

**Forum za
tranzicionu
pravdu**

**Forum for
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Fond za humanitarno pravo
Humanitarian Law Center

**TRANZICIONA PRAVDA
U POST-JUGOSLOVENSKIM ZEMLJAMA:
POLITIČKA VOLJA I PODRŠKA JAVNOSTI
PROCESU *REKOM***

Priredila Denisa Kostovicova

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Uvod

Ovaj posebni broj, čiji je cilj da doprinese debati o tranzicionoj pravdi na zapadnom Balkanu, se najvećim delom pojavljuje zbog dva događaja. Prvi je jednodnevni seminar pod nazivom „Evropske integracije i tranziciona pravda: perspektive i smerovi restorativne pravde na zapadnom Balkanu“, koji su organizovali bivši Centar za proučavanje globalnog upravljanja Londonske škole za ekonomiju i političke nauke i beogradski Fond za humanitarno pravo. Ovaj seminar je održan u sedištu Evropske komisije u decembru 2009. Drugi događaj je Međunarodni forum za tranzicionu pravdu koji je organizovala Koalicija za REKOM, i koji je održan u Sarajevu u junu 2011. Veoma smo zahvalni Evropskoj komisiji, italijanskoj kompaniji za istraživanje javnog mnjenja *Compagnia di San Paolo* i *King Baudouin Foundation* koji su omogućili održavanje ova dva skupa, i Programu za razvoj fakultetskog kadra u jugoistočnoj Evropi Fondacije za otvoreno društvo i Civil Rights Defenders koji su pomogli izdavanje ovog broja *Foruma za tranzicionu pravdu*.

Civilno društvo i restorativna pravda na zapadnom Balkanu: od simboličke politike do konsolidovanja države

Denisa Kostovicova

Koncept tranzicione pravde je donedavno prisvajala retributivna pravda (tj. pravda koja se postiže suđenjem) kada su u pitanju javne rasprave na zapadnom Balkanu, debate o smerovima saradnje sa različitim spoljnim akterima kakva je i Evropska unija, kao i naglo rastući broj istraživanja u oblasti tranzicione pravde u regionu. Pristupi koji su okrenuti ka žrtvama u oblasti instrumenata restorativne tranzicione pravde na zapadnom Balkanu trebaju tek da privuku pažnju akademske javnosti i političara, koja im s pravom pripada, iako su nedavni naučni radovi dotakli temu neuspelih pokušaja (koje su finansirale države) da se osnuju komisije za istinu i pomirenje na zapadnom Balkanu.

Rad REKOM-a, koji je međunarodna inicijativa civilnog društva na zapadnom Balkanu pokrenuta sa ciljem da se ustanove činjenice u vezi sa ratnim zločinima i teškim kršenjima ljudskih prava počinjenim za vreme ratova koji su doveli do raspada Jugoslavije, nedavno je privukla pažnju Evropske unije, ali i političara u regionu. Inicijativa za REKOM je osnovana kao odgovor na slabosti i očiglednu nedelotvornost mehanizama retributivne pravde, konkretno na rad Međunarodnog tribunala za ratne zločine, a koji su trebali da dovedu do pravde i pomirenja. Uticaj REKOM-a se već proširio na ceo region, iako on još uvek nije postigao svoj cilj – da postane regionalna komisija iza koje stoje države, a u isto vreme je njegov rad nailazio na ponekad žestoko protivljenje predstavnika država i građanskog društva iz regiona. Stotine konsultacija o pitanjima vezanim za tranzicionu pravdu, uključujući i konsultacije o statutu ove komisije, podstakle su među- i unutar-etničku raspravu

o neophodnosti suočavanja sa prošlošću dok se ostaje veran osnovnoj usredsređenosti – na žrtve.

Proces koji je REKOM pokrenuo zahteva razmatranje uloge civilnog društva u odnosu na šire ciljeve tranzicione pravde i, pre svega, razmatranje našeg shvatanja o tome kako aktivnosti građanskog društva mogu da učvrste ciljeve procesa evropskih integracija u regionu. Od posebnog značaja u ovom izlaganju je značaj aktivizma u građanskom društvu u oblasti restorativne pravde za evropeizaciju zapadnog Balkana, koji obuhvata i pomirenje i izgradnju država nakon završenog sukoba.

Rad Međunarodnog tribunala za bivšu Jugoslaviju, u okviru uslovljenosti Evropskom unijom, kao i „lokalna“ i „hibridna“ suđenja za ratne zločine na zapadnom Balkanu, svedočanstva su značaja retributivne pravde u kontekstu tranzicije i post-konfliktnog društva. Pristup retributivne pravde je obuhvatio nekoliko ciljeva tranzicione pravde za izgradnju mira. Ovi ciljevi uključuju identifikaciju zločina kroz kažnjavanje počinilaca, stvaranje istoričarskog zapisa, a takođe i formiranje lokalne sposobnosti da se izgradi vladavina zakona. Ali pre svega, rad Međunarodnog tribunala za bivšu Jugoslaviju, na koji se može gledati kao na spoljno nametanje tranzicione pravde zapadnom Balkanu, oduzeo je mogućnost domaćim zakonodavcima i publici da zanezmare prošlost. Postoji iskušenje, koje je naročito veliko u vremenu posle etničkog sukoba, da se usvoji stav „zaboravi i produži dalje“, naročito ako postoji kontinuitet između predratnih aktera i poratnih vlasti. Činjenica da se tranziciona pravda ne može gurnuti na stranu će ostati najtrajnije

i nesporno nasleđe ovog instrumenta tranzicione pravde, uprkos priznavanja činjenice da je sposobnost Tribunala da isporuči pravdu nesigurna.

Zaista, čak i zločine koji su kažnjeni na međunarodnim krivičnim suđenjima nisu nužno priznale sve strane umešane u sukob; javna rasprava o ratnim zločinima počinjenim širom zapadnog Balkana je ostala ograničena na određene segmente građanskog društva; istoričarski tekstovi se još uvek opovrgavaju, a lokalna suđenja za ratne zločine često ilustruju slabosti pre nego snagu vladavine prava. Slično tome, domaća suđenja u regionu često prati politizacija, uključujući tu i mešanja političara i selektivnost zasnovanu na etnicitetu optuženih, udružena sa slabostima koje proističu iz nedostataka kapaciteta, što za rezultat ima sporo procesuiranje slučajeva i umnožavanje zaostataka, kao i ozbiljniji problem – neodgovarajući okvir za zaštitu svedoka, što se u praksi pokazalo i kao politički problem i kao problem sa kapacitetima. Dodatno se pojavilo više prepreka na regionalnom nivou, kao što je nesposobnost nekih država da sklope ugovore o izručenju. Stoga je povećanje broja suđenja za ratne zločine i njihov potencijal da ispune višestruke ciljeve postkonfliktne izgradnje mira potrebno posmatrati na fonu manjka javnog konsenzusa o prošlosti, na nacionalnom i regionalnom nivou.

Dva tipa rasepa i dalje stoje na putu postizanja konsenzusa o skoroj prošlosti na zapadnom Balkanu: jedan je među-etnički (između različitih nacionalnih grupacija – Srba i Muslimana, Srba i Albanaca, Muslimana i Hrvata, Albanaca i Makedonaca) a drugi je unutar-etnički (sukobljene interpretacije skore prošlosti u okviru nacionalnih grupa, tj. između Srba, Hrvata, Albanaca itd). Kako se ceo region sve više približava Evropskoj uniji – u formalnom smislu, posmatrano kroz ugovorne odnose – različite nacionalne grupe ostaju međusobno onoliko podeljene koliko su podeljene i unutar sebe. Mehanizmi retributivne pravde koji trenutno deluju ne mogu da prevladaju ove rasepe, pa ih u nekim slučajevima čak i pogoršavaju. Zbog toga pitanje tranzicione pravde, shvaćene u terminima otvaranja pitanja o zločinima iz prošlosti, ostaje podložno neprestanoj politizaciji, dok nikako ne može da dođe do svođenja računa.

Simboličke politike i izgradnja kapaciteta su dve oblasti u kojima restorativna pravda, i naročito uloga civilnog društva u unapređivanju restorativne pravde, mogu da doprinesu izgradnji mira. Simboličke politike mogu da doprinesu premošćavanju među-etničkih i unutar-etničkih rasepa. Spajanje u okviru pojmova istine i pomirenja između i unutar grupa može se ostvariti jedino ako su napori u ovom pravcu stekli legitimitet kroz osnaživanje i priznanje „odoz-

do“. Međutim, mada je samo po sebi bitno, usredsređivanje na simboličke politike često zasenjuje podjednako bitan doprinos restorativne pravde konsolidovanju države, koje je ključno za evropeizaciju perspektivnih članica evropskog kluba. Bitno je shvatiti da se manjak konsenzusa u vezi sa bliskom prošlošću može direktno povezati sa sporim tokom reformi na celom zapadnom Balkanu, u kritičkim oblastima reforme bezbednosnog sektora, vladavine zakona i korupcije, kao i usvajanju već prilagođene legislature kao rezultat približavanja Evropskoj uniji. Sukobljene interpretacije o prošlosti doprinose okoštavanju parcijalnih interesa koji su zasnovani na etnicitetu i(li) neformalnoj ekonomiji, a koji su povezani sa organizovanim kriminalom. Ovi se interesi često izražavaju ili kroz načelno opiranje reformama, ili kroz otpor primeni već usvojenih zakona i regulativa. Takvi interesi ometaju procese evropskih integracija, uprkos retoričke posvećenosti njima.

Civilno društvo ima potencijal da prevaziđe ograničenja inicijativa na polju tranzicione pravde koje sprovode države i koje su zasnovane na suđenjima. Ono može pružiti osećaj vlastitosti procesima suočavanja sa nedavnim zločinima, pošto je nedostatak tog osećaja vlastitosti često politizovao te procese. Štaviše, depolitizacija je nužan preduslov svakoj smisljenoj konsolidaciji države, posmatranoj kroz sposobnost za izgradnju države.

Sve od kraja neprijateljstva u bivšoj Jugoslaviji, civilno društvo je igralo kritičnu ulogu u promovisanju tranzicione pravde. Civilno društvo se pokazalo kao noseći stub lokalne podrške projektu Tribunala, a takođe i kao stručni kritičar uskog pristupa Tribunala koji je koncentrisan na počinitelja. Dosledno svom stavu o neophodnosti suočavanja sa kriminalnom prošlošću i fokusiranju na žrtve povreda ljudskih prava, civilno društvo je predvodilo debatu posvećenu suočavanju sa prošlošću. Ono je podvrglo zvanične autoritete nepopustljivom kritičkom ispitivanju tokom svoje kritike zvanične retorike i politike koje bi nagradile nekažnjivost. Nacionalna civilna društva u regionu nisu o ovim temama govorila jednoglasno. Ovo je pre svedočanstvo o živosti i elastičnosti ove debate nego znak slabosti – uključujući tu i osetljive teme kao što su pitanja da li je ideološka delegitimizacija nacionalizma iz 1990-ih preduslov tranzicione pravde, ili *vice versa*; da li nacionalni pristup ima prednost nad regionalnim, itd. Takva raznovrsnost u mišljenjima svedoči o važnoj demokratskoj dimenziji tranzicione pravde u regionu. Međutim, takav pogled na civilno društvo pruža samo jednostranu sliku višeznačnog doprinosa civilnog društva tranzicionoj pravdi. Baš kao što smo videli kako civilna društva u celom regionu mukotrпно rade na pravdi i pomirenju, drugi segmenti

civilnog društva su sebi postavili potpuno suprotne ciljeve i ideje koji propagiraju ekstremne, neliberalne i isključive ideje i interese.

U kontekstu neprekidnog preispitivanja post-konfliktnih rešenja, bez pokreta ili sa ograničenim napretkom u rešavanju pitanja nestalih osoba kao i instrumentalizacije pravde, civilno društvo će, i pored svih ograničenja

„odozgo“ i „odozdo“, ostati noseći stub nade u pravdu i pomirenje na zapadnom Balkanu. Stoga je ključno pitanje kako se najbolje Evropska unija može povezati sa takvim saveznicom na zapadnom Balkanu, i kakvi nivoi i oblici podrške civilnom društvu i njegovim inicijativama na polju tranzicione pravde mogu unaprediti projekat evropeizacije država i društava u regionu.

REKOM: Nov pristup pomirenju i korektiv krivične pravde

Nataša Kandić

Uspostavljanje [tranzicione] pravde je jedan od bitnih uslova za članstvo post-jugoslovenskih zemalja u Evropskoj uniji. Ta obaveza se odnosi na procesuiranje ratnih zločina i reformu institucija, s tim da EU finansijski podržava i brojne nevladine inicijative za traženje istine o prošlosti. Ocena EU je da ima napretka. U februaru 2011. godine, Državno odvjetništvo i MUP Republike Hrvatske doneli su Strategiju za istraživanje i procesuiranje ratnih zločina počinjenih u razdoblju od 1991. do 1995. godine. Bosna i Hercegovina je takođe donela strategiju procesuiranja ratnih zločina, a potom, u junu 2012. godine, Ministarstvo pravde i Ministarstvo za ljudska prava i izbeglice BiH su uputili na javnu raspravu dokument *Strategija tranzicijske pravde u BiH, 2012 -2016*. Pomenuta ministarstva su u javnost izašla s predlogom o osnivanju vanskog tela za kazivanje istine koje bi podsticalo stalni dijalog o prošlosti. U junu 2012. godine, Vlada Kosova je osnovala Radnu grupu za tranzicionu pravdu.

Regionalna saradnja državnih institucija u drugim oblastima tranzicione pravde se uglavnom svodi na učešće pojedinih predsednika država u komemoracijama žrtava iz drugih etničkih zajednica i na lična izvinjenja za nedela pojedinaca iz vlastite etničke grupe. Predsednik Hrvatske Ivo Josipović i bivši predsednik Srbije Boris Tadić su 2010. godine promovisali pomirenje među narodima nekadašnje SFRJ kao cilj i vrednost regionalne saradnje. Te godine, obojica su snažno podržali civilnu inicijativu za osnivanje zvanične Regionalne komisije za utvrđivanje činjenica o ratnim zločinima i drugim teškim povredama ljudskih prava zvane REKOM. Predsednik Hrvatske je ponovo u junu 2011. godine, prilikom susreta sa članovima Koalicije za REKOM, kada mu je uručena peticija za osnivanje REKOM sa 543.000 potpisa građana iz svih post-jugo-

slovenskih zemalja, izrazio svoju punu podršku osnivanju REKOM. U maju 2012. godine, u razgovoru sa javnim zagovaračima Inicijative REKOM, predsednik Josipović se složio da je vreme da se konkretizuje verbalna politička podrška, te je predložio da države u regionu ispitaju pravne i ustavne mogućnosti za osnivanje REKOM. Obećao je da će se u tome lično angažovati. U međuvremenu, u junu 2012. godine došlo je do promene vlasti u Srbiji, što je dovelo do prekida zvanične komunikacije između Hrvatske i Srbije, a u Koaliciji za REKOM do preispitivanja strategije zagovaranja osnivanja REKOM. Verujući da pojačana javna podrška može otkloniti nastalu političku blokadu, Koalicija je tokom septembra i oktobra 2012. godine organizovala javne akcije pod nazivom *REKOM za budućnost*, tokom kojih su građani potpisivali peticiju za osnivanje REKOM i slali razglednice predsednicima sa porukom da je vreme za političku odluku. Međutim, osim predsednika Makedonije, koji je od javnih zagovarača Inicijative REKOM zatražio više informacija, ostali predsednici nisu reagovali. U decembru 2012. godine, javni zagovarači su pozvali predsednike država da odgovore na zahtev Koalicije i 545.000 građana za osnivanje REKOM. Tom prilikom, javni zagovarači su obavestili predsednike da su nevladine organizacije izradile popis od oko 100.000 osoba koja se su izgubile život u vezi sa oružanim sukobima u bivšoj Jugoslaviji, od ukupno 130.000, ali da ostaju poslovi u kojima one ne mogu zameniti zvanična tela, kao što je REKOM. Osim verifikacije prikupljenih podataka i činjenica o identitetu žrtava, potrebno je utvrditi činjenice o političkim i istorijskim okolnostima koje su odlučujuće doprinele izbijanju oružanih sukoba i činjenju ratnih zločina, kao i organizovati javno slušanje, čiji je neposredni cilj priznanje patnji i nepravdi nanetih žrtvama.

Pre i nezavisno od Inicijative REKOM, Istraživačko-dokumentacioni centar iz BiH i Fond za humanitarno pravo iz Srbije i sa Kosova¹ su započeli sa istraživanjem ratnih zločina, stradanja civila, vojnika i policajaca u oružanim sukobima ili u vezi sa njima. U 2011. godini, Fond za humanitarno pravo i Fond za humanitarno pravo Kosovo su objavili prvi tom *Kosovske knjige pamćenja* koji govori o 2.056 ljudi, i okolnostima u kojima su izgubili život ili nestali tokom rata 1998. godine. U toku je provera podataka o preostalim 9.816 žrtava rata od januara 1999. do juna 1999. godine, kao i o 1.646 žrtava post-konfliktnih ubistava i otmica na Kosovu. Istraživačko-dokumentacioni centar je u decembru 2012. godine, u saizdavaštvu sa FHP-om, objavio četiri toma *Bosanske knjige mrtvih*, koja sadrži imena 95.540 ljudi koji su izgubili život ili nestali u ratu ili u vezi sa ratom u BiH, od aprila 1992. godine do kraja decembra 1996. godine. U toku je dokumentovanje žrtava rata u Hrvatskoj, na čemu zajedno rade Documenta iz Hrvatske i Fond za humanitarno pravo.

Nevladine organizacije širom nekadašnje SFRJ, kao i EU, podržavaju suđenja za ratne zločine kao najvažniji instrument za utvrđivanje pojedinačne krivice za nedela u prošlosti. Ali su nevladine organizacije svesne ograničenja krivičnih suđenja u odnosu na potrebe žrtava za pravdom, zbog čega pokreću brojne inicijative za traženje istine i pomirenje. Otvaranje debate o pomirenju ne ide brzo i lako. Na regionalnom nivou, jednako kao i u BiH, debate o suočavanju s prošlošću, u kojima učestvuju lideri udruženja logoraša, veterana i porodica nestalih, često se odvijaju u znaku „političkih istina“ o tome šta se dogodilo u prošlosti. Koalicija za REKOM, koja okuplja više od 1.900 organizacija civilnog društva, pokušala je da se tome suprotstavi organizovanjem sesija nazvanih *Glas žrtava*, u kojima su žrtve svedočile o svojim ličnim iskustvima. Na početku konsultativnog procesa, lične ispovesti odigrale su ključnu ulogu u promovisanju novog odnosa među i prema žrtvama, koji polazi od saosećanja, solidarnosti i razumevanja prošlih događaja iz ugla drugog. Međutim, posle izvesnog vremena, lideri nekih udruženja žrtava i porodica nestalih su počeli da postavljaju uslove - da oni ili njihovi predstavnici „svedoče“ o tome šta se dogodilo u prošlosti. Tako su na Forumu za tranzicionu pravdu u Crnoj Gori 2009. godine, lideri udruženja porodica nestalih Srba iz BiH zapretili da

će, ukoliko njihov predstavnik ne „svedoči“ među prvima, napustiti skup. Zatim je, na Forumu za tranzicionu pravdu u Hrvatskoj 2010. godine, lider jedne od udruga stradalih branitelja „svedočio“ o agresiji Srbije na Hrvatsku. Zbog toga je Koalicija za REKOM prekinula da organizuje sesije *Glas žrtava*, svesna snage ličnih ispovesti za izgradnju kulture solidarnosti i saosećanja ali i svoje nemoći da spreči manipulaciju žrtvama u političke svrhe. Ali REKOM, zahvaljujući regionalnom karakteru, ima snagu da se suprotstavi svim pokušajima zloupotrebe i manipulacije žrtvama, i da organizuje javna slušanja koja će dovesti do javnog priznanja patnji i nepravdi nanetih svim žrtvama.

Postoji još jedan razlog koji nas upućuje na važnost osnivanja REKOM-a. Reč je o ograničenjima krivične pravde u odnosu na potrebe žrtava da njihova patnja bude javno priznata. Sud se ne bavi patnjama i nepravdom prema žrtvama, nema zadatak da dokumentuje sve individualne žrtve, kao ni okolnosti njihovog stradanja. Ima samo jedan zadatak: da oceni dokaze i donese odluku o krivici optuženog/ih. Iz tog razloga, u svim presudama Haškog tribunala naći će se imena tek desetak hiljada žrtava ratnih zločina, iako ih ima najmanje 45.000. Poseban problem se javlja u vezi sa oslobađajućim presudama koje u javnosti stvaraju utisak da ako nema individualne krivice nema ni žrtava. Tako su oslobađajuće presude hrvatskim generalima, Anti Gotovini i Mladenu Markaču, kao i kosovskom bivšem premijeru Ramushu Haradinaju, stvorile jak utisak u javnosti da u Hrvatskoj i na Kosovu nije bilo ratnih zločina prema Srbima. Međutim, tokom suđenja generalima izneti su brojni dokazi o ubistvima najmanje 300 srpskih civila, tokom i nakon vojno-policijske operacije *Oluja*, a na suđenju bivšem kosovskom premijeru dokazi o ubistvima srpskih civila na teritoriji pod kontrolom Oslobođilačke vojske Kosova². U postupcima pred Haškim tribunalom, kao i pred domaćim sudovima, zbog visokih standarda dokazivanja često se događa da sud utvrdi da su optuženi odgovorni za smrt značajno manjeg broja žrtava od broja stvarnih žrtava – zbog nedostatka forenzičkih izveštaja ili zbog toga što nisu pronađeni posmrtni ostaci svih žrtava. Te žrtve ne smeju biti zaboravljene. REKOM je jedini mehanizam koji ima potencijal da dokumentuje sve žrtve. U tom smislu, REKOM je korektiv krivične pravde, i nov pristup pomirenju.

1 Tom poslu se 2009. godine pridružila i Documenta iz Hrvatske.

2 *Kosovska knjiga pamćenja*, prvi tom, FHP, 2011. FHP je utvrdio identitet 41 srpskog civila koji je izgubio život na teritoriji Kosova pod kontrolom Oslobođilačke vojske Kosova, kojom je komandovao Ramush Haradinaj.

I DEO

Mogućnosti i opcije za restorativnu pravdu

Pravda izvan sudnice: Uključivanje društva u proces razumevanja prošlosti

Eric Gordy

Međunarodni krivični sud za bivšu Jugoslaviju (MKSJ), osnovan 1993. godine je najpoznatiji ali svakako ne i jedini mehanizam uspostavljen u cilju utvrđivanja činjenica koje bi doprinele razumevanju događaja iz prošlosti, identifikovanja slučajeva kršenja ljudskih prava i kažnjavanja njihovih počinitelja, kao i zadovoljavanja zahteva međunarodne zajednice za utvrđivanje lične odgovornosti. MKSJ nije trajni sud već je zamišljen kao sudska institucija koja ima ograničen životni vek sa mandatom koji je limitiran samo na jedan segment međunarodnog humanitarnog prava. Iako je osnovan u nadi da će doprijeti procesu pomirenja u regionu, statut Tribunala ne odražava njegovu funkciju vezanu za pomirenje a činjenica da je nastao izvan regiona čijom se istorijom bavi, dodatno podriva kapacitet Tribunala u tom pogledu. Ozbiljan rad na uspostavljanju socijalnog dijaloga i pokušaja stvaranja uslova da se razumeju događaji vezani za nedavni ratni sukob moraju biti obaveza ljudi i institucija u regionu.

Svakako da je bilo inicijativa u tom pravcu - uglavnom građanskih inicijativa pre promene vlasti u Srbiji i Hrvatskoj 2000. godine kao i nekih zvaničnih inicijativa u periodu koji je usledio. Međutim, ove inicijative su bile sporadične i nesistematske, a neretko su bile uslovljene spoljno-političkim pritiscima, ponekad su sprovedene bez dobre volje i pristupano im je sa polovičnim merama što je naravno rezultiralo nezavršenim poslom.

Ovo nije naročito iznenađujuće jer cilj suočavanja sa prošlošću podrazumeva proces koji po svojoj brzini i dubini nema presedana u istoriji. To je proces koji obuhvata i domaće i međunarodne krivične postupke koji koriste obilje različitih procedura i praksi i koji nastoji da proizvede efekat pokajanja koji podrazumeva istinsku transformaciju

u svesti naroda – sve to bez uništavanja političkih i pravnih institucija i bez dopuštanja tim institucijama da ostanu onakve kakve su bile u trenutku kada su njihove države bile odgovorne za dela koje te iste institucije sada treba da kažnjavaju. Imajući na umu da posmatrane države nisu doživele ni odlučan vojni poraz ni kompletnu političku transformaciju, činjenica da su se inicijative tranzicione pravde uopšte pojavile, a posebno da su u značajnoj meri prisutne u svakodnevnom životu, sama je po sebi veoma značajna.

Možemo raspravljati o tome da je više urađeno (mada i tu ipak postoji samo delimičan rezultat) na procesuiranju počinitelja ratnih zločina nego na postizanju drugih vidova pravde. Ovo može biti uslovljeno činjenicom da pitanja dokaznog materijala i procedure koje se koriste u krivičnom postupku, iako veoma složeni po prirodi, nisu ni izbliza tako složeni kao široka pitanja javnog pamćenja i stvaranja legitimnog istorijskog zapisa o predmetnim događajima. Ali, ako hoćemo da pokrenemo malo provokativniju raspravu ovde, možemo tvrditi da relativni uspeh krivičnih postupaka može sam za sebe da predstavlja prepreku u postizanju nekih ciljeva pravde. Prvenstveno zbog strukture ovih suđenja koju određuju specijalna sudska veća i MKSJ, dogodilo se nešto što prvobitno nije bilo namera: određeni događaji su sklonjeni iz polja odgovornosti a socijalna i moralna pitanja svedena su na politička i proceduralna. Ovim ne impliciram da ne treba voditi krivične postupke – naravno da se oni moraju voditi, već ističem da je potrebno dopuniti ih nekim procesima o kojima pravni i politički eksperti ne vole mnogo da razmišljaju, tačnije kulturnim i socijalnim procesima koji su spori, neizvesni i čiji je ishod teško predvideti.

Koji su to procesi? Po cenu da možda odem predaleko, dozvolite mi da citiram nekoliko teoretičara sociologije i pravne nauke koji su ovom pitanju pristupili na različite načine.

Mark Osiel, na primer, sudski postupak stavlja u prvi plan smatrajući ga poprištem borbe dokaza, gde se razmenjuju stavovi i gde se donosi odluka:

Kao ritualno izražavanje kolektivne svesti, suđenja za administrativni masakr svakako 'nisu' bila jednostavna i nepomirljiva refleksija moralnog sentimenta koji je već univerzalno bio prisutan u društvu u odnosu na optuženog [...] Sudnica će neizbežno biti smatrana od strane svih uključenih u proces kao forum u kome će neizostavno različite strane promovisati suprotstavljena istorijska tumačenja nedavnih katastrofalnih događaja u potrazi za autoritativnim priznanjem a takve presude će takođe bez izuzetka biti tumačene kao pružanje podrške jednoj ili drugoj verziji kolektivnog pamćenja¹.

Ruti Teitel ide dalje od trenutka suđenja do difuzije rezultata suđenja i njihove eventualne reperkusije na opštenarodnu svest:

Jednom kad istinu učinimo 'oficijelnom', to podrazumeva postojanje određenog nivoa demokratskog konsenzusa; ipak, u tranziciji, demokratski procesi nisu u potpunosti konsolidovani noseći sa sobom implikacije vezane za autoritarnost i legitimnost tranzicijske produkcije saznanja. U skladu s tim, u tranzicionom kazivanju istine, postoji određeni orkestrirani napor da se istorijska i politička odgovornost ukrste [...] Istorijski konsenzus stvoren na taj način zasnovan je na pretpostavci da će istina biti distribuirana i prihvaćena u javnoj sferi [...] Ono što je u pitanju jeste sporna nacionalna istorija².

Mislim da se ovde podrazumevaju dve kategorije koje je vredno izdvojiti i obe su prilično kontroverzne: prvo, izgleda da postoji pretpostavljena vrednost zvana „istina“ i drugo, izgleda da postoji ustanovljenje nečega zvanog „prošlost“ od čega je neophodno „distancirati se“. Ovi termini su pod znacima navoda ne zato što ja želim da osporim njihovu primenljivost već zbog toga što kad god se upotrebe, nastaje i potreba da se oni definišu. U stabilnim i predvidivim uslovima bilo bi previše postaviti ovakav

zahtev jednom političkom društvu – u uslovima neizvesnosti i rizika, zadatak je zaista veoma obiman i vrlo težak.

Zahtev da se „distanciramo od prošlosti“ ne dolazi isključivo spolja i nije potpuno bez sadržaja. Mislim da neće biti nimalo teško pronaći ljude u bilo kojoj zemlji bivše Jugoslavije koji bi se složili da je nedavno okončana prošlost bila neobično bolan period koji je prouzrokovao dugotrajnu štetu i da bi bilo kakav napor da se prevaziđu teškoće koje su iz tog perioda proistekle morale da uključe, na nekom nivou, konstataciju da je taj period završen kao i napor da se što sveobuhvatnije razume šta je to sve činilo tu bolnu prošlost.

Ali, raskidanje sa prošlošću ne dešava se automatski. To je proces koji mora biti rezultat nekog oblika generalnog konsenzusa. Ovaj konsenzus trenutno ne postoji ni u jednom delu bivše Jugoslavije. Postoje nezaobilazne kontroverze koje podrazumevaju pitanja poput:

1. Kad počinje prošlost?
2. Ko su bile žrtve prošlosti?
3. Koji elementi prošlosti su važniji?
4. Da li prošlost treba ispitivati kroz mehanizme krivice i odgovornosti?
5. Ko je vrhovni autoritet koji odlučuje?

U nastojanju da se dođe do odgovora na ova pitanja, jedna dilema se iznova javlja. Ova pitanja su hitna po svojoj prirodi a jedini način da se na njih odgovori jeste kroz politički proces koji je neminovno, iz više razloga, veoma spor. Moćni međunarodni faktori u svojim ambicijama da pronađu brzi odgovor (određene vrste) koristeći raspoložive mehanizme intervencije mogu proizvesti neželjeni efekat i sprečiti da dođe do bilo kakvog svesnog „distanciranja ili raskida sa prošlošću“.

Da uzmemo jedan primer. Možemo pokušati da načnemo pitanje ko su žrtve rata. Izvesno znamo tri stvari: 1) bilo je žrtava iz svih etničkih grupa, 2) postoje ogromne brojčane razlike u broju žrtava iz različitih etničkih grupa i 3) bilo kakav napor da pokušamo da objasnimo prve dve činjenice neizostavno će dovesti do toga da se jedna grupa

1 Hesse and Post (eds.), *Human rights in political transitions: Gettysburg to Bosnia / Ljudska prava u političkim tranzicijama: Od Getisburga do Bosne* (NY: Zone Books, 1999), pp. 218, 219.

2 Ruti Teitel, *Transitional justice / Tranziciona Pravda* (Oxford: Oxford University Press, 2000), pp. 83, 84.

oseća otuđeno i uvređeno. Drugim rečima, potrebna je „ravnoteža“ a to je isto tako teško postići kao što je teško zamisliti da će bilo ko biti time zadovoljan. A „ravnoteža“ sama po sebi nosi rizik – ona može imati efekat smanjivanja ili u praksi može biti doživljena kao komparativna viktimizacija, što može da funkcioniše kao vrsta izbegavanja ili poricanja. U nekom trenutku biće važno za sve žitelje država bivše Jugoslavije da generišu, kroz dijalog, debatu i istraživačku delatnost, tumačenje koje priznaje sve one zločine koje su različite formacije počinile u ime raznih „nacionalnih“ interesa i identiteta. Međutim, da bi se ovo dogodilo, verovatno će biti neophodno za sve ove zemlje da dosegnu nešto poput konsenzusa o sopstvenoj odgovornosti, i to barem delimično, neovisno o tome šta druge zemlje čine po tom pitanju i kojim intenzitetom, i bez obaziranja na to da li međunarodna zajednica vrši isti pritisak na sve vlade u regionu. Može se dogoditi da neki oblik regionalnog pristupa ovom pitanju ima jasne prednosti, ali teško je predvideti organizovanje nekog regionalnog pristupa ukoliko ne postoji prethodno uspostavljena lokalna inicijativa u ovom pravcu.

Na šta se ovo u stvari svodi jeste potreba da se u ime pravde i pomirenja veoma ozbiljno pristupi pitanju istine, imajući u vidu istinu mnogo širu od one vrste istine koju advokati imaju na umu prilikom vođenja krivičnog postupka (iako je uspostavljanje ove vrste istine takođe neophodno). A dosadašnji naponi u zemljama regiona da se dođe do istine u najboljem slučaju se mogu okarakterisati kao sporadični i retki. Slučaj Bosne i Hercegovine je najbolja ilustracija toga: uprkos velikom broju različitih inicijativa, od kojih su neke potekle od civilnog društva, neke od međunarodne zajednice a neke od političkih partija i institucija, svaki napor da se oformi istraživačka komisija bio je efikasno zaustavljen osim jednog: Komisija Republike Srpske za istraživanje zločina počinjenog u Srebrenici 1995. godine je jedina komisija koja je zaista sastavila izveštaj. Ovaj izveštaj je naravno izazvao lavinu kritika na svoj račun.

Jasna Dragović-Soso u izveštaju koji uskoro treba da bude objavljen³ prati različite inicijative da se oforme i osposobe za rad „komisije za istinu“ u regionu i dolazi do generalnog zaključka da su svi ti naponi osujećeni nedostatkom političke volje, uočavajući razne vidove obstruk-

cije, nedovoljnu podršku i nedostatak dobre volje da se taj posao uradi. Nedostatak istinske političke volje najmoćnijih ličnosti u regionu da se konstruktivno uključe u proces suočavanja sa bliskom prošlošću može se delom objasniti komplikovanim odnosom sa međunarodnim faktorima, uključujući i MKSJ, koji su uticali na domaće sudske procese za ratne zločine u meri da oni nisu uvek najproduktivniji u nastojanjima da se dođe do „istine i pomirenja“. Ovaj problem se dalje pogoršava dubokim i još uvek prisutnim problemom podeljenosti i fragmentarne vizije bliske prošlosti na prostoru bivše Jugoslavije, koji se sreće ne samo na među-entničkom nivou već i u okviru civilnih društava iste nacionalne grupe.

Da li je onda neophodno zahtevati da se nešto što je apstraktno kao istina uopšte dovodi u pitanje? Zašto jednostavno ne dozvolimo sudovima i tribunalima da rade ono što najbolje znaju i ostavimo dokumentaciju da o njoj raspravljaju istoričari u nedogled? To nam može pomoći da sagledamo jedan trenutak u tekućem procesu razumevanja prošlosti Srbije kad se u javnost iznesu dokazi o naporima da se unište tragovi zločina premeštanjem tela žrtava sa jedne lokacije na drugu, na mesta kao što je dno reke Dunav. Ovaj incident je inspirisao pokojnog novinara Stojana Cerovića da se udubi u analizu odnosa legalističkih i nelegalističkih inicijativa:

Ako bismo hteli da izbegnemo Haški sud, to nipošto ne bi smelo biti zato što ne verujemo da su se dogodili zločini – jer evo isplivaše dokazi – niti zato što imamo neka opravdanja – što su to radili i drugi – jer takvim opravdanjima ni sami ne verujemo. Hoću da kažem da, u meri u kojoj u nama postoji neko moralno osećanje, nije moguće preći preko ovakvih stvari, makar nikakav ovozemaljski sud nikad ništa o tome ne saznao.

Ako u ovakvim slučajevima ne tražimo krivce i ne mislimo na kazne, onda nam nikakav sud, pa ni haški, ne može da pomogne. To bi značilo da smo, kao društvo, već kažnjeni vraćanjem u rajsku beslovesnost. Ili, ako neko više voli lokalnu mitologiju, to bi ličilo na gubitak oba ona carstva koja su pominjana baš u vezi s Kosovom⁴.

3 Jasna Dragović-Soso i Eric Gordy, „Transitional justice and reconciliation in the former Yugoslavia“ / „Tranziciona pravda i pomirenje u zemljama bivše Jugoslavije“, D. Đokić i J. Ker-Lindsay (eds.), *New perspectives on Yugoslavia: Key issues and controversies / Nova perspektive u Jugoslaviji: ključna pitanja i kontroverze* (Routledge, 2010).

4 Stojan Cerović, „Zločin i tajna“ / „Crime and Secret“, *Vreme Weekly Magazine*, br. 540, 10. maj 2001. Dva „carstva“ koje Cerović pominje u poslednjoj rečenici odnose se na mitski ciklus o Kosovskom boju koji je Car Lazar izgubio nakon što je izabrao „carstvo nebesko“ nad „carstvom zemaljskim“.

Ovde verovatno pokušavamo naći utočište na terenu morala. Ali ovde možda ima smisla analizirati pojam koji se nalazi u pozadini svih ovih diskusija: pojam „odgovornosti“ / „responsibility“. Prvi deo ove reči, prirodno, sadrži u sebi reč „odgovor“ / „response“. U svom eseju o „Odgovornosti“ u Hejstingsovoj Enciklopediji religije i morala (Hastings Encyclopedia of Religion and Ethics), David Fyffe uvodi sinonim „answerableness“. Ova jezička igra ima smisla i u srpsko-hrvatskom jeziku takođe: koren reči „odgovornost“ (responsibility) je reč „odgovor“ (answer). U ovom tumačenju pojam odgovornosti je uzet u značenju sposobnosti da se odgovori – i u smislu da je neophodno pružiti odgovor i u naporu da se proizvedu ti odgovori. Kad se ovome pristupi na ovakav način, i ljudi koji žele da vide da se događa neka pravna akcija i ljudi koji se tome opiru, imaju istu motivaciju: i jedni i drugi misle da će ishod bilo kog sudskog postupka imati direktan odraz na njih i da će nositi određene reperkusije na njihov odnos prema sebi samima i njihovom doživljavanju sopstvenog identiteta. Ovo može biti mesto gde bi diskusija mogla da počne – a to nije sudnica.

Organizacija krivičnih postupaka je svakako bila neophodna i napori da se to odradi u sebi sadže određena dostignuća i novi dijapazon mogućnosti. Istovremeno, međutim, to je praćeno rizikom koji nije možda odmah uočljiv: od svih kulturnih, političkih i intelektualnih napora da se dostigne viši nivo razumevanja, rizikom da se sve to izgubi u diskursu koji je po svojoj prirodi i tehnički i manipulativan.

Tribunali koji su nastali nakon ili po uzoru na MKSJ pokušavaju da objasne ovaj problem i integrišu njegovo razumevanje u svoje operacione strukture. U Istočnom Timoru i Sijera Leoneu, proces ustanovljavanja istorijske istine bio je institucionalno odvojen od procesa podizanja optužbi protiv osumnjičenih kao i od samih sudskih procesa. U Kambodži, na primer, mogućnost da žrtve govore i dobiju priznanje za svoje iskustvo je integrisano u proces koji je simultan i paralelan sa vođenjem sudskog postupka. Što se tiče zemalja čija su suđenja unapred tipski predodređena postojanjem tribunala kao što je MKSJ – bivša Jugoslavija i Ruanda, postoji čitav niz napora da se taj jaz prevaziđe. U Ruandi, vlada je aktivno promovisala pomirenje sa narativnim elementom. Ovaj napor je bio delimično uspešan

zbog toga što je imao podršku države i zato što je u narodu vladalo zajedničko uverenje da propust da se učestvuje u procesu ostvarenja pomirenja može dovesti do novih nevolja.

Uglavnom se čini da ni istaknute političke ličnosti ni međunarodne pravne institucije nemaju mnogo uspeha u stvaranju uslova da se otvori novi front suočavanja sa prošlošću koji bi imao dalekosežniji domet od sadašnje prakse slanja malog broja ljudi u posetu Haškom Tribunalu u neodređenom vremenskom periodu. Istovremeno, bila bi greška zameniti retoriku vodećih političara sa celokupnim zvaničnim ponašanjem, a takođe ni svaki relevantni događaj nema isti publicitet u medijima. Nacionalne i regionalne inicijative dobijaju zamajac – njih pažljivo orkestriraju profesionalci koji svoj posao rade u relativnoj tišini, bez davanja redovnih izjava za medije. Iako javni zvaničnici na obe strane to glasno poriču, deo razloga zašto je nakon proglašenja nezavisnosti Kosova (s izuzetkom, naravno, incidenta koji su organizovale određene političke partije u Beogradu) jeste rad lokalnih i niže rangiranih vladinih službenika koji su ostvarivši komunikaciju s obe strane granice sprečavali da dođe do rasplamsavanja sukoba i kad god je bilo moguće sprečavali njegovo širenje⁵.

Dramatični događaji takođe ukazuju na neophodnost saradnje u sprovođenju zakona, na primer, ubistvo hrvatskog novinara Ive Pukanića i njegovog saradnika je brzo povezano sa kriminalnim grupama u Srbiji⁶. Slično tome, izlaganje sličnim rizicima ukazalo je da je regionalna saradnja potrebna u obezbeđivanju osnovnih potreba. Kada je došlo do trgovinskog konflikta između Rusije i Ukrajine što je izazvalo prekid u snabdevanju regiona bivše Jugoslavije prirodnim gasom u januaru 2009. godine, odluka Srbije da isporuči određene količine gasa Bosni i Hercegovini nije bila samo gest prijateljstva već i izraz razumevanja da sve zemlje regiona zajednički trpe određenu vrstu pritiska. Konačno, bez obzira na nivo eskalacije diplomatske i političke retorike, putovanje kroz zemlje regiona ostaje i dalje uglavnom slobodno i obim ekonomske razmene nastavlja da se uvećava.

Što se tiče nivoa nezvaničnih formi ponašanja, u tom domenu bilo kakav doneti zaključak bi bio manje izvestan.

5 Zvanično, naravno, komunikacija između predstavnika dve etničke zajednice ne postoji. Ovu tvrdnju su izneli lokalni zvaničnici i aktivisti u nezvaničnom razgovoru sa autorom.

6 P.P., „Prst uperen u zemunski klan“, 24. oktobar 2008, može se naći na sledećoj Internet adresi: http://www.rtl.hr/index.php?cmd=show_clanak&clanak_id=359

U skoro svakoj oblasti popularne i visoke kulture, od literature do pozorišta do filma i popularne muzike, zajedničko interesovanje za tu vrstu aktivnosti u Srbiji, Hrvatskoj i Bosni i Hercegovini zadržava visok nivo kakav se zaista i može očekivati među zemljama koje dele zajednički lingvistički prostor. Iako je većina ovih događaja orijentisana na tržišnu laku zabavu, povremeno se pojavljuju i intenzivniji intelektualni i umetnički izrazi koji prelaze regionalne granice. Na primer, što se filmskih ostvarenja tiče, film Jasmile Žbanić „Grbavica“ (2006) koji nudi kritički osvrt na period rata, kao i filmovi Gorana Paskaljevića „San zimske noći“ (2004) i Vinka Brešana „Svjedoci“ (2003), naišli su na veoma pozitivan odjek kod publike širom regiona. Sasvim je moguće da kako se društva u regionu pomeraju dalje od događaja iz devedesetih i kako umetnička dela koja se bave ovom tematikom trpe sve manji upliv od strane ljudi koji su bili direktno umešani u događaje iz tog perioda, ovakva dela će biti primana sa više entuzijazma od strane mlađe publike koja je željna projekata i ostvarenja koja nude odgovore i mogućnost za razumevanje naše bliske prošlosti.

Da li se odavde može izvući opšta poruka? Ponovljeni pogrešan početak neke inicijative za iznalaženje istine pokazuje da je mnogo lakše pitanje prošlosti obraditi proceduralno nego postići neku vrstu katarzičnog suočavanja sa njom. Inicijative tranzicione pravde nisu premostile kognitivne podele koje podrivaju čitav proces pomirenja u regionu. Može se raspravljati o tome da „suočavanje sa prošlošću“ predstavlja jedan difuzan koncept kome nedostaje jasna definicija i da je u istoj meri teško reći da li je došlo do suočavanja sa prošlošću ili ne. Na određenom nivou određene primedbe da zahtevi koji se nameću Srbiji u ime vrednosti kojima nedostaje i jasnoća i istorijski presedan imaju smisla. Istovremeno, nijedan ozbiljni posmatrač ne može a da ne primeti do koje mere politički i kulturni razvoj i dalje ostaje talac nasleđa ratova vođenih u toku raspada bivše Jugoslavije, a na štetu gotovo svakog stanovnika regiona. Ovo postaje još jasnije jer su veze između ratnih zločina i organizovanog kriminala, koje se posebno jasno vide u slučaju atentata na bivšeg premijera Srbije Dr. Zorana Đinđića u martu 2003. godine, sve očiglednije i predstavljaju sve veću pretnju za individualne države.

Skoro je izvesno, međutim, da poravnavanje računa iz rata i spori proces pomirenja neće zavisiti samo od krivičnog procesuiranja osumnjičenih za ratne zločine. Političari i kreatori nacionalnih politika moraće da odigraju presudno važne uloge kroz reformu obrazovanja i kulturu kao i kroz stalno unapređivanje dijaloga među ljudima koji sada dele granice nekih novih država. Paralelno sa procesima koji se vode kroz međunarodne institucije kao što je MKSJ, ponekad uz njihovu pomoć a ponekad uprkos onome što one rade, svedoci smo sporog i ne sasvim izvesnog napretka u kreiranju svesti potrebne da bi se pristupilo sistematskom i metodičnom ispitivanju prošlosti što bi omogućilo odvijanje nepristrasnog i neostrašćenog dijaloga. Ali, najverovatnije se sve to neće dogoditi odjednom.

Moguće je da je doprinos krivičnih postupaka limitiran na usko definisano polje. Jedan širi vid pravde zahtevaće drugačije oblike angažovanja. U biti, zahtev za „suočavanjem“ sa prošlošću dobija oblik zakona i politike ali i dalje ostaje potreba da se u taj napor uvrste i daleko širi društveni i kulturni procesi. Uloga države je presudna, ali država je uspešnija u stvaranju klime povinjavanja nego u davanju značajnih doprinosa. Država ne treba da pokušava da promovise ili da guši narativne sadržaje već umesto toga treba da ohrabruje narativnu aktivnost. To je sastavni deo kulturološkog pristupa razumevanju činjenice da će se različite verzije događaja iz prošlosti elaborirati i takmičiti jedna sa drugom. Književnici, filmski stvaraoci, umetnici i muzičari već razvijaju novi dijalog i stvaraju dijaloge koji su usmereni boljem razumevanju prošlosti. Naravno, oni nailaze na malo zvanične ili međunarodne pažnje jer njihove aktivnosti ne rezultiraju izveštajima ili presudama. Ali, kroz ovakve intervencije nova generacija političkih aktera, neopterećenih saradnjom sa prethodnim režimima, stiče preduslov da razvije jedan sasvim nov pristup pitanju događaja iz prošlosti. Samo deset godina od završetka oružanog sukoba verovatno ne iznenađuje da se ova vrsta razumevanja još nije pojavila. Pravne i političke inicijative poslednjih nekoliko godina pomažu da se ponudi neophodan, mada nekompletan, doprinos razvoju nove vrste dijaloga. Forma ovih dijaloga i karakter debate koju oni podstiču uzeće ovaj doprinos u obzir, ali možda neće nužno od njih krenuti na predvidiv način.

Civilno društvo i novi napori na normalizaciji tursko-jermenskih odnosa

Armine Ishkanian

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Nakon kraja hladnog rata, jezik i logika tranzicione pravde, kao pristupa post-konfliktnoj izgradnji mera, postali su jedna od glavnih, globalnih naracija. Suština pristupa tranzicione pravde je u tome da društva koja su bila uključena u oružane konflikte, zločine i genocid – treba da se suoče i izađu na kraj sa nepravdama iz prošlosti, kao i da počnu izgradnju održivog, pozitivnog mira koji će, idealno, negovati demokratiju, stabilnost, a možda čak i pomirenje bivših neprijatelja. U zemljama bivše Jugoslavije, brojni mehanizmi tranzicione pravde su bili upotrebljeni. Ja se okrećem ka jednom manje poznatom slučaju, slučaju Turske i Armenije, i koristim okvir tranzicione pravde kako bih ispitala nove napore na normalizaciji odnosa između Turske i Armenije, i razmotrila kako je civilno društvo doprinelo tim naporima. Uzimam u obzir i postignuća, ali i ograničenja akcija koje predvodi civilno društvo.

Pozadina i kontekst

Uzevši u obzir teške istorijske odnose Turske i Armenije, čak i kada je Armenija dobila nezavisnost od Sovjetskog Saveza 1991. godine, te dve zemlje nisu uspostavile diplomatske odnose, a granica je zatvorena i danas. Skoro 10 godina od jermenske deklaracije nezavisnosti, jedva da je bilo kontakta između te dve zemlje. Umesto kontakta, bilo je puno mržnje, neprijateljstva, straha, sumnje i ogorčenosti, koji su bili dodatno rasplamsani konfliktom između Armenije i Azerbejdžana oko Nagorno Karabaha. Taj konflikt je odveo

Tursku blizu njene granice sa Armenijom u znak podrške svojoj, etnički turskoj, azerbejdžanskoj braći.

Sa početkom 2000. godine, međutim, počeli su kontakti visokih i niskih instanci između Turaka i Jermena. Identifikujem Tursko - Jermensku komisiju za pomirenje (TARC), koja je stvorena kao deo programa američkog Stejt Departmenta pod nazivom *Program za Tursku i Kavkaz na dva kolovoza*, kao početnu tačku napora na približavanju i normalizaciji. TARC je formalno uspostavljena 2001. godine, i bio je inspirisan južnoafričkom Komisijom za istinu i pomirenje. Iako se uglavnom sastojao od bivših diplomata, TARC je uokviren u postignuća *Dva kolovoza* i predstavio je svoj rad kao okupljanje „predstavnik civilnog društva”. Iako TARC nije ostvario veliki (i zaista, preterano ambiciozan) cilj pomirenja između Turaka i Jermena, on jeste ostvario dva važna postignuća. Prvo, čineći prvi korak, TARC je otvorio vrata za buduću saradnju sa akterima turskog i jermenskog civilnog društva, i to se nastavlja i danas¹. Drugo, TARC je angažovao Međunarodni centar za tranzicionu pravdu (MCTP) da napiše izveštaj o događajima iz 1915. godine, i proceni da li oni mogu da se okarakterišu kao genocid. MCTP je sproveo pravnu analizu situacije i došao do sledećeg zaključka:

...ne uzimajući u obzir napore velikog broja 'pravednih Turaka' koji su intervenisali u ime Jermena, bar neki od počinitelaca događaja su znali da će posledice njihovih aktivnosti biti delimično ili potpuno uništenje Jermena iz

1 Phillips, David L. (2005), *Skidanje čutnje sa prošlosti: Diplomacija dva kolovoza i tursko-jermensko pomirenje*, New York, Bergham Books, strana 5.

*istočne Anatolije, ili su namerno delovali sa tim ciljem, i time imali ono što je potrebno kako bi se mogla utvrditi genocidna namera.... Za te događaje, posmatrane kolektivno, zato može da se kaže da uključuju sve elemente zločina genocida, onako kako je on definisan u konvenciji, i pravni stručnjaci, kao i istoričari, političari, novinari i drugi bi bili u pravu kada bi nastavili da ih tako opisuju.*²

Međutim, MCTP je pažljivo istakao da ne bi smelo biti retroaktivne primene sporazuma. Stoga, nikakvi pravni, finansijski ili teritorijalni zahtevi ne bi mogli da budu podneti u vezi sa genocidom Jermena u Otomanskom carstvu.

Iako je napredak oko tursko-jermenskog približavanja unekoliko posustao 2004. Goidne sa zatvaranjem TARC, proces je povratio zamah 2008. i 2009. godine, kada su Jermenija i Turska žrebom određeni da igraju u istoj kvalifikacionoj grupi za Svetsko prvenstvo u fudbalu 2010. godine. 2008. godine, novoizabrani predsednik Jermenije, Serzh Sargsyan je oživeo debatu o tursko-jermenskim odnosima kada je pozvao svog turskog kolegu, predsednika Abdullaha Güla u Jerevan kako bi zajedno gledali utakmicu. To je bio istorijski događaj, i iako je Gulovo prisustvo bilo dočekano sitnim protestima nacionalnih grupa u Jerevanu, poseta je ocenjena kao uspeh na putu približavanja. Četiri dana pre nego što je revanš utakmica trebalo da se odigra u Turskoj, 10. oktobra 2009. godine, jermenski i turski ministri spoljnih poslova su potpisali dva protokola usmerena ka normalizaciji odnosa između te dve zemlje. To su bili „Protokol za uspostavljanje diplomatskih odnosa između Republike Jermenije i Republike Turske i Protokol o razvoju odnosa između Republike Jermenije i Republike Turske“. Ceremoniji potpisivanja su prisustvovali brojni visoki strani gosti, između ostalih i državna sekretarka SAD Hillary Clinton, ruski ministar stranih poslova Sergei Lavrov, bivši francuski ministar spoljnih poslova Bernard Kouchner i bivši visoki predstavnik EU za zajedničku spoljnu i bezbednosnu politiku Javier Solana. Prisustvo ovih visokih gostiju je većini posmatrača ukazalo da postoji velika međunarodna podrška normalizaciji odnosa. Ali, postoje dve sporne tačke koje su zaustavile proces ratifikacije. Prva se tiče međunarodnih napora na priznavanju genocida organizacija jermenske dijaspore (i jermenska navodna podrška takvim naporima), a druga je u vezi sa rezolucijom o Karabah konfliktu. U vezi sa međunarodnim priznavanjem genocida, Turska se čvrsto protivi obeležavanju masakra i deportacija Jermena koji

su živeli u Otomanskom carstvu kao genocida. Turski zvaničnici, uključujući i premijera Recepta Tayyip Erdogana, tvrdili su da pitanje da li „događaji od 1915. godine” treba da budu nazvani genocidom treba prepustiti istoričarima. Oni ukazuju na istorijsku potkomisiju koja je pomenuta u protokolima kao instituciju kroz koju to može da se uradi. Jermenski zvaničnici, međutim, tvrde da je genocid široko prepoznata istorijska činjenica, i uskraćuju podršku bilo kakvoj komisiji koja će pokrenuti pitanje istinitosti genocida. Kod drugog pitanja, nerešeni konflikt između Jermenije i Azerbejdžana oko Nagorno Karabaha je doveo do tvrde opozicije nekih turskih političara. Vladini zvaničnici, pa čak i neke grupe civilnog društva, tvrde da rešenje koje favorizuje Azerbejdžan mora biti preduslov razvoja bilateralnih odnosa između Turske i Jermenije. Jermenska strana tvrdi da je konflikt između Jermenije i Azerbejdžana, i da njegovo razrešenje ne bi ni na koji način trebalo da utiče na razvoj bilateralnih odnosa između Jermenije i Turske.

Razrešenje Karabah konflikta nije sadržano u protokolima, i turski zvaničnici su ga tek kasnije pomenuli kao preduslov ratifikacije protokola. Stanje od marta 2010. godine je takvo da protokole tek treba da ratifikuje bilo koja od strana.

Pristupi restorativne pravde normalizaciji tursko-jermenskih odnosa: neki primeri

Iako većina mehanizama tranzicione pravde - uključujući tribunale, komisije za istinu, panele za lustraciju i amnestije - ne može biti primenjena na istorijski kontekst, drugi pristupi, uključujući napore na memorijalizaciji, socijalnoj rekonstrukciji i dijaloge civilnog društva, jesu korišćeni u tursko-jermenskom slučaju. Na primer, tokom prošle decenije bilo je više sastanaka i zajedničkih projekata između turske i jermenske omladine, ženskih grupa, grupa za zaštitu životne sredine, muzičara, umetnika, fotografa, itd. Ti projekti i razmene finansirali su međunarodni donatori, uključujući bilateralne agencije, međunarodne nevladine organizacije i privatne fondacije. Iako su te razmene bile male i ograničenog obima, one jesu uspele da ospore očvrstle stereotipe o „drugima”, stvarajući prostor za raspravu o prošlosti, i gradeći mostove između pojedinaca i zajednica u te dve zemlje.

Pored ovih inicijativa, neke međunarodne organizacije su takođe finansirale inicijative za trgovinu preko granice, uključujući i proizvodnju i distribuciju proizvoda poput kavaskog sira i čaja. Pretpostavka koja je vodila te napore

2 Međunarodni centar za tranzicionu pravdu (2003): „Primenjivost konvencije UN o prevenciji i kažnjavanju zločina genocida u događajima koji su se odigrali u ranom dvadesetom veku: Pravna analiza pripremljena od strane Međunarodnog centra za tranzicionu pravdu“. Njujork, MCTP, strana 17.

na uspostavljanju trgovine je da ako Jermeni i Turci trguju jedni sa drugima, poverenje i pouzdanje će se razvijati, a kada ti elementi bubu prisutniji, oni onda mogu da odluče da se pozabave mnogo težim pitanjima. Kao što je rekao jedan predstavnik međunarodne organizacije koja finansira takve inicijative:

Mi smo liberali i mi promovishemo slobodnu ekonomiju i dijalog. Mi ne govorimo o razrešenju konflikta, već o slobodnoj ekonomiji. Mi verujemo da će pokretanje ekonomske saradnje, otvaranje granice i skidanje barijera trgovini voditi razvoju, a to će voditi do rešenja svih drugih pitanja [između Jermena i Turaka]. (19. april 2009. godine.)

Iako nema empirijskog dokaza u prilog pretpostavci da razvoj trgovine vodi normalizaciji i pomirenju, taj pristup, bez obzira, ostaje popularan među nekim donatorima i nevladinim organizacijama. To je primer koji je Trudy Govier zvala pristup „indirektnog pomirenja”. Ako uzmemo da tradicionalno ili direktno izmirenje uključuje sledeće korake: 1. priznanje nepravdi iz prošlosti; 2. izgrađivanje poverenja; 3. neki stepen pomirenja; i 4. saradnju pomirenih strana, indirektno izmirenje okreće taj redosled i „zajednička praktična aktivnost” prethodi i samom prihvatanju, a kamoli priznanju, počinjenih zločina³.

Konačno, na nivou i civilnog društva i države, preduzimani su koraci ka memorijalizaciji. Na primer, ponovno otvaranje jermenske apostolske crkve svetog krsta na ostrvu Ahtamar u Vanu je označeno kao gest dobre volje turske vlade, koja je finansirala renoviranje i restauraciju freski unutar crkve i reljefa na spoljašnjosti. Međutim, pošto je crkva formalno otvorena kao muzej bez krsta u 2007. godini, otvaranje je kritikovano kao politički poduhvat.

Sada se vode nove rasprave, u kojima su neki od učesnika koje sam intervjuisala pomenuli rekonstrukciju starog mosta u Mostaru, govoreći o zajedničkom tursko-jermenskom naporu da ponovo izgrade drevni most Ani preko reke Ahurian koja ide uz granicu dve zemlje. Turski predsednik Gül je prihvatio plan, a očigledno su i jermenske vlasti zainteresovane⁴. Most bi pružio priliku za turizam

preko granice ukoliko bi granica bila otvorena, i predstavljao bi primer tursko-jermenske saradnje.

Pored renoviranja arhitekturnih struktura, postojali su pokušaji ustanovljavanja kulture sećanja posvećeni otomanskoj jermenskoj populaciji. Na primer, 24. aprila 2009. godine,⁵ Komitet turske asocijacije za ljudska prava protiv rasizma i diskriminacije je organizovao memorijalni događaj u Istanbulu pod naslovom „Jermenski intelektualci i 24. april 1915. godine - bili su uhapšeni, proterani, nisu imali čak ni svoje grobove”. Tom događaju, koji je bio održavan drugu godinu za redom, prisustvovalo je oko 300 ljudi. Organizatori događaja su predstavili smrt jermenskih intelektualaca ne samo kao gubitak za jermensku zajednicu, već kao kolektivan gubitak za kojim bi trebalo da žale svi građani Istanbula. Jedan od organizatora je rekao: „Smrt ovih intelektualaca je predstavljala gubitak ne samo za jermenski jezik, kulturu, misao i naučni svet, već, takođe, i za otomansko društvo u to vreme, kao i za nas i naš svet, koji živimo u njemu danas.”⁶

Jedan puno javniji napor na razvijanju kulture sećanja je održan decembra 2008. godine – kampanja izvinjenja civilnog društva. Kampanju su vodili brojni turski akademici, pisci i novinari koji su bili poznati po svom kritičkom stavu prema tezi zvanične Turske u vezi sa „jermenskim pitanjem”. Tekst izvinjenja:

Moja savest ne prihvata bezosećajnost koja je pokazana i poricanje ogromne katastrofe kojoj su izloženi otomanski Jermeni u 1915. godini. Odbijam tu nepravdu, i, što se mene tiče, izražavam empatiju sa osećanjima i bolom moje jermenske braće. Izvinjavam im se.⁷

Sa preko 30,000 potpisnika, izvinjenje je izazvalo napetu debatu u Turskoj. Dovelu je do desetak kampanja za anti-izvinjenje, koje su započele nacionalističke grupe koje su prikupile više od 30,000 potpisa. Iako je kampanja za izvinjenje dočekana sa zahvalnošću u nekim jermenskim krugovima, ostali su je gledali sa sumnjom, a jedna tvrda nacionalistička organizacija ju je čak odbacila tvrdeći da ako je njihova grupa zaista spremna da se izvini, trebalo je da koristi reč „genocid”, a ne „veliku katastrofu” (Meds Yeghrin)⁸.

3 Govier, Trudy (2009): „Dijalekt priznanja” u *Pomirenje: tranziciona pravda u post-konfliktnim društvima*, ur. Joanna R. Quin. Montreal: McGill-Queen's University Press, strana 49.

4 The Economist (2010), „Cena rekonstrukcije”, 11. mart 2010.

5 24. april je zvanični komemorativni dan u čast žrtava armenijskog genocida.

6 Bianet (2009), „220 intelektualaca prognanih 1915” – komemoracija.

7 Engleski prevod teksta turskog izvinjenja za zvaničnog sajta www.ozurdiliyouruz.com.

8 Fraza „velika katastrofa” je prevod Jermenskog „Meds Yegrin”. Tu frazu je iskoristio predsednik Barack Obama u svom obraćanju od 2009. godine tokom komemoracije 24. aprila. Neki Jermeni vide tu frazu kao politički kompromis usmeren ka udovoljavanju Turskoj, čiji je cilj izbegavanje upotrebe reči „genocid”.

Zaključak

Razgovori o normalizaciji između Turske i Jermenije su počeli fundamentalno da osporavaju dugo negovana verovanja i ideje o naciji, sebi i drugome, čime su izazvali ponovno osmišljavanje kategorija i pozicija koje su neki stručnjaci tumačili kao statične i okoštale.⁹ Taj proces je intenzivirao rasprave i debate u Jermeniji, Turskoj, i u zajednicama jermenske dijaspore širom sveta o prošlosti, sadašnjosti i budućnosti.

Ljudi su podstaknuti da ponovo razmisle o svojim ukorenjenim stavovima, a to znači da nekada marginalna ili ivična pozicija zastupana od strane disidenata koji su podržavali dijalog, sada postaje manje radikalna ideja, tako da se pojedinci koji se protive dijalogu sve češće definišu kao „tvrdokorni nacionalisti” ili „ivične figure” koji moraju da obrazlože svoje opozicionarstvo da bi učestvovali u dijalogu. Ali, ja bih pozvala na snažan oprez prema preterano optimističkim procenama trenutnih izgleda za normalizaciju kao i prema predominantno normativnim procenama potencijala civilnog društva da popravi odnose. Drugim rečima, treba da prihvatimo masivne promene koje su se dogodile, ali istovremeno treba da obuzdamo naš entuzijazam u vezi sa brzom normalizacijom. Za to postoje dva razloga. Prvo, kao što postoje oni akteri civilnog društva koji teže stupanju u dijalog i popravljajući odnosa, postoje takođe i oni koji odbacuju bilo koju formu približavanja kao vid ustupaka i kapitulacije pred neprijateljem. Nacionalističke organizacije sa obe strane granice nastavljaju da uživaju široku podršku masa. To zahteva dublju diskusiju i analizu za koju nemam prostora u ovom poglavlju. Drugo, dok inicijative civilnog društva koje kreću od najširih društvenih slojeva jesu bile važne u omogućavanju veza između ljudi, pružanju prostora za debatu i izmenu tvrdih stereotipa (bar do neke mere), na vladama ostaje da promene politiku, primene institucionalne reforme i uključe se u fundamentalan proces razrešenja konflikta i izgrađivanja mira, u meri u kojoj to samo civilno društvo nije u stanju da uradi.

Proces pristupanja Evropskoj uniji je imao veoma snažan uticaj na turski politički razvoj – stavio je veći naglasak na jačanje ljudskih prava, demokratiju i vladavinu prava u Turskoj. Evropska komisija vidi ulogu civilnog društva kao „ključnu u utvrđivanju brzine i kvaliteta procesa pristu-

panja, kao i generatora javne podrške pristupanju”.¹⁰ Jedan od ispitanika kojeg sam intervjuisala u Turskoj je rekao:

Svi sada zaboravljamo da su pregovori o pristupanju EU promenili sve. Svi duhovi su izašli iz svojih boca. Mek uticaj EU je izgurao sve duhove iz Pandorine kutije. 1999. bilo je skoro nemoguće govoriti o ovim stvarima (o jermenskim i kurdskim pitanjima). Ljudi su skloni da zaborave da je EU glavni vozač koji je otvorio ta pitanja. Nije moguće vratiti duhove u flaše sada. 20. april 2009. godine

Iako su legislativne reforme sprovedene u okviru zakona o harmonizaciji [EU] dovele do proširenja sloboda kroz amandmane u ustavu i abolicije određenih zakona, uključujući i izbacivanje smrtno kazne, član 301 Turskog krivičnog zakonika se i dalje koristi za progon pojedinaca, uključujući novinare i javne intelektualce, koji govore o teškom nasleđu tursko-jermenskih odnosa. Ovi akti se tumače ka uvrede „turskosti”. Pojedinci optuženi prema članu 301 uključuju i dobitnika Nobelove nagrade autora Orhana Pamuka, pisca Elifa Şafaka, i Hrantu Dinta, pokojnog tursko-jermenskog novinara koji je ubijen januara 2007. godine. Tako, dok je proces turskog približavanja EU doveo do povećane dinamike unutar turskog civilnog društva i njegove spremnosti da se upušta u političke debate, takođe je bilo i ograničenja uticaja EU u normalizaciji tursko-jermenskih odnosa. Do sada, Evropska komisija je prihvatila pristup da se direktno ne meša i nevoljna je da se na bilo koji način upušta ili finansira prekogranične inicijative. U intervjuima i diskusijama sa zvaničnicima komisije u Briselu iz septembra 2009. godine, bilo je jasno da je jedan od razloga te nevoljnosti to što je Turska kandidat, a Jermenija član novostvorenog istočnog partnerstva, i da zato oni potpadaju pod različite budžetske kategorije, što znači da nema zajedničkog budžeta ili instrumenta koji bi omogućio finansiranje tursko-jermenskih projekata.

Tako, dok su inicijative na Balkanu, poput REKOM, imale ogromnu korist od EU podrške, nikakva podrška – ni finansijska ni tehnička – nije predviđena za slučaj podrške normalizaciji odnosa između Turske i Jermenije. U ovom trenutku, zamah u vezi sa protokolima je posustao, ali je situacija i dalje veoma fluidna. Jasno je da će normalizacija biti dugoročan proces, i samo vreme će reći kako će se razviti.

9 Akcam, Taner (2001), „Dijalog preko međunarodne podele: eseji u cilju tursko-jermenskog dijaloga”, Boston, The Zoryan Institute.

10 Dijalog sa civilnim društvom, [http://ec.europa.eu/enlargement/civil-society-development/index\)en.htm](http://ec.europa.eu/enlargement/civil-society-development/index)en.htm).

Evropske integracije i suočavanje sa komunističkom prošlošću

John Gledhill

Evropska Unija (EU) je, u najboljem slučaju, bila nekonzistentna u formulisanju svoje strategije za tranziciju pravdu na zapadnom Balkanu.¹ Iako za žaljenje, ta nekonzistentnost je donekle razumljiva; iako su EU i organizacije koje su joj prethodile možda proizveli napora na izgradnju mira nakon Drugog svetskog rata, sama EU ima malo iskustva kao spoljni graditelj mira. Zapravo, EU generalno ima malo iskustva kao spoljno-politički akter. Tako, imajući u vidu da su države zapadnog Balkana van granica EU, možda ne iznenađuje da Brisel nije bio u stanju da deluje sa zajedničkim, konzistentnim stavom po pitanju tranzicione pravde u bivšoj Jugoslaviji. Međutim, od 2004. godine, Brisel je sve više bio pozivan da da podršku procesima tranzicione pravde unutar granica EU. Konkretno, nakon što se 10 bivših komunističkih država centralne i istočne Evrope pridružilo Uniji 2004. i 2007. godine, Brisel je bio pozvan da predvodi kolektivno suočavanje sa komunističkom prošlošću u novim državama članicama.

U ovom kratkom radu istražujem uticaj evropskih integracija na napore usmerene ka suočavanju sa komunističkom prošlošću u centralnoj i istočnoj Evropi (CIE). Konkretno, dokumentujem uticaj evropske regionalizacije na vidljivost i intenzitet dve forme istorijskog suočavanja: društvene i kulturne projekte usmerene ka oblikovanju kolektivnih sećanja na komunizam, i zakonske projekte usmerene ka ispravljanju navodnih nepravdi komunističke vladavine. U oba slučaja dolazim do zaključka da je EU bila nevoljna da započne ili sa vrha rukovodi suočavanjem sa komunističkom prošlošću širom Evrope. Međutim, evrop-

ske integracije su ipak poslužile kao podstrek procesima istorijskog suočavanja u CIE, obzirom da su omogućile anti-komunističkim aktivistima da *ad hoc* pristupe resursima evropskih institucija (resursima organizacija EU, ali i ostalih regionalnih organizacija). Ovi evropski finansijski i politički resursi su zatim omogućili zastupnicima istorijskog suočavanja u državama CIE da udahnu novi život projektima koji su započeti na nacionalnom nivou, ali su poklekli suočeni sa lokalnim finansijskim i političkim ograničenjima.

Evropska integracija i komemoracija komunističke prošlosti

Naniže: od Brisela do država članica

Kao što je izneto, EU je uglavnom bila nevoljna da započne ili razvija bilo kakve društvene ili kulturne projekte usmerene sa vrha koji bi promovisali izgradnju pan-evropskog sećanja na komunističku vlast u CIE. Stav Evropske komisije je da je komemoracija prošlosti pitanje kojim treba da se bave države članice EU, ukoliko to žele, pod sopstvenim uslovima i – što je možda najvažnije – svojim novcem. Takav stav je očigledan u odgovorima predstavnika Evropske komisije na pozive komisiji da započne, rukovodi i finansira raznovrsne projekte sećanja (pan-evropske komemorativne praznike, muzeje, konferencije, obrazovne programe *et alia*). Konkretno, suočen sa takvim zahtevima, bivši potpredsednik Evropske komisije, Jacques Barrot, izjavio je da „starije zemlje članice treba u većoj meri

1 Pogledati *Strategija tranzicione pravde EU – praznine i prilike* Dicka Oostinga, *Od ad hoc mera do strategije suočavanja sa prošlošću* Vesne Teršelič, *EU i tranziciona pravda: od retributivne do restorativne pravde na zapadnom Balkanu* koji je uredila Denisa Kostoviceva (Fond za humanitarno pravo, Beograd, 2009. godine).

da budu svesne tragične prošlosti novih država članica". Međutim, on je takođe bio čvrst u svom stavu da je „na svakoj državi članici da pronađe sopstveni način za bavljenje pitanjem sećanja na... [zločine totalitarnog režima]”.² Jan Figel, bivši predstavnik Evropske komisije za obrazovanje, obuku, kulturu i omladinu, iskoristio je slične argumente kada je bio pozvan da učestvuje u parlamentarnoj raspravi o „evropskoj savesti i totalitarizmu”. U toku te rasprave, Figel je potvrdio potrebu za podizanjem svesti o zločinima komunizma, ali je naglasio i da je „naravno, na državama članicama da pronađu sopstveni način kojim će krenuti napred” u izgradnji kolektivnih sećanja na komunističku prošlost. Komisija će podržati lokalne projekte suočavanja sa prošlošću, ali neće aktivno rukovoditi bilo kakvim komemorativnim programima.³

Naviše: od država članica do Brisela (i Strazbura)

Uprkos nevoljnosti Brisela da započne projekte kolektivnog sećanja, pristupanje država CIE Evropskoj Uniji je ipak dovelo do oživljavanja društvenih i kulturnih projekata negovanja kolektivnog suočavanja sa komunističkom prošlošću – usmerenih naviše. Pristupanje EU je dalo podstrek revitalizaciji projekata sećanja koji su originalno osmišljeni ili implementirani na nacionalnom nivou, ali su zatim utihnuli, suočeni sa raznim lokalnim izazovima. Tamo gde su ti izazovi bili u formi nedostatka lokalnog finansiranja za projekte suočavanja sa prošlošću, *ad hoc* pristup sredstvima EU je pružio ekonomski podstrek koji je bio neophodan za ponovno pokretanje komemorativnih projekata. Tamo gde su ti izazovi bili u formi težnji bivših komunističkih elita da uguše nacionalnu raspravu o potrebi suočavanja sa prošlošću, pristup Evropskom parlamentu je poslužio stvaranju novog foruma za raspravu. I, tamo gde su izazovi bili ukorenjeni u opštoj javnoj apatiji prema pozivima za komemoracijom komunističke prošlosti, mogućnost pristupanja EU je poslužila delimičnom preokretanju te apatije, stvarajući normativan kontekst koji je podrazumevao da se sa nasleđem komunističke prošlosti treba

suočiti odmah, kako bi se prigrllila „evropska” budućnost. Obradiću nakratko svaki od tih izazova na nacionalnom nivou, i njegova trans-nacionalna rešenja.

Izgradnja kolektivnih sećanja na prošlost je skup proces; potrebno je unajmiti istraživače, finansirati konferencije, osmisлити obrazovne programe i tekstove, i izgraditi javne memorijale. Troškovi u vezi sa tom vrstom projekata bi opteretili budžet bilo koje države, a za ograničene budžete država CIE, takvi komemorativni projekti bi predstavljali nemoguće zahteve. Kao posledica toga, većini projekata sećanja u CIE na nacionalnom nivou je donekadno dodeljivana samo minimalna državna podrška, što je dovelo do toga da oni budu suočeni sa konstantnim finansijskim izazovima. Međutim, evropska integracija je omogućila lokalnim istraživačima i zastupnicima kolektivne komemoracije da delimično prevaziđu te izazove, tako što im je otvorila nove izvore finansiranja. Jedan takav izvor je Evropska komisija. Iako je komisija bila obazriva pri pružanju sistematske podrške projektima kolektivnog sećanja, nacionalni istraživački instituti, poput rumunskog Instituta za istraživanje zločina komunizma (IIZKR),⁴ bili su u mogućnosti da *ad hoc* pristupe sredstvima komisije, postavljajući konkretne projekte u okvir kulturnih programa i prijavljujući se zatim za sredstva iz kulturnog i obrazovnog budžeta komisije, ili budžeta predstavnika komisije u državama CIE. IIZKR je takođe dobio i sredstva za podršku organizaciji takmičenja u okviru kog se od učenika srednjih škola tražilo da odgovore na pitanje: „Šta komunizam znači za mene?” Dodatna *ad hoc* podrška komisije projektima IIZKR/IIZKRPRE bila je dodeljena 2010. godine.⁵ Iako su ta sredstva do sada bila prilično skromna i obezbeđivana samo za pojedinačne projekte, grantovi EU mogli bi da postanu pouzdan izvor finansiranja.⁶

Drugi novi izvor sredstava za projekte kolektivnog sećanja se pojavio kada su države CIE bile na položaju rotirajućeg predsedništva Saveta Evropske unije – kao što je bio slučaj sa Slovenijom 2008. godine i Češkom republikom 2009.

2 Jacques Barrot, komentari izneti tokom „predložene sednice Komisije o zločinima genocida, zločinima protiv čovečnosti i ratnim zločinima počinjenim od strane totalitarnih režima”, (Evropski parlament, Strazbur, 21. april 2008. godine). Dostupno na adresi: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20080421+ITEM-015+DOC+XML+V0//EN>.

3 Jan Figel, komentari izneti tokom rasprave u Evropskom parlamentu o „evropskoj savesti i totalitarizmu”. (Evropski parlament, Strazbur, 25. mart 2009. godine). Dostupno na adresi: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20090325+ITEM-010+DOC+XML+V0//EN>.

4 Institut je kasnije preimenovan u Institut za za istraživanje zločina komunizma i sećanja Rumuna u egzilu (IIZKRPRE).

5 Pogledati stranicu rumunskog Instituta za istraživanje zločina komunizma: http://www.crimelecomunismului.ro/ro/proiecte/proiecte_educationale/elevi/concursuri.

6 Na osnovu komentara Raluca Grosescu, šef Kancelarije za dokumentaciju i istraživanje pri IIZKR, Bukurešt. Intervju sa autorom od 30. jula 2009. godine.

godine. U oba slučaja, vlade tih država su odvojile značajna sredstva za kulturne i društvene događaje koji su trebali da budu održani tokom šest meseci njihovog predsedavanja. I, u oba slučaja, anti-komunistički aktivisti su lobirali da deo tih sredstava bude odvojen za društvene i kulturne projekte usmerene ka komemoraciji komunističke prošlosti.⁷ Lobiranje je bilo posebno efikasno u slučaju Češke, i rezultat je bio značajan porast u podršci inicijativama koje je predložio češki Institut za studije o totalitarnim režimima u toku prvih šest meseci 2009. godine.⁸ Na primer, u martu 2009. godine, Institut je dobio sredstva za organizovanje dva javna saslušanja u saradnji sa Evropskim parlamentom - „Kako Evropa treba da izađe na kraj sa svojim totalitarnim nasleđem?” i „Naša zajednička istorija: zajednička evropska platforma”. Institut je takođe dobio sredstva i za organizovanje dodatnih konferencija u Pragu koje su se bavile sećanjem, kao i za organizovanje nekoliko izložbi i publikacija koje su komemorirale zločine komunizma. Iako je neposredni porast u aktivnostima suočavanja opao sa okončanjem češkog predsedavanja u julu 2009. godine, očekuje se da će litvansko (2013) predsedavanje biti izloženo sličnom pritisku anti-komunističkih aktivista da pruži podršku društvenim i kulturnim projektima usmerenim ka podizanju svesti o komunističkoj prošlosti.⁹

Evropske integracije nisu samo pružile finansijski podstrek projektima kolektivnog sećanja, već su u formi Evropskog parlamenta otvorile i jedan novi, trans-nacionalni forum za javnu debatu o potrebi za suočavanjem sa komunističkom prošlošću. Pristup takvom forumu je važan jer su vremenom bivši komunistički aktivisti u nekim državama CIE pokušali da spreče ili diskredituju rasprave o komunističkoj prošlosti na nacionalnom nivou. U Rumuniji, na primer, relativno brojne bivše komunističke elite, koje i dalje sede u parlamentu, uložile su velike napore kako bi ugušile javnu raspravu o komunističkoj prošlosti – posežući čak i za fizičkim i verbalnim nasiljem kada su učinjeni pokušaji da se komunizam osudi pred rumunskim parlamentom 2006. godine.¹⁰ Evropske integracije su omogućile onima

koji su se zalagali za komemoraciju zločina komunizma da zaobiđu tu vrstu političke opozicije na nacionalnom nivou, pružajući im pristup podijumu Evropskog parlamenta (i parlamentarnoj skupštini Saveta Evrope). Do sada su u Evropskom parlamentu održane dve rasprave o potrebi za osudom i komemoracijom zločina komunizma - jedna u aprilu 2008, druga u martu 2009. godine. U oba slučaja, situacija je bila daleko od opšte saglasnosti poslanika o pitanju da li komunizam treba zvanično osuditi, i još dalje od saglasnosti o tome da li takva osuda treba da bude izrečena na evropskom nivou. Uprkos tome, za poslanike Evropskog parlamenta iz centralne i istočne Evrope, poput Istvana Szent-Ivanyia (Mađarska) i Laszla Tokesa (Rumunija), samo prenošenje debate o zločinima komunizma na trans-nacionalni nivo predstavljalo je poželjan razvoj, jer je time dat novi glas njihovim pozivima za suočavanjem sa prošlošću – pozivima koji delimično nisu bili čuti ili saslušani na nacionalnom nivou.¹¹

Kako komunistička prošlost postaje sve udaljenija, takođe postaje i sve manje jasno zašto na pozive za komemoracijom komunizma treba odgovoriti odmah. Oni koji aktivno podržavaju suočavanje sa komunističkom prošlošću u državama CIE bili su suočeni sa izazovom prevazilaženja apatije u lokalnoj javnosti prema njihovim zahtevima. Evropska integracija je generisala normativan kontekst u okviru kojeg je ta apatija delimično osporena, tako da su naponi na izgradnji kolektivnog sećanja o komunističkoj prošlosti na kraju bili shvaćeni kao neka vrsta političkog prioriteta. Konkretno, kada su države CIE pristupile Evropskoj Uniji, izgrađen je normativan pritisak oko ideje da evropska budućnost ne može biti efektivno prihvaćena sve dok se ne reši komunistička prošlost. Rumunski slučaj govori o načinu na koji je taj normativan pritisak poslužio da pokrene inače samrtne pokušaje istorijskog suočavanja na nacionalnom nivou.

Tokom 16 godina koje su prethodile pristupanju Rumunije EU, kulturni i istorijski projekti koji su bili usmereni na

7 Slovenačko predsedavanje je, na primer, organizovalo javno evropsko saslušanje o „zločinima počinjenim od strane totalitarnih režima” i proizvelo propratani materijal od 316 strana koji je dostupan na adresi: http://www.arhiv.mp.gov.si/fileadmin/mp.gov.si/pageuploads/2005/PDF/publikacije/Crimes_committed_by_Totalitarian_Regimes.pdf

8 Za spisak događaja koje je priredio Institut tokom perioda češkog predsedavanja pogledati: <http://www.ustrcr.cz/en/activities-eu>.

9 Zoltan Dujisin, „Komunistička ideologija, podjednako loša kao i nacizam?”, *Inter pres servis*, 6. april 2009. godine. Dostupno na adresi: <http://ipsnews.net/news.asp?idnews=46407>.

10 „Vadim Tudor a încercat să-i dea afară din lojă pe Patapievici și Pleșu”, *Realitatea.net*, 18. decembar 2006. godine. Dostupno na adresi: http://www.realitatea.net/vadim-tudor-a-incercat-sa-i-dea-afara-din-loja-pe-patapievici-si-ple-su_31331.html.

11 Pogledati govore u okviru debate o „Evropskoj savesti i totalitarizmu”, Evropski parlament, Strazbur, 25. mart 2009. godine. Kompletan transkript debate je dostupan na adresi: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20090325+ITEM-010+DOC+XML+V0//EN>.

bavljenje komunističkom prošlošću su u Rumuniji bili retki, uglavnom zato što su bivše komunističke elite i dalje držale prominentne položaje u post-komunističkim vladama.¹² Međutim, kada je priključivanje EU 2006. godine bilo izvesno, počeo je da se stvara javni konsenzus oko ideje da poglavlje o komunizmu treba zatvoriti, pre nego što bude moguće otvoriti poglavlje o „evropskoj” budućnosti Rumunije. U tom normativnom kontekstu, predsednik i premijer Rumunije su, obojica, 2006. godine preduzeli nagle korake kako bi demonstrirali svoju privrženost rešavanju tekućeg nasleđa komunističke vladavine. Konkretno, u razmaku od samo par meseci, predsednik Traian Basescu i premijer Calin Popescu-Tariceanu su obojica uspostavili istraživačke projekte velikih razmera - „Komisija za analizu komunističke diktature u Rumuniji” koju je podržao predsednik, i IIZKR koji je podržala vlada. Kada je reč o predsedničkoj komisiji, potreba za suočavanjem sa prošlošću, kako bi se prihvatila budućnost, bila je očigledna u planu rada komisije i prirodno Basescuove prezentacije Konačnog izveštaja komisije. Uprkos tome što je zadatak stvaranja zvanične istorije komunizma u Rumuniji bio ogroman, komisiji je dato samo šest meseci da iznese svoje nalaze, jer je krajnji rok za objavljivanje Konačnog izveštaja odabran kako bi prethodio pristupanju Rumunije EU 1. januara 2007. godine. Odobravajući Konačni izveštaj 18. decembra 2006. godine, Predsednik Basescu je govorio o potrebi Rumuna kao „budućih građana Evropske Unije” da se izbore sa „otvorenom ranom” komunističke prošlosti zemlje.¹³ Obzirom da je predstojalo pristupanje EU, njegova komisija se tom ranom bavila na brzinu, ali se ipak jeste njom bavila.

Kao što u opštim crtama sugerisem iznad, evropske integracije su pružile zastupnicima tekućeg suočavanja sa komunističkom prošlošću skup tranzicionih alatki za prevazilaženje nekih od ekonomskih, političkih i normativnih izazova sa kojima su bili suočeni u ostvarivanju svojih projekata suočavanja na nacionalnom nivou. Svakako se čini da su sami zastupnici suočavanja postali svesni prilika koje evropske integracije predstavljaju za njihove projekte. Ta svest je bila očigledna na konferenciji o „evropskoj savesti i komunizmu”, održanoj u Pragu juna 2008. godine. Većina

onih koji su prisustvovali konferenciji je dugo pozivala na suočavanje s komunističkom prošlošću u svojim matičnim zemljama. Međutim, oni su u Pragu izabrali da kolektivno preusmere svoj fokus sa nacionalnog nivoa ka trans-nacionalnom nivou. Potreba za komemoracijom zločina komunizma nije više bila predstavljena kao nacionalna obaveza, koja zahteva podršku na nacionalnom nivou. Umesto toga, zvanična tema konferencije je bila da je „komunizam zajedničko evropsko nasleđe... [i da] Evropa ne može biti ujedinjena sve dok ne prihvati svoju zajedničku prošlost i shvati svoju zajedničku odgovornost”.¹⁴ Dvodnevni simpozijum je kulminirao objavljivanjem Praške deklaracije – dokumenta koju su potpisali renomirani anti-komunistički aktivisti poput pokojnog Václava Havela i (sadašnjeg predsednika Nemačke) Joachima Gaucka, u kom su iznete smernice za suočavanje sa komunističkom prošlošću u okviru evropskog konteksta.¹⁵

Evropske integracije i zakonsko suočavanje sa komunističkom prošlošću

Naniže: od Brisela i Strazbura do država članica

Kao što se Evropska Unija pokazala nevoljnom da sa vrha inicira bilo kakve društvene i kulturne programe usmerene ka negovanju kolektivnih sećanja na komunizam, tako su i evropske institucije odbile da implementiraju programe usmerene naniže, ka promociji sistematskog zakonskog suočavanja sa komunističkom prošlošću. Zapravo, evropske institucije su u nekoliko prilika preduzele korake kako bi aktivno obeshrabrile konkretne procese tranzicione pravde u državama članicama i državama koje pretenduju na članstvo. Na primer, Evropski savet, Evropski parlament i evropski sekundarni regionalni akteri (Savet Evrope i OEBS) su svi zauzeli čvrste stavove protiv uvođenja oštrih zakona o lustraciji u Poljskoj i Albaniji.

U Poljskoj, Konzervativna partija prava i pravde je 2007. godine predložila zakon o proveru koji je zahtevao od svih Poljaka na „položajima od javnog poverenja” da sačine afidavite u kojima će detaljno opisati svoju kolaboraci-

12 Vladimir Tismaneanu, „Demokratija i sećanje: Rumunija se suočava sa svojom komunističkom prošlošću”, *Analiza američke akademije političkih i društvenih nauka*, tom 617, br.1 (maj 2008): str. 166-180.

13 „Discursul președintelui României, Traian Băsescu, prilejuit de Prezentarea Raportului Comisiei Prezidențiale pentru Analiza Dictaturii Comuniste din România”, 18. decembar 2006. godine. Dostupno na adresi: http://www.presidency.ro/?_RID=det&tb=date&id=8288&_PRID=ag.

14 *Evropska savest i komunizma*, Senat Parlamenta Češke Republike, 2-3. jun 2008. godine, naslovna strana.

15 Ceo tekst Praške deklaracije se nalazi na adresi: <http://www.victimsofcommunism.org/media/article.php?article=3849>

ju (ili nedostatak iste) sa poljskom tajnom policijom iz komunističke ere. Domet zakona je bio dubok; procenjuje se da je preko 700,000 Poljaka iz javnog i privatnog sektora bilo obuhvaćeno proverom. Svakome ko je odbio da saraduje bilo je zabranjeno da ostane na položaju „od javnog poverenja” na 10 godina.¹⁶ Nedugo nakon objavljivanja, i Savet Evrope i Evropski parlament su izneli jake primedbe na taj zakon. Predstavnik Komisije za ljudska prava Saveta Evrope, Thomas Hammarberg, izjavio je da obim i invazivnost zakona fundamentalno podrivaju individualna prava Poljaka.¹⁷ Članovi Evropskog parlamenta su na sličan način bili zabrinuti oko implikacija zakona u vezi sa radnim pravima Poljaka. Takođe su izrazili zabrinutost i u vezi sa primenom zakona van granica Poljske, obzirom da su, bar na papiru, poljski građani zaposleni u evropskim institucijama u Briselu i Strazburu takođe bili podložni procesu provere. Kada je jedan poljski poslanik u Evropskom parlamentu, Bronislaw Geremek, bio suočen sa mogućnošću da bude uklonjen sa svog evropskog položaja zato što je odbio da saraduje sa drakonskim procesom provere (jer je prethodno već nekoliko puta bio pod istragom poljskih vlasti i oslobođen optužbi), članovi Evropskog parlamenta su se usprotivili.¹⁸ Taj protest, zajedno sa primedbama Saveta Evrope, ohrabrio je protivnike zakona o proveri u Poljskoj, i, nakon što je iznet pred poljski Ustavni sud, zakon je poništen.

U nešto skorijoj prošlosti, Evropski savet i Savet Evrope su se, oba, snažno usprotivili pokušajima vlade Sali Berishe da uvede takozvani lustrativni zakon o „čistim rukama” u Albaniji. Taj zakon, koji je prvi put objavljen krajem 2008. godine, trebalo je da da vladi diskreciona ovlašćenja da otpusti bilo kog tužioca ili sudiju koji je bio na tom položaju tokom komunističke vladavine u Albaniji. Iako su slični zakoni o lustraciji bili doneti u ostalim zemljama CIE ranih devedesetih godina, postojale su zabrinutosti o političkim motivima iza albanskog zakona, jer je Berisha imao istoriju

periodičnog čišćenja državne administracije od potencijalnih političkih protivnika. Ta zabrinutost se odrazila kroz opštu osudu od strane evropskih institucija koja je pratila objavljivanje tog zakona. Evropski Savet je odmah izdao demarš kojim je „ohrabrivao vladu Albanije da razmotri zakonske i političke posledice zakona o lustraciji”.¹⁹ OEBS je otvoreno zauzeo stav da „zakon krši nekoliko članova [albanskog] ustava”.²⁰ Takve stavove je zauzeo i Savet Evrope, identifikujući konkretne probleme u zakonu, poput nedostatka vremenskog ograničenja lustracije i preterano oštrih sankcija predviđenih za one koji su procenjeni kao „prekršioc”.²¹ Iako je Berisha inicijalno iz mesta odbacio takve evropske kritike, zakon je kasnije poslat albanskom Ustavnom sudu na pregled.

Naviše: od država članica do Strazbura

Kao i u području kolektivnih sećanja, iako su evropske institucije odbile da ponude podršku usmerenu sa vrha zakonskom i sudskom suočavanju sa prošlošću, ima indikacija da evropske integracije služe oživljavanju dugo odlaganih procesa tranzicione pravde - ka vrhu, navije. Konkretno, tamo gde su zakonski izazovi u vezi sa komunističkom prošlošću pokrenuti na nacionalnom nivou, ali su zatim bili zaustavljeni zbog neefikasnosti ili politizacije nacionalnog sudstva, lokalni akteri su delimično bili u stanju da prevaziđu te barijere prenoseći svoje zahteve za pravdom na evropski nivo. Podnosioci zahteva su do sada bili u stanju da prenesu dve vrste slučajeva na Evropski sud za ljudska prava u Strazburu: slučajeve povreda ljudskih prava počinjenih tokom perioda komunističke vladavine i tranzicije iz komunizma; i slučajeve u vezi sa povraćajem imovine koja je bila konfiskovana od strane države pod komunizmom.

Nekoliko krivičnih slučajeva i slučajeva povreda ljudskih prava je preneto na evropski nivo iz Rumunije – na primer, tamo gde su postojale lokalne barijere procesuiranju prijava u vezi za zločinima počinjenim tokom krvave revolucije u

16 Cynthia Horne, „Kasni programi lustracije u Rumuniji i Poljskoj: podrška ili podrivanje demokratskih tranzicija”, *Demokratizacija*, 16:2 (april 2009. godine) str. 344-376.

17 „Procena napretka učinjenog na implementaciji preporuka Saveta Evrope iz 2002. godine, predstavnik komisije za ljudska prava”, Savet Evrope, CommDH(2007)13, Strazbur, 20. jun 2007. godine. Dostupno na adresi: https://wcd.coe.int/ViewDoc.jsp?id=1155005&Site=COE#P423_71145; Thomas Hammarberg, „Lustracija ne sme da se pretvori u osvetu nad bivšim kolaboratorima”, pogledi Saveta Evrope, 19. mart 2007. godine.

18 „Rasprava o mandatu poljskog poslanika Bronislava Geremeka”, Evropski parlament, 25. april 2007. godine. Dostupno na adresi: <http://www.europarl.europa.eu/sides/getDoc.do?language=EN&type=IM-PRESS&reference=20070425IPR05853>.

19 „Deklaracija Predsedništva u ime EU o albanskom zakonu o lustraciji”, Savet Evropske Unije, 6481/09 (Presse 40) Brisel, 13. februar 2009. godine. Dostupno na adresi: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/cfsp/106063.pdf.

20 „OEBS: Albanski zakon o lustraciji je neustavan”, *Pogledi na Balkan*, 16. januar 2009. godine. Dostupno na adresi: <http://old.balkaninsight.com/en/main/news/15625/>.

21 „Savet Evrope osuđuje albanski zakon o lustraciji”, *Pogledi na Balkan*, 16. januar 2009. godine. Dostupno na adresi: <http://www.balkaninsight.com/en/article/council-of-europe-pans-albania-lustration-law>.

toj zemlji iz decembra 1989. godine. Posle 20 godina odbijanja državnih tužilaca da prihvate kompromis, jedna nevladina organizacija koja zastupa interese „revolucionara” je nedavno podnela formalnu prijavu protiv države Rumunije Evropskom sudu za ljudska prava (ESLJP). U toj prijavi je navedeno da je žrtvama revolucije uskraćeno pravo da njihovi slučajevi budu razrešeni u „razumnom roku” – što je pravo garantovano Članom 6 Evropske konvencije o ljudskim pravima. ESLJP je presudio u korist podnosilaca tužbe, kaznio državu Rumuniju sa 20,000 evra i pozvao da se preduzmu koraci na otvaranju dosijea o revoluciji.²² Kao odgovor, rumunska vlada se složila da otvori sve dosijee i dokumente u vezi sa revolucijom.

Pravni tim iz rumunskog IIZKRPRE takođe razmatra da na evropskom nivou iznese optužbe za zlostavljanja od strane pripadnika rumunske tajne policije iz komunističke ere, *Securitate*-e. Takva promena nivoa je možda neophodna, obzirom da je u Rumuniji nastupila statutarna ograničenja (zastarelost) zločina počinjenih pod komunističkom vladavinom, i zato se za slučajeve poput slučaja Vasilea Parasciva, koji optužuje *Securitate* za zlostavljanje u trajanju od 20 godina, više ne može suditi lokalno. Međutim, pred ESLJP ne postoji zastarevanje slučajeva koji su u vezi sa povredama ljudskih prava ili zločinima protiv čovečnosti. Na taj način, ukoliko pravni tim IIZKRPRE bude u stanju da postavi svoje optužbe u okvir jezika povreda ljudskih prava, biće u stanju da iznese te slučajeve pred ESLJP, i time oživi svoje napore na ostvarivanju retributivne pravde za zločine komunizma.²³

Rumuni su takođe bili u mogućnosti da iskoriste pristup ESLJP kao osnovu za osiguravanje restitucije imovine koja je nacionalizovana pod komunizmom. Rumunija se tokom devedesetih godina pokazala kao zemlja koja u toj oblasti kasni, jer njene vlade nisu donosile efektivne zakone o restituciji, a čak su i intervenisale kako bi blokirale sudske procese koji su bili usmereni na rešavanje slučajeva u vezi sa povraćajem imovine. Suočena sa tom blokadom, grupa Rumuna je odlučila da iznese svoje slučajeve pred ESLJP, koji je, između 2002. i 2004. godine, saslušao 58 rumunskih zahteva za restitucijom. U većini slučajeva, ESLJP je presudio u korist podnosilaca zahteva i državi Rumuniji je

naređeno da isplati ukupno 4.6 miliona evra kao kompenzaciju onima čija imovina je bila nacionalizovana.²⁴

Zaključak: Evropeizacija i homogenizacija prošlosti?

Ovaj kratki pregled uticaja evropskih integracija na procese društvenog i zakonskog suočavanja sa komunističkom prošlošću u centralnoj i istočnoj Evropi je ukazao na jedan jasan trend - iako je Evropska Unija bila nevoljna da povede napore na suočavanju sa komunističkom prošlošću u zemljama CIE, pojedinci i organizacije unutar zemalja CIE su bili u stanju da *ad hoc* uvuku evropske institucije u napore istorijskog suočavanja. Neposredna posledica tog trenda je bila ukupni porast vidljivosti projekata suočavanja u centralnoj i istočnoj Evropi.

Dugoročne uticaje evropskih integracija na suočavanja sa komunističkom prošlošću je teže izmeriti, ali ima naznaka da istorijsko suočavanje u okviru evropskog konteksta može da služi „homogenizaciji” kolektivnog sećanja na komunističke vladavine u zemljama CIE. Da bi zastupnici istorijskog suočavanja u državama CIE bili u stanju da nastave da koriste podršku evropskih institucija u svojim projektima suočavanja, moraće da nastave proces postavljanja nasleđa komunizma u okviru zajedničkog, „evropskog” tereta, koji zahteva zajedničku, „evropsku podršku”. Takav okvir, koji je jasno iskorišćen u Praškoj deklaraciji, zahteva konstantno naglašavanje zajedničkih osobina komunističke vladavine širom Evrope, i konstantnu minimalizaciju ogromnih razlika koje su postojale među tim sistemima. Efekat tih procesa je zamena shvatanja finih međusobnih razlika koje su karakterisale komunističku vladavinu u Mađarskoj, Poljskoj, Čehoslovačkoj i Rumuniji – jednim opštim, tupim shvatanjem komunizma kao homogenog oblika vlasti, koji se prostirao preko cele centralne i istočne Evrope. Za zemlje CIE koje sada dele zajedničku, trans-nacionalnu budućnost, svakako postoji korist u prepoznavanju zajedničkih osobina svojih različitih autoritarnih prošlosti. Međutim, bilo bi za žaljenje ukoliko bi to prepoznavanje za cenu imalo gubitak suptilnih razlika u kolektivnim sećanjima komunističkog autoritarizma i totalitarizma u centralnoj i istočnoj Evropi između 1945. i 1989. godine.

22 „România a fost condamnată la CEDO pentru „osarul Revoluției”, *Realitatea TV Online*, 8. decembar 2009. godine. Dostupno na adresi: http://www.realitatea.net/romania-a-fost-condamnata-la-cedo-pentru-dosarul-revolutiei_691071.html.

23 Vidi raspravu kod Mirela Corlăţan, “Rechizitoriu inutil pentru torţionarul Enoiu?”, *Evenimentul zilei*, 30. Jun 2010. godine. Dostupno na adresi: <http://www.evz.ro/detalii/stiri/rechizitoriu-inutil-pentru-tortionarul-enoiu-899431.html>.

24 Lavania Stan, „Krov nad našim glavama: restitucija imovine u Rumuniji”, *Dnevnik komunističkih studija i tranziciona politika*, broj 22:2 (jun 2006. godine): 180-205.

Komisije za istinu iz latinsko-američke perspektive: izazovi i lekcije

Eduardo Gonzalez

Potruga za istinom i sećanjem se trenutno smatraju ključnim elementima post-konfliktne rekonstrukcije¹. Postojalo je puno komisija za istinu širom sveta, i praktično u svakom post-konfliktnom prostoru, institucije poput Ujedinjenih nacija (UN) i Evropske Unije (EU) su podržavale te institucije. Trenutno se vode pregovori u Nepal u o uspostavljanju komisije za istinu. Postoji jedna komisija za istinu koja započinje svoje aktivnosti u Keniji, jedna na Solomonskim ostrvima, i jedna u Kanadi, koja će se baviti nasilnom asimilacijom starosedelačke indijanske populacije u toj zemlji.²

To nije samo praktičan proces, već, takođe, i normativan: razvoj i prihvatanje načela da postoji „pravo na istinu” je važna činjenica koju treba uzeti u obzir. Deklaracija UN o pravu je usvojena u Savetu za ljudska prava, koji je pozvao zemlje koje su pretrpele konflikte da razviju svoje pristupe tom pravu žrtava povreda ljudskih prava. To pravo je priznato i u pravnoj nauci specifičnih ustavnih i vrhovnih sudova širom sveta.

Pravo na istinu podrazumeva pravo da se sazna šta se dogodilo, činjenice, posledice, kontekst povreda ljudskih prava, i za direktne žrtve, ali i za njihove zajednice: ono što je u početku nastalo, u međunarodnom humanitarnom pravu, kao pravo porodice pojedinca da sazna lokaciju ili sudbinu nestale osobe, evoluiralo je u pravo društva, u kome su se dogodile masovne zloupotrebe. To pravo, zajedno sa priznanjem žrtava, nosi sa sobom takođe i obaveze za

države – da se bore protiv poricanja, protiv revizionizma, da čuvaju istorijsku bazu za sećanja.

To je, svakako, jedan kompleksan koncept. Postoji puno slojeva istine, i puno verzija istine. Ono što članovi komisija u čuvenom *dictumu* kanadskog pisca Michaela Ignatieffa rade je „smanjivanje polja dopustivih laži”, što znači da, makar, osiguravaju da ogromne laži ili poricanja povreda ljudskih prava ne dobijaju podijum tako lako. Ono što komisije za istinu rade je omogućavanje žrtvama da podele svoja iskustva, i pronađu, u tome što su sve zajedno žrtve, mogućnost da potvrde određene nove demokratske vrednosti u istoriji, sada očišćene od bilo kakvog opravdavanja brutalnosti.

Komisije za istinu su organizovane u mnogim zemljama, međutim, one su i dalje veoma mlade institucije. Prva istra-ga koju prepoznamo kao „komisiju za istinu i pomirenje” bila je Nacionalna komisija o nestalim osobama u Argentinu, koja je uspostavljena pre više od 25 godina. Pošto su mlade, one su i dalje veoma plastične institucije. Na primer, fleksibilne su i prilagodljive konkretnim lokalnim situacijama. Zato koncept i model komisije za istinu primenjen u Južnoj Africi, na primer, nikada nije mogao biti primenjen u Čileu, ili u Gvatemali, a svakako ne na zapadnom Balkanu.

Komisije za istinu su i dalje dovoljno fleksibilan instrument za civilno društvo i političare da bi ih dizajnirali na način na koji možda reflektuje prave potrebe žrtava i političkog

1 Kao učesnik procesa peruanske Komisije za istinu i pomirenje, uspostavljene po padu Alberta Fujimorija, autor predstavlja latinsko-američku perspektivu tranzicione pravde.

2 U pitanju su komisije koje su osnovane tokom 2008, i 2009. godine i već tada su započele sa svojim radom. (*prim.ur.*)

procesa pomirenja: komisije za istinu, za razliku od suđenja, bile su veoma otvorene prema ulozi civilnog društva da ih modeluje prema svojim potrebama.

Istovremeno, treba da prepoznamo kako su neke komisije za istinu zapravo bile neuspešne u ostvarivanju svojih ciljeva. Neke komisije za istinu su pokrenute u situacijama bez preduslova za njihov uspeh. Videli smo bolan neuspeh napora da se stvori komisija za istinu i pomirenje u Demokratskoj Republici Kongo, posle mirovnih sporazuma, jer je uspostavljanje komisije uključivalo predstavnike ratnih komandanata, i žrtve nisu bile u stanju da veruju takvom naporu. Takođe smo videli i neuspeh indonežanske komisije za istinu. Rezultujući zakon je bio toliko falican, da je zakon kojim je uspostavljena komisija konačno bio odbačen pred ustavnim sudom te zemlje.

Neki preduslovi moraju biti uzeti u obzir kako bi se uspešno uspostavila komisija za istinu. Potrebno je da postoji minimum političke spremnosti: političari, oni koji u tome imaju svoje uloge – svi oni treba da imaju priliku da izrade konsenzus oko ideje potrage za istinom, i moraće da veruju da će institucija koja će biti stvorena biti dovoljno objektivna, dovoljno neutralna, i dovoljno profesionalna da sasluša sve njihove glasove. Komisija u početku treba da ima podršku civilnog društva, i zato, ono što se događa sada sa REKOM-om je fundamentalno – civilno društvo zapadnog Balkana pokušava da iskorači izvan tradicionalnih grupa organizacija za ljudska prava, mirovnih pokreta i udruženja žrtava, i da se obrate jedni drugima, i drugim institucijama i stanovništvu.

Komisije za istinu su obično stvarane u demokratskom proleću, u periodima aktuelne socijalne mobilizacije. Posle tog prozora i prilike njihovo stvaranje može biti teže. Zato je potrebno malo više podrške da bi se zaista ušlo u proces konsultacije koji će mobilizovati ostale sektore. To zahteva radni mandat, realistične parametre istrage, kako se ne bi stvorila institucija koja je prekomplikovana za vođenje konkretnih istraga, i koja će biti u stanju da na vreme sačini izveštaj i da preporuke.

Sa tim na umu, REKOM je suočen sa veoma konkretnim i do sada nevidenim izazovima. Nikada nije postojala autentična komisija uspostavljena na nivou više zemalja. Komisije za istinu su, klasično, institucije jedne zemlje, stvorene kako bi se bavile specifičnim situacijama u toj zemlji. Naravno, za REKOM je od ključnog značaja da radi van granica samo jedne zemlje, jer je takva priroda konflikta koji je doveo do raspada bivše Jugoslavije. Ali, to je i jasan izazov, i jasno je da je takav napor do sada potpuno nepoznat. Postojao je samo jedan pokušaj koji je izgledao

kao inicijativa dve zemlje, a to je inicijativa koju su pokrenule vlade Indonezije i Istočnog Timora pre nekoliko godina, takozvana „Komisija za istinu i prijateljstvo”. Međutim, tu komisiju su kritikovale organizacije za ljudska prava i civilno društvo kao, u osnovi, politički dogovor između dve zemlje da pronađu rešenje za zločine koji su se odigrali tokom borbe za nezavisnost Istočnog Timora 1999. godine. Obe vlade su imale svoj interes u stvaranju te institucije i u tome da ona počne da radi. Međutim, ta komisija je patila od nedostatka legitimnosti i podrške civilnog društva. Zato će, u suštini, REKOM biti prva komisija pokrenuta u više zemalja. Moraće da se bavi brojnim naracijama, brojnim viktimizacijama, često od suseda (ili susedima) koji sada žive u susednoj zemlji.

Na kraju, i proces stvaranja ove komisije i sama komisija su napor vezan za konsenzus.

Postoji razlog zašto ovo neće biti brz proces. U Latinskoj Americi, većina komisija za istinu je bila stvorena predsedničkim dekretom. Korišćena je kratkotrajna prilika tokom demokratskog proleća. Preduzimanje potrebnih akcija je bilo pitanje meseci, a ne godina. Države i društva su se bavile veoma konkretnim, veoma specifičnim pitanjima u jednom političkom entitetu. U slučaju REKOM-a, stvaranje konsenzusa će zahtevati duži proces, od pojedinačne zemlje navise.

Otkrivanje istine na zapadnom Balkanu će morati da uključi i Evropu. Ovo je, pre svega, najgori konflikt koji se odigrao na teritoriji Evrope nakon Drugog svetskog rata. To je kontekst koji je nametnuo ogromne izazove, ne samo političke i bezbednosne izazove, već takođe i moralne, za Evropu. Zato je ovo proces koji mora biti međunarodan od samog početka: međunarodan u smislu uključivanja zemalja bivše Jugoslavije, ali takođe i uključivanja pažnje čitave Evrope.

Zato, postoje brojni specifični izazovi sa kojima se suočavaju evropski prijatelji inicijative za regionalnu komisiju.

Prvi je taj da političari u post-jugoslovenskim republikama treba da osete glas Evrope - jasno i glasni u znak podrške ovoj inicijativi. REKOM-u će biti potreban jedan veoma delikatan akt političke veštine – biće potrebno da sedam različitih satova odzvone u isto vreme. To je izuzetno teško, i to će, sigurno, zahtevati da lideri tih zemalja znaju da je Evropa ozbiljna u pomirenju, sećanju i pravdi, i da razume potonji koncept ne samo kao specijalizovan proces u tribunalu, već i kao moralan i kulturni proces na ulicama, u javnom diskursu i stvaranju istorijskih naracija.

Drugi izazov je taj da Evropa treba da pažljivo podržava taj kompleksan, i možda neravan put prema stvarnoj konsultaciji u balkanskom kontekstu. On će imati svoje pomake i nazadovanja. Spremaju se izbori u Bosni, a zatim i u jednoj drugoj zemlji, i biće opozicije jednog ili drugog sektora, sumnji i oklevanja.³ To je u suštini uspostavljanja komisije za istinu; to je upravo ono što se dogodilo u mnogim drugim zemljama - počeci su uvek ekstremno teški, čak i teži za takvu institucije bez predsedana. Tako Inicijativa za REKOM, i sve grupe koje učestvuju u ovim konsultacijama, treba da veruju da ih Evropa prati. Bila bi dobra ideja da imamo razne predstavnike različitih evropskih institucija koji zaista posmatraju ove procese, rasprave i stvaranje konsenzusa. Bilo bi važno za ljude na zapadnom Balkanu da shvate da su njihovi procesi shvaćeni ozbiljno i da imaju podršku.

Treće, a to je nešto u čemu smo izrazili naš interes u nastavljajući sa podrškom REKOM-u putem Međunarodnog centra za tranzicionu pravdu - to je živi prenos informacija o komisijama za istinu, o tome šta se događalo u drugim zemljama, dovodenje u ovaj proces konsultacija ljudi koji su zaista učestvovali u komisijama za istinu, u dobrim, ali i u lošim momentima, koji će biti u stanju da podele svoju

stručnost, i pruže neke skromne ideje-vodilje o nekim od aspekata ovog procesa.

I na kraju, bilo bi suštinski da prepoznamo da će proces zaštite prava na istinu u ovom veoma, veoma kompleksnom regionu, morati da bude predstavljen na globalnoj sceni. To je, pre svega, jedan svet u kom smo već imali preko 30 komisija za istinu. To iskustvo ne sme biti protraćeno – potrebno je da bude preneseno na zapadni Balkan, i podeljeno sa onima koji imaju ulog u tome. Ali, istovremeno, *mutatis mutandis*, iskustvo na zapadnom Balkanu treba da bude preneseno negde drugde, jer puno konflikata je u svojoj prirodi međunarodno, i potraga za istinom takođe treba da bude međunarodna. Nije moguće razumeti konflikte u Liberiji i Sjevera Leoneu u izolaciji jednog od drugog. Biće nemoguće pokrenuti pravi proces istine i pomirenja u Demokratskoj Republici Kongo (DRC), bez uzimanja u obzir toga da su ratovi u DRC uključivali mnoge druge afričke zemlje. Ova konkretna inicijativa, biće ključna u zemljama kao što su centralna Azija, Bliski Istok, Srednji Istok, Velika Jezera. Stvaranje globalnih zajednica prakse i rasprave će biti apsolutno esencijalno, i predstavljajući jedan način podrške za REKOM.

3 Opšti izbori u BiH su održani u oktobru 2010. (*prim.ur.*)

II DEO

Tranziciona pravda iz ugla epistemološke zajednice

Dražen Lalić

Profesor sam na Fakultetu političkih znanosti u Zagrebu. Dva su osnovna razloga zbog kojih se zanimam za suočavanje s prošlošću. Prvi razlog je knjiga „Suočavanje s prošlošću u Republici Hrvatskoj: stavovi i mišljenja aktera i javnosti u poraću“. Napisali smo je Kruno Kardov, ovdje prisutna Vesna Teršelič, voditeljica Documente i ja, na osnovu velikoga istraživanja fenomena suočavanja s prošlošću u Hrvatskoj. U njemu smo koristili različite metode, i kvantitativne i kvalitativne. Drugi razlog se odnosi na jednu bizarnu činjenicu iz moga života. Naime, za zločine počinjene u proljeće 1945. godine na Bleiburgu i drugim lokacijama saznao sam tek 1985. godine, znači u dobi od 25 godina. Vjerojatno sam za te zločine saznao tako kasno zato što potječem iz obitelji koja je u Drugom svjetskom ratu bila na strani partizana - moj djed je u tom ratu ubijen zbog svoga antifašističkog opredjeljenja, pa se o tome u mojoj obitelji nije razgovaralo. Saznavši za te zločine, razgovarao sam o tome s nekim ljudima, pa sam shvatio da neki moji prijatelji ili dobri poznanici imaju djedove s druge strane, dakle ustaške, pa i to da su djedovi pojedinih mojih prijatelja i poznanika nastradali na Blajburgu ili tzv. Križnom putu. Meni je to bila strašna činjenica, uz ostalo i zato što sam u svojoj mladosti mogao otvoreno govoriti o svome djedu, dok ti moji prijatelji i poznanici svoje djedove nisu mogli spominjati pred većinom drugih ljudi. Teško sam se zbog toga osjećao, i to kako kao čovjek zbog svog odnosa prema tim prijateljima i poznanicima, tako i kao akademski građanin (u to sam vrijeme diplomirao na studiju politologije u Zagrebu).

Okupili smo se baš zbog toga da se ne ponovi takva situacija, da jedan akademski obrazovani građanin u jednom totalitarnom sustavu, ili sustavu koji je naizgled demokratski a zapravo je totalitarni, nema spoznaje o zločinima koji

su se dogodili, primjerive ubojstvima ratnih zarobljenika bez suđenja. Bez obzira na prethodno ponašanje, nikoga se ne smije ubijati tako bez suđenja i bacati u jame, i slično. Većina ovdje prisutnih je živjela u bivšoj Jugoslaviji, ali se sistem promijenio, a mi bismo trebali živjeti u demokraciji u kojoj se takvi zločini ne događaju, a zločini iz prošlosti se osuđuju.

Dosad rečeno je začetak moga shvaćanja *Tranzicijske pravde iz kuta epistemološke zajednice*. Uvodno još trebam pojasniti kako određujem osnovne pojmove ove panel diskusije. Tranzicijsku pravdu shvaćam ponajprije u smislu suočavanja s prošlošću. U toj velikoj društvenoj promjeni, dakle u dugotrajnom i složenom tranzicijskom procesu prelaska od autoritarnog do demokratskog sistema, mi kao građani zemalja nastalih nakon raspada bivše Jugoslavije moramo se suočiti s istinom i s pravdom, posebno vezano za zločine i različito teško nasilje koji su se dogodili u ratovima tokom devedesetih godina. Mnogi građani Hrvatske, a siguran sam i drugih zemalja, imaju veliku potrebu za tom istinom i pravdom. U tom smislu netko koristi pojam “tranzicijska pravda”, netko “odrađivanje prošlosti”, netko “svladavanje prošlosti”, a ja koristim pojam “suočavanje s prošlošću”. Drugi je pojam - epistemološka zajednica. Smatram kako se u stvari radi o više zajednica. Naime, postoje različiti načini na koje dobivamo saznanja i spoznaje o ratnim zločinima, ubojstvima i svemu onome mučnome što se dogodilo u ratovima na području bivše Jugoslavije. To nije samo akademska zajednica kojoj osobno pripadam. Ovdje među nama su i neki stručnjaci. Zar spoznaje o suočavanju s prošlošću ne donose i brojni psiholozi, defektolozi i drugi koji izravno rade sa žrtvama? Konačno, ovdje su i mnogi novinari. Zar i ti stručnjaci ne doprinose suočavanju s prošlošću, pogotovo prikupljanjem informacija i inter-

pretiranjem činjenica vezanih za rat? Osim znanstvenika i stručnjaka, time se bave i umjetnici. U sklopu rečenoga istraživanja Vesna Teršelič, Kruno Kardov i ja smo ustanovili da je vrlo važan taj subjektivni odnos prema nasilnoj prošlosti. Znači, dogodila se promjena koja se dogodila od Drugog svjetskog rata, i pogotovo Prvog svjetskog rata, kada pojedinačne ljudske sudbine i nisu toliko bile važne, do situacije vezane za ratove na području bivše Jugoslavije i neka druga ratnim zbivanja posljednjih desetljeća u kojima individualno postaje jako važno. Mislim da baš u tom smislu umjetnici mogu dati i daju posebno veliki doprinos. Mnogi autori umjetničkih djela su nam pomogli kao aktivistima u shvaćanju toga problema - nema aktivista u ovom području koji nije gledao filmove kao što je „Sofijin izbor“ Alana J. Pakule i čitao knjige poput „Zar je to čovjek?“ Prima Levija. Znači, umjetnici su nam jako važni. Dakle, epistemologiju u ovom smislu shvaćam kao različito prikupljanje saznanja i spoznaja o mučnim događajima i ratnim zločinima koji su vezani za ove ratove. To je ono osnovno što sam htio reći vezano za sadržaj, temu ovoga panela.

Polazim od jedne rečenice, u stvari to je bio njegov moto, Michela de Montaigne, velikoga francuskog filozofa koji se upitao: „Što znam?“ Slijedom toga se možemo upitati što znamo o ratnim zločinima i drugim nesretnim događajima

iz ratne prošlosti. A kad pogledamo istini u oči, onda možda shvaćamo da je jednako važno sljedeće pitanje: što ne znamo o tome? Naše znanje o ratnim zločinima je vrlo ograničeno. Znači: koliko znamo i koliko ne znamo? Sljedeće je pitanje kako društveni kontekst u našim zemljama utječe na ono što znamo i ono što ne znamo o tome. Nadalje, mislim da je vrlo važno odgovoriti na pitanje kako kritički vrednovati ono što znamo i ono što ne znamo, a da sve to bude zasnovano na objektivnoj spoznaji, bez da motrimo isključivo iz kuta svoje etničke ili druge zajednice. Naposlijetku, kako možemo pridonijeti tome da unaprijedimo svoje znanje i smanjimo svoje neznanje o tome? Koji nam akteri u tome mogu pomoći? Što političke i druge institucije rade na tome da nam pomognu, nama iz civilnog društva, nama iz znanosti ili medija i drugim akterima, pa i društvu u cjelini da se unaprijedi to znanje? Kako možemo stimulirati vlasti da pomognu u stjecanju onakvoga znanja o ratnim zločinima i nasilju iz prošlosti koje bi bilo istinito, znači zasnovano na istini; koje bi bilo argumentirano, znači zasnovano na činjenicama; koje bi bilo plodno, znači služilo bi kao osnova za široku akciju, ne samo nevladinih organizacija i civilnog društva, nego različitih aktera društva? Mislim da bez takve, široke i objektivne, spoznaje ne može biti uspješnog suočavanja sa prošlošću, odnosno tranzicijske pravde.

Diane F. Orentlicher

U proteklih dvadesetak godina, na međunarodnom nivou se ulaže ogroman napor u jednu veoma značajnu oblast tranzicione pravde, a to je zadovoljenje pravde u društvima u kojima su počinjeni teški zločini. Tokom tog perioda, mnogi stručnjaci i istraživači razvili su različite teorije o tome šta mere međunarodnog prava i tranzicione pravde u post-konfliktnim društvima - poput suđenja, komisija za istinu, reparacija i drugih procesa - znače za društva koja su doživela teške zločine. Između ostalog, ove mere mogu pomoći sprečavanje budućih zločina, unaprediti vladavinu prava, povratiti osnovne vrednosti ljudskog dostojanstva koje su bile brutalno kompromitovane nasiljem, ubrzati pomirenje u podeljenim društvima, promovisati stabilnu tranziciju ka demokratiji i izlečenje društva.

U tom duhu, dozvolite mi da kažem nekoliko reči o onome što sam ja saznala iz istraživanja koje sam sprovodila neposredno pre nego što sam se pridružila Obaminoj administraciji. To istraživanje je bilo pokušaj da shvatim uticaj Haškog tribunala na društva u Srbiji i Bosni. Zaključak koji se vrlo jasno nametnuo tokom proučavanja situacije u Bosni je nešto što je, mislim, veoma očigledno narodu Bosne, a što se često gubi u akademskim štivima na temu tranzicione pravde – pravda sama po sebi je jedan od najvažnijih razloga zbog koga su žrtve želele da se osnuje sud kao što je Međunarodni krivični tribunal za bivšu Jugoslaviju. U naučnim raspravama o međunarodnim sudovima često ćete naići na fino nijansiranu raspravu o sprečavanju nasilja, pomirenju i drugim vrednostima vezanim za pitanje međunarodnog pravosuđa, ali iznenađujuće malo je rečeno o onome što su mnogi s kojima sam razgovarala opisivali kao „pravdu zarad pravde“.

Kada sam ljude u Bosni pitala da mi kažu šta oni *očekuju* od Haškog tribunala i kako je *zaista doprineo* njihovom ličnom doživljaju pravde, odgovori koje sam dobijala najčešće su počinjali prilično dugom kritikom Haškog tribunala. Ljudi s kojima sam razgovarala identifikovali su nekoliko specifičnih aspekata delovanja Haškog tribunala, kao ili razočaravajuće ili izuzetno poželjne. Kao negativan aspekt najčešće je isticano da sudski postupci frustrirajuće dugo traju i da to znači dugo iščekivanje izricanja pravde. Drugo često pominjano nezadovoljstvo je neadekvatna dužina zatvorskih kazni za lica odgovorna za teške zločine ili njihovo prevremeno puštanje na slobodu. Takođe sam otkrila duboko nezadovoljstvo odlukom Tribunala da dopusti optuženima da se sami brane i koriste suđenja kao političku platformu. U vezi sa ovim primetila sam da ih posebno uznemirava nekompetentnost Tribunala da sankcioniše ovakvo ponašanje optuženih.

Najveći izvor nezadovoljstva koji sam iznova slušala iz godine u godinu prilikom poseta Bosni predstavlja činjenica da su Ratko Mladić i Radovan Karadžić toliko dugo proveli na slobodi. I dok je to bilo tako, ljudi u Bosni su mi govorili da činjenica da su oni na slobodi nakon što je protiv njih podignuta optužnica još 1995. Godine između ostalog i za genocid, činjenica da su i dalje nekažnjeni, baca senku na sve ostale rezultate rada Haškog tribunala. Njihova zakasnela hapšenja su otklonila ovu senku, ali ne mogu i da otklone štetu nanetu dugotrajnom nekažnjivošću u kojoj su uživali.

Jedan od interesantnih zaključaka koji se nametnuo tokom mojih razgovora sa ljudima u Bosni jeste da oni ne doživljavaju pravdu kao nešto što ili dobijete ili ne postignete, već pre kao nešto što možete parcijalno dobiti, nešto što neće biti savršeno dostignuće. Iako zahvalni što su zločinci

privedeni pravdi, mnogi su očekivali da Tribunal ispuni i neke druge potrebe. Osobe koje su izgubile članove svojih porodica tokom oružanih sukoba su naglašavali važnost saznanja o sudbini njihovih najmilijih i smatrali da je neophodno da se od počinitelaca zahteva da pruže ovakvu vrstu informacija, pogotovo u slučajevima sporazuma o priznanju krivice koji su sklapali sa tužilaštvom.

Ljudi sa kojima sam razgovarala takođe su često izražavali nadu da će svojim radom MKSJ doprineti još jednom važnom cilju – priznavanju činjenice da su i pripadnici naše sopstvene etničke grupe odgovorni za kršenja ljudskih prava. Međutim, iako su mi mnogi od njih rekli da se nadaju

da će činjenice utvrđene kroz postupke vođene pred Tribunalom podstaći ovakvu vrstu spoznaje, mnogi su izrazili razočaranje realnom mogućnošću Tribunala da to i ostvari.

Međutim, na kraju svih ovih razgovora oni bi se uvek izrazito pozitivno izrazili o značaju koji za njih ima osnovna činjenica da Tribunal izriče pravdu. Vrednost koju za njih ima pravda često se ne može svesti ni na jednu drugu vrednost, a mnoge žrtve su odlučno tvrdile da je to bilo veoma značajno za njih. Uprkos tome, kao što sam ranije pomenula, prevladavalo je mišljenje da je pravda izrečena u sudnicama Haškog tribunala daleko bolja nego nikakva pravda i da bi je trebalo biti još mnogo više.

Vladimir Petrović

Postoji jedan paradoks na koji vredi skrenuti pažnju ovog skupa. On se tiče pitanja učešća historičara u procesu suočavanja sa prošlošću. Lako se dá primetiti da u aktivnostima ove vrste, uz izuzetke koji se podrazumevaju, historičari ne prednjače ni brojem ni prirodom angažmana, što je pomalo čudno ako se ima u vidu da je težište njihovog interesovanja upravo na proučavanju prošlosti, i da su oni obučeni da se njome bave.

Moguća su razna objašnjenja ovog paradoksa: neka od njih su filozofska, neka metodološka, a neka sasvim politička. Upravo je zloupotreba istorije predstavljala jedan od ključnih mehanizama rastakanja Jugoslavije, širenja međunacionalne mržnje i prerastanja ovog rastakanja u rat. Istorijska nauka ne samo što nije mnogo učinila u suprotstavljanju ovom trendu, već ga je umela značajno podsticati i još uvek to čini. Daleko bilo, naravno, da svi historičari učestvuju u tom ratu sećanja. Radi se o jednoj manjini, ali manjini koja je bučna i neobično dobro organizovana, čiji su pogledi na prošlost prilično koherentni a svest o sopstvenoj nacionalnoj misiji izoštrena. Takva je situacija u Srbiji, a nije mnogo bolja ni u drugim bivšim jugoslovenskim republikama. Prirodno je onda da, kada se otvori pitanje šta bi ta disciplina mogla da učini na tome da se postjugoslovenska društva suoče sa najneugodnijim aspektima sopstvene nedavne prošlosti, nailazimo na probleme. Kako očekivati od ljudi koji su svoje karijere uložili u određeni politički projekat da u jednom trenutku reše da se kritički osvrnu na svoj sopstveni angažman i na taj politički projekat? To se dešava, ali nije ni često niti lako i na to ne možemo računati.

Šta onda da se radi? Pokušao bih da u odgovoru opišem luk inverzijom pitanja kojim je profesor Lalić otvorio ovaj

panel. On se pitao šta mi o prošlosti zapravo znamo, a ja bih tome dodao pitanje - šta o njoj ne znamo? Tačnije, šta nam ne daju da znamo? Hoću da kažem da bi bilo vrlo svrsishodno razdvojiti epistemološku dimenziju problema spoznaje od praktične. Na epistemološkoj ravni ne možemo očekivati konsenzus o pitanjima spoznaje, koja zavise od filozofskog uverenja, pa i od ličnog senzibiliteta. Naša šansa, po meni, leži na heurističkom nivou, na kojem nas ne interesuje nužno šta je istina, već kakvu to svoju istinu neko pokušava da sakrije od nas.

Stara je poslovice da je istina prva žrtva rata. Država i u redovnim uslovima nastoji da očuva kontrolu nad informacijama koje proizvodi, što vidimo na primeru Juliana Paul Assangea i drugde, a u vanrednim situacijama taj refleks poprima razmere nacionalnog interesa i propagandnog rata. Svemu tome smo svedočili tokom raspada Jugoslavije i ne moramo se na tome zadržavati.

Svedočimo, međutim, još jednom potpuno suprotnom fenomenu. Eksplozija informacija koja je pratila imploziju Jugoslavije veoma je otežala ovo zataškavanje, a formiranje Haškog tribunala ga je zapravo onemogućilo. Istraživači ovog perioda prošlosti su zapravo u epistemološki privilegovanoj situaciji. Dokumenta koja bi inače po prirodi stvari i po slovu arhivskog zakonodavstva još dugo bila nedostupna, a odnose se na rad najviših državnih organa, vojnog i bezbednosnog aparata, a pre svega na rat i ratne zločine, našla su svoj put do haških i domaćih sudnica. Mnoga su korišćena kao sudski dokazi i tako postala dostupna javnosti. Zapravo, tako mnoga da najveći istraživački problem leži u njihovom obilju, u potrebi da se ona selektuju, kritički obrade i prezentuju na razumljiv način.

Tu ja vidim ulogu epistemološke zajednice, a pre svega istorijske nauke u procesu tranzicione pravde. Dakle, dobro je što posla imamo. Loše je što ne uspevamo da zainteresujemo dovoljno ljudi da se njime bave, budući da se radi o poslu koji zahteva strpljenje i sistematski pristup. Šta tu može da se uradi? Naravno, nikome ne možemo reći šta treba da radi, svako ovom problemu pristupa po svojoj savesti i znanju. Međutim, mogu sa svoje strane da kažem šta radi Institut za savremenu istoriju, iz koga dolazim, u saradnji sa Fondom za humanitarno pravo. Mi smo se zajednički upustili u projekat pod imenom Jugoslovenska kriza, kroz koji nastojimo da izdvojimo dokumenta i

materijale po našem sudu najrelevantnije za razumevanje raspada Jugoslavije, rata i ratnih zločina, sa ciljem da ih kritički priredimo i predočimo javnosti u štampanoj i u elektronskoj formi. Osnovna namera projekta je unapređivanje naših spoznaja o ovom aspektu prošlosti, a time i snaženje faktografske baze ovih naših rasprava. Namerno upotrebljavam taj pomalo staromodan termin, da bih još jednom podvukao da ćemo teško odgovoriti na pitanje šta je istina, ali nas to ne sme sprečiti u sprečavanju sistematskog pokušaja skrivanja informacija koje do nje vode. Meni se čini da je uloga epistemološke zajednice u svojim različitim granama da se takvom pokušaju suprotstavi.

Mladen Ostojčić

Ovo izlaganje se zasniva na mojoj doktorskoj disertaciji o uticaju Haškog suda na političke prilike u Srbiji u periodu nakon pada Miloševića (2000-2010). Jedna od najvažnijih pouka iz rada Haškog suda je da međunarodni tribunali, bez podrške domaćih političkih elita, ne mogu kazniti počiniocce ratnih zločina i promovisati suočavanje sa prošlošću.

Tokom devedestih, rad tribunala praktično je bio blokiran zbog odsustva saradnje srpskih i hrvatskih vlasti koje su mahom štatile optuženike za ratne zločine. Nakon smrti Tuđmana i pada Miloševića, srpske i hrvatske vlasti su postepeno, pod velikim pritiskom međunarodne zajednice, izručile haške optuženike. Međutim, domaće vlasti nisu bile spremne da javno iznesu istinu o ratnim zločinima i da time same pospeše suočavanje sa prošlošću, a Haški sud se s druge strane pokazao prilično nesposobnim u obraćanju domaćoj javnosti. Samim tim, suđenja za ratne zločine pred Haškim sudom nisu dovela do podizanja svesti o ratnim zločinima niti su podstakla njihovu osudu u srpskom društvu.

Ovakav ishod često se pripisuje srpskim političkim elitama koje su pragmatički pristupale saradnji sa Hagom i pravdale ekstradiciju optuženika dobijanjem ekonomske pomoći ili napretkom u evropskim integracijama. 'Instrumentalizacija' Haga je mahom tumačena kao odraz većinskog nacionalizma srpskih političkih elita i negacije ratnih zločina. Međutim, moje istraživanje pokazuje da je suštinski razlog za neiskren odnos prema Tribunalu činjenica da su srpske vlasti doživljavale Haški sud kao pretnju za stabilnost i legitimnost države.

Pravda vs. stabilnost

Hapšenje, te izručenje optuženih lica Haškom sudu ugrozilo je političku stabilnost u Srbiji iz nekoliko razloga.

Najpre, postojala je duboka podela u vezi sa ekstradicijom optuženika po tom pitanju unutar same vlasti nakon smene Miloševića. Premijer Đinđić zalagao se za punu saradnju sa Tribunalom, dok je tadašnji predsednik SRJ Vojislav Koštunica insistirao na poštovanju postojećih zakonskih okvira koji su onemogućavali ekstradiciju optuženika. Njihovo neslaganje u vezi s izručenjem Miloševića dovelo je do rascepa u okviru vladajuće koalicije. Otuda je sposobnost Vlade Srbije da hapsi lica optužena za ratne zločine uveliko smanjena zato što je Koštunica de facto pružao otpor saradnji sa Hagom.

Drugo, vojska i službe bezbednosti, koje nisu reformisane nakon pada Miloševića, aktivno su opstruirale hapšenje optuženika. Mi danas znamo da su se Ratko Mladić i Veselin Šljivančanin krili u vojnim objektima bar do 2002. godine. Pored toga, pripadnici bezbednosnih službi su se okrenuli protiv Vlade iz straha da će i oni jednog dana završiti u Hagu. Tako je Jedinica za Specijalne Operacije (JSO) digla pobunu u novembru 2001. godine tražeći prekid saradnje sa Haškim sudom. Dve godine kasnije, njeni pripadnici izvršili su atentat na premijera Đinđića u okviru akcije 'Stop Hagu'.

Plašeći se nestabilnosti, vlasti su sve više težile da nagovore optuženike da se sami predaju, umesto da pristupe njihovom hapšenju. Ključni trenutak u tom procesu bilo je hapšenje Veselina Šljivančanina, katastrofalno izvedeno u junu 2003. Godine. Vlada je zatim uvela finansijske i pravne podsticaje za predaju optuženika Haškom sudu. Opisana praksa kulminirala je takozvanom politkom „dobrovoljnih predaja“ koju je Koštunica uveo tokom svog prvog mandata 2004. Godine. „Dobrovoljna predaja“ podrazumevala je prebacivanje optuženika u Hag uz državne počasti. U medijima, njihova predaja je prikazana kao doprinos evropskim

integracijama i odbrani Kosova. Optuženici, koji su pritom primali zamašne sume novca, su, dakle, predstavljeni kao mučenici koji idu u Hag da bi obavili svoju patriotsku dužnost. Oni koji su odbijali da se predaju su uhapšeni, ali su njihova hapšenja prikazana kao dobrovoljne predaje.

Politika „dobrovoljnih predaja“ dovela je do izručenja 16 optuženih lica u Hag u roku od godinu dana, ali je u isto vreme narušila ciljeve tranzicione pravde i dovela do socijalizacije ratnih zločinaca u društvu. Posledica strategije „dobrovoljnih predaja“ jeste da su optuženici doživljeni kao heroji u javnosti, što objašnjava i slabu podršku radu Tribunala. U protekloj deceniji, tek 15 posto stanovništva Srbije imalo je pozitivan stav prema Haškom sudu i izručenjuhaških optuženika.¹

Pravda vs. legitimnost

Vlada Srbije izručila je Miloševića u nadi da će podići ugled države u svetu i da će ovo suđenje doprineti individualizaciji krivice za ratne zločine. Srpske vlasti nadale su se i da će suđenje podstaći suočavanje sa ratnim zločinima u Srbiji, te da će dodatno diskreditovati bivši režim i ojačati podršku novim vlastima. Dakle, vlasti nisu bile spremne da same izađu u javnost sa podacima o ratnim zločinima, ali su očekivale da će Haški sud to učiniti umesto njih. Međutim, suđenje Miloševiću pokazalo je da Haški sud nije bio dorastao opisanom zadatku, jer je Miloševićeva popularnost u stvari porasla tokom prvih nedelja suđenja. Prenos suđenja učvrstio je negativan stav javnosti prema Tribunalu i diskreditovao isti u očima liberalne političke elite.

Takođe, suđenje Miloševiću izazvalo je strah kod srpskih vlasti da bi presuda mogla implicirati odgovornost države za genocid. Optužnica protiv Miloševića za zločine u Hrvatskoj i Bosni i Hercegovini podignuta je tek u jesen 2001. godine, nakon njegovog izručenja. Deo optužnice u vezi sa zločinima u Bosni teretio je Miloševića za genocid, izazvavši pritom veliku zabrinutost vlasti u Beogradu budući da je Bosna pokrenula spor za genocid protiv SRJ pred Međunarodnim Sudom Pravde (MSP).. Srpski

političari očekivali su da će Bosna odustati od spora nakon pada Miloševića, međutim to se nije desilo. Da je Milošević bio osuđen za genocid pred Haškim tribunalom, Bosna bi imala veće izgleda da dobije spor pred MSP. U tom slučaju, Srbija bi bila prva zemlja ikada osuđena za genocid. Pored plaćanja zamašnih reparacija BiH, pomenuta osuda bi dovela i do potpunog urušavanja međunarodnog legitimiteta Srbije.

Strah od ishoda spora za genocid, iako prećutan u javnosti, u mnogom je uticao na odnos srpskih vlasti prema Haškom sudu. Država je stoga tajno pružala pomoć Miloševićoj odbrani, što se jasno videlo u njegovom nastupu u sudnici na početku suđenja. Kasnije je obelodanjena činjenica da je opisana pomoć pružana posredstvom Vojne komisije za saradnju sa Haškim tribunalom koja je naknadno ukinuta 2003. godine. Pored toga, vlasti su zatražile zaštitne mere za osetljive dokumente, pre svega za zapisnike Vrhovnog Saveta Odbrane. Bilo je dosta polemika i kontroverzi u vezi sa dodeljivanjem zaštitnih mera i uticaju istih na ishod spora za genocid. Ja ne želim da ulazim u te rasprave. Ono što želim da naglasim ovde je da je Miloševićovo suđenje suštinski dovelo u pitanje legitimitet države Srbije i da je time Haški sud izgubio podršku onih političara u Srbiji koji su bili iskreno privrženi izvršenju pravde i suočavanju sa prošlošću. Haški tribunal je, u tom kontekstu, suzio prostor za kazivanje istine u Srbiji.

Zaključak

Na osnovu postojećeg iskustva, može se zaključiti da buduće inicijative za tranzicionu pravdu mogu uspeti samo ukoliko se uvide njihove političke konsekvence. Jedan od osnovnih ciljeva tranzicione pravde je da se povrati legitimitet, kredibilitet i poverenje u državne institucije. Ako te inicijative imaju suprotne efekte, one su osuđene na neuspeh. Dakle, inicijativa za REKOM može uspeti samo uz podršku vlasti država u regionu. Ta podrška će izostati ukoliko vlasti dožive Komisiju kao pretnju za stabilnost i legitimnost institucija.

1 „Stavovi prema ratnim zločinima, Haškom tribunalu i domaćem pravosuđu za ratne zločine“, Beogradski centar za ljudska prava, OEBS i Strategic Marketing Research, April 2009.

Jasna Dragović-Soso

Moja današnja prezentacija usmerena je na dva pitanja: Prvo, gde se tačno nalazimo u kontekstu tranzicione pravde u regionu i drugo, šta nam još nedostaje. Konkretno, sastali smo se ovde u prvom redu zbog Inicijative za REKOM (uprkos opštoj prirodi Foruma) i bilo bi veoma korisno da se skoncentrišemo i na pitanje gde bi se REKOM najbolje uklopio u širi kontekst tranzicione pravde u regionu bivše Jugoslavije.

Moje kolege su već pomenule čitav niz važnih dostignuća i ja se potpuno slažem sa iznetim ocenama. I ja bih podvukla značaj obimne dokumentacije o ratovima vođenim devedesetih godina koja danas postoji zahvaljujući radu Međunarodnog krivičnog tribunala i ne manje zahvaljujući nevladinim organizacijama koje su bile veoma posvećene prikupljanju dokumentacije. Dakle, što se tiče regiona bivše Jugoslavije, raspoložemo nezapamćeno velikim brojem informacija od kojih je većina dostupna javnosti.

Druga tema je vreme. U delovima regiona bivše Jugoslavije, tokom poslednjih nekoliko godina došlo je do niza pozitivnih pomaka u sferi tranzicione pravde, posebno u smislu hapšenja preostalih haških begunaca i njihovog izručivanja Haškom tribunalu, kao i u pravcu obnavljanja veza i saradnje među državama. Prevladavajući osećaj je da se politička klima menja, na šta u velikoj meri utiče pro-evropska orijentacija država regiona. Ali, uprkos obilju nerešenih problema, čini se da postoji veća odlučnost državnog vrha da se bavi pitanjima ratnih zločina, iako, kao što je pokazano u mom nedavnom članku, na način koji je i dalje prvenstveno definisan političkim kalkulacijama i ciljevima međunarodne politike (od kojih je najuočljivije nastojanje država da obezbede članstvo u EU). Uprkos očiglednim nedostacima nedavno izrečenih javnih izvinjenja državnih

zvaničnika i ostalih instrumenata tranzicione pravde, ja bih rekla da ipak ima više prostora sada nego ikad pre za pokretanje novih inicijativa kojima bi se privukla pažnja javnosti na događaje iz nedavne ratne prošlosti.

Treća pozitivna stavka koju bih želela da istaknem je uloga koju su odigrale nevladine organizacije, i drago mi je što mogu da konstatujem da su i dalje izuzetno aktivne. Važno je shvatiti koliko napora i energije odlazi u inicijative tranzicione pravde, pogotovu one kao što je Inicijativa za REKOM, i koliko faktori kao što je vremenska udaljenost od događaja, društvena apatija i nepoverenje zvaničnika predstavljaju očigledne prepreke u obavljanju ovih aktivnosti.

Rekavši ovo, jasno je da, naravno, postoje mnogi nerešeni problemi, od kojih su neki pomenuti u prethodnim diskusijama. Meni je bilo posebno interesantno da čujem izlaganja predstavnika organizacija žrtava i kako oni funkcionišu u uslovima u kojima ne postoje adekvatni odgovori na veoma konkretna, često praktična pitanja i potrebe. Njihovi problemi kreću se u dijapazonu od pitanja finansijske kompenzacije, potraživanja nepokretnosti, nedostatka održive zdravstvene nege i psihološkog staranja do pitanja rešavanja sudbine nestalih članova porodice. Nizak nivo interesovanja i loš zvanični odziv na ove probleme i pitanja predstavljaju ozbiljan problem u politici tranzicione pravde u regionu. Takođe smo dosta čuli i o trajnim problemima u reformi pravosuđa i o neadekvatnoj reformi institucija širom regiona. Svi ovi problemi su već više puta istaknuti u brojnim izveštajima međunarodnih tela i domaćih nevladinih organizacija. Međutim, jedno zvanično i autoritativno telo – poput regionalne komisije za istinu – moglo bi obezbediti toliko željeni podstrek za promene u ovoj oblasti. U najmanju ruku, ovakvo jedno telo može da obje-

dini postojeće analize, da obezbedi jedinstvenu autoritativnu procenu pomenutih problema i da preporuči moguće načine rešavanja istih.

Drugi problem s kojim sam se susrela u svom radu tiče se nedostatka prave javne debate o prošlosti. Postoji mnogo razloga zašto je to tako, uključujući stavove političkog vrha (koji se, čak i kada se bave implementacijom politike koja se odnosi na prošlost – kao što je hapšenje osumnjičenih i optuženih za ratne zločine i javna izvinjenja za počinjene ratne zločine – uzdržavaju od prave diskusije o tome šta se desilo, ko su žrtve a ko počinitelji određenog zločina i kakvu su ulogu odigrale tadašnje vlade i njihove bezbednosne službe), kao i određeni pripadnici građanskog društva (koji često zauzimaju preterano moralističke i apstraktne stavove o pitanjima kolektivne krivice koji ne mogu imati odjeka kod šire publike). U mojoj svesti, ono što bolno nedostaje je jedna veoma „svedena“ debata zasnovana na činjenicama o tome šta se događalo devedesetih godina prošlog veka i otvoreno razbijanje i danas opšteprisutnih mitova vezanih za kolektivno doživljavanje čitave nacije kao žrtve, međunarodne zavere i istorijske nepravde – svega onoga što i dalje predstavlja temelj za nepoverenje i neprijateljstvo među etničkim grupama širom regiona. Jedan od najuočljivijih utisaka svih nas koji pratimo javni diskurs tokom poslednjih godina jeste koliko su se malo stavovi i argumentacija promenili i evoluirali tokom godina.

Ovo je očigledno oblast u kojoj REKOM – ako dođe do njegovog osnivanja – može da odigra važnu, možda čak i presudnu ulogu. Ovakvo jedno telo – pod pretpostavkom da je istinski autoritativno i zastupljeno, i sa pravim publicitetom i medijskom pažnjom (očigledno je da su ovo veliki izazovi) – moglo bi da obezbedi polaznu tačku i podsticaj za debate. Koristeći razumljive i opšteprihvaćene metode i unakrsnu proveru podataka iz različitih izvora, ovakvo telo bi moglo da utvrdi obilje suštinski važnih činjenica o ratovima vođenim devedesetih godina, što bi se moglo koristiti kao osnova za dalje debate o skorijoj istoriji regiona. Ako je moguće organizovati javna svedočenja pojedinaca koji su bili faktori odlučivanja u nedavnim događajima, njihov društveni domet bi bio ogroman – posebno imajući u vidu nedostatak poverenja javnosti u institucije, kao što je pomenuo Eric Gordy. Ovakva saslušanja bi mogla predstavljati neposrednu, direktnu konfrontaciju javnosti sa iskustvima pojedinaca i – sudeći po njihovim uticajima u drugim slučajevima – mogla bi podstaći nivo ličnog preispitivanja i emocionalnog učešća koji nužno ne prate usvajanje zvaničnih dokumenata i izveštaja ili sudskih postupaka. Naravno, REKOM ne može svima biti sve, i na REKOM se ne sme gledati kao na univerzalni lek; važno je da očekivanja budu skromna i realistična. Međutim, ovo su, za mene lično, načini na koje ova inicijativa može doprineti razvoju prave, korisne javne debate o prošlosti, i u regionu i na nivou pojedinačnih nacionalnih zajednica.

Christian Axboe Nielsen

Ja svake godine kažem svojim studentima u Danskoj da ne bi bilo teško napuniti čitavu biblioteku samo knjigama o ratovima u bivšoj Jugoslaviji. Neverovatno je koliko je knjiga napisano o ovom predmetu, koji je svakako jedan od najvažnijih u najnovijoj svetskoj i evropskoj istoriji. Ako postoji jedna stvar oko koje se skoro svi autori tih knjiga slažu, onda je to da je nacionalizam bio možda najvažniji uzrok raspada Jugoslavije i oružanih sukoba na području te bivše zemlje. Ja ne bih osporio tu tezu, a mislim da ona i dalje do određene mere stoji. Međutim, moje iskustvo, proisteklo iz analize delovanja policije u ratu u Bosni i Hercegovini, govori da je delovanje nacionalizma samo jedan deo veće priče. Ja sam nekoliko godina radio u tužilaštvu Haškog tribunala, a kao analitičar zadužen za analizu MUP-a Republike Srpske (te i saradnje MUP-a RS sa MUP-om Republike Srbije), imao sam priliku da prikupljam i proučavam obimnu ratnu dokumentaciju tih organa. Proučavanjem tih dokumenata došao sam do zaključka da je nacionalizam za veliki deo tadašnjeg rukovodstva bio sredstvo i paravan, a ne cilj. Dakle, kad govorimo o policiji, otkrio sam da su policajci raznih naroda i narodnosti, koji su trebali čuvati Jugoslaviju, ustvari krenuli ka rušenju te zajedničke države. Sjajan primer toga vidimo u zajedničkom starom MUP-u Socijalističke Republike Bosne i Hercegovine u ključnom razdoblju između prvih višestranačkih izbora u novembru 1990. godine i početka rata u aprilu 1992. godine. Tadašnje rukovodstvo ministarstva se sastojalo od Bošnjaka, Hrvata i Srba koji u velikoj meri potiču iz prve generacije rođene posle Drugog svetskog rata. Tu je ministar Alija Delimustafić, tu su Momčilo Mandić, Branko Kvesić i drugi. Oni su odrasli u «zlatnom dobu» socijalizma i bratstva i jedinstva. Neki su radili kao čuvari Jugoslavije za Državnu bezbednost ili

vojnu bezbednost, neki su iskoristili prve pojave slobodnog tržišta u osamdesetim godinama kako bi napravili male trgovinske imperije – neki su radili i jedno i drugo. Tako je Delimustafić dospeo od saradnika vojne kuhinje (pod optužbom za finansijske malverzacije) preko osnivača lanca trgovačkih punktova do – ministra policije.

Bez obzira čiji su kadrovi – SDA-ovi, SDS-ovi ili HDZ-ovi – svi su oni gurali «svoje» ljude posle pobede tih stranaka na izborima. Na taj su način lagano iskorenjeni profesionalni kadrovi, dok su u saradnji sa svojim strankama širili antagonizam i strah od drugih stranaka. A kad je konačno došlo do rata, većina ih je otišla u «svoje» MUP-ove - novonastale MUP RS, MUP Herceg Bosne i, naravno, MUP Republike BiH. Svojim narodima su pričali o nemogućnosti daljeg zajedničkog života, o egzistencijalnim pretnjama, o opasnosti od novih genocida. Tako Mićo Stanišić, prvi ministar unutrašnjih poslova RS-a, na samom početku rata govori o strašnom neprijatelju srpskog naroda, o «ustaškoj džamahiriji».

Sve se ovo lepo uklapa u standardni narativ o nacionalizmu i ratu. Međutim, tu ima dosta – široj bosanskoj javnosti još uvek nepoznatih – detalja. Na primer, imamo sjajan razgovor sa početka maja 1992. godine, kada Momčilo Mandić i Mićo Stanišić sa Pala vode dugačak telefonski razgovor sa Brunom Stojićem i Brankom Kvesićem u Mostaru. Razgovor počinje na srdačan način, to su stari prijatelji koji se čuju: „Kako ste, braćo ustaše“ – „Kako ste, braćo četnici“. Istina, malo jesu živčani kad pričaju o tome, tačno gde će ta granica biti između hrvatskih i srpskih delova Bosne i Hercegovine – ali inače se svi lepo slažu oko razbijanja zajedničkog MUP-a. Znamo da koliko god su Srbi i Hrvati ratovali u Bosni, nije im nimalo problematično

bilo da trguju dok je narod ginuo. „Šta hoćete? Kafu, naftu, cigare, brašno? Nije problem“. Na kraju krajeva, nije ni bilo problema prodavati „neprijatelju“ municiju i oružje, ako je to bilo u ekonomskom interesu pojedinaca. Nije ovde slučajno što je Mandić prilično brzo nestao iz ratne Bosne. Otišao je on na Dedinje, u vilu *Bosanka*, gde je kao šef Biroa Republike Srpske držao sve konce.

Koliko je nacionalizam bio sredstvo, a ne cilj rata, vidimo i u delovanju najnasilnijih paravojnih formacija koje su širile teror i smrt u Bosni. Tu ću samo spomenuti dva primera. Poznato je da je Arkan sa svojom jedinicom došao u Bosnu i da su tamo počinili stravične zločine protiv nesrpskog civilnog stanovništva. Radi se o klasičnom primeru gde država (u ovom slučaju stara savezna Služba državne bezbednosti) svesno angažuje notornog pripadnika notornog kriminala pod geslom „ako radiš za nas, onda više nećeš biti kriminalac nego patriota – a sve što prikupljaš od ratnog lova biće tvoja zarada“. Tako je Arkanova jedinica pljačkala „pod zastavom“. Iz te Arkanove jedinice je nastala famozna Jedinica za specijalne operacije. Svi znamo kako se ta priča završava: ubistvom premijera Đinđića i Legijom u bekstvu – sa lažnim hrvatskim pasošem. Na kraju je patriotska JSO završila kao međunarodna, nimalo patriotska mreža plaćenih ubica i krijumčara opojnih droga.

Drugi primer su *Žute ose*, paravojska koja je bila veoma aktivna u istočnoj Bosni u prvim ratnim mesecima 1992. godine. Kao pravi patriote, učestvovali su u etničkom čišćenju Podrinja. Dovedi su ne samo dobrovoljce iz Srbije na ratište, nego i kamione i šleperu na koje su tovarili ratni plen, da bi ga onda odvezli preko Drine. Njima je prva meta bila muslimansko stanovništvo, ali kad njega više nije bilo, onda je paravan nacionalizma pao – počele su *Ose* da ubadaju i srpsko stanovništvo. Republika Srpska – ista tvorevina koja ih je pozvala u Bosnu – našla se u veoma neprijatnoj situaciji da mora da brani sebe protiv takvih „osa, vukova, pantera i drugih opasnih životinja“ kojima je

nacionalizam bio ipak samo isprika za ratno profiterstvo i bogaćenje. U danima na kraju jula 1992. godine, specijalna brigada milicije RS-a je morala da drži Zvornik pod opsadom kako bi konačno uhapsila *Žute ose*. Većina ih je posle kratkog informativnog razgovora bila prebačena na teritoriju Srbije – a posle toga nikome ništa.

Prošle godine sam slušao izjave sa jedne konferencije za štampu, i koje čudo – ispalo je da se ja slažem sa Ivicom Dačićem, što nikada ranije u životu nisam, ali gospodin lepo kaže: „kad se raspala Titova Jugoslavija, preživelo je samo bratstvo i jedinstvo kriminalnih grupa koje traje do danas“. Ono što jasno proizlazi iz ove priče, dakle iz one cele priče koju sam ja proučavao, jeste da su ratni kriminal i organizovani kriminal dve strane iste kovanice, u svim republikama bivše Jugoslavije. Ta veza, kao što je Dačić rekao, počinje već krajem osamdesetih godina, a bogami traje i do dan-danas u svim MUP-ovima bivše Jugoslavije. A za mene kao istoričara i analitičara traganje za nekom objektivnijom – neću reći objektivnom, ali za nekom objektivnijom istorijom o raspadu Jugoslavije i o ratovima na ovom području – podrazumeva ozbiljno proučavanje te sinergije i ključnih veza ratnog i organizovanog kriminala. Ali svi mi dobro znamo da je za budućnost ovih zemalja puno važnije procesuiranje, nego proučavanje tih zločina i zločinaca. Kao što su predstavnici nekih organizacija rekli na skupu: „svi počinioци su u velikoj meri još uvek među nama“. Ponekad su na visokim funkcijama u MUP-u, u državnim službama i tako dalje, i zato je najvažnije, po mom mišljenju, istražiti do dna sistematske i strukturalne veze između ratnog i organizovanog kriminala od početka raspada Jugoslavije do danas. Ako ne radimo, i kao naučnici i kao tužioc, i dalje na rasvetljavanju kriminalnih vodećih struktura u bivšoj Jugoslaviji, imaćemo potpuno nekompletnu sliku istorije, ali imaćemo i važne probleme sa kojima ćemo se i dalje morati suočavati u ovim društvima i koji će stvarati ogromne prepreke za evropsku budućnost ove regije.

Iavor Rangelov

Tema ovog članka su dva pitanja koja se javljaju u vezi sa postojećom inicijativom civilnog društva za osnivanje REKOM-a u post-jugoslovenskim državama i širim raspravama o restorativnoj pravdi. Prvo pitanje se tiče civilnog društva u regionu: Kakav je karakter civilnog društva? Koji akteri čine civilno društvo? Ovde je cilj da se ukaže na raznolikost aktera unutar civilnog društva koji mogu imati uticaj na restorativnu pravdu, kao i na širi proces tranzicione pravde na Zapadnom Balkanu. Drugo pitanje koje ću na kratko pomenuti u ovom članku se tiče uloge ovih aktera u tranzicionoj pravdi: Treba li da podstičemo civilno društvo u regionu da se bavi ovim aspektom pravde? Tačnije, koji je značaj procesa restorativne pravde poput ovog koji pokušavamo da istaknemo u kampanji za osnivanje REKOM-a?

Smatram da civilno društvo na Zapadnom Balkanu treba da bude organizovano kao višestruko, izdvojeno i suprotstavljeno. Ima nekoliko različitih načina na koji se može govoriti o civilnom društvu i pomenuti i višestrukost i suprotstavljenost koji definišu njegovu prirodu. Mogu se, na primer, naglasiti različite funkcije koje akteri civilnog društva teže da obavljaju. Treba se povući razlika između nevladinih organizacija koje se bave pružanjem usluga i koje čak mogu da predstavljaju zamenu za državu, s jedne strane, i organizacije koje sebe vide kao borce za određene ciljeve i predstavljaju kontratežu državi, s druge strane. Drugi način da se govori o civilnom društvu jeste da se naglase granice, ili čak rascepi koji postoje unutar civilnog društva u regionu. Postoje nacionalne granice i postoje etničke granice, koje su postavljene ne samo strašnim ratovima tokom devedesetih godina, nego i klimavim mirom koji je uspostavljen nakon sukoba.

Može se govoriti i o ideološkim podelama unutar civilnog društva koje često postaju najuočljivije u diskusijama o tranzicionoj pravdi. Pitanje pravde i odgovornosti za naslede zločina iz devedesetih služi da se naglasi intenzitet političkog sukoba umesto vrednosti i inicijative širom regiona. Primer kojeg se mnogi verovatno sećaju je miting u Splitu i kontramiting u Zagrebu 2001. Godine. Civilno društvo je protestovalo, a ista stvar je pokrenula i jedan i drugi događaj (sud u Rijeci je podigao optužnicu protiv hrvatskog generala za ratne zločine), ali je i intenziviralo sukob preko vrednosti i projekata za hrvatsku državu. Trenutni sukob u Srbiji između boraca za ljudska prava i članova takozvanog „patriotskog bloka“ takođe govori o civilnom društvu kao o sukobljenom i suprotstavljenom prostoru.

Ono što proizilazi iz ove analize jeste činjenica o raznovrsnosti aktera unutar civilnog društva na Zapadnom Balkanu: postoje oni koji funkcionišu širom regiona i oni koji su ograničeni na državu i lokalne zajednice; borci za određene ciljeve i oni koji pružaju usluge; urbane nevladine organizacije i ruralna udruženja žrtava; borci za ljudska prava i vojni veterani; mediji i javne ličnosti – intelektualci. Ukoliko svi ovi akteri čine civilno društvo u regionu, onda zaista moramo civilno društvo da shvatimo kao prostor višestrukosti i pobijanja.

Ovo se odnosi na drugo pitanje koje se ovde postavlja: Da li treba podsticati civilno društvo da se bavi pitanjem pravde i koja je uloga REKOM-a u ovom procesu? Mnogi posmatrači su ukazali na to da pitanje pravde može voditi daljoj polarizaciji i sukobu u post-jugoslovenskim društvima. I zaista, moja analiza ukazuje na rascepe unutar samog civilnog društva. Ali, želim da ukažem na to da

različiti stavovi o prošlosti i rešavanju problema iz prošlosti, takođe, mogu predstavljati i prednost. Civilno društvo na Zapadnom Balkanu, kao i civilno društvo bilo gde drugo, u javnom domenu artikuliše raznovrsne stavove i nedaće stanovništva koji već postoje u društvu i poziva i drugačije glasove da se uključe u debatu koja sledi. Ovo je prednost inicijative za REKOM i obećanje za moguću regionalnu komisiju: da se društveni sukob i neslaganja ne potiskuju,

već da se dozvoli da se reše na polju politike, putem javne debate i rasprave, nenasilnim sredstvima i uz poštovanje principa vladavine prava. Ukoliko treba suditi na osnovu inicijative civilnog društva za osnivanje REKOM-a, transformativni potencijal procesa restorativne pravde u regionu bi mogao da bude daleko veći nego što to očekuju neki od njegovih zagovornika.

III DEO

Tranziciona pravda iz ugla medija

REKOM i medijska strategija

Tihomir Loza

Što se tiče pravosuđa, međunarodni i nacionalni procesi vođeni u poslednjih 15 godina sa zadatkom da procesuiraju počiniocima ratnih zločina počinjenih tokom konflikta kojim je praćen raspad bivše Jugoslavije, mogu se oceniti kao uglavnom uspešni. Za desetine visoko rangiranih državnih službenika osuđenih za ratne zločine obezbeđeni su korektni sudski postupci a samo dva važna optužnika su i dalje van dometa pravde. Ali, čak i veoma blagonaklonim posmatračima učiniće se da je politički i socijalni domet ovih suđenja za ratne zločine na društva zapadnog Balkana prilično ograničen.

Važno je razumeti da većina žrtava ratnih zločina ne oseća da je do njih doprla pravda. Većina ih i dalje živi u siromaštvu i u uslovima društvene izolovanosti. Često se žale da je kažnjavanje ratnih zločina veoma blago i da većina osuđenih zatvorske kazne služi u komfornim zatvorima u državama zapadne Evrope. Preuranjeno puštanje na slobodu osuđenih za ratne zločine žrtve doživljavaju kao ličnu izdaju.

Tužiocima u Međunarodnom krivičnom sudu za bivšu Jugoslaviju (MKSJ) su sasvim razumljivo insistirali na suđenjima krupnim figurama rata na Balkanu i normalno je da su ova suđenja privlačila mnogo veću pažnju nego suđenja direktnim počiniocima ratnih zločina. U međuvremenu, stotine, a možda i hiljade onih koji su počinili ratne zločine i dalje ostaju van domašaja pravde. Osim što su pomogla da se učvrsti ideja da suđenja za ratne zločine služe za raspodelu političke krivice, fokusiranje na krupne političke figure dovelo je i do toga da ih većina žrtava ne doživljava kao nešto što je u direktnoj vezi sa njihovim ličnim tragedijama.

Veoma mali broj ljudi smatra da su suđenja pred Haškim tribunalom i nacionalna suđenja za ratne zločine doprinela procesu pomirenja i suočavanja sa prošlošću u globalu. Veliki broj završenih postupaka i dalje izaziva međuetničku

podelu. Jedan takav primer je i potez odlazećeg predsednika Hrvatske, Stjepana Mesića, koji je u januaru 2010. godine, u trenutku očitog političkog ludila, smanjio zatvorske kazne za dva počinioca ratnih zločina – za jednog Srbina koji je bio čuvar u logoru u kome su mučeni Hrvati i za jednog Hrvata, pukovnika čuvenog po tome što je bio akter verovatno najgнусnijih zločina počinjenih protiv Srba u Hrvatskoj. Ovaj Mesićev potez izveden na samom kraju njegovog predsedničkog mandata šokirao je i uplašio mnoge, od hrvatskih veterana, bivših ratnih zarobljenika posebno, do članova srpske manjinske zajednice u Hrvatskoj i Vlade Republike Srbije.

Ne sme se dozvoliti zamena pojmova reintegracije i pomirenja. Uprkos novim međunarodnim i unutrašnjim granicama koje ih sada administrativno dele, etničke grupe sa prostora bivše Jugoslavije su zaista uspostavile mnoge predratne veze, u kulturi i trgovini posebno, u meri u kojoj su one postojale u predratnom periodu i to uprkos činjenici da nisu uspeli da ostvare međusobno pomirenje. U stvari, ove grupe su bile neuspešne čak i u pokušajima da dođu do zajedničkog tumačenja događaja iz prošlosti, što, naravno, ne dokazuje da je pomirenje nepotrebno, već možda pre otkriva postojanje suštinske trajnosti veza koje među njima postoje.

Zastanimo na trenutak pred činjenicom da su sve post-jugoslovenske države prihvatile saradnju sa Haškim tribunalom i pristale da pružaju podršku nacionalnim sudovima za ratne zločine. Ali, čak i najliberalniji među njima vrlo oprezno podržavaju procesuiranje ratnih zločina i pred svojim biračkim telima interpretiraju tu podršku skoro isključivo u sklopu premise da je saradnja sa Hagom dobar potez na putu ka ostvarenju integracija njihovih država u međunarodnu zajednicu, Evropsku Uniju i posebno NATO. Istovremeno, većina njih pruža finansijsku i pravnu pomoć optuženima za ratne zločine i članovima njihovih porodica

i organizuje herojske dočke osuđenima za ratne zločine nakon povratka sa izdržavanja zatvorske kazne.

Bivša predsednica Republike Srpske, Biljana Plavšić, osuđena za ratne zločine pred sudskim većem Haškog tribunala, koja je pre isteka zatvorske kazne puštena na slobodu iz zatvora u Švedskoj u oktobru 2009. godine, doletela je iz Švedske kući avionom koji je po nju poslala vlada jednog BiH entiteta. Nekoliko dana kasnije, srpski stanovnici Banja Luke priredili su joj srdačnu dobrodošlicu na zaprepašćenje Bošnjaka iz cele zemlje. A osuđeni počinioi ratnih zločina nisu zaboravljeni ni dok su iza rešetaka. Deca u nekim hrvatskim školama u Bosni pišu božićne čestitke Hrvatima osuđenim za ratne zločine.

Neuspeh da se suđenjima za ratne zločine više doprinese približavanju suprotstavljenih mišljenja o događajima iz prošlosti ne može se otpisati na nesposobnost Haga ili lokalnih sudova da shvate značaj jake outreach aktivnosti. Svakako, kako u Hagu tako i širom regiona, uspostavljanje pravde nije uvek shvaćeno kao pravda. Ali, često postoje druge vrste nepredvidivih strukturalnih prepreka koje umanjuju spremnost bivših jugoslovenskih republika da se suoče sa prošlošću na konstruktivan način čemu se možda mora dati više značaja u razmatranju ovog problema.

Zločini o kojima se ovde radi nisu počinjeni iz čiste mržnje, iako mržnje nikad nije nedostajalo, već u ime političkih ciljeva koje su podržavali milioni ljudi. To nisu bili tek neki obični politički ciljevi već težnje usmerene ka pukoj egzistenciji pripadnika drugih etničkih grupa, težnje poput nacionalnog suvereniteta, graničnih pitanja, identiteta, ustavnog položaja, ili dugoročne stabilnosti.

Same po sebi ove težnje nisu bili nelegitimne. Nije bilo ničega nelegitimnog ili nezakonitog u nastojanju bosanskih Srba da žele da se odvoje unutar teritorije Bosne i Hercegovine ili u težnji Hrvata iz Hrvatske da postanu samostalna država, ili težnje Srba da zadrže Kosovo unutar svojih granica ili pak težnje kosovskih Albanaca da postanu nezavisna država. Ali, neke ili većina radnji preduzetih u cilju ostvarivanja ovih težnji su bile nezakonite.

Naravno, moguće je raspravljati o tome da su neke od ovih težnji bile ilegalne same po sebi jer je njihova implementacija podrazumevala upotrebu sile, ali to je komplikovana debata i trenutak za takvu raspravu je odavno prošao.

Međutim, ove političke aspiracije su uveliko nadživele konflikt. One su delimično ili u potpunosti realizovane i kao takve smatraju se nedvojbenim istorijskim tekovinama učvršćenim u ustavnim aktima zemalja aktera, ili, ako nisu

u potpunosti realizovane, one i dalje žive na konceptualnom kao i pravnom nivou kao što je slučaj Srbije po pitanju Kosova.

Drugim rečima, post-jugoslovenska društva su osnovana – i međunarodno prihvaćena kao takva – na aspiracijama, bile one realizovane ili ne, u ime kojih su članovi ovih društava počinili nepojmljive zločine.

Kad dođe do rasvetljavanja zločina počinjenih u ime ovih aspiracija, koji god da je način u pitanju, ono što mi tražimo od ovih društava da urade jeste da se uzdignu iznad samih sebe i naprave distinkciju između svojih političkih aspiracija i zločina počinjenih u njihovo ime. To je intelektualno i emocionalno veoma zahtevan predlog, ne samo za široke narodne slojeve, već i za liberalne manjine, takođe.

U redu, evo vam vaša Republika Srpska, ali molimo vas pokažite nam masovne grobnice koje čine njene temelje i pokažite malo saosećanja za porodice tih žrtava. A možda biste mogli i da pomognete u obnavljanju stotina džamija uništenih u ime stvaranja Republike Srpske? Hrvatska, čestitamo vam na postignutoj nezavisnosti! Odlično ste to uradili! A sad predajte one generale i molim vas popravite kuće koje ste spalili dok ste terali Srbe iz Hrvatske, one iste Srbe za koje sad kažete da biste voleli da se vrate. Ovo nikad nije moglo lako da se uradi, ako je uopšte i bilo želje.

Iako ratni zločini nisu bili jedino sredstvo korišćeno u stvaranju aktuelne političke mape regiona, retko izgovorena istina je da su ratni zločini zaista bili važno sredstvo. Iz tog razloga se pokušaji rasvetljavanja individualne odgovornosti visokih državnih zvaničnika optuženih za ratne zločine kroz sudske postupke, u zajednici iz koje ti zvaničnici potiču, najčešće doživljavaju kao udar na same temelje te zajednice. Zato se događa da, inače ispravni, pristojni građani jednog društva, koji poštuju zakon u svakom smislu i koji nikad ne bi došli u situaciju da opravdavaju „obične“ zločine, ostaju ravnodušni kada se otkrije neki ratni zločin. U suštini, ljudi često na ratne zločine gledaju kroz prizmu nekih apstraktnih uslova, kao da su oni počinjeni u nekoj drugačijoj stvarnosti u kojoj vlada drugačiji poredak od onog u kome oni žive. Drugim rečima, dok su ona možda poslužila u druge svrhe, suđenja za ratne zločine nisu ništa postigla u smislu pružanja satisfakcije žrvama niti su doprinela u značajnijoj meri uspostavljanju pomirenja između etničkih grupa u regionu.

To je upravo mesto gde Inicijativa za REKOM ima smisla. Ali, koja je verovatnoća da će države u regionu pristati da prihvate ovakav predlog u skorijoj budućnosti? Možda nije sasvim izvesno, ali nije ni totalno nemoguće.

Arhitektura osnovnih političkih sentimentata u regionu sugeriše da je osnovni preduslov da se ovo dogodi simultana podrška ovoj inicijativi od vlada dva najvažnija centra u regionu: Beograda i Zagreba. Gotovo je nezamislivo da bi Podgorica, Sarajevo i Priština odbile da se priklone ovakvoj inicijativi jednom kad je prihvate Zagreb i Beograd. A njihova podrška inicijativi bez podrške bilo Zagreba bilo Beograda bila bi gotovo beznačajna.

Iako je teško zamisliti da bilo koja vlada u regionu svojom voljom oberučke prihvata ovu inicijativu kao prioritet, sa malo sreće i sa malo malo umerenog pritiska Beograd i Zagreb bi mogli da odigraju ispravnu kartu na kraju. Obe zemlje su u poslednje vreme bile prilično srećne u izboru svojih lidera. Prošlog leta, sada osramoćeni premijer Hrvatske Ivo Sanader, mislio je da je imenovanje Jadranke Kosor predstavljalo zapravo ustoličenje njegovog naslednika u premijerskoj fotelji, da bi se vrlo brzo ispostavilo da se Jadranka Kosor nezaustavljivo razvija u neustrašivog igrača spremnog da transformiše ne samo vladajuću aparat i vladajuću stranku, već i izgled čitave države. Dajući ogromnu podršku predsedničkom kandidatu Ivi Josipoviću na izborima održanim u januaru, Hrvatska je dobila umerenog, stalozenog i izuzetno inteligentnog predsednika. U međuvremenu, bivši predsednik Srbije Boris Tadić nastavio je da stvara uslove za kreiranje umerenijeg imidža Srbije od onog koji smo navikli da doživljavamo kroz novinske naslove. Iako se ovo ne može uvek lako uočiti kroz događaje kojima obiluju dnevne vesti, nesumnjivo se glavni politički pravci sporo, ali sigurno kreću u ka stvaranja umerenog političkog sentimenta. I Tadić i Josipović su izjavili da smatraju da je razvoj odnosa između Srbije i Hrvatske njihov prioritet.

Mediji u regionu, međutim, mogu predstavljati veću prepreku za REKOM. U stvari, može se sasvim odgovorno tvrditi da, kad se radi o suočavanju sa nedavnom prošlošću širom regiona bivše Jugoslavije, značajni delovi političke scene, bar u Srbiji i Hrvatskoj imaju više medijskog prostora od tipične informativne kuće u ovim zemljama. Medijske scene su pasivne i biće još dugo vremena pod dominacijom urednika čija je intelektualna platforma formirana tokom raspada bivše Jugoslavije i vlasnika medija ili političara koji ih štite a kojima je u interesu da održavaju u životu sentimente iz devedesetih godina, mada u nešto izmenjenom formatu. Rad MKSJ i organizacija poput Fonda za humanitarno pravo je postepeno učinio da zamukne ono gromoglasno poricanje ratnih zločina tako da u poslednje vreme toga nema mnogo u medijima. Ono što smo najčešće mogli da vidimo u deceniji iza nas je da je većina medija na neki način postala indiferentna na ratne zločine. O suđenjima i ostalim verodostojnim izvorima informacija

o ratnim zločinima ili se polovično izveštava, na način koji izgleda kao da urednik odobrava izveštavanje o događajima nižeg prioriteta, ili se o njima izveštava u programima koji su pola informativni a pola zabavnog karaktera, kao što je slučaj sa suđenjima Šešelju i Miloševiću, skrivanju generala Gotovine ili povratku Biljane Plavšić. A kad se priznaje ratni zločin počinjen od strane članova etničke grupe kojoj se određeni medij obraća, što se ponekad događa, priznanje da je taj ratni zločin počinjen obično je urađeno na način koji ne zadire u uzrok koji je doveo do počinjenja zločina. Ovo, naravno, lako može biti objašnjeno s obzirom na prirodu i ishod raspada Jugoslavije, ali je takođe i veoma loše u smislu napora da se promoviše pomirenje među narodima koji žive na ovim prostorima.

U stvari, najteži deo problema sa kojim će se Inicijativa za REKOM suočavati jeste činjenica da nove elite koje kontrolišu medije nisu mnogo zainteresovane za ratne zločine i pitanja iz prošlosti osim kad im to služi u svrhu brzog senzibiliranja i homogenizovanja sopstvenih glasača, ali ne više u cilju održavanja konflikta već u svrhu pružanja predizborne podrške odabranim kandidatima, uvećavanju tiraža ili gledanosti. Preuzimanje medija u regionu od strane različitih interesnih grupa je deo onoga što možemo nazvati proces porobljavanja države, što, naravno, nije svojstveno samo bivšoj Jugoslaviji. Ono što je zaista specifična razlika u slučaju bivše Jugoslavije u poređenju sa ostatkom komunističkog sveta uglavnom, jeste postojanje ogromnog tereta prošlosti satkanog od ratnih zločina i grubih kršenja ljudskih prava tokom nedavnog konflikta o kojima tek treba govoriti. Medijski naponi koji bi mogli doprineti kvalitetnom obrađivanju ove teme ne postoje, a ono što je najgore jeste procena da nema mnogo razloga za optimizam da će se ovo promeniti u skorije vreme s izuzetkom činjenice da se priroda medija u principu brzo menja. Ono što elite oformljene tokom devedesetih kontrolišu jesu tradicionalne medijske kuće koje još uvek dominiraju lokalnom medijskom scenom. Ta dominacija će bez sumnje opstati još neko vreme. Ali, nadolazeći novi mediji će nužno doneti promene sa sve više čitalačke publike koja izvor informisanja nalazi na internetu, gde su i produkcija i distribucija mnogo jeftiniji i svakog dana bivaju još jeftiniji. Dalje, veoma jeftino otvaranje novih medijskih kuća je takođe pogodno za distribuciju vesti putem tradicionalnih kanala, što predstavlja element koji će sigurno pojačati pritisak da se pristup uređivačkoj politici iz korena promeni. Ovde se takođe nazire tračak nade za REKOM.

Umesto da se čeka da trenutno dominantne dnevne novine ili nacionalne TV stanice pristupe ovoj temi ozbiljno, REKOM treba da osnuje sopstvenu snažnu multimedij-

jsku produkciju kao i da ojača svoje prisustvo na internetu putem stvaranje moćnog multimedijskog portala čiji sadržaj će se odslikavati kroz čitav balkanski internet

prostor, što će biti način da se vrši naizmenični pritisak na tradicionalne medijske kuće da shvate REKOM sa velikom dozom ozbiljnosti.

Uloga i obaveza medija u procesu posleratnog pomirenja

Florence Hartmann

Tranziciona pravda, osim krivičnih gonjenja, reparacija, sprečavanja nekažnjivosti i unapređenja zakona, obuhvata i ciljeve koji se odnose na kazivanje istine, izgradnju mira, stvaranje kulture poštovanja ljudskih prava i demokratije, čuvanje uspomene na žrtve i vraćanje dostojanstva žrtvama. Sve ovo zajedno predstavlja predušlov za pomirenje. Pored sudskih procesa, instrumenti za ostvarivanje ovih ciljeva su i komisije za istinu poput REKOM-a i komemoracije. Ali, ovakvi procesi uvek bivaju nekompletni ukoliko nisu praćeni i promenama istorijske naracije kod naroda koji su bili uključeni u sukob. Obrazovanje je dugo bilo odsutno iz teorija i diskusija o tranzicionoj pravdi. Širi obrazovni sistem i istorijska nauka sama po sebi – šta se uči i kako – retko su bili predmet analize institucija koje je trebalo reformisati kroz procese tranzicione pravde.

Članom 45 Predloga Statuta REKOM-a traži se konkretan mandat za davanje preporuka o mehanizmima koji bi omogućili da se utvrđene činjenice integrišu u obrazovni sistem državljanica sporazuma. Ali, biće potrebno dosta vremena da se REKOM osnuje, da finalni izveštaj bude objavljen, da se preporuke iz izveštaja unesu u udžbenike, da se objave stručni tekstovi i da se nastavnicima pruži adekvatna obuka.

U ovom trenutku, imamo čitavu posleratnu generaciju koja je odškološana na različitim, najčešće konfliktnim istorijskim štivima, u sistemu u kome se istorijska nauka i tranziciona pravda kreću različitim kolosecima i u kome nijedan tribunal, ni međunarodni ni domaći, nije u svoj mandat uključio produkciju didaktičkih materijala posebno usmerenih ka reformi obrazovanja.

Svi se slažu da interpretacije događaja iz prošlosti utiču na post-konfliktna društva. Ali do sada su, uglavnom, da ne

kažem uvek, ova tumačenja poveravana onima kojima je cilj da se održava razdor među grupama uključenim u konflikt umesto da odgovaraju na potrebe društva za mirom, pravdom, demokratizacijom i među-etničkim pomirenjem. Ove važne teme su prepuštene ljudima na vlasti čija je reputacija ukaljana vezama sa prethodnim zločinačkim režimima ili kojima je jednostavno u interesu da promovišu pomirenje kao sredstvo društvene amnezije.

Proces preuređivanja udžbenika istorije nakon perioda masovnih kršenja ljudskih prava obično traje veoma dugo. Ali, i pre nego što mehanizmi tranzicione pravde i znanja stečena kroz te procese ostvare svoj uticaj na reformu obrazovanja, na razne druge načine se može uticati na promenu društvene svesti o nedavnoj ratnoj prošlosti i na druge načine se može doprineti, zajedno sa građanskim društvom, uvođenju promena u stvaranje istorijskog zapisa kod grupa zahvaćenim konfliktom. Tu na prvom mestu mislim na medije.

Mediji mogu pomoći da se utvrđene činjenice plasiraju u javnost, da se prihvaćenom istorijskom naracijom ne maskiraju zlodela koja su nanela veliku patnju i da se ne zanemaruju bolna iskustva drugih grupa, uključujući i nasilje počinjeno od strane klikaških državnih aparata u slučaju međunarodnog sukoba kao što je bio slučaj u bivšoj Jugoslaviji.

Veoma mali broj medija i novinara u regionu je prihvatilo ovaj zadatak. Mediji su u prošlosti najčešće igrali značajnu ulogu u eskalaciji nasilja i masovnih kršenja ljudskih prava šireći govor mržnje, dehumanizujući protivničku stranu i promovisući ratnu politiku. Oni, stoga, imaju posebnu dužnost da se „iskupe“ za ratno-huškačko novinarstvo tako što će pomoći da se smanji broj laži koje i dalje nes-

metano opstaju u nacionalnim diskursima, što je jedan od najvažnijih ciljeva mehanizama tranzicione pravde.

Mediji mogu u velikoj mjeri pomoći da se stvori kontra-retorika koja će predstavljati izazov za postojeće stereotipe ukorenjene među njihovom čitačkom publikom ili mogu ponuditi onu vrstu retorike koju odobravaju različite strane u konfliktu i koja ne briše različitosti čak i kad su donekle kontradiktorne.

Kroz prenos suđenja za ratne zločine ili izveštavanje o aktivnostima u procesima govorenja istine, mediji imaju mogućnost da stvore novu platformu za javni diskurs, diskusije i analize u koje bi se uključila neka nova publika i mlađa populacija post-konfliktnih društava. Ovakva uloga medija posebno je važna kad znamo da ne postoje mehanizmi države kojima bi se činjenice utvrđene pred međunarodnim ili domaćim sudovima institucionalizovale i uvrstile u školske programe.

Mediji također mogu igrati značajnu ulogu u stvaranju kritičkog mišljenja i razvijanja empatije, kreiranja volje da se preispituju uprošćeni modeli i sposobnost da se izrazi neslaganje sa interpretacijama prošlosti i njihovim implikacijama na trenutna društvena pitanja bez pribegavanja upotrebi sile i novih zločina i nepravdi.

Medijski izveštaji sa suđenja za ratne zločine, svedočenja i udžbenici istorije u očima žrtava i drugih struktura javnosti služe za procenu iskrene namere društva kojima su bivši počinio ratnih zločina pripadali da spreče ponavljanje prošlosti, kao i za ocenu da li se neka politička i društvena

grupa zaista promenila u mjeri da bi se mogla smatrati pouzdanim partnerom u procesima tranzicione pravde.

U većini slučajeva, međutim, umesto da doprinesu jačanju procesa stvaranja kritičke svesti, mediji često koriste polarizovane pristupe i jezičke formulacije u svojim izveštajima sa suđenja za ratne zločine – ukoliko uopšte o njima izveštavaju.

Za direktne prenose suđenja za ratne zločine, TV stanice najčešće nisu obezbeđivale adekvatne komentatore koji bi gledaocima pomogli da razumeju kontekst. Umesto ras-kidanja sa nasilnom prošlošću, izveštavanjem o suđenjima za ratne zločine, mediji nastavljaju da održavaju u životu (drugim sredstvima) ratne stereotipe i mržnju. Suđenja pred Haškim tribunalom imala su za cilj da dokažu da su zločini počinjeni, kao i da spreče da se nastavi sa zaludivanjem nacije i stvaranjem novog mita u kome se ta nacija pojavljuje isključivo kao žrtva. Ovaj pokušaj nije uspeo u velikoj mjeri zbog neprofesionalnog izveštavanja sa ovih suđenja.

Nivo obrazovanja novinara je uglavnom nizak i uobičajeni novinarski pristup najčešće podrazumeva nekritičnu misao i nedostatak novinarske samostalnosti u odnosu na političke i institucionalne strukture. Razumljivo je da ovakav naglasak na ulogu medija u procesima tranzicione pravde može izgledati idealistički. Međutim, napor da se mediji na taj način iskupe za godine širenja govora mržnje i ratno-huškačkog izveštavanja koje je dovelo do eksplozije nasilja u regionu mora biti očigledan. Mediji danas imaju obavezu da daju ozbiljan doprinos bavljenju spornim pitanjima i da pomognu da se istorijska nauka i procesi tranzicione pravde nađu na zajedničkom koloseku.

IV DEO

Tranziciona pravda iz ugla Haškog tribunala

John Hocking

Ratko Mladić, haški begunac je konačno uhapšen i izručen Haškom tribunalu. Njegovim hapšenjem računica se svodi na to da je od 161 lica optuženih za ratne zločine na slobodi samo jedan, Goran Hadžić. Tribunal je završio sudske postupke u odnosu na 126 optuženih. U ovom momentu 34 optužene osobe ili čekaju na presudu ili su njihova suđenja u toku.¹ Tribunal je učinio dostupnim javnosti milione strana dokumenata iz političkih i vojnih arhiva. Preko 6000 svedoka je svedočilo u postupcima pred Haškim tribunalom pričajući svoje priče. Iz njihovih svedočenja, utvrđene su brojne činjenice o zločinima počinjenim u bivšoj Jugoslaviji tokom devedesetih. Lica proglašena odgovornim za te zločine su kažnjena. Uspeh Tribunala daleko prevazilazi čak i najsmelija očekivanja njegovih osnivača. Haški tribunal je san o utvrđivanju odgovornosti pretvorio u realnost. Najviši ešaloni vlasti nisu više nedostupni pravdi. Svest o odgovornosti najviših zvaničnika se sada širi po čitavom svetu.

Međutim, važno je konstatovati da krivični postupci nisu jedini način suprotstavljanja kršenjima ljudskih prava. Veliki broj različitih mehanizama tranzicione pravde takođe obezbeđuje instrumente za društvenu transformaciju. Krivično pravo je kritično važan element, ali nije, niti treba da bude jedini. Dokaz da je to tako je upravo današnji Forum.

Ujedinjene Nacije prepoznaju značaj zauzimanja šireg fronta u bavljenju post-konfliktnim društvima i često zauzimaju

vodeću ulogu u tom procesu. Prethodni Generalni sekretar Ujedinjenih Nacija izjavio je svojevremeno da pravda, mir i demokratija nisu ciljevi koji se međusobno isključuju, već da su to ciljevi koji se uzajamno jačaju.

Ukoliko se u bavljenju post-konfliktnim društvima koncentrišemo samo na jednu instituciju ili ako ignorišemo građansko društvo ili žrtve, ti napori će biti uzaludni. To znači da se ovim pitanjima mora pristupiti na sveobuhvatan način. Moraju se osluškiivati sve institucije koje su u međusobnoj zavisnosti i mora se imati sluha za potrebe ključnih grupa. Takođe se mora voditi računa o tome da je potrebno da mehanizmi tranzicione pravde budu komplementarni.

Tribunal je međunarodni sud koji je fizički veoma udaljen od mesta događanja zločina. Ali njegov uticaj ne sme biti ograničen na sudnice u Hagu. *Outreach* program je ključni instrument tranzicione pravde Haškog tribunala. *Outreach* program je pomogao Tribunalu da ostvari širi pristup o kome je govorio Generalni sekretar. Svakako je zadovoljenje pravde neophodan preduslov za mir, ali kako se mandat Tribunala bliži kraju, misija MKSJ i posebno *Outreach* program Tribunala postaju važniji nego ikad pre. Preostalih nekoliko godina rada Tribunala predstavljaju poslednju priliku da Tribunal obezbedi da dokazi koji su prikupljeni – svedočanstva preko 6000 svedoka i izrečene presude – da ovaj ogromni broj objektivno proverenih činjenica postane dostupan javnosti, i nacionalnim sudovima za ratne zločine i građanima u regionu, bez etničke ili političke pristrasnosti.

1 Izlaganje Johna Hockinga na Međunarodnom forumu za tranzicionu pravdu održanom u junu 2012., u Sarajevu. Goran Hadžić, poslednji begunac je uhapšen 20. jula 2012. godine, čime je MKSJ postao jedini međunarodni sud koji je osigurao hapšenje svih optuženih.

Iz tog razloga sam, kao Sekretar Haškog tribunala, učinio sve da *Outreach* program postane ključno strateško opredeljenje tokom preostalih nekoliko godina rada Tribunala. Posao koji budemo uradili u ovom periodu, zapečatiće zauvek ono što ostavljamo u nasleđe generacijama iza nas. Ono što radimo danas definišaće naše mesto u istoriji.

Rad Tribunala je uvek bio u potpunosti u vezi sa svim lokalnim aktivnostima – to je uvek bio vodeći princip *Outreach* inicijativa Tribunala. I to je ono što vezu između Tribunala i Inicijative za REKOM čini veoma dobrom. Inicijativa REKOM otvara novo poglavlje u post-konfliktnoj transformaciji bivše Jugoslavije. Ideja REKOM-a predstavlja alternativni glas onih koji žele da ispričaju svoje priče bez ograničenja i onih koji žele da se otvori debata o zločinima počinjenim u prošlosti i o tome kako da nastavimo da živimo sa njima. To je nešto što društvo radi za društvo.

Tokom proteklih četvrt veka, mnoge zemlje su pokušavale da se bore sa tragičnim nasleđem sukoba. Neke zemlje su formirale svoje komisije za istinu koje su odražavale potrebe tog određenog društva. REKOM ide istim putem. Iskustvo nas uči da ovakvi mehanizmi imaju potencijala da transformišu društvo. Pogledajte samo iskustva Južnoafričke Republike, Argentine i Ruande.

Suočavanje sa prošlošću nije jednostavan proces i moje je mišljenje da su za to potrebna dva elementa. Jedan je sposobnost da se razume i prihvati prošlost. Drugi je da se snosi odgovornost za ono što se dogodilo u prošlosti. Mehanizmi govorenja istine i krivično gonjenje odgovornih za zlodela iz prošlosti mogu doprineti i jednom i drugom elementu. Inicijative govorenja istine, kakva je i Inicijativa za REKOM, više su usmerene ka procesu razumevanja prošlosti. Krivično gonjenje, Haški tribunal i domaći sudovi igraju dominantnu ulogu u utvrđivanju odgovornosti za zločine iz prošlosti. Međutim, iako se njihove specifične metode razlikuju, oba ova načina suočavanja sa prošlošću na kraju idu ka istom suštinskom cilju i, dopunjujući se međusobno, daju doprinos post-konfliktnom oporavku društva.

Ali, ipak, važno je razumeti da ova dva načina imaju različite uloge, različite ciljeve i različite procedure. Pomenuću samo nekoliko razlika.

Predmeti kojima se Haški tribunal bavi koncentrišu se samo na određene incidente, u vezi sa kojima se dokazi predstavljaju na način koji odgovara strogim kriterijuma sudske procedure. Tokom sudskih procesa koji se vode pred Tribunalom, ogroman broj dokaza se predstavlja i proverava kroz rigoroznu sudsku proceduru. Cilj svega toga

je utvrđivanje lične odgovornosti van osnovane sumnje. Dokazi predstavljeni Haškom tribunalu nemaju primarnu ulogu da stvore sveobuhvatni istorijski zapis. Oni to prosto ne mogu postići.

Komisije za istinu poput REKOM-a, sa druge strane, imaju drugačiju nameru – da sačine što širi zapis o događajima iz prošlosti, uključujući i analizu uloge nacionalnih institucija. To je nešto što se ne može postići kroz sisteme krivične pravde. Procesi govorenja istine ne podležu rigoroznim kriterijumima prihvatljivosti kao što je slučaj sa dokazima koji se žele uvesti u sudsku proceduru, niti podležu pravilima unakrsnog ispitivanja koji su od suštinskog značaja za krivične postupke. Ovo ima svoje prednosti, ali i ograničenja i veoma je važno razumeti ih i prihvatiti.

Oba procesa stvaraju zapis u kome centralno mesto zauzima žrtva. Uloga žrtve u krivičnim postupcima u Haškom tribunalu je presudna. Bez svedoka i njihovog svedočenja ne bi bilo sudskih postupaka. Hiljade hrabrih svedoka koji su došli da svedoče pred Tribunalom omogućili su da se glas mnogih žrtava čuje i zapamti. U tom kontekstu, krivični postupak, pored suštinskog cilja da se kazne odgovorna lica, služi i interesima javnosti i interesu žrtava da se njihov glas čuje.

Komisije za istinu žrtvu stavljaju još dublje u kontekst procesa, pokušavajući da steknu kompletan uvid u njihovo stradanje. Govorenje istine je važna komponenta individualnih i javnih saslušanja. To se događa u oba konteksta, ali pod potpuno drugačijim uslovima i imajući potpuno drugačiji cilj pred sobom.

Obrazovanje takođe igra važnu ulogu u sprečavanju budućeg opresivnog ponašanja, a ima i kritičnu ulogu u učvršćivanju vladavine prava.

I domaći i međunarodni krivični sudovi i mehanizmi za pronalaženje istine funkcionišu kao sredstva za edukovanje društva o zločinima počinjenim u prošlosti. Tribunal to čini kroz sudske postupke, kroz presude i kroz svoj *Outreach* program. Slično tome, REKOM takođe ima obrazovni karakter u tome što kao jedan od svojih glavnih ciljeva navodi sprečavanje širenja laži u javnosti.

Važno je da se razlike u ova dva pristupa jasno preciziraju kako bi i očekivanja bila realistična. Potrebe žrtava se mogu suštinski razlikovati od pojedinca do pojedinca. Neće svaka žrtva biti zadovoljna ako je krivična sankcija izražena samo u obliku zatvorske kazne. Mnoge žrtve često osećaju da takve mere ne mogu kompenzovati njihovu patnju i gubitak

i jedino mogu naći utehu u ne-retributivnim mehanizmima kakve nude tela za kazivanje istine.

Regionu bivše Jugoslavije potrebna je pravda i pomirenje. Nijedna pojedinačna institucija niti mehanizam ne može samostalno zadovoljiti tu potrebu. Krivični postupci, bilo

da su vođeni pred Haškim tribunalom ili pred domaćim sudovima, i alternativni mehanizmi govorenja istine imaju podjednako važne uloge u ovom procesu. Mora se izbeći svako poređenje ova dva procesa i mora se ići u pravcu holističkog pristupa pravdi, kako bi se našli interaktivni procesi za uspešnu izgradnju trajnog mira u regionu.

**TRANSITIONAL JUSTICE
IN POST-YUGOSLAV STATES:
POLITICAL WILL
AND PUBLIC SUPPORT
FOR THE *RECOM* PROCESS**

Edited by Denisa Kostovicova

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Introduction

This special issue, whose aim is to contribute to the debate on transitional justice in the Western Balkans, is largely based on two events. One is a day-long seminar entitled ‘European Integration and Transitional Justice: Prospects and Policy Options for Restorative Justice in the Western Balkans’, organised by the former Centre for the Study of Global Governance, London School of Economics and Political Science, and the Humanitarian Law Centre, Belgrade, held at the European Commission in Brussels in December 2009. The other is the International Forum for Transitional Justice organised by the Coalition for RECOM, held in Sarajevo in June 2011. The support of the European Commission, *Compagnia di San Paolo* and *King Baudouin Foundation* that enabled organising these events, and the support of the Open Society Faculty Development Programme in South East Europe and Civil Rights Defenders for the publication of this issue of the *Forum for Transitional Justice* are gratefully acknowledged.

Civil Society and Restorative Justice in the Western Balkans: From Symbolic Politics to State Consolidation

Denisa Kostovicova

The concept of transitional justice has until recently been appropriated by retributive justice (i.e. justice by means of a trial) in the public debates in the Western Balkans, policy debates with different external actors such as the EU as well as in a rapidly growing scholarship on transitional justice in the region. Victim-centred approaches to restorative transitional justice instruments in the Western Balkans are yet to receive their due academic and policy attention, despite recent academic scholarship that has begun to address failed state-sponsored attempts to establish truth and reconciliation commissions in the Western Balkans.

The work of RECOM, which is a transnational civil society initiative in the Western Balkans aimed at establishing the facts of war crimes and gross human rights violations committed during the wars of Yugoslavia's dissolution, has recently attracted attention both of the EU and the policy makers in the region. The RECOM Initiative was established as a response to weaknesses and outright ineffectiveness of retributive justice mechanisms, specifically, those of the ICTY to bring about justice and reconciliation. The RECOM's impact has already been wide-ranging throughout the region even though it has yet to reach its goal of the regional state-backed commission, while its work has encountered sometimes vehement opposition both by representatives of states and civil societies in the region. Hundreds of consultations on issues related to transitional justice, including the consultations on the commission's Statute, has invigorated an inter- and intra-ethnic debate about the necessity of facing the past whilst remaining true to its primary focus on victims.

The process that the RECOM has set in motion calls for a reflection on the role of civil society in relation to broader goals of transitional justice, and, even more so, on our understanding of how civil society activities can further the aims of European integration processes in the region. What is of particular interest in this contribution is the importance of civil society activism in the area of restorative justice for the Europeanisation of the Western Balkans, which concerns both reconciliation and state-building in the aftermath of conflict.

The work of the ICTY, within the scope of the EU conditionality, and 'local' and 'hybrid' war crimes trials in the Western Balkans are a testimony to relevance of retributive justice in a transitional post-conflict context. The retributive justice approach has addressed a number of peace-building goals of transitional justice. These goals include the identification of crimes by means of the punishment of perpetrators, the creation of a historical record as well as building local capacity in the area of the rule of law. But, first and foremost, the work of the ICTY, which can be understood as an external imposition of transitional justice to the Western Balkans, has removed from the hands of domestic law makers as well as publics the possibility to ignore the past. The temptation, particularly strong in the aftermath of ethnic conflict, is to adopt an approach of 'forget and move on' especially if there is continuity between war time actors and post-war authorities. The fact that the transitional justice could not be sidelined will stand as the longest lasting and uncontested legacy of this transitional justice instrument, despite the recog-

nition of the fact that the ability of the ICTY to project justice is more ambiguous.

Indeed, even the crimes which were sanctioned in international criminal trials have not necessarily been acknowledged by all sides involved in the conflict, a public discussion of war crimes throughout the Western Balkans has remained limited to certain segments of civil societies, the historical record is still disputed while local trials themselves often illustrate the weaknesses rather than the strength of the rule of law. Similarly, domestic trials in the region have been accompanied by their politicisation, including political interference, and selectivity based on the ethnicity of those indicted, coupled with weaknesses stemming from a lack of capacity, resulting in slow processing of cases and building up of backlog of cases, and, more seriously, inadequate framework for witness protection, which has emerged both as a capacity and political problem. In addition, a number of regional-level obstacles have also surfaced, such as inability of some states to reach agreements on extradition. Therefore, the proliferation of war crimes trials and their potential to meet multiple goals of post-conflict peace-building has to be viewed against a backdrop of a lack of public consensus nationally and regionally about the past.

Two types of cleavages persist and remain in the way of achieving a consensus on the recent past in the Western Balkans: one is inter-ethnic (between different national groups – Serbs and Muslims, Serbs and Albanians, Muslims and Croats, Albanians and Macedonians) and the other is intra-ethnic (conflicting interpretations of one's nation recent past within national groups, i.e. among Serbs, Croats, Albanians, etc.). As the region approximates the European Union -- in a formal sense based on the contractual agreements -- different national groups remain as divided among themselves as they are divided within themselves. Ongoing retributive justice mechanisms have not been able to address these cleavages, and even exacerbated them in some cases. That is the reason why the issue of transitional justice understood in terms of opening up questions about past crimes remains open to constant politicisation, while the reckoning remains elusive.

Symbolic politics and capacity building are two areas where restorative justice, and, in particular, civil society's role in advancing restorative justice, can contribute to peace-building. Symbolic politics can contribute to bridging inter-ethnic and intra-ethnic cleavages. Coalescing around the notions of truth and reconciliation between and within groups can be done only if legitimacy of

efforts undertaken in this direction is earned through empowerment and entitlement from below. However, while important in itself, the focus on symbolic politics often tends to overshadow an equally important contribution of restorative justice to state consolidation, which is critical for the Europeanisation of prospective members of the European club. Importantly, a lack of consensus on the recent past can be directly correlated with a slow pace of reforms across the Western Balkans, in critical areas of security sector reform, rule of law and corruption, as well as implementation of the already adapted legislation as a result of the approximation to the EU. The contested interpretations about the past contribute to the entrenchment of partial interests formed around ethnicity and/or informal economy, with links leading to organised crime. These interests often find their expression either in the opposition to reforms in the first instance, or in the resistance to implementation of the already adopted laws and regulations. As such, they obstruct the processes of European integration, despite rhetorical commitment to the EU integration.

Civil society has a potential to overcome the limitations of state-led and trial-based transitional justice initiatives. It can give a sense of ownership to processes of reckoning with the recent crimes, while the lack of a sense of ownership has often lent these processes to politicisation. Furthermore, depoliticisation is a necessary precondition for any meaningful state consolidation, understood in terms of state-capacity building.

Since the end of hostilities in former Yugoslavia, civil society has played a critical role in promoting transitional justice. Civil society emerged as a key pillar of local support of the ICTY project, as well as an informed critic of a narrow perpetrator-centred ICTY approach. Consistent with its vantage point of necessity of reckoning with the criminal past and focus on victims of human rights violations, civil society spearheaded the debate aimed at facing the past. It subjected official authorities to unrelenting critical scrutiny in its critique of the official rhetoric and policies that would award impunity. National civil societies in the region have not spoken on these issues with a unitary voice. Rather than a weakness, this is a testimony to the vibrancy and resilience of this debate – including sensitive issues such as whether ideological delegitimisation of nationalism of the 1990s is precondition for transitional justice, or vice versa; whether national as opposed to regional approach is preferable, etc. Such a diversity of views speaks to an important deliberative dimension of transitional justice in the region. However, such a perspec-

tive on civil society provides only one side of civil society's more ambiguous contribution to transitional justice. Just as we have seen civil societies across the region that have worked painstakingly on justice and reconciliation, other segments of civil society have had exactly the opposite aims and ideas endorsing extreme, illiberal and exclusive ideas and interests.

In the context, where there is a sense of continued contestation of the post-conflict settlement, no movement

or limited progress on resolving the issue of missing persons as well as instrumentalisation of justice, liberal civil society, will despite all the constraints, from above and from below, remain a key pillar of hopes for justice and reconciliation in the Western Balkans. Therefore, the key question is how best the European Union can engage with such an ally in the Western Balkans, and what levels and forms of support to civil society and its initiative in the area of transitional justice would further the project of the Europeanisation of the states and societies in the region.

RECOM: A New Approach to Reconciliation and a Corrective for Criminal Justice

Nataša Kandić

The establishment of transitional justice is an essential condition for post-Yugoslav countries' membership of the European Union. This obligation involves processing war crimes and reforming institutions, with the EU financially supporting numerous non-governmental initiatives in their quest for the truth about the past. The EU is of the opinion that progress has been made. In February 2011, the State Attorney's Office and the Ministry of the Interior (MUP) of the Republic of Croatia adopted a strategy for investigating and prosecuting war crimes committed between 1991 and 1995. Afterwards, Bosnia and Herzegovina also adopted a strategy for prosecuting war crimes, when in June 2012 its Ministry of Justice and Ministry of Human Rights and Refugees put forward for public debate a document entitled *Transitional Justice Strategy for Bosnia and Herzegovina 2012-2016*. The two ministries went public with a proposal to set up an extrajudicial body for truth-telling, to encourage an ongoing dialogue about the past. In June 2012, the Kosovo Government also set up a Working Group for Transitional Justice.

The regional cooperation of state institutions in other areas of transitional justice comes down mostly to certain state presidents attending commemorations for victims belonging to other ethnic communities and making personal apologies for crimes committed by individuals belonging to their own ethnic groups. In 2010, Croatian President Ivo Josipović and former Serbian President Boris Tadić promoted reconciliation among the nations of the former SFRY as an objective, and as an asset of regional cooperation. That year, they both strongly supported the

civic initiative to set up RECOM, an official Regional Commission to determine the facts about war crimes and other grave breaches of human rights in the former Yugoslavia. The Croatian President again voiced his full support for the establishment of RECOM when, in June 2011, he met members of the Coalition for RECOM and was presented with a petition, signed by 543,000 people from all the post-Yugoslav countries, in support of establishing the Commission. During a meeting with the public advocates of the RECOM Initiative in May 2012, President Josipović agreed that the time had come to concert the verbal political support and proposed that the states in the region explore the legal and constitutional possibilities for establishing RECOM. He also promised to make a personal commitment to this end. However, the change of government in Serbia in June 2012 resulted in a breakdown of official communication between Croatia and Serbia and, within the Coalition for RECOM, a reconsideration of the strategy for advocating the establishment of RECOM. Believing that the political barriers could be overcome by intensified public support, the Coalition launched during September and October 2012 public campaigns under the name of *RECOM for the Future*, during which members of the public signed a petition in support of establishing RECOM and sent picture postcards to their presidents bearing the message that the time for a political decision was ripe. However, except for the President of Macedonia, who requested further information from the public advocates of the RECOM Initiative, the presidents failed to respond. In December 2012, the public advocates called on the state presidents to respond to the demand of the

Coalition and the 545,000 petition signatories to establish RECOM. The public advocates informed the presidents that, while certain NGOs had drawn up a list of some 100,000 persons, out of a total of 130,000, who had lost their lives in the armed conflict in the former Yugoslavia, there remains work to be done which only an official body such as RECOM can perform. In addition to verifying the available information and facts about the identity of the victims, it is necessary to establish the facts about the political and historical circumstances which had a crucial bearing on the outbreak of the armed conflicts and the commission of the war crimes, as well as organizing public hearings with the prime object of acknowledging the suffering and injustice inflicted on the victims.

Prior to and independently of the RECOM Initiative, the Research and Documentation Centre in Bosnia and Herzegovina and the Humanitarian Law Centers in Serbia and in Kosovo¹ began investigating the war crimes and deaths of civilians, soldiers and policemen during the armed conflicts or as a result of them. In 2011, the Humanitarian Law Centre and the Humanitarian Law Center of Kosovo published the first volume of the *Kosovo Memory Book*, recording the names of 2,056 people and the circumstances in which they lost their lives or went missing during the war in 1998. These two NGOs are currently checking information about the remaining 9,816 victims of the war for the period January-June 1999, as well as about the 1,646 victims of post-conflict killings and kidnappings in Kosovo. In December 2012, the Research and Documentation Centre and the Humanitarian Law Center jointly published four volumes of the *The Bosnian Book of Dead*, which contains the names of 95,540 people who were killed or went missing during the war in Bosnia and Herzegovina or as a result of it between April 1992 and the end of December 1996. The victims of the war in Croatia are currently being jointly documented by Documenta in Croatia and the Humanitarian Law Center.

NGOs throughout the former Yugoslavia as well as the EU support trials of war crimes as the most important instrument for establishing individual guilt for crimes committed in the past. However, NGOs keep launching numerous truth-seeking and reconciliation initiatives because they are aware of the limitations of criminal trials with respect to victims' needs for justice. Opening a debate

on reconciliation is neither quick nor easy. At the regional level, as well as in Bosnia and Herzegovina, debates on confronting the past attended by leaders of associations of camp inmates, veterans and relatives of missing persons are often overshadowed by the 'political truth' about what happened in the past. The Coalition for RECOM, which brings together more than 1,900 civil society organizations, tries to counter this by organizing sessions called *The Voice of the Victims*, at which victims tell of their personal experiences. At the beginning of the consultative process, personal accounts played a key part in promoting a new attitude among and towards the victims, an attitude based on sympathy, solidarity and understanding of past events from the point of view of the others. However, after a while leaders of a number of associations of victims and relatives of missing persons began to set conditions, insisting that they or their proxy 'give evidence' about what happened in the past. For instance, at a session of the Forum for Transitional Justice in Montenegro in 2009, leaders of associations of relatives of missing Serbs from Bosnia and Herzegovina threatened to walk out unless their representative could be among the first to 'give evidence'. Later, at a session of the Forum for Transitional Justice in Croatia in 2010, a leader of an association of fallen homeland defenders 'gave evidence' about Serbia's aggression against Croatia. This is why the Coalition for RECOM stopped organizing further *The Voice of the Victims* sessions; although it is aware of the effect of personal accounts in building up a culture of solidarity and sympathy, it is also aware of its powerlessness to prevent manipulation of victims for political purposes. However, thanks to its regional character, RECOM has the strength to stand up to any attempt to abuse and manipulate the victims and the capacity to organize public hearings furthering recognition of the suffering and injustice inflicted on all victims.

There is yet another reason why establishing RECOM is of such importance. It concerns the limitations of criminal justice with respect to the need of victims that their suffering should be publicly acknowledged. A court does not concern itself with the suffering and injustice inflicted on a victim; its brief does not include documenting every individual victim, nor the circumstances of his or her death. The court has only one task: to evaluate the evidence and decide on the guilt of the accused, if any. For this reason, the judgments rendered by the Hague Tribunal contain

1 The undertaking was joined in 2009 by Documenta in Croatia.

2 *The Kosovo Memory Book*, Vol. I, Humanitarian Law Center, 2011. The Center identified 41 Serb civilians who lost their lives on the territory of Kosovo controlled by the Kosovo Liberation Army under Ramush Haradinaj's command.

the names of only about 10,000 victims of war crimes, although there are at least 45,000 of them. Judgements of acquittal pose a special problem, because the public is led to believe that if no individual guilt is established there are also no victims. Thus, the acquittal of the Croatian generals Ante Gotovina and Mladen Markač, as well as of the former Kosovo Premier, Ramush Haradinaj, helped create the strong impression among the public that the war crimes committed against Serbs in Croatia and Kosovo were considered not to have happened at all. However, during the trial of the generals, the prosecution submitted numerous items of evidence about the murder of at least 300 Serb civilians during and after Operation Storm conducted by the Croatian military and the police; and

during the trial of the former Kosovo Prime Minister, the prosecution submitted evidence about the murders of Serb civilians on the territory under control of the Kosovo Liberation Army.² Owing to the high standards of evidence employed, in proceedings held both before the Hague Tribunal and before domestic courts it often happens that the accused is found guilty of the death of a considerably smaller number of victims compared with the actual number of victims, either because of lack of forensic reports or because the mortal remains of all the victims have not been found. Those victims must not be forgotten. RECOM is the only mechanism having the potential to document all the victims. In this sense, RECOM is a corrective for criminal justice and a new approach to reconciliation.

Part I

Prospects and Policy Options for Restorative Justice

Justice outside of the Courtroom: Engaging Society in Understanding the Past

Eric Gordy

The International Criminal Tribunal for the Former Yugoslavia (ICTY), established in 1993, is the best known but certainly not the only mechanism that has been generated to produce accounts and promote understandings of the past, identify violations of humanitarian law and penalise their perpetrators, and satisfy international demands for accountability. The tribunal, that is not a permanent court, was envisioned as having a time-limited institutional life, and has a mandate restricted only to a portion of international humanitarian law. While it was founded with the hope that it would contribute to reconciliation in the region, its charter does not accord it functions related to reconciliation and its origins outside the region undermine its capacity in that regard. The serious work of engaging social dialogue and developing an understanding of the events of the war has to be the work of people and institutions in the region.

There have been initiatives along these lines: mostly citizens' initiatives before the change of government in Serbia and Croatia in 2000, and some official ones in the period since then. However, these initiatives have operated in fits and starts, often in response to conditionality imposed from outside, sometimes in bad faith and frequently in half measures or through processes that remain incomplete. This may not be especially surprising, as the goal of confronting the past requires a process which, in its depth and speed, has no close parallel in history. It involves both domestic and international criminal proceedings that use an eclectic mixture of procedures and practices and to produce gestures of penance which embody a genuine transformation in popular consciousness – all this without

destroying political and legal institutions nor permitting them to remain as they were when their states were complicit in deeds that they now have to punish. Considering that the states involved have experienced neither a decisive military defeat nor a complete political transformation, the fact that transitional justice initiatives have occurred on a meaningful scale at all is in itself noteworthy.

It might be possible to argue that more has been done (even though it has inevitably been partial) to prosecute criminals than to achieve other forms of justice. This may be because the issues of evidence and procedure involved in prosecution, however complex, are nowhere near as complex as broad questions of public memory and the generation of legitimate shared historical accounts. But it might be possible to be a bit more provocative here, and argue that the relative success of criminal prosecution might itself constitute an obstacle to achieving some of the goals of justice. This is primarily because as it is structured by special chambers and the ICTY, it has the unintended consequence of removing events from the field where responsibility operates and of reducing social and moral issues to political and procedural ones. This is not to imply that criminal prosecutions should not be done – of course they need to be – but rather that they need to be supplemented by some processes that specialists in law and politics do not like to think about too much, by cultural and social processes that are slow, uncertain and hard to predict.

What kinds of processes are we talking about? At the risk of going too far, let me cite a couple of social-legal theorists

who have taken on this question in different ways. Mark Osiel foregrounds the trial as a site of contestation, where an exchange takes place but a determination is made:

As ritual expressions of collective conscience, trials for administrative massacre have decidedly *not* been simple and unmediated reflections of moral sentiments already universally felt within the society toward the accused [...] [T]he criminal courtroom will inevitably be viewed by all concerned as providing a forum in which competing historical accounts of recent catastrophes will inevitably be promoted, in search of authoritative recognition, and that judgments will inevitably be viewed as endorsing one or another version of collective memory.¹

Ruti Teitel moves forward from the moment of trial to the diffusion of outcomes and their eventual repercussions in popular consciousness:

Making the truth “official” presumes a degree of democratic consensus; yet, in transition, democratic processes are often not fully consolidated, with implications for the authority and legitimacy of transitional production of knowledge. In transitional truth-telling, accordingly, there is a concerted attempt to make historical and political accountability converge [...] Consensus on the history produced is predicated on the truth’s dissemination and acceptance in the public sphere. [...] For what is at stake is a contested national history.²

I think that there are two categories implied here that worth highlighting, and they are both controversial ones: First, there seems to be posited a value called “truth”; and second, there seems to be a constitution of something called “the past” from which it is necessary to “break”. These terms are appearing in quotations not because I want to dispute their applicability but because every time they are used they create a need for definition. Under stable and predictable circumstances this would be a lot to ask from a political society – in conditions of uncertainty and risk the task is really very large and very difficult.

The demand to “break with the past” does not come exclusively from outside, and is not wholly empty of content. Nobody would be likely to confront any difficulty at all in finding people in any of the countries of the former Yugoslavia who would agree that the recently ended past was a

uniquely painful period which caused long-lasting damage, and that any effort to overcome the difficulties which remain would have to involve, on some level, a declaration that this period has ended and an effort to understand more fully what was involved in the past.

But breaks with the past do not take place automatically; they need to be the product of some form of general consensus. This consensus does not presently exist in any part of the former Yugoslavia. There are inescapable controversies involving questions like:

- 1) when does the past begin?
- 2) who were the victims of the past?
- 3) which elements of the past are most important?
- 4) is the past to be approached through mechanisms of guilt or responsibility?
and
- 5) who has the authority to decide?

In the effort to develop answers to these questions, one dilemma is confronted repeatedly. These questions are urgent, while the only way they can be answered is through a political process which is bound, for many reasons, to be slow. Powerful international actors, in their efforts to produce a quick answer (of a particular nature) through intervention might bring about the unintended effect of preventing any sort of conscious “break with the past” from occurring at all.

To take an example, we can try to approach the question of who the victims are. We know three things: 1) there were victims from every ethnic and national group, 2) there are large numerical imbalances in the number of victims from each, and 3) any effort to try to account for both of these facts is bound leave some important group of people alienated and offended. That is to say, there is a need for “balance” and this is as difficult to achieve as it is to imagine anybody being satisfied with it. And “balance” itself carries a risk – it can become a type of reduction, or take on the form of comparative victimization, which can function as a type of avoidance or denial. At some point it will be essential for citizens of all of the countries of the former Yugoslavia to generate, through discussion, debate

1 In Hesse and Post (eds.), *Human rights in political transitions: Gettysburg to Bosnia* (NY: Zone Books, 1999), pp. 218, 219.

2 Ruti Teitel, *Transitional justice* (Oxford: Oxford University Press, 2000), pp. 83, 84.

and research, an account which recognises all of the things which various forces did to people in the name of various “national” interests and identities. In order for this to happen, though, it will probably be necessary for each of those countries to reach something like a consensus about their own responsibility, at least partly without regard to whether other countries are doing so at the same pace or with the same intensity, or whether powerful international actors are placing equal demands on every government. It could be that some sort of coordinated regional approach would have clear advantages, but it is difficult to see how a regional approach could be generated at all if it is not preceded by local approaches.

What this amounts to is a contention that approaches to justice and reconciliation need to be serious about truth, in a sense that is broader than the type of truth that lawyers have in mind when they are conducting a criminal trial (although establishing this sort of truth is also essential). Here the record on truth-seeking initiatives in the region has been spotty at best. The case of Bosnia-Herzegovina is certainly illustrative: despite a number of initiatives, some of them originating with civil society, some with international actors and some with political parties and institutions, every effort to create an investigative commission has been effectively blocked except one. The Republika Srpska commission to produce an account of the crimes around Srebrenica in 1995 is the only commission to have actually produced a report. This report, of course, was the object of a great number of criticisms.

Jasna Dragović-Soso in her forthcoming research³ has traced the various efforts to generate and operate “truth commissions” in the region, and reached the general conclusion that efforts have been held back by lack of political will, perceived interference, inadequate support and bad faith. The lack of genuine political will among power-holders in the region to engage constructively with processes of confronting the recent past can be traced in part to a complicated relationship with international actors, including the ICTY, which have shaped domestic processes in ways that have not always been conducive to quests for ‘truth and reconciliation’. The problem is exacerbated by a deep

and still enduring problem of divisive and fragmented visions of the recent past throughout the former Yugoslavia, encountered not only on an inter-ethnic level but even within civil societies of the same national group.

Is it fair then to ask why something as abstract as truth needs to be confronted at all? Why not simply let the courts and tribunals do what they know how to do and leave the documentation for the historians to argue over in perpetuity? It may help to look at one moment in the ongoing process of understanding the past in Serbia, when evidence was made public about efforts to destroy evidence of crimes by moving the bodies of victims – to places like the bottom of the Danube River. The incident inspired the late journalist Stojan Cerović to reflect on the relation between judicial and nonjudicial initiatives:

If we want to avoid the Hague Tribunal, the reason can absolutely not be that we do not believe that crimes were committed—because we can see the evidence swimming to the surface—nor that we think we have some justification—like that other people did the same thing—because we do not believe those justifications ourselves. What I mean is that, to the extent that we have any kind of moral sensibility at all, it is not possible to paper this sort of thing over, even if no earthly judge were ever to find out about it.

[....]

If in this case we do not find the guilty parties and do not think about their punishment, then no court in the world, not even the Hague, can help us. It would mean we as a society have already been punished by being sent back to Edenic moral idiocy [*beslovesnost*]. Or if you prefer local mythology, it would mean that we have lost both of the kingdoms which are mentioned exactly in relation to Kosovo.⁴

Here we are perhaps taking refuge on moral ground. But it may make sense here to think of the term that is in the background of all these discussions: responsibility. The first part of the word is of course “response.” In his essay on “Responsibility” in the Hastings *Encyclopaedia of Religion and Ethics*, David Fyffe invents the synonym

3 Jasna Dragović-Soso and Eric Gordy, “Transitional justice and reconciliation in the former Yugoslavia”, in D. Đokić and J. Ker-Lindsay (eds.), *New perspectives on Yugoslavia: Key issues and controversies* (Routledge, 2010).

4 Stojan Cerović, “Zločin i tajna,” *Vreme*, no. 540, 10 May 2001. The two “kingdoms” Cerović mentions in the last sentence are a reference to the mythological cycle of the battle of Kosovo, in which King Lazar loses the battle after choosing “the kingdom of heaven” over “the earthly kingdom.”

“answerableness.”⁵ The analytic point works in Serbo-Croatian as well: the root of the word *odgovornost* (responsibility) is *odgovor* (answer). In the interpretation here, responsibility is taken to mean the ability to respond—both the sense that there is a need to produce answers, and an effort to produce those answers. Approached from this point of view, both people who are willing to see legal action and people who resist it might be described as acting from the same motivation: because they believe that what will come out any trial would reflect somehow on them, and have repercussions on their sense of self and their feelings of identity. This may be where the discussion that needs to take place – and that cannot be held in a courtroom – might begin.

The organisation of criminal prosecutions has certainly been necessary, and the effort has constituted both an achievement and a new set of opportunities. At the same time, however, it is accompanied by a danger that might not be immediately apparent: of all of the cultural, political and intellectual efforts to develop understandings being displaced by a discourse that is by its nature both technical and manipulable.

Post-ICTY tribunals have tried to take account of this problem and integrate this understanding into their structures. In East Timor and Sierra Leone, the process of establishing historical truth has been separated institutionally from the process of indicting and trying suspects. In Cambodia the opportunity for victims to be heard and receive recognition for their experience has been integrated into a process simultaneous with and parallel to the conduct of criminal proceedings. As for the countries regulated by the ICTY generation of tribunal design – the ex-Yugoslav countries and Rwanda – there have been a variety of efforts to fill the gap. In Rwanda the government has actively promoted reconciliation with a narrative element. This effort has succeeded in part because it has had the backing of the state and because of the widely shared perception that failing to participate in reconciliation would bring new danger.

Most of the time it appears that neither prominent politicians nor international judicial institutions have proved themselves helpful in bringing about the sort of confrontation with the past that would go further than sending a small number of travellers on visits to the Hague of indefinite length. At the same time, it would be a mistake to confuse the rhetoric of leading politicians for the entirety of official behaviour. Not every event of importance receives publicity in the media. Domestic and cross-border initiatives are moving forward – led quietly by professionals who are doing their jobs without making regular statements to the press. Though public officials on both sides deny it, part of the reason that there was little violence following the declaration of independence by Kosovo (the great exception, of course, being an incident organised by political parties in Belgrade) was that local and low-ranking officials communicated across borders to prevent the instigation of violence and contain its spread.⁶ Dramatic events also pointed toward the necessity of cooperation in law enforcement: for example, the murder of Croatian newspaper editor Ivo Pukanić and an associate was quickly traced to organised crime groups in Serbia.⁷ Similarly, exposure to similar risks pointed to the necessity of regional cooperation in the provision of basic needs. When a trade conflict between Russia and the Ukraine suspended natural gas supplies to the region in January 2009, Serbia’s delivery of gas to Bosnia and Hercegovina was not only a gesture of friendship but also an expression of understanding that all the countries of the region face similar pressures together. Finally it bears noting that however much diplomatic and political rhetoric may have escalated, travel through most of the region remains mostly free and economic exchange continues to increase.

As for the level of unofficial behaviour, here any conclusions would have to be less certain. In almost every field of popular and high culture, from literature and theatre to film and popular music, mutual interest in the activity of Serbia, Croatia and Bosnia and Herzegovina has regained the high levels one would expect in a shared linguistic space. While most of this activity is concentrated around market-oriented light entertainment, it has

5 David Fyffe, “Responsibility,” in James Hastings, John A. Selbie and Louis H. Gray (eds.), *Encyclopaedia of Religion and Ethics* (Edinburgh: T & T Clark Co., 1980 [1905]), p. 739.

6 Officially, of course, there is no communication. This point was made by local officials and activists speaking to the author off the record.

7 P.P., “Prst uperen u zemunski klan,” 24 October 2008, available online at http://www.rtl.hr/index.php?cmd=show_clanak&clanak_id=359.

certainly included some more intensive intellectual and artistic exchange. To take film as an example, audiences throughout the region responded positively to critical reflections on the war period like Jasmila Žbanić's *Grbavica* (2006), Goran Paskaljević's *San zimske noći* (2004) and Vinko Brešan's *Svjedoci* (2003). It is entirely possible that as the whole region moves farther away from the events of the 1990s and the cultural reflection on it ceases to be dominated by people who were directly involved, this will find a more enthusiastic reception on the part of a younger audience seeking to understand the recent past.

Is there a general message to be derived here? The repeated false starts of 'truth seeking' initiatives underscore the point that it is easier to approach the past procedurally than it is to achieve a cathartic confrontation with it. Transitional justice initiatives have not bridged the cognitive divisions that undermine reconciliation in the region. It could be argued that 'confronting the past' is a diffuse concept lacking in clear definition, and that it is correspondingly difficult to tell whether the past has been confronted or not. On a certain level there could be some sense in the objection that demands are being imposed on Serbia in the name of values which lack both clarity and precedent. At the same time, no serious observer could fail to note the extent to which political and cultural development remain hostage to the legacy of the wars of Yugoslav succession, to the detriment of nearly everybody. This becomes more clear as the connections between war crimes and organised crime, highlighted in the assassination of Zoran Đinđić in 2003, become more apparent and more threatening for individual states.

There can be little doubt, however, that the settling of accounts from the war and the slow process of reconciliation will not depend entirely on the prosecution of criminal cases. Crucially important roles have to be played by politicians and policymakers, through education and

culture, and through the ongoing development of dialogue among people divided into new states. Parallel to the internationally led processes taking place through institutions like ICTY, sometimes with these institutions' help and sometimes in spite of them, we are witnessing the slow and not yet certain development of the will for the kind of systematic and methodical examination of the past that would make disinterested discussion possible. It will probably not develop all at once.

It is possible that the contribution of criminal trials is limited to a narrowly defined field. A broader type of justice will call for different forms of engagement. In essence, the demand to 'confront' the past takes the shape of law and politics but is a demand involving far broader social and cultural processes. The role of the state is essential, but the state is better at generating compliance than at producing contributions of substance. It should not attempt to promote or suppress narratives but instead to encourage narrative activity. It is in the cultural process of understanding that versions of the past will be elaborated and compete with one another. Writers, filmmakers, artists and musicians are already developing new discourses and generating dialogues deployed to understand the past. These have received little official or international attention because they do not result in reports or convictions. But it is through these interventions that a new generation of political actors unburdened by complicity with the recent regimes will develop an approach to the past. Just ten years since the end of the last armed conflict, it is probably not surprising that this new understanding has not yet emerged. The legal and political initiatives of the last several years have helped offer a necessary if incomplete contribution to the development of new discourses. The shape of those discourses and the character of the debates they generate will take this contribution into account, but may not follow on from it in predictable ways.

Civil Society and Recent Efforts at Normalizing Turkish Armenian Relations

Armine Ishkanian

88

Following the end of the Cold War, the language and logic of transitional justice, as an approach to post-conflict peace building, became one of the master, global narratives. The essence of the transitional justice approach is for societies that have been involved in violent conflict, atrocities and genocide to face and reckon with past injustices and to begin building a sustainable, positive peace which will, ideally, foster democracy, stability and perhaps even reconciliation between former enemies. In the countries of the former Yugoslavia, a number of transitional justice mechanisms have been employed and these are addressed in the other chapters. In this chapter I turn to a much lesser known case, that of Turkey and Armenia, and I use the transitional justice framework to examine recent efforts at normalizing relations between Turkey and Armenia and to consider how civil society has contributed to those efforts. I consider both the achievements as well as the limitations of civil society-led actions.

Background and Context

Given the difficult history between Turkey and Armenia, even when Armenia gained independence from the Soviet Union in 1991, the two countries did not establish diplomatic relations and the border remains closed to date. For nearly a decade following Armenia's declaration

of independence, there was hardly any contact between the two sides. Instead of contact there was a great deal of hatred, animosity, fear, suspicion and resentment which was further exacerbated by the conflict between Armenia and Azerbaijan over Nagorno Karabakh. This conflict led Turkey to close its border with Armenia as a show of support to its ethnically Turkish Azerbaijani brethren.

Beginning in 2000, however, high and low profile contacts began to take place between Turks and Armenians. I identify the Turkish Armenian Reconciliation Commission (TARC), which was created under the auspices of the US State Department *Track Two Program on Turkey and the Caucasus*, as the starting point of rapprochement and normalization efforts. TARC was formally established in 2001 and was inspired by the South African Truth and Reconciliation Commission. Although consisting primarily of ex-diplomats, TARC framed itself as a Track Two effort and represented its work as the coming together of "civil society representatives." While TARC did not achieve the lofty (and indeed overly ambitious) aim of reconciliation between Turks and Armenians, it had two important achievements. First, by drawing the first fire, TARC opened the door to future engagements among Turkish and Armenian civil society actors which continue today.¹ Second, TARC commissioned the New York based

1 Phillips, David L. (2005) *Unsilencing the Past: Track Two Diplomacy and Turkish-Armenian Reconciliation*. New York: Berghahn Books, page 5.

International Centre for Transitional Justice (ICTJ) to write a report about the events of 1915 and whether they could be characterized as genocide. The ICTJ conducted a legal analysis of the situation and reached the following conclusion:

...notwithstanding the efforts of large numbers of “righteous Turks” who intervened on behalf of the Armenians, at least some of the perpetrators of the Events knew that the consequence of their actions would be the destruction, in whole or in part, of the Armenians of eastern Anatolia, as such, or acted purposively towards this goal, and, therefore, possessed the requisite genocidal intent...the Events, viewed collectively, can thus be said to include all of the elements of the crime of genocide as defined in the Convention, and legal scholars as well as historians, politicians, journalists and other people would be justified in continuing to so describe them.²

But the ICTJ was careful to point out that there could not be retroactive application of treaties. Therefore no legal, financial or territorial claims can be made in relation to the genocide of the Armenians in the Ottoman Empire.

Although the developments around Turkish Armenian rapprochement stalled somewhat in 2004 with the closure of TARC, the process regained momentum in 2008 – 2009 when Armenia and Turkey were drawn to play in the same 2010 World Cup qualifying group. In 2008 the newly elected president of Armenia, Serzh Sargsyan, reignited debates about Turkish Armenian relations when he invited his Turkish counterpart, President Abdullah Gül, to Yerevan to watch the match together. This was a historic event and although Gül’s attendance at the match was met with small scale protests by nationalist groups in Yerevan, the visit was deemed a success on the path to rapprochement. Four days before the return leg was played in Turkey, on 10 October 2009, the Armenian and Turkish Foreign Ministers Armenian and Turkish foreign ministers signed two protocols aimed at normalizing relations between the two countries. These were the *Protocol for the Establishment of Diplomatic Relations between the Republic of Armenia and the Republic of Turkey* and the *Protocol on the Development of Relations between the Republic of Armenia and the Republic of Turkey*. The signing ceremony was attended by a number of high level foreign dignitaries including US Secretary of State Hillary Clinton, Russian Foreign

Minister Sergei Lavrov, the then French Foreign Minister Bernard Kouchner, and the then EU High Representative for Common Foreign and Security Policy Javier Solana among others. The presence of these high level dignitaries indicated to most observers that there was a great deal of international support for the normalization of relations. But there are two points of contention which have stalled the ratification process. The first has to do with international genocide recognition efforts by Armenian Diaspora organisations (and Armenia’s perceived support for such efforts) and the second is related to the resolution of the Karabakh conflict. With regard to international recognition of the genocide, Turkey vehemently objects to the labelling of the massacres and deportations of the Armenians living in the Ottoman Empire as genocide. Turkish officials, including the Prime Minister Recep Tayyip Erdogan, have argued that the matter of whether the ‘events of 1915’ should be called genocide or not should be left to historians. They point to the historical sub-commission mentioned in the protocols as the institution through which this can occur. Armenian officials however argue that the genocide is a widely recognized historical fact and deny support for any commission which will raise questions about the veracity of the genocide. On the second issue, the unresolved conflict between Armenia and Azerbaijan over Nagorno Karabakh has led to staunch opposition from some Turkish politicians, government officials and even civil society groups who argue that a resolution favouring Azerbaijan must be a precondition to the development of bilateral relations between Turkey and Armenia. The Armenian side argues that the conflict is between Armenia and Azerbaijan and that its resolution should not in any way affect the development of bilateral relations between Armenia and Turkey. The resolution of the Karabakh conflict was not mentioned in the protocols and has only been subsequently raised by Turkish government officials as a pre-condition to the protocols’ ratification. Thus as of March 2010, the protocols have yet to be ratified by either side.

Restorative Justice Approaches to Normalizing Turkish Armenian Relations: some examples

Although most of the transitional justice mechanisms, including tribunals, truth commissions, lustration panels, and amnesties cannot be applied to a historical context,

2 International Center for Transitional Justice (2003) *The Applicability of the United Nations convention on the Prevention and Punishment of the Crime of Genocide to Events Which Occurred During the Early Twentieth Century: Legal Analysis Prepared for the International Center for Transitional Justice*. ICTJ, page 17.

other approaches including memorialisation efforts, social reconstruction, and civil society dialogues have been used in the Turkish Armenian case. For instance, over the past decade there have been a number meetings and joint projects between Turkish and Armenian youths, women's groups, environmental groups, musicians, artists, photographers, etc. These projects and exchanges have been funded by international donors including bilateral agencies, international NGOs and private foundations. While these exchanges have been small and limited in scope, they have succeeded in challenging hardened stereotypes of the 'other', creating space for discussing troubled past, and building bridges between individuals and communities in the two countries.

Alongside these initiatives, some international organisations have also funded cross border trade initiatives including the production and distribution of such products as Caucasian cheese and tea. The assumption driving these trade efforts is that if Armenians and Turks trade with one another, trust and confidence will develop and once those elements are present, then they can decide to tackle the more difficult issues. As the representative of one such international organization that funds such initiatives said,

We are liberals and we promote a free economy and dialog. We don't talk of resolution of conflicts but a free economy. We suggest that starting economic cooperation, opening the border, and abolishing barriers to trade will lead to development and this will lead to all the other issues [between Armenians and Turks] being sorted. (19 April 2009).

While there is no empirical evidence to support the assumption that small scale trade will lead to normalization and reconciliation, nonetheless this approach remains popular among some donors and NGOs. It is an example of what Trudy Govier has called the "indirect reconciliation" approach. If traditional or direct reconciliation involves the following steps: 1) acknowledgement of past injustices; 2) trust building; 3) some degree of reconciliation; and 4) the reconciled parties working cooperatively. Indirect reconciliation reverses that order and "joint practical activity"

precedes acknowledgement, let alone recognition, of the atrocities or crimes committed.³

Finally, at both the civil society and state levels there have been memorialisation efforts. For instance, the reopening of the Armenian Apostolic Church of the Holy Cross on Akhtamar Island in Van was defined as a gesture of goodwill on the part of the Turkish government which funded the renovation and the restoration of the frescoes inside the church and the relief carvings on the exterior. However, since the church was formally opened as a museum and without a cross, in 2007, the reopening of the effort was criticised for being a political exercise.

There are now discussions, which some respondents I interviewed likened to the reconstruction of the Old Bridge in Mostar, concerning a Turkish Armenian joint effort to rebuild the ancient bridge of Ani across the Akhurian River which runs along the border separating the two countries. Turkish President Gül has embraced the plan and apparently the Armenian authorities are also interested.⁴ The bridge would provide an opportunity for cross-border tourism if the border were to open and be an example of Turkish Armenian cooperation.

In addition to renovating architectural structures, there have been memorialisation efforts dedicated to the Ottoman Armenian population. For instance, on 24 April 2009⁵, the Turkish Human Rights Association's Committee against Racism and Discrimination organised a memorial event in Istanbul titled "Armenian Intellectuals and 24 April 1915 – They were Arrested, Exiled and Did Not Even Have Grave Stones". This event, which was being held for the second year in a row, was attended by nearly 300 people. The event organizers' represented the deaths of the Armenian intellectuals not only as a loss for the Armenian community, but a collective loss that should be mourned by all citizens of Istanbul. As one of the organizers said, "... the death of these intellectuals represented a loss not only for the Armenian language, culture, thought and science world, but also for the Ottoman society of the time and for 'the world of all of us today.'"⁶

3 Govier, Trudy (2009) "A Dialectic of Acknowledgment" in *Reconciliation(s): Transitional Justice in Postconflict Societies* ed. Joanna R. Quinn. Montreal: McGill-Queen's University Press, pages 48-49.

4 The Economist "The cost of reconstruction" 11 March 2010.

5 April 24th is the official commemoration day in honour of the victims of the Armenian Genocide.

6 Bianet (2009) "220 Intellectuals Exiled in 1915 Commemorated" in <http://bianet.org/english/other/114092-220-armenian-intellectuals-exiled-in-1915-commemorated>. Last accessed 18 March 2010.

A much more widely publicized memorialisation effort was the December 2008 civil society apology campaign. This campaign was led by a number of Turkish academics, writers, and journalists who are known for their critical position on the official Turkish state thesis concerning the “Armenian Question”. The text of the apology reads:

My conscience does not accept the insensitivity showed to and the denial of the Great Catastrophe that the Ottoman Armenians were subjected to in 1915. I reject this injustice and for my share, I empathize with the feelings and pain of my Armenian brothers. I apologize to them.”⁷

With over 30,000 signatures, the apology sparked intense debate in Turkey. It led to over a dozen anti-apology campaigns initiated by nationalist groups which gathered far more than 30,000 signatures. While the apology campaign was met with gratitude in some Armenian circles, others viewed it with suspicion and one hard-line nationalist organisation even wrote it off saying if they group was truly apologetic they should have used the world ‘genocide’ and not ‘Great Catastrophe’ (*Meds Yeghern*).⁸

Conclusion

Normalization talks between Turkey and Armenia have begun to fundamentally challenge long held beliefs and notions of nationhood, self and other, thereby forcing a rethinking of categories and positions that some scholars had referred to as static and ossified.⁹ This process has intensified discussions and debates in Armenia, Turkey and in Armenian Diaspora communities around the globe about the past, present and future.

As people are being challenged to rethink their entrenched positions, this has meant that what was once the marginal or fringe position advocated by dissidents who were proponents for dialogue, is now becoming somehow a less radical idea such that individuals who oppose dialogue are increasingly being defined as ‘hard-line nationalists’ and as ‘fringe figures’ who must qualify their opposition for dialogue. But I would strongly caution against any overly optimistic assessments of both the current prospects for

normalization as well as the overly normative assessments of civil society’s potential for improving relations. In other words, we should acknowledge the massive changes that have taken place, but at the same time we should curb our enthusiasm for rapid normalization. This is for two reasons. First, because just as there are those civil society actors which seek to engage in dialogue and to improve relations, there are also those that reject any form of rapprochement as conceding and capitulating to the enemy. Nationalist organisations, on both sides of the border, continue to enjoy broad support among the masses. This warrants more in-depth discussion and analysis which I do not have space for in this chapter. Second, while bottom-up civil society initiatives have been important in developing people to people ties, providing space for debate, and changing hardened stereotypes (at least to a certain extent), it remains with governments to change policy, implement institutional reforms, and to engage in more fundamental processes of conflict resolution and peace building than civil society alone is able to carry out.

The EU accession process has had a very important impact on Turkey’s political development; it placed greater emphasis on strengthening human rights, democracy and rule of law in Turkey. The European Commission views the role of civil society as “crucial in determining the pace and quality of the accession process, as well as generating public support for accession”.¹⁰ One of the respondents I interviewed in Turkey said,

Everyone now forgets that it was the EU membership talks that changed everything. All the jinns came out of their bottles. The EU soft power has pushed all jinns out of Pandora’s Box. In 1999 it was almost impossible to talk of these things [the Armenian and Kurdish issues]. People tend to forget that the EU is the main driver that opened up these issues. It is impossible to put the jinns back in the bottle now (20 April 2009).

Although legislative reforms under the EU Harmonisation Laws have led to the enlargement of freedoms through amendments in the constitution and abolition of certain laws including the removal of the death penalty, Article

7 English-language text of Turkish apology from the official website. www.ozurdiliyoruz.com

8 The phrase ‘Great Catastrophe’ is a translation of the Armenian *Meds Yeghern*. It is the phrase used by President Barack Obama in his 2009 address during the 24 April commemoration. Some Armenians view the phrase as a political compromise aimed at appeasing Turkey by avoiding the use of the word - genocide.

9 Akcam, Taner (2001) *Dialogue Across an International Divide: Essays Towards a Turkish – Armenian Dialogue*. Boston: The Zoryan Institute.

10 Dialogue with Civil Society http://ec.europa.eu/enlargement/civil-society-development/index_en.htm. Last accessed 10 March 2010.

301 of the Turkish criminal code continues to be used to prosecute individuals, including journalists and public intellectuals, who invoke the difficult legacy of Turkish-Armenian relations. These acts are interpreted as insults on 'Turkishness'. Individuals charged under Article 301 include Nobel Prize winning author Orhan Pamuk, writer Elif Şafak, and Hrant Dink, the late Turkish-Armenian journalist who was assassinated in January 2007. Hence while Turkey's EU accession process has led to the increasing dynamism within Turkish civil society and its willingness to engage in political debates, there are also limits to the EU's impact on the normalization of Turkish Armenian relations. Until now, the European Commission has embraced a hands-off approach and is reluctant to engage or fund any cross-border initiatives. In interviews and discussions with Commission officials in Brussels conducted in September 2009, it was clear that one of the reasons

behind this reluctance was that Turkey as a candidate country and Armenia as a member of the newly created Eastern Partnership come under different budget categories and therefore there is no common budget or instrument that would allow for funding a Turkish – Armenian projects.

Thus while initiatives in the Balkans, such as RECOM, have benefitted enormously from EU support, no support – financial or technical – has been forthcoming in the case of supporting the normalization of relations between Turkey and Armenia. At the time of writing, the momentum surrounding the protocols has slowed but the situation is very fluid. It is clear that normalization is going to be a long term process and only time will tell how these processes will develop.

European Integration and Confrontations with the Communist Past

John Gledhill

The European Union (EU) has been inconsistent, at best, in formulating its strategy on transitional justice for the Western Balkans.¹ Although regrettable, that inconsistency is somewhat understandable; the EU and its predecessor organizations may have been products of peacebuilding efforts that followed World War II, but the EU itself has little experience as an external peacebuilder. In fact, the EU has little experience as a foreign policy actor in general. So, given that states of the Western Balkans lie outside the borders of the EU, it is perhaps unsurprising that Brussels has failed to act with a single, consistent voice on the issue of transitional justice in the former Yugoslavia. Since 2004, however, Brussels has been increasingly called upon to support processes of transitional justice *within* the EU's borders. Specifically, since ten former communist states of Central and Eastern Europe acceded to the Union in 2004 and 2007, there have been calls for Brussels to lead a collective confrontation with the communist past in its new member states.

In this short piece, I examine the impact of European integration on efforts to reckon with the communist past in Central and Eastern Europe (CEE). Specifically, I document the impact of European regionalization on the visibility and intensity of two forms of historical reckoning: social and cultural projects aimed at shaping collective

memories of communism, and legal projects aimed at righting the alleged wrongs of communist rule. In each case, I find that the EU has been reluctant to initiate or manage a top-down, Europe-wide confrontation with the communist past. However, European integration has still served to boost processes of historical reckoning in CEE, since it has allowed anti-communist activists to access the resources of European institutions (both the EU and other regional organizations) on an *ad hoc* basis. Those European financial and political resources, in turn, have allowed advocates of historical reckoning in CEE states to reinvigorated projects that they had initiated at the national level, but which then faltered in the face of local financial or political constraints.

European Integration and Commemoration of the Communist Past

Top-down: From Brussels to Member States

As suggested, the EU has been broadly reluctant to initiate or develop any top-down social or cultural projects that would promote the construction of a pan-European memory of communist rule in CEE. As far as the European Commission is concerned, commemoration of the past is a matter for EU member states to pursue of their own

¹ See Dick Oosting, 'The EU's Transitional Justice Strategy: Gaps and Opportunities', and Vesna Teršelič, 'From Ad Hoc Measures to the Strategy of Facing the Past', in Denisa Kostovicova (ed.), *The European Union and Transitional Justice: From Retributive to Restorative Justice in the Western Balkans* (Belgrade: Humanitarian Law Center, 2009).

accord, under their own conditions, and -- most importantly, perhaps -- with their own money. This position has been made evident in responses given by European commissioners to calls for the Commission to initiate, manage, and finance diverse remembrance projects (pan-European commemoration days, museums, conferences, educational programmes *et alia*). Specifically, in the face of such demands, former Commission vice-president, Jacques Barrot, has recognized that 'old Member States should be made more aware of the tragic past of the new Member States.' However, he has also been adamant that 'it is up to each Member State to find its own way of dealing with the remembrance of...[the crimes of totalitarian rule].'² Ján Figel', former European Commissioner for Education, Training, Culture and Youth, adopted a similar line of argument when he was invited to contribute to a European parliamentary debate on 'European Conscience and Totalitarianism'. At the debate, Figel' acknowledged the need to raise awareness of the crimes of communism, but stressed that 'it is of course for the Member States to find their own way forward' in the construction of collective memories of the communist past. The Commission would endorse local reckoning projects, but it would not actively manage any commemoration programmes.³

Bottom-Up: From Member States to Brussels (and Strasbourg)

Despite reluctance from Brussels to initiate collective memory projects, the accession of CEE states to the EU has still served to invigorate social and cultural projects aimed at fostering collective reckoning with the communist past -- from the bottom, up. That is, EU accession has given impetus to the revitalization of memory projects that were originally conceived of, or implemented at, the national level, but which then waned in the face of various local challenges. Where those challenges came in the form of a lack of local funding for reckoning projects, *ad hoc* access to EU funds has provided the economic boost needed to restart commemoration projects. Where challenges took

the form of efforts from former communist elites to mute national debate over the need to confront the past, access to the European Parliament has served to create a new forum for debate. And where challenges were rooted in general public apathy in the face of calls for commemoration of the communist past, the prospect of EU accession has served to partially overturn that apathy, by creating a normative context in which it is understood that the legacies of the communist past need to be confronted now, so that the 'European' future can then be embraced. I will treat each national-level challenge, and its transnational solution, in brief.

Building collective memories of the past is an expensive process; researchers need to be employed, conferences funded, educational programmes and texts redesigned, and public memorials constructed. While the costs associated with these kinds of projects would strain any state budget, commemoration projects would have placed impossible demands on the tight budgets of CEE states. As a result, most national-level memory projects in CEE received only minimal state support until recently and, consequently, they faced constant funding challenges. European integration, however, has allowed local researchers and advocates of collective commemoration to partially overcome those challenges by opening up new sources of funding. One such source is the European Commission. Although the Commission has been wary of backing collective memory projects in a systematic fashion, national research institutes such as the Romanian *Institute for the Investigation of the Crimes of Communism* (IICCR),⁴ have been able to access Commission funds on an *ad hoc* basis, by framing particular projects as cultural programmes and then applying for support from the Commission's cultural and educational budget, or from the budget of Commission Representatives in CEE member states. The IICCR, for example, received funds to support the organization of a competition in which high school students were asked to speak to the question, 'What does communism mean to me?'. Further *ad hoc* Commission support for IICCR/

2 Jacques Barrot. Comments made during a 'Proposed hearing of the Commission on crimes of genocide, crimes against humanity and war crimes committed by totalitarian regimes'; (European Parliament, Strasbourg, April 21 2008). Accessed online: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20080421+ITEM-015+DOC+XML+V0//EN>.

3 Ján Figel'. Comments made during the European Parliament debate on 'European Conscience and Totalitarianism'. (European Parliament, Strasbourg, March 25 2009). Accessed online: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20090325+ITEM-010+DOC+XML+V0//EN>.

4 The institution was later renamed the *Institute for the Investigation of Communist Crimes and the Memory of the Romanian Exile* (IICCMER).

IICCMER projects was rolled out in 2010.⁵ Although these funds, until now, have been quite modest and they have only been provided on a project-by-project basis, EU grants could become a reliable source of funding.

A second new source of funding for collective memory projects has presented itself when CEE states have held the rotating presidency of the Council of the European Union -- as Slovenia did in 2008, and the Czech Republic did in 2009. In each case, the governments of the respective states made a significant pool of funds available for cultural and social events that were to be run throughout the six months of their respective presidencies. And, in each case, anti-communist activists lobbied to have some of those funds allocated to social and cultural projects that were aimed at commemorating the communist past.⁶ Lobbying was particularly effective in the Czech case, and the result was a significant boost in support for initiatives proposed by the Czech *Institute for the Study of Totalitarian Regimes*, across the first six months of 2009.⁷ In March 2009, for example, the Institute was endowed to organize two public hearings in conjunction with the European Parliament: 'How Does Europe Reconcile with its Totalitarian Legacy?' and 'Our Common History: A Common European Platform'. The Institute also received funding to host a further memory-focused conference in Prague, and to organize several exhibitions and publications that commemorated the crimes of communism. Although the immediate increase in reckoning activity receded with the conclusion of the Czech presidency in July 2009, it is expected that the Lithuanian (2013) presidency will come under similar pressure from anti-communist activists to support social and cultural projects aimed at raising awareness of the communist past.⁸

European integration has not only provided a financial boost to collective memory projects, it has also opened up a new, transnational political forum for public debate over

the need to confront the communist past, in the form of the European Parliament. Access to such a forum is important, since, over time, former communist activists in some CEE states have tried to block or discredit debates over the communist past at the national level. In Romania, for example, the relatively large number of former communist elites who continue to sit in parliament have gone to great lengths to mute public debate on the communist past -- even resorting to physical and verbal abuse when attempts were made to condemn communism before the Romanian parliament in 2006.⁹ European integration has allowed those calling for commemoration of the crimes of communism to step around this kind of political opposition at the national level, by offering them access to the floor of the European Parliament (and the Parliamentary Assembly of the Council of Europe). Thus far, there have been two focused debates in the European Parliament on the need to condemn and commemorate the crimes of communism: one in April 2008, and a second in March 2009. In both cases, there was far from universal agreement from MEPs over the question of whether communism should be officially condemned and even less agreement over whether such a condemnation should be made at the European level. Nevertheless, for Central and East European MEPs such as István Szent-Iványi (Hungary) and László Tőkés (Romania), the very activity of elevating debate on the crimes of communism to the transnational level must be a welcome development, since it brings new voice to their calls for confrontation with the past -- calls that had gone partially unheard, or unheeded, at the national level.¹⁰

As the communist past becomes increasingly distant, it also becomes increasingly unclear why calls for the commemoration of communism should be attended to here and now. As such, those who actively support confrontation with the communist past in CEE states have faced the challenge of overcoming local public apathy in the face of their calls. European integration has generated a norma-

5 See the website of the Romanian *Institute for the Investigation of the Crimes of Communism*: http://www.crimelecomunismului.ro/ro/proiecte/proiecte_educationale/elevi/concursuri.

6 The Slovenian Presidency, for example, organized a European public hearing on 'Crimes Committed by Totalitarian Regimes' and it produced a 316-page accompanying volume, which is available online: http://www.arhiv.mp.gov.si/fileadmin/mp.gov.si/pageuploads/2005/PDF/publikacije/Crimes_committed_by_Totalitarian_Regimes.pdf

7 For a list of events hosted by the Institute during the period of the Czech presidency, see: <http://www.ustrcr.cz/en/activities-eu>.

8 Zoltan Dujisin, 'Communist Ideology, as bad as Nazism?', *Inter Press Service*, April 6 2009. Accessed online: <http://ipsnews.net/news.asp?idnews=46407>.

9 Vadim Tudor a încercat să-i dea afară din lojă pe Patapievici și Pleșu, *Realitatea.net*, December 18 2006. Accessed online: http://www.realitatea.net/vadim-tudor-a-incercat-sa-i-dea-afara-din-loja-pe-patapievici-si-ple-su_31331.html.

10 See contributions to 'European Conscience and Totalitarianism (debate)', European Parliament, Strasbourg, March 25 2009. Complete transcript of the debate available online: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20090325+ITEM-010+DOC+XML+V0//EN>.

tive context in which that apathy has been partially challenged, so that efforts to construct a collective memory of the communist past have come to be seen as something of a policy priority. Specifically, when CEE states have acceded to the European Union, normative pressure has built up around the idea that the European future cannot be effectively embraced until the communist past is first put to rest. The Romanian case speaks to ways in which this normative pressure has served to kick-start otherwise moribund historical reckoning efforts at the national level.

Over the 16 years preceding Romania's accession to the EU, cultural and historical projects aimed at attending to the communist past had been few and far between in Romania, mainly because former communist elites had retained prominent positions in the post-communist governments.¹¹ However, when EU accession loomed in 2006, public consensus began to build around the idea that the chapter on communism needed to be closed, before the chapter on Romania's 'European' future could be opened. Within that normative context, Romania's president and prime minister both took sudden steps in 2006 to demonstrate their commitment to resolving the ongoing legacies of communist rule. Specifically, within months of one another, President Traian Băsescu and Prime Minister Călin Popescu-Tăriceanu each established large-scale research projects: the presidency-backed 'Commission for the Analysis of the Communist Dictatorship in Romania', and the government-backed IICCR. In the case of the presidential commission, the need to face the past, in order to embrace the future, was evident both in the commission's schedule and in the nature of Băsescu's presentation of the commission's *Final Report*. Despite the huge task of producing an official history of communism in Romania, the commission was given just six months to produce its findings, since the deadline for publication of the *Final Report* was set to precede Romania's accession to the EU on January 1 2007. In his endorsement of the *Final Report* on December 18 2006, President Băsescu spoke of the need for Romanians, as 'future citizens of the European Union', to deal with the 'open wound' of the country's communist past.¹² With EU accession pending, that wound

was attended to in a hurry by his commission, but it was attended to nonetheless.

As the above sketch suggests, European integration has provided advocates of an ongoing reckoning with the communist past with a set of transnational tools for overcoming some of the economic, political, and normative challenges that they have faced in pursuing their reckoning projects at the national level. It certainly seems that advocates of reckoning have themselves become aware of the opportunities that European integration holds out for their projects. This awareness was made evident at the conference on 'European Conscience and Communism', held in Prague in June 2008. Most of those attending the conference had long called for confrontation with the communist past within their respective home countries. But, in Prague, they chose to collectively shift their focus -- away from the national level, toward the transnational level. The need to commemorate the crimes of communism was no longer advertised as a national obligation, which requires national-level support. Instead, the official theme of the conference was that, 'Communism is a common European legacy...[and] until Europe accepts its common past and comprehends its common responsibility, it cannot be united.'¹³ The two day symposium culminated in the publication of the *Prague Declaration* -- a document signed by such renowned anti-communist activists as the late Václav Havel and (current German president) Joachim Gauck, which lays out a roadmap for confronting the communist past within a European context.¹⁴

European Integration and Legal Confrontations with the Communist Past

Top-Down: From Brussels and Strasbourg to Member States

Just as the European Union has proved reluctant to initiate any top-down social or cultural programmes aimed at fostering collective memories of communism, so too have European institutions refused to implement top-down programmes aimed at promoting a systematic legal confrontation with the communist past. In fact, on

11 Vladimir Tismaneanu, Democracy and Memory: Romania Confronts its Communist Past, *Annals of the American Academy of Political and Social Science*, Vol.617, no.1 (May 2008):166 - 180.

12 'Discursul președintelui României, Traian Băsescu, prilejuit de Prezentarea Raportului Comisiei Prezidențiale pentru Analiza Dictaturii Comuniste din România' December 18 2006. Available online: http://www.presidency.ro/?_RID=det&tb=date&id=8288&PRID=ag.

13 *European Conscience and Communism*, Senate of the Parliament of the Czech Republic, June 2-3 2008, Cover Page.

14 For the full text of the Prague Declaration see: <http://www.victimsofcommunism.org/media/article.php?article=3849>.

several occasions, European institutions have taken steps to actively discourage particular transitional justice processes in member states and aspiring member states. For example, the European Council, the European Parliament, and Europe's secondary regional actors (the Council of Europe and the OSCE) have all taken solid stances against the introduction of stringent lustration laws in Poland and Albania.

In Poland, the conservative Law and Justice Party introduced a vetting law in 2007, which required all Poles holding 'positions of public trust' to complete affidavits detailing their collaboration (or lack thereof) with Poland's communist-era secret police. The reach of the law was profound; it was estimated that over 700,000 Poles, from both the public and private sectors, were set to be subject to scrutiny. Any who refused to cooperate were to be barred from holding their 'position of trust' for ten years.¹⁵ Shortly after its publication, both the Council of Europe and the European Parliament voiced strong objections to the law. The Council's Commissioner on Human Rights, Thomas Hammarberg, declared that the breadth and invasiveness of the law fundamentally undermined the individual rights of Poles.¹⁶ Members of the European Parliament were similarly concerned about the implications of the law for the labour rights of Poles. They also raised concerns about the application of the law outside of Poland's borders since, on paper, Polish nationals who were working for European institutions in Brussels or Strasbourg were also to be subject to the vetting process. When Polish MEP, Bronisław Geremek, faced the prospect of being removed from his European post for refusing to cooperate with the draconian vetting process (because he had already been investigated and cleared by the Polish authorities several times), members of the European Parliament protested.¹⁷ That

protest, along with objections from the Council of Europe, emboldened challengers to the vetting law inside Poland and, after it was brought before the Polish Constitutional court, the law was struck down.

More recently, the European Council and the Council of Europe both strongly objected to attempts from the government of Sali Berisha to introduce the so-called 'Clean Hands' lustration law in Albania. The law, which was first aired in late 2008, would have given the government discretionary powers to dismiss any prosecutor or judge who held such a position during the period of communist rule in Albania. Although similar lustration laws had been passed in other CEE states in the early 1990s, there was concern over the political motives that underwrote the Albanian law, since Berisha has a track record of periodically purging the state administration of potential political adversaries. That concern reflected itself in the chorus of denunciation from European institutions that followed publication of the law. The European Council immediately issued a demarche, in which it 'encourage[d] the Government of Albania to reconsider the legal and political ramifications of the Lustration Law.'¹⁸ The OSCE openly stated that 'the law breaches several articles of the [Albanian] constitution.'¹⁹ The Council of Europe echoed those sentiments, by identifying specific problems with the law, such as the absence of a sun-set period on lustration and excessively severe sanctions for those deemed to be 'violators'.²⁰ Although Berisha initially rejected these European critiques out of hand, the law was sent to the Albanian Constitutional Court for review.

Bottom-Up: From Member States to Strasbourg

As in the collective memory realm, although European institutions have refused to offer top-down support for

15 Cynthia Horne, 'Late Lustration Programmes in Romania and Poland: Supporting or Undermining Democratic Transitions,' *Democratization*, 16:2 (April 2009): 344-76.

16 'Assessment of the Progress Made in Implementing the 2002 Recommendation of the Council of Europe Commissioner for Human Rights,' Council of Europe, CommDH(2007)13, Strasbourg, June 20 2007. Accessed online: https://wcd.coe.int/ViewDoc.jsp?id=1155005&Site=COE#P423_71145; Thomas Hammarberg, 'Lustration must not turn into revenge against former collaborators,' *Council of Europe Viewpoints*, March 19 2007.

17 'Discussion of mandate of Polish MEP Bronisław Geremek,' European Parliament, April 25 2007. Accessed online: <http://www.europarl.europa.eu/sides/getDoc.do?language=EN&type=IM-PRESS&reference=20070425IPR05853>.

18 'Declaration by the Presidency on behalf of the EU on the Albanian Lustration Law,' Council of the European Union, 6481/09 (Presse 40) Brussels, February 13 2009. Accessed online: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/cfsp/106063.pdf.

19 'OSCE: Albania Lustration Law Unconstitutional,' *Balkan Insight*, December 17 2008. Accessed online: <http://old.balkaninsight.com/en/main/news/15625/>

20 'Council of Europe Pans Albania Lustration Law,' *Balkan Insight*, January 16 2009. Accessed online: <http://www.balkaninsight.com/en/article/council-of-europe-pans-albania-lustration-law>

legal and judicial confrontations with the past, there are indications that European integration is serving to rein-vigorate long-delayed processes of transitional justice, from the bottom, up. Specifically, where legal challenges related to the communist the past were initiated at the national level, but then became blocked there due to the inefficiency or politicization of national judiciaries, local actors have been able to partially overcome those barriers, by moving their appeals for justice to the European level. Already, plaintiffs have been able to refer two types of cases up to the European Court of Human Rights (ECHR) in Strasbourg: cases of human rights violations that were committed during the period of communist rule and transition from communism; and cases relating to the restitution of property that was confiscated by the state, under communism.

Several human rights and criminal cases have recently been referred up to the European level from Romania, for example, where there have long been local barriers to the processing of complaints related to crimes committed during the country's bloody revolution of December 1989. After 20 years of intransigence from state prosecutors, a non-governmental organization that represents the interests of 'revolutionaries' lodged a formal complaint against the Romanian state with the ECHR. In the complaint, it was argued that families of victims of the revolution had been denied the right to have their cases addressed in a 'reasonable amount of time' -- a right that is guarded by Article 6 of the European Convention on Human Rights. The ECHR found in favour of the plaintiffs, fined the Romanian state €20,000, and called for action on the revolution dossier.²¹ By way of response, the Romanian government agreed to open up access to all files and records related to the revolution.

The legal team from Romania's IICCMER is also considering taking their allegations of abuse by officers of Romania's communist-era secret service, the *Securitate*, to the European level. Such a shift in level may be necessary, since the statute of limitations for crimes committed under communist rule has expired in Romania, and so cases such as that of Vasile Paraschiv, who alleges abuse at

the hands of the *Securitate* over a twenty year period, can no longer be tried locally. The ECHR, however, carries no statute of limitations on cases that pertain to human rights violations or crimes against humanity. So, if the IICCMER legal team can frame the claims they are making in the language of human rights violations, they will be in a position to bring those cases before the ECHR and, in so doing, revitalize their efforts to pursue retributive justice for the crimes of communism.²²

Romanians have also been able to use their access to the ECHR as a basis for ensuring the restitution of property that was nationalized under communism. Romania distinguished itself as a laggard in this area throughout the 1990s, when governments failed to push through effective restitution laws, and even intervened to block legal processes that were aimed at resolving restitution cases. In the face of that blockage, a collection of Romanians chose to take their cases on to the ECHR, which, between 2002 and 2004, heard 58 Romanian restitution cases. In most instances, the ECHR found in favour of the claimants and, in total, the Romanian state was ordered to pay out €4.6 million in compensation to those whose properties were nationalized.²³

Conclusion: The Europeanization and Homogenization of the Past?

This short survey of the impact of European integration on processes of social and legal reckoning with the communist past in Central and Eastern Europe has pointed to a clear trend; although the European Union has been reluctant to take the lead on efforts to confront the communist past in CEE states, individuals and organizations within CEE states have been able to draw European institutions behind historical reckoning efforts on an *ad hoc* basis. The immediate consequence of this trend has been a net increase in the visibility of reckoning projects in Central and Eastern Europe.

The long-term impacts of European integration on confrontations with the communist past are harder to gauge, but there are signs that historical reckoning within a Euro-

21 'România a fost condamnată la CEDO pentru "Dosarul Revoluției"', *Realitatea TV Online*, December 8 2009. Accessed online: http://www.realitatea.net/romania-a-fost-condamnata-la-cedo-pentru-dosarul-revolutiei_691071.html

22 See discussion in Mirela Corlăţan, "Rechizitoriu inutil pentru tortionarul Enoiu?", *Evenimentul zilei*, June 30 2010. Accessed online: <http://www.evz.ro/detalii/stiri/rechizitoriu-inutil-pentru-tortionarul-enoiu-899431.html>

23 Lavinia Stan, 'The Roof Over Our Heads: Property Restitution in Romania,' *Journal of Communist Studies and Transition Politics*, Vol.22:2 (June 2006): 180-205.

pean context may serve to 'homogenize' the way in which communist rule in CEE states is collectively remembered. If advocates of historical reckoning in CEE states are to continue drawing the support of European institutions behind their reckoning projects, then they will need to continue the process of framing the legacies of communism as a common, 'European' burden, which demand common, 'European' support. Such framing, which was put into clear use in the *Prague Declaration*, requires constant highlighting of the commonalities of communist rule across Europe, and constant minimization of the great differences that existed between those systems. The effect

of these processes is to replace nuanced understandings of the differences that characterized communist rule in Hungary, Poland, Czechoslovakia and Romania, with a blunt understanding of communism as a homogenous form of rule -- one that spanned all of Central and Eastern Europe. For CEE countries that now share a common, transnational future, there is certainly benefit in recognizing the commonalities of their various authoritarian pasts. However, it would be unfortunate if that recognition came at the cost of a loss of nuance in collective memories of communist authoritarianism and totalitarianism in Central and Eastern Europe between 1945 and 1989.

Truth Commissions from the Latin American Perspective: Challenges and Lessons

Eduardo Gonzalez

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Truth-seeking and memory are currently regarded as essential elements of post conflict reconstruction.¹ There is little dispute now that dealing with the past is an important aspect of re-creating the narratives that a society has about itself and, therefore, it will have an important impact in the possibilities of that society to embrace a new normative system that will encourage human rights, rule of law and peace. There have been many truth commissions around the world, and in practically every post-conflict space, institutions such as the UN and the EU, have supported these institutions. There are ongoing negotiations in Nepal to establish a truth commission. There is one truth commission initiating activities in Kenya, one in the Solomon Islands, and one in Canada, to deal with forced assimilation of indigenous population in that country.

This is not only a practical process, but also a normative one: the development and acceptance of the notion of a “right to the truth” is an important fact to take into account. A UN declaration on the right to truth has been approved in the Human Rights Council, calling on countries that have suffered conflicts to develop their own approaches to this right of victims of human rights violations. This right has been recognized not only in that arena, but also in the jurisprudence of specific constitutional and supreme courts across the world.

The right to the truth entails the right to know what has happened, the facts, the consequences, the context of human rights violations, both by the direct victims and their societies: what emerged initially, in international humanitarian law, as a right of individual families to know the whereabouts or the fate of missing and unaccounted for persons, has evolved into a right of societies, where mass abuse has taken place. This right, in addition to the recognition of the victims, entails also the recognition of a duty on the side of states – to fight denial, to fight revisionism, to preserve the historical basis for memory.

Certainly, this is a complex concept. There are many layers of truth, and there are many versions of truth. What truth commissions do in a celebrated *dictum* by Canadian writer Michael Ignatieff is to “reduce the field of the permissible lies”, that is, to, at least, make sure that certain egregious lies, certain egregious denials of human rights violations are not given the floor so easily. What truth commission do is to propitiate the encounter of victims so that they can share their experiences and find, in their common victimhood, the possibility to affirm certain new democratic values in history, now expunged from any justification of brutality.

Truth commissions have taken place in many countries and are taking place in many countries. However, they

1 As a participant in the process of the Peruvian Truth and Reconciliation commission, established after the fall of Mr. Alberto Fujimori, the author presents the Latin American perspective on transitional justice.

are still very young institutions. The first inquiry that we understand as a “truth and reconciliation commission” was the National Commission on the Disappearances of Persons in Argentina, which was established over 25 years ago. Being young, they are still very plastic institutions, i.e. flexible and adaptable to concrete local situations. That is why the concept and the model of a truth commission applied in South Africa, for example, could never have been applied in Chile, or in Guatemala, and certainly not in the Western Balkans.

Truth commissions are still an instrument flexible enough for civil society and for policy makers to design them in a way in which they may reflect the actual needs of victims and those of a political process of reconciliation: truth commissions, differently from trials, have been quite receptive to the role of civil society to model them after their needs.

At the same time, we have to recognize that some truth commissions have actually failed to achieve their objectives. Some truth commissions were launched in situations without the preconditions for their success. We have seen the painful failure of an effort to create a truth and reconciliation commission in the Democratic Republic of Congo, after the peace agreements, because the establishment of the commission included representatives of warlords, and victims could not trust such an effort. We have also seen the failure of an Indonesian truth commission, because the process was kidnapped by political horse-trading in parliament. The resulting legislation was so flawed that the legislation establishing the TRC was finally rejected by the constitutional court of that country.

Some preconditions need to be taken into account in order to establish a truth commission successfully. There needs to be some basic minimum of political willingness: policy-makers, stakeholders, need to have at least an opportunity to build consensus around the notion of truth seeking, and they will need to believe that the institution to be created will be objective enough, neutral enough, professional enough to receive all the voices. A nascent truth commission needs the support of civil society and, therefore, what is happening right now with the RECOM initiative is fundamental: civil society in the Western Balkans is trying to go beyond the traditional groups of human rights, peace movements and victims’ groups, and reach out to other institutions and other constituencies.

Truth commissions have been created usually during democratic spring times, during moments of actual social mobilization. After that window of opportunity, their

creation may be more difficult. Therefore, it requires a bit more support to actually engage in a process of consultation that will mobilize other sectors. It will require a workable mandate, realistic parameters for investigation, so that they don’t create an institution that is too unwieldy to develop the specific inquiries, and that will be able to produce a report and recommendations in time.

With this in mind, RECOM faces very concrete and unprecedented challenges. There has never been a genuine truth commission established at a multi-country level. Truth commissions, classically, are one-country institutions, created to deal with the specific situations of that country. Obviously, for RECOM it is an existential issue to work beyond one country because of the nature of the conflict that made the former Yugoslavia collapse. But it is a clear challenge that this effort is completely unprecedented. There has been only one effort that seemed like a dual country initiative, which is an initiative launched by the governments of Indonesia and East Timor a couple of years ago, the so called “Commission for Truth and Friendship”. However, that commission was criticized by human rights organizations and civil society as, basically, a political arrangement between the two countries to find a solution to the atrocities that took place during the independence of East Timor in 1999. There was a vested interest from both governments to create this institution and to make it work. However, it suffered from endemic problems of lack legitimacy and civil society support. Therefore, in effect, RECOM would be the first commission to be launched in a multi-country fashion. It has to deal with multiple narratives, multiple victimizations, often from neighbors (or to neighbors) that are now in a country next door. Ultimately, both the process to create this commission and the commission itself are an exercise in consensus.

This is the reason why this is not going to be a fast, quick process. In Latin America, most truth commissions were created by presidential decree. A short window of opportunity during the democratic springtime was used. Taking action was a question of months, not years. States and societies had to deal with very concrete, very specific issues in one political entity. In the case of RECOM, the creation of consensus will require a longer process coming from the bottom-up.

The unveiling of truth in the Western Balkans will have to engage Europe. This is, after all, the worst conflict that has taken place in the heart of Europe after World War II. And, this is a context that has raised incredible challenges, not just political and security challenges, but also moral ones for Europe. Therefore, this is a process that needs to

be international from the beginning: international in the sense of involving the countries of the former Yugoslavia, but also involving the attention of all of Europe.

Hence, there are a number of specific challenges facing European friends of the regional commission initiative.

The first one is that policy makers in the post-Yugoslav republics need to feel the voice of Europe loud and clear in support of this initiative. RECOM will require a very delicate act of political craftsmanship: it will require seven clocks striking at once. That is extremely difficult and that will, certainly, require that the leaders of those countries know that Europe is serious about actual reconciliation, memory and justice, that it understands the latter concept not just as a specialized process in a tribunal, but also as a moral and cultural process in the streets, in the public discourse, in the creation of historical narratives.

The second challenge is that Europe needs to support patiently this complex, and perhaps bumpy road towards actual consultation in the Balkans context. It will have ups and downs. There will be elections coming in Bosnia, and then in another country, and there will be opposition from one sector or another, doubts and hesitations. That is in the essence of establishing a truth commission; that is exactly what happened in many other countries: the beginnings are always extremely difficult, even more for such an unprecedented institution. So, the RECOM initiative, and certainly the groups participating in these consultations, need to feel that they are accompanied by Europe. It would be a good idea to have members of different European institutions actually observing these processes of discussion and consensus creation. It will be important for the

people in the western Balkans to understand that their processes are being taken seriously and have support.

Third, and this is something where we have expressed our interest in continuing support to RECOM via the International Center for Transitional Justice (ICTJ), is to channel real case information about truth commissions, about what happened in other countries, bringing to this process of consultation people who have actually participated in truth commissions, that have been in the good moments, and in the bad moments, that will be able to share expertise, and provide some humble guidance on some of the aspects of this process.

And, finally, it will be very essential to recognize that the process to uphold the right to truth in this very, very complex region will need to be presented in the global scene. This is, after all, a world where we have already had over 30 truth commissions. That experience cannot be left to waste: it needs to be taken to the Western Balkans to share with the stakeholders there. But, at the same time, *mutatis mutandis*, the experience in the Western Balkans needs to be taken somewhere else, because many conflicts are international in nature, and truth-seeking needs to be international, too. It is impossible to understand the conflicts in Liberia and Sierra Leone in isolation from each other. It will be impossible to take on a real truth and reconciliation process in the Democratic Republic of Congo (DRC), without taking into account that the wars in the DRC involved many other African countries. This particular initiative, will be essential in places like Central Asia, the Middle East, the Great Lakes. The creation of global communities of practice and debate will be absolutely essential, and will represent one way of supporting RECOM.

PART II

Transitional Justice: Views of the Epistemic Community

Dražen Lalić

My name is Dražen Lalić and I am a professor at the Faculty of Political Sciences in Zagreb. There are two main reasons why I am sitting here. The first reason is the book *Dealing with the Past in the Republic of Croatia: The Views and Opinions of Stakeholders and the Public in the Post-War Period*. The book was co-authored by Kruno Kardov, Vesna Teršelič, head of Documenta, present at this forum, and myself. We wrote the book after extensive research into the phenomenon of dealing with the past in Croatia. In it we used different methods, both quantitative and qualitative. Another reason why I personally was interested in dealing with the past, not only as a scientist but also as a civil society activist, concerns one bizarre fact from my life. Namely the crimes committed in the spring of 1945 at Bleiburg and other sites that I learned of in 1985, at the age of 25. I probably found out about these crimes so late because I come from a family that, in the Second World War, fought on the side of the partisans – my grandfather was killed in that war because of his anti-fascist activities – and so these crimes had not been discussed in my family. Having found out about them, I talked with some people, and realized that some of my friends and acquaintances had grandfathers on the other side, that is to say the Ustasha side, and also that the grandparents and relatives of some of my friends had been killed in Bleiburg or at the so-called Way of the Cross. For me this was a terrible fact, among other reasons, because in my youth I could speak openly about my grandfather, while these friends and acquaintances of mine could not mention their grandfathers in front of most other people. I felt bad because of all that, both as a human being, because of my relationship with those friends and acquaintances,

but also as an academic (at that time I had graduated from the Faculty of Political Sciences in Zagreb).

We have all gathered here because of that, so that it never happens again that an academic living in a totalitarian system, or a system that is seemingly democratic but in fact totalitarian, has no knowledge of the atrocities that occurred, for example about the murder of prisoners of war without the trial. Regardless of how they behaved previously, no one should be killed without a trial, thrown into a pit, and the like. Most of you present here lived in the former Yugoslavia, but the system has changed now, and we should live in a democracy, in which such crimes do not happen, and the crimes of the past are condemned.

What I said so far forms the beginning of my own understanding of *Transitional Justice from the Perspective of Epistemic Community*. I have yet to define the basic concepts of this panel discussion. I understand transitional justice first and foremost in terms of dealing with the past. In that great social change, which is to say in the long and complex transitional process of moving from authoritarian to democratic systems, we the citizens of countries that emerged after the disintegration of the former Yugoslavia must face the truth and justice, particularly in relation to crimes and various acts of violence that broke out in the wars in the 1990s. Many citizens of Croatia, and I am sure of other countries as well, are in great need of this truth and justice. In this sense, some use the concept of transitional justice, some the notion of determining the past, some call it overcoming the past, and I use the term dealing with the past. The second term is epistemic community. I believe that the term subsumes a number of communities. In fact,

there are different ways to obtain information and understanding of war crimes, murder and all the horrors that happened in the wars in the former Yugoslavia. I don't get it only from the academic community, to which I personally belong. There are some experts among us too. Don't the psychologists, special educators and others who work directly with victims, bring knowledge of dealing with the past? Then there are many journalists here too. Is it not the case that these experts contribute to our dealing with the past, especially by gathering the information and interpreting the facts about the war? Along with the scientists and experts, artists are engaged in this area too. As part of the research I have just mentioned, Vesna Teršelič, Krno Kardov and I found a subjective attitude towards the violent past to be very important. So, the changes took place in the period after the Second World War (and the more so after the First World War), when individual human destinies were not as important, and these can be contrasted with the recent past including the period of the wars in the former Yugoslavia and other wars in recent decades, in which the individual has become very important. Precisely in that regard, artists can and do make an especially big contribution. Many of them have helped us, as activists, to understand the problem. There is not a single activist among us who did not see Alan J. Pakula's *Sophie's Choice* or read Primo Levi's *Is This A Man?* So, artists are very important to us. In that sense, I understand epistemology to mean different ways of collecting knowledge and awareness of the painful war-time events and war crimes. This is the basic thing I wanted to say regarding the content of this panel topic.

I take as my starting point, a sentence, in fact a motto, by a great French philosopher Michel de Montaigne, who asked, "What do I know?" Following his question, we may ask what we know about war crimes and other unfortunate events of wartime. And, if we look at the truth closely, we might realize that it is equally important to ask the following question: What is it that we don't know about it? Our knowledge of war crimes is very limited. So: What we know and what we do not know? The next question is: How does the social context in our country affects what we know and what we do not know about it? Furthermore, I think it is very important to answer the question of how to critically evaluate what we know and what we do not know, and to base this on objective knowledge, rather than observing things from the perspective of our own ethnic or other communities. Finally, how can we contribute to improving our knowledge and minimizing our ignorance about the past? What can our stakeholders do to help? What are political and other institutions doing to help us – to help civil society, to help the scientific community or the media, or society at large – to improve their knowledge? How can we encourage the authorities to assist in the acquisition of knowledge about war crimes and violence from the past that will be true, based on truth and facts, that would be fertile ground for, and serve as a basis for, broadly-based action, not only of non-governmental organizations and civil society, but of a range of actors in society? I think that without such broad and objective knowledge there cannot be successful process of dealing with the past and transitional justice.

Diane F. Orentlicher

For more than two decades, the international community has undertaken intensive efforts to assist societies to achieve some measure of justice in the aftermath of atrocious crimes, including through the establishment of international tribunals. As the fields of international and transitional justice have developed, academic experts and practitioners have put forth myriad claims about the values that measures associated with these disciplines—trials, truth commissions, reparations and other processes—could advance. Among them, scholars have theorized, such measures can help prevent future crimes, strengthen the rule of law, restore core values of human decency that were brutally compromised by violence, foster reconciliation within divided societies, promote a stable transition to democracy, and in other ways help foster social repair.

Inevitably, during the early years of the contemporary experience with international justice, these views entailed a large measure of prediction (some say wishful thinking). Today, however, it is both possible and necessary to assess the actual impact of institutions like the International Criminal Tribunal for the former Yugoslavia (ICTY), even as we recognize that their impact will continue to evolve. Above all, it is important that those who have supported or engaged in these efforts—and I include myself in this group—make sure that our notions of what is important to societies that have endured atrocities are tested against *their* reality, *their* truth, *their* experience—particularly when it comes to the experience of victims.

With these considerations in mind, before I joined the Obama administration I carried out research in Serbia and Bosnia aimed at understanding the impact of the ICTY. A fundamental conclusion that emerged from my

interviews in these countries is that a central reason why many Bosnian victims wanted to see the ICTY established was, quite simply, to achieve justice. Perhaps this should not come as a surprise. Yet the scholarly literature about international tribunals rarely acknowledges or highlights the importance of what many whom I interviewed in Bosnia, as well as in Serbia, described as “justice for its own sake.” Instead, the literature typically emphasizes the types of potential contributions of international courts to which I have already alluded—deterrence, prevention, reconciliation, promoting the rule of law and democratic progress—and often critiques the ICTY’s perceived failure to make measurable contributions in these areas.

To be sure, when I asked people in Bosnia to describe their expectations of the ICTY and their perception of what it has actually contributed, the responses I received typically began with a litany of criticisms. The Hague Tribunal has in myriad ways disappointed Bosnians’ expectations of how justice would be delivered. Many individuals whom I interviewed emphasized how frustratingly long trials at the ICTY have taken, and how long they have had to wait for justice as a result. Another commonly voiced frustration is the relatively short sentences imposed on a significant number of individuals convicted by the ICTY, compounded further by the early release of defendants from prison. I also encountered deep frustration with proceedings in which defendants represent themselves in court and use their trials as a political platform. On this point, many are profoundly frustrated by what they see as the Tribunal’s failure to control these defendants adequately.

Across the years that I visited Bosnia for my study, the greatest frustration expressed related to the protracted

impunity of Ratko Mladić and Radovan Karadžić. Over the years that these two men remained at large after they were indicted in 1995 on charges including genocide, people in Bosnia would say that, as long as these two remained beyond the reach of justice, their impunity would overshadow everything else the ICTY had accomplished. Their belated apprehension has removed this shadow, even if it cannot erase the harm caused by their prolonged impunity.

In larger perspective, one of the striking points that emerged from my interviews in Bosnia is that people there did not, for the most part, experience justice as something they either received or did not achieve, but rather as something that they experienced partially, imperfectly. For example, while gratified that perpetrators were brought to justice before an impartial tribunal, many wanted the ICTY to address other needs. Individuals who had lost loved ones during the conflict emphasized the importance of acquiring information about the fate of their loved ones, and thought that perpetrators should be required to provide this type of information, particularly when the defendants received reduced sentences as a result of guilty pleas.

Beyond the importance attached to this particular type of factual knowledge, many whom I interviewed said that they had hoped the ICTY would help spur broad social acknowledgement that members of one's own national or ethnic group committed grave human rights violations during the 1990s conflict. Indeed, in both Bosnia and Serbia many whom I interviewed had hoped that, through its rigorous establishment of facts, the ICTY could help their societies acquire a shared knowledge and acknowledgment of what was done and by whom. Among these individuals, a large number expressed profound disappointment about the Tribunal's apparent inability to contribute meaningfully to this goal, at least so far.

But at the end of these interviews, my sources would almost invariably express a strong affirmation of the importance they attached to the basic fact that the Tribunal had delivered justice—something they believed would not have happened without the ICTY. This point could not be reduced to any other value; instead, many victims were emphatic about how important justice itself has been. In short, there was a strong consensus that the justice the ICTY has delivered was far preferable to having no justice at all—and yet *more* justice was necessary.

Vladimir Petrović

There is one paradox, worth drawing attention to. It concerns the question of participation of historians in dealing with the past. It's easy to see that in activities of this kind, with obvious exceptions, historians lead neither in number nor in the nature of engagement, which is a bit strange if we understand that the focus of their interest is precisely the study of the past, and that they are trained to deal with it.

Various explanations for this paradox are possible – philosophical, methodological and political. The abuse of history was one of the key mechanisms behind the dissolution of Yugoslavia, the spreading of inter-ethnic hatred and the culmination of this disintegration into war. Not only did historiography not do much to *counter* this trend – it sometimes tended to greatly encourage it, something it still does. Not all historians, of course, participate in this war on memory. I am talking about a minority, but a minority that is noisy and unusually well-organized, whose views on the past are rather coherent, and whose awareness of their own national mission is well-focused. Such is the situation in Serbia, and it is not much better in other former Yugoslav republics. It is only natural then that, when the question is broached concerning what the discipline could do to ensure that the post-Yugoslav societies face the most unpleasant aspects of their recent past, there emerges a problem. How could one expect people who have invested their entire careers in the political project to suddenly resolve to critically reflect on and question their own involvement and the political projects in question? It happens, but not often or easily, and we cannot count on it.

What to do then? In my response, I will invert the question with which Professor Lalić opened this panel. He

asked what it is that we actually know about the past; to this I would add: what is it that we do *not* know about it? Or more precisely, what is it that we are not allowed to know? By this I mean that it would be quite purposeful to separate the epistemic dimension of knowledge from the practical dimension. At the epistemic level, we cannot expect a consensus on issues of perception, which depend on philosophical belief, even on our own emotions. Our chance, I think, lies at a heuristic level, where we do not care necessarily what is true, but what kind of truth someone is trying to hide from us.

According to an old saying, truth is the first casualty of war. Under normal conditions, a state attempts to maintain control over the information it produces, something we see quite well in the example of Julian Paul Assange and elsewhere. In a state of emergency, however, this instinct assumes the proportions of national interest and war propaganda. We witnessed all this during the disintegration of Yugoslavia and we need not dwell on it.

Observe, however, an entirely different phenomenon. The information explosion that followed the implosion of Yugoslavia made cover-ups very difficult, and the establishment of the ICTY made it actually impossible. Researchers into this period of the past are, in fact, in a privileged epistemic position. Documents that would otherwise naturally and in keeping with the letter of archival law be unavailable for much longer, those that concern the work of the highest authorities, military and security apparatus, and above all the war and war crimes, have found their way to the Hague and national courts. Many were used as court evidence, and thus became available to the public. In fact, so many have become available that the major

research problem lies in their abundance, and the need for selection, critical processing, and presentation in an understandable way.

This is where I see the role of epistemic community, and primarily historical science, in the process of transitional justice. Therefore, it is good that we have work to do. The bad thing is that we have failed to interest enough people in the work, since it is a job that requires patience and a systematic approach. What can be done? Of course, we cannot tell anyone what to do, as everyone must approach this problem according to their own conscience and knowledge. However, for my own part, I say: "What the Institute for Modern History, where I work, is doing in its cooperation with the Humanitarian Law Center." We are now engaged in a joint project entitled *The Yugoslav Crisis*,

within which we are trying to separate the documents and materials that are, in our opinion, most relevant to the understanding the break-up of Yugoslavia, war and war crimes on its territory, in order to prepare and critically present them to the public in print and electronic form. The main intention of the project is to improve our understanding of this aspect of the past, and thus strengthen the factual basis of our discussions. I use this somewhat old-fashioned term deliberately, in order to once again stress that it will be difficult to answer the question of what is true and what isn't, but that must not stop us from preventing the systematic attempt to hide the information that leads to the truth. It seems to me that the role of the epistemic community in its various branches is to oppose any such attempt.

Mladen Ostojić

This paper is based on my doctoral dissertation, which concerns the impact of the Hague Tribunal (ICTY) on the political situation in Serbia in the period after the fall of Milošević (2000-2010). One of the most important lessons from the work of the ICTY is that without the support of local political elites, international tribunals are unable to punish the perpetrators of war crimes and promote the process of dealing with the past.

During the nineties, the work of the Tribunal came to a virtual standstill due to a lack of cooperation from the Serbian and Croatian authorities, which to a large extent protected war crimes indictees. After Tuđman's death and the fall of Milošević, the Serbian and Croatian authorities have gradually, under heavy international pressure, begun extraditing the Hague indictees. However, those authorities were not ready to publicly tell the truth about war crimes and thus strengthen the process of dealing with the past in their respective countries. The Hague Tribunal, on the other hand, proved quite incapable of addressing the public domestically. And hence, the war crimes trials before the Hague Tribunal were not conducive to raising awareness about war crimes, nor did they encourage the condemnation of those crimes by Serbian society.

This outcome is often attributed to the Serbian political elite, which approached the Hague Tribunal pragmatically and justified the extradition of indictees by economic assistance received or progress towards European integration. Such 'instrumentalization' of The Hague (tribunal) was largely interpreted as a reflection of the nationalism of the Serbian political elite and a negation of war crimes. However, my research shows that the essential reason for the insincere attitude towards the Tribunal was that the

Serbian authorities saw the ICTY as a genuine threat to the stability and legitimacy of the state.

The arrest and extradition of indictees to the Hague Tribunal has threatened political stability in Serbia for several reasons. First, after the overthrow of Milošević, a deep gap opened within the government with regard to the extradition of the former Serbian strongman. Prime Minister Đinđić argued for full cooperation with the Tribunal, while the then-Yugoslav President Vojislav Koštunica insisted on respect for the existing legal framework which prevented the extradition of the accused. Their disagreement about the extradition of Milošević generated a split within the ruling coalition. Hence, the ability of the Serbian government to arrest those persons indicted for war crimes was greatly reduced because Koštunica *de facto* resisted effective cooperation with the ICTY.

Second, the military and security services, which had not been reformed after the fall Milošević, actively obstructed the arrest of the indictees. We now know that Ratko Mladić and Veselin Šljivančanin hid in military facilities at least until 2002. In addition, members of the security forces turned against the government for fear that one day they too would end up in The Hague. This is why the Special Operations Unit (JSO) mutinied in November 2001, seeking an end to cooperation with the Hague Tribunal. Two years later, its members carried out the assassination of Prime Minister Đinđić in an action dubbed "Stop The Hague".

Fearing instability, the authorities sought to persuade the indictees to surrender, rather than have them arrested. The key moment in this process was the arrest of Veselin Šljivančanin, carried out rather disastrously in June 2003.

The government then introduced financial and legal incentives for indictees surrendering to the Hague Tribunal. This practice culminated in the so-called 'voluntary surrender' policy, which Koštunica introduced during his first mandate in 2004. Voluntary surrender involved the transfer of indictees to The Hague with state honors. In the media, their surrender was presented as a contribution to the country's European integration and the defense of Kosovo. Indictees, who received hefty sums, were therefore presented as martyrs who went to The Hague in order to perform their patriotic duty. Those who refused to surrender were arrested, but their arrest was presented as voluntary surrender.

The policy of voluntary surrender led to the extradition of sixteen indictees to The Hague within one year, but at the same time undermined the goals of transitional justice and led to the socialization of war criminals in society. The consequence of the voluntary surrender strategy was that the indictees were seen as heroes by the public, which explains the weak popular support for the Tribunal. In the past decade, just 15 percent of Serbia's population expressed positive views of the Tribunal and the extradition of war crimes indictees.¹

The Serbian government extradited Milošević hoping to boost the country's reputation in the world, expecting that the trial would contribute to the individualization of guilt for war crimes. The authorities also hoped the trial would encourage the public to confront war crimes in Serbia, and further discredit the former regime and strengthen support for the new government. While the authorities were not ready to step forward and convey information about war crimes to the public, they expected the ICTY to do it for them. However, the trial of Milošević showed that the ICTY was not capable of carrying out this task, as Milošević's popularity paradoxically rose during the first weeks of the trial. Broadcasting of the trial only strengthened negative public attitudes towards the Tribunal and discredited the ICTY in the eyes of the liberal political elite.

Also, the trial spread fear among the Serbian authorities that the outcome could imply Serbia's responsibility for genocide. Milošević was indicted for the crimes committed in Croatia and Bosnia and Herzegovina only in the fall of 2001, following his extradition to The Hague. Part of the indictment regarding crimes in Bosnia charged Milošević

with genocide, causing great concern to the authorities in Belgrade, especially as Bosnia and Herzegovina had filed a lawsuit against the Federal Republic of Yugoslavia for genocide before the International Court of Justice (ICJ). Serbian politicians had expected Bosnia to give up the dispute after the fall of Milošević, but that did not happen. Had Milošević been pronounced guilty of genocide by the ICTY, Bosnia and Herzegovina would have had a better chance to win its case at the ICJ. Had that happened, Serbia would have been the first country ever to be convicted of genocide. In addition to paying costly reparations to Bosnia and Herzegovina, the potential conviction would have led to a complete collapse of Serbia's international legitimacy.

Fear of the accusations of genocide, although never voiced in public, in many ways influenced the attitude of the Serbian authorities to the Hague Tribunal. The state secretly provided assistance to Milošević's defense, which was quite apparent at the beginning of the trial. It was later disclosed that this assistance had been provided through the Military Commission for Cooperation with The Hague Tribunal, which was subsequently abolished in 2003. In addition, the authorities sought to withhold sensitive documents from public scrutiny, especially the minutes of the Supreme Defense Council. There were many debates and much controversy concerning the withholding of these documents and their potential impact on the outcome on the genocide dispute. I do not want to get into that debate. What I want to emphasize here, is that Milošević's trial fundamentally challenged the legitimacy of the state of Serbia and the ICTY thus alienated those Serbian politicians who were genuinely committed to justice and the process of dealing with the past. In that sense, the Hague Tribunal narrowed the space for truth-telling in Serbia.

Based on this experience, it can be concluded that future transitional justice initiatives will succeed only if their political consequences are fully understood. One of the main goals of transitional justice is to restore the legitimacy, credibility and trust in state institutions. If these initiatives have the opposite effect, they are doomed to fail. Therefore, the initiative for RECOM can only work with the support of state authorities in the region. This support will not be forthcoming if the authorities perceive the Commission as a threat to the stability and legitimacy of state institutions.

1 „Attitude toward war crimes, the Hague Tribunal and national war crimes judiciary“ („Stavovi prema ratnim zločinima, Haškom tribunalu i domaćem pravosuđu za ratne zločine“), the Belgrade Center for Human Rights, OSCE and Strategic Marketing Research, April 2009.

Jasna Dragović-Soso

My presentation today focuses on two questions: one is where we are in terms of transitional justice in the region and the second is what is still lacking. More specifically, we are here today primarily because of the RECOM initiative (despite the general nature of the Forum) and it would be useful to reflect on where RECOM might fit into broader transitional justice needs in the region.

My colleagues have already mentioned a number of important achievements so far and I agree with their assessment. I too would highlight the vast documentation that now exists on the wars of the 1990s, thanks to the ICTY and other institutions—not least the NGOs, which have been very active in gathering information. So, concerning the post-Yugoslav region, we really do have an unprecedented amount of information, much of which is in the public sphere.

A second point concerns timing. In parts of the region, over the last few years there have been a number of positive developments in the sphere of transitional justice—particularly in terms of apprehending war crimes fugitives and sending them to the ICTY, as well as in terms of renewing links and cooperation across state borders. There is a sense that the political climate is changing, which has a lot to do with the European aspirations of states in the region. While there are still many outstanding problems, it does appear that there is greater official willingness to deal with the war crimes issue—albeit, as I show in a recent article, in ways that are still defined primarily by political calculations and foreign policy objectives (notably EU accession). Despite the obvious shortcomings of recent official apologies and other transitional justice policies, I would nevertheless argue that there is perhaps more space now than

ever before for new initiatives concerning the recent past to emerge and capture the public's attention.

The third positive thing I would like to highlight is the role played by the NGO sector in particular, and it is good to see that you have remained extremely active on these issues. It is important to recognize the effort and energy that goes into transitional justice initiatives such as RECOM despite obvious obstacles—notably the increasing temporal distance from the events, public apathy, and official misgivings.

This said, there are, of course many remaining problems, some of which have been highlighted in the other sessions. I was particularly interested in the session of the victims' organizations this morning and the lack of adequate responses to these organizations' very precise, often practical questions and needs—from problems regarding financial compensation and property claims to the lack of sustained medical or psychological care, to issues relating to missing family members and relatives. The low level of interest and poor official responses to such questions are clearly an important gap in current transitional justice policies in the region. We have also heard about the continuing problems with judicial reform and the insufficient restructuring of institutions throughout the region. All these problems have already been highlighted in the many reports by both international bodies and local NGOs. However, an official and authoritative body—such as a regional truth commission—could provide one possible impetus for change in this area. At the very least, it could compile such existing analyses, provide a single authoritative assessment of these problems and indicate how they might be tackled.

A second problem that I have encountered in my work on the region concerns the low level of public debate about the past. There are many reasons for this, including the standpoints taken by the political leaderships (which, even when they implement policies relating to the past—such as the arrests of war crimes suspects or official apologies for war crimes—refrain from actually discussing what happened, who were the victims and the perpetrators of a particular crime, and what role was played by the former government and its security forces), as well as civil society actors (who at times adopt overly moralistic and abstract positions about questions of collective guilt and responsibility that do not resonate with the broader public). To my mind, what is sorely lacking is a factually informed, “down-to-earth” debate about what happened in the 1990s and a direct debunking of the still ubiquitous myths surrounding collective national victimhood, international conspiracies and historical injustices—all of which continue to remain the foundation of mistrust and hostility throughout the region. One of the most striking things to those of us who have followed the debates of the last twenty years is how little the positions and arguments adopted have evolved or changed over time.

This is clearly an area where RECOM—if it comes into being—could play an important, even crucial, role. Such

a body—provided it is genuinely authoritative and representative and with the right publicity and media attention (admittedly, these are big challenges)—could provide a starting point and a stimulus for debate. By using broadly understandable and acceptable methods and cross-checking information from a variety of sources, it could establish a set of crucial facts about the wars of the 1990s which would serve as a foundation for further debate about the region’s recent history. If public hearings of individual actors in the region’s recent events could be organized, their social effect could potentially be tremendous—especially when taking into account the lack of public trust in institutions that Eric Gordy mentioned. Such hearings would represent a proximate, direct confrontation of the public with individuals’ experiences, and—judging by their effects in other cases—they could stimulate a level of personal reckoning and emotional engagement that do not usually accompany the adoption of official documents and reports or judicial proceedings. Of course, RECOM cannot be all things to all people, and must not be viewed as a general panacea; it is important to keep expectations modest and realistic. However, these are, to my mind, some of the ways in which such an initiative could contribute to the development of a more engaged and more fruitful public debate about the past, both in the region and in individual national contexts.

Christian Axboe Nielsen

Every year I tell my students in Denmark that it would not be that difficult to fill an entire library with just books about the wars in the former Yugoslavia. It is amazing, really, how many books have been written on the subject, which is certainly one of the most important in modern world and European history. If there is one thing that almost all the authors of these books agree on, it is that nationalism was perhaps the most important cause of the disintegration of Yugoslavia and the armed conflict in the former country. I would not deny that thesis, and I still believe that it is valid to a certain extent. However, my analysis of police actions in the war in Bosnia and Herzegovina shows that the effect of nationalism is only one piece in a larger story. I worked for several years in the Office of the Prosecutor of the Hague Tribunal, where my job was to analyze the Ministry of Internal Affairs (MUP) of Republika Sprska, as well as the co-operation between the MUP of Republika Srpska and the MUP of Serbia. There, I had the opportunity to collect and study extensively the documentation of these two institutions. By studying these documents, I concluded that nationalism for much of the former leadership was only a means and a cover, not the goal. Hence, when it came to the police, I found that the officers of various nations and nationalities who were supposed to protect Yugoslavia and prevent it from falling apart, actually began demolishing the common state. We see a great example of this in the practices of the old Ministry of Internal Affairs of the Socialist Republic of Bosnia and Herzegovina, precisely in that crucial period between the first multi-party elections in November 1990 and the beginning of the war in April 1992. The then leadership of the ministry consisted of Bosniaks, Croats and Serbs, who, to a large extent, belonged

to the first generation born after World War II. Serving as ministers then were Alija Delimustafić, Momčilo Mandić, Branko Kvesić and others. They had all grown up in the ‘golden age’ of socialism and brotherhood and unity. Some worked to protect Yugoslavia through the state security or military security services, while some used the emergence of the free market in the 1980s in order to establish small trading empires, and some were doing both. That’s how Delimustafić, who worked in a military canteen (a job he lost because of charges of embezzlement), became one of the founders of a chain of retail outlets and finally the Minister of the Police.

Regardless of which party they belonged to – SDA, SDS or HDZ – they were all lobbying for ‘their’ people after the victory of these parties in the elections. In this way, professional cadres were slowly eradicated, while in their own parties they spread antagonism and fear of other parties. And when the war finally broke out, most of them went to ‘their’ police, the new MUPs of Serbia, Herzeg-Bosnia and, of course, Bosnia and Herzegovina. They talked to their own people about the impossibility of further co-existence, about existential threats, about the threat of a new genocide. Thus, Mićo Stanišić, the first Minister of Internal Affairs of Republika Srpska, at the very beginning of the war, talks about the terrible enemy of the Serbian people, the “Jamahiriya of the Ustasha.”

All this nicely fits into the standard narrative of nationalism and war. However, the general public of Bosnia is still unfamiliar with many other details. For example, there was a long telephone conversation at the beginning of May 1992 between Momčilo Mandić and Mićo Stanišić, who were at that time in Pale, with Bruno Stojić and Branko

Kvesić who were in Mostar. The conversation begins in an affectionate manner, because these are old friends talking: “How are you, brethren Ustashe? And how are you, brethren Chetniks?” True, all four are a bit annoyed when they talk about where exactly to draw that line between the Croatian and the Serbian parts of Bosnia and Herzegovina, but otherwise they all nicely agree about breaking up the joint MUP. We know that as much as the Serbs and Croats fought in Bosnia, they did not find it at all problematic to trade while people were dying. “What do you want? Coffee, oil, cigarettes, flour? Not a problem.” In the end there was no problem selling weapons and ammunition to ‘the enemy,’ as long as it was economically lucrative for some individuals. It is not by accident that Mandić fairly quickly disappeared from the Bosnia war. He went to Dedinje, to Villa *Bosanka*, where as head of the Bureau of the Republic he pulled the strings.

How much nationalism was a means rather than an end in the war is obvious from the actions of the most violent paramilitary groups that spread terror and death in Bosnia. Let me mention only two examples. It is well known that Arkan and his unit came to Bosnia where they committed terrible crimes against non-Serb civilian population. This is a text-book example where the state (in this case, the old federal State Security Service) knowingly engages a notorious criminal under the following motto: if you work for us, you will no longer be a criminal, but a patriot; everything you collect from the war, will be your ‘earnings.’ Thus, Arkan’s unit plundered under the official flag. The (in)famous Special Operations Unit emerged out of Arkan’s unit. We all know how the story ends: with the assassination of Prime Minister Đinđić and with Legija on the run, with a fake Croatian passport. The patriotic Special Operations Unit ended up as an international, and not in the least bit patriotic, network of assassins and drug traffickers.

Another example are the *Yellow Wasps* (*Žute Ose*), a paramilitary unit, very active in eastern Bosnia in the early months of the war in 1992. As true patriots, they participated in the ethnic cleansing of the Drina River area. Not only did they bring ‘volunteers’ from Serbia to the battlefield, they also brought trucks and lorries onto which they loaded the loot, which would then be transported back across the Drina. Their first target was the Muslim

population, but when the Muslims disappeared, the mask of nationalism fell, and the Wasps began to sting the Serbs too. Republika Srpska which had initially ‘invited’ them to Bosnia, found itself in a very uncomfortable situation, where it had to defend itself from these wasps, wolves, panthers and other dangerous animals, to which nationalism was only an excuse for war-profiteering and for getting rich. At the end of July 1992, the special police brigade of Republika Srpska had to keep Zvornik under siege in order to finally arrest the Yellow Wasps. Most of them were transferred to Serbia after a brief interrogation, as if nothing had happened.

Last year, I heard a press conference and, lo and behold, I had to agree with Ivica Dačić, which I had never done before in my life. But the gentleman clearly said, “when Tito’s Yugoslavia fell apart, the only brotherhood and unity that survived was the brotherhood and unity of the criminal groups, which continues to this day.” What clearly emerges from this story, that is, from the whole story I have studied, is that war crimes and organized crime are the two sides of the same coin in all republics of the former Yugoslavia. This link, as Dačić said, began at the end of the eighties, and seems to have persevered to this day in all the Ministries of Internal Affairs of the former Yugoslavia. For me, as a historian and analyst, the search for a more objective – not *the* objective, but a *more* objective – history of the disintegration of Yugoslavia and the wars in this region, implies a serious examination of the key links and synergies between the war and organized crime. But we all know very well that the future of these countries depends on the prosecution, not the study, of crimes and criminals. As representatives of some organizations said at the conference: all the perpetrators are to a large extent still among us. Sometimes they are in senior positions in the Ministry of Internal Affairs, the civil service and so on, and it is therefore crucial, in my view, to explore thoroughly the systemic and structural links between organized crime and war crimes from the beginning of the disintegration of Yugoslavia through to today. If we don’t work, as scholars and as prosecutors, on the further illumination of the leading crime structures in the former Yugoslavia, we will end up with an incomplete image of history, and also with significant problems that these societies will still have to face and in doing so we will have created enormous obstacles for the European future of this region.

Iavor Rangelov

This contribution will address two issues that emerge in relation to the ongoing civil society initiative for RECOM in the post-Yugoslav states and broader debates about restorative justice. The first issue concerns civil society in the region: What is the nature of civil society? What actors constitute civil society? Here the objective is to convey a sense of the diversity of civil society actors that might have a stake in restorative justice and the broader process of transitional justice in the Western Balkans. The second question that will be addressed briefly, involves the role of these actors in transitional justice: Should we encourage civil society in the region to engage with the issue of justice? In particular, what is the significance of a restorative justice process such as the one we begin to discern in the campaign for RECOM?

I want to suggest that civil society in the Western Balkans should be conceived as plural, fragmented and conflicted. There are several different ways in which one could talk about civil society and invoke both the pluralism and conflicts that define its nature. One could highlight, for example, the various functions that civil society actors tend to perform. A distinction can be drawn between NGOs engaged in service delivery that may even substitute for the state, on the one side, and those organisations that see themselves as advocates for particular causes and serve as counterweight to the state, on the other. Another way to speak about civil society is to emphasize the boundaries, or even fault lines, which mark the civil society terrain in the region. There are national boundaries and there are ethnic boundaries, which have been reinforced not only by the vicious wars in the nineties but also by the precarious peace that has emerged in their aftermath.

One could also talk about ideological divisions in civil society that have often become most obvious in debates about transitional justice. The issue of justice and accountability for the legacy of crime inherited from the nineties has served to highlight the intensity of political conflict over values and projects across the region. An example that many might remember is the rally in Split and the counter-demonstration in Zagreb in 2001. Civil society protest and mobilisation was triggered by the same event (the indictment of a Croatian general for war crimes by a court in Rijeka) but advanced conflicting sets of values and projects for the Croatian state. In Serbia, the ongoing conflict involving human rights defenders and members of the so-called 'patriotic bloc' speaks to the same theme of civil society as a contested and conflicted space.

What emerges from this analysis is a sense of the diversity of civil society actors in the Western Balkans: those who operate across the region and those bound by the state or the local community; the advocacy groups and the service providers; the urban NGOs and the rural victims associations; the human rights defenders and the war veterans; the media and the public intellectuals. If all of these actors constitute civil society in the region, then we should indeed understand civil society as an arena of pluralism as well as contestation.

This relates to the second question raised here: Should civil society be encouraged to engage with the issue of justice, and what role for RECOM in that process? Many observers have pointed that the issue of justice might lead to further polarization and conflict in post-Yugoslav societies. Indeed, my own analysis has conveyed the multiple fault lines within civil society itself. But I want to sug-

gest that the conflicting views about the past and about addressing that past could also be seen as presenting an opportunity. Civil society in the Western Balkans, like civil society everywhere, articulates in the public domain the various views and grievances of citizens that already exist in society, and provokes other voices to take part in the ensuing debate. This is the value of the RECOM initiative, and the promise of a possible regional commission: not to

suppress social conflict and disagreement but to allow it to be settled in the domain of politics, through public debate and deliberation, with non-violent means and respect for the rule of law. If the consultation process of the civil society initiative for RECOM is anything to judge by, the transformative potential of a process of restorative justice in the region might be even greater than what many of its protagonists expect.

PART III

Transitional Justice from the Media Perspective

RECOM and the Media Strategy

Tihomir Loza

In legal terms, international and local efforts over the past 15 years to prosecute those responsible for war crimes committed in the conflicts accompanying the breakup of Yugoslavia have been a success overall, if one requiring some elaborate qualification. Dozens of high-ranking officials have faced largely credible trials, with just two really important suspects, still evading justice. Yet when it comes to the impact of war crimes trials on political and social lives of the Western Balkan societies even generous watchers see only mixed results.

It is important to understand that most of the victims of war crimes don't feel they have received justice. Many of them live lives of poverty or social exclusion. They often complain about what they see as lenient sentencing and good living conditions of the convicts, many of whom are serving their sentences in relatively comfortable prisons in Western countries. When convicted war criminals are released early, victims feel betrayed.

Prosecutors at the Yugoslav war crimes tribunal in The Hague understandably focused more on the big beasts of the Balkan wars. Inevitably, these trials attracted much more attention than those of actual perpetrators. Meanwhile, most of the hundreds or possibly thousands of those who actually carried out atrocities are yet to face justice. Apart from reinforcing the notion that the trials are really about apportioning political blame, the focus on top officials has made it difficult for many victims to relate to the trials as relevant to their personal tragedies.

Few would argue that trials in The Hague and the region contributed much to reconciliation and dealing with the past in general. Many closed cases continue to generate fresh interethnic acrimony. To take a relatively minor

example, in January 2010, in what very much looked like a moment of political madness, Croatia's then outgoing president, Stjepan Mesić, reduced two sentences for crimes committed in the early 1990s, one given to a Serb guard at a detention center where Croatian soldiers were tortured, one to a Croat colonel infamous for taking part in some of the most gruesome crimes against Croatia's Serb community. The list of those dismayed, or even frightened, by Mesić's parting shot included Croatian veterans, former POWs in particular, members of Croatia's Serb minority, and the government of Serbia.

One must not here mistake reintegration with reconciliation. Despite new international and internal borders now dividing them, the ethnic groups of the former Yugoslavia have indeed re-established many pre-war links, in culture and trade in particular, often to levels matching those from before the war. They have achieved this despite failing to reconcile with one another. In fact, they fail to even try to reconcile their conflicting takes on the past, which, of course, does not prove that reconciliation is unnecessary, but does perhaps reveal an intrinsic durability of links among them.

Consider that the post-Yugoslav states have accepted the obligation to cooperate with the Hague tribunal and support local war crimes courts. But even the most liberal among them have been careful to support war crimes prosecutions, and sell that support to their respective electorates, almost exclusively under the premise that cooperation with The Hague is good for their countries' integration into the international community, the EU and NATO in particular. At the same time, most of them provided financial and legal assistance to suspects and their

families, not to speak of the heroes' welcome convicts often receive upon their release.

Released early from a Swedish prison in October 2009, convicted war criminal Biljana Plavšić, a former president of Republika Srpska, flew home in an aircraft sent by the entity government. A few days later, ordinary Serbs warmly greeted her in Banja Luka to the utter dismay of the Bosniak parts of the country. Nor are the war criminals forgotten, while behind bars. Children in some Bosnian Croat schools write Christmas letters to Croat convicts.

The failure of war crimes trials to contribute more to reconciliation of the region's conflicting views of the past cannot be explained away by simply pointing to the failure of the Hague tribunal and local courts to grasp the importance of strong outreach. Sure enough, in The Hague and the region alike, justice has often been done without being seen as having been done. Yet an often unappreciated structural obstacle to a greater readiness of former Yugoslavia's ethnic groups to face the past in a constructive way is perhaps a more important consideration in this regard.

The crimes highlighted here were not committed out of sheer hatred, though hatred was never in short supply, but in the name of political aims supported by millions. These were not just any political aims, but aspirations addressing fundamental issues concerning the existence of these ethnic groups, such as national sovereignty, borders, identity, constitutional position, or long-term security.

In and of themselves, these aspirations were not necessarily illegitimate. There was nothing illegitimate or unlawful in principle for the Bosnian Serbs to want a separate territory inside Bosnia or for the Croats of Croatia to want an independent Croatia or for Serbia to want to keep Kosovo within its border or for Kosovo Albanians to want independence. Some or many of the actions committed in the name and within the context of these aspirations were unlawful.

It is, of course, possible to argue that at least some of these aspirations were illegal in themselves as their fulfilment implied the use of force, but that is a complicated argument and one whose time has long passed.

Not least, because those political aspirations have largely survived the conflicts. They were fully or partly realized, and as such are considered as unquestioned historical achievements now set in constitutions, or where they were not fulfilled, they survived on a conceptual as well as legal level, such as in the case of Serbia vis-a-vis Kosovo. In

other words, the post-Yugoslav societies are founded – and internationally accepted as such – on aspirations, fulfilled or not, in whose name members of these societies committed terrible crimes.

When it comes to illuminating, by whatever means, the crimes committed in the name of these aspirations, what we are asking these societies to do is in effect to rise above themselves and divorce their political aspirations from the crimes committed in the name of those aspirations. This is intellectually and emotionally a very demanding proposition, not just for the masses, but often for liberal minorities too.

Fine, you can have your Republika Srpska, but, please, show us the mass graves that went into its making and some empathy for the families of the victims. How about rebuilding some of the hundreds of mosques destroyed in the name of Republika Srpska? Congratulations on achieving an independent Croatia! Well done! Would you mind handing over the generals who made it possible and please repair the houses they torched while chasing out those Serbs, who we are sure you'd be thrilled to see come back. This was never going to work smoothly, if at all.

For while criminal acts were certainly not the only building blocks used to construct the current political map of the region, a rarely spoken truth is that they were indeed building blocks. That's why attempts to highlight individual responsibility for war crimes, in court trials of former top officials in particular, are more often than not perceived by the community from which the accused come as assaults on the very foundations of that community. That's why you see otherwise perfectly decent, law-abiding citizens who would never dream of condoning "ordinary" crimes being unmoved by revelations of war crimes. In fact, people often seem able to view war crimes in abstract terms, as if they were committed in a reality of a different order from the one in which they live their everyday lives. In other words, while they may have served other worthy purposes, war crimes trials have not so far given satisfaction to the victims or contributed to reconciliation among the region's ethnic groups.

This is exactly why the RECOM initiative makes sense. But how likely is it that the governments in the region will sign up to this proposal in the near future? Perhaps not very likely, but not totally improbable either.

The architecture of basic political sentiments in the region would suggest that the prerequisite for this to happen is simultaneous support for the initiative from the govern-

ments in the two most important capitals, Belgrade and Zagreb. It is virtually inconceivable that Podgorica, Sarajevo, and Pristina would fail to follow such a move. And their support for the initiative without either Belgrade or Zagreb on board would not amount to very much.

While it is hard to picture any government in the region embracing the initiative as a priority and of its own will, with a bit of luck and some fine pressure Belgrade and Zagreb just may play ball in the end. Both countries have been quite lucky in choosing their leaders lately. Last summer, Croatia's now disgraced former Prime Minister Ivo Sanader thought he was appointing a mere proxy as his successor only to see Jadranka Kosor quickly develop into a most formidable player capable of transforming, not only the fortunes of the government and the ruling party, but the country's entire outlook. In giving a landslide victory in January to Ivo Josipović, Croatia gained a moderate, calm, and exceptionally brainy president. Meanwhile, now former Serbian President Boris Tadić was creating conditions for the gradual taking hold of a Serbia more decent than the one that has usually made headlines in the recent past. Even though this is not always easily discernable from developments that make daily news, there is little doubt that the entire mainstream political sentiment is slowly but surely moving toward moderation. Tadić and Josipović both said they view the development of the Serb-Croat relationship as their priority.

The region's media, however, may be a bigger obstacle for RECOM. In fact, it can be argued that, when it comes to dealing with the recent past, significant parts of political scenes, at least in Croatia and Serbia, are more enlightened than typical newsrooms in these countries. The media scenes are still, and will for some time be, largely dominated by editors whose mindsets were shaped during Yugoslavia's breakdown and owners or political protectors who have an interest in perpetuating the sentiments from the 1990s, albeit in modified forms. The work of ICTY and organizations such as the Humanitarian Law Center has gradually made the outright denial of crimes, typical of the late 1990s, implausible, so in recent years we have seen much less of it in the media. What we have mostly seen over the past decade in the majority of media outlets is something close to indifference to war crimes. Trials and other credible accounts are either reported in a half-hearted manner, as if editors just go through the motions of recording second-rate developments, or as infotainment, such as in the case of Šešelj or Milošević's

trials, Gotovina's hiding or indeed the return of Biljana Plavšić. And when war crimes committed by members of the ethnic group that the media outlet in question is addressing are acknowledged, as they are on occasion, the acknowledgment is regularly presented in a way that it leaves the cause in whose name that crime was committed intact. Which, of course, is explicable given the nature and outcome of Yugoslavia's demise, but is also rather unfortunate for efforts aimed at fostering reconciliation.

In fact, the most difficult part of the problem facing an initiative such as RECOM is that new elites controlling the media are just not much interested in war crimes or issues of the past, except when they can be utilized to quickly sensitize and homogenize their own camps, now no longer for conflict, but rather for continued loyalty to the camp at the ballot box, the news stand or the TV remote control. The takeover of the region's media by different interest groups is part of what we may want to call a state capture process, which, of course, is not unique to the former Yugoslavia. What is indeed different in the former Yugoslavia's case as compared to most of the rest of the former communist world is the existence of a huge baggage of war crimes and other gross breaches of human rights in recent past that still needs addressing. A media landscape conducive to any such effort is not in place. What's more, there are few reasons for optimism that this will soon change.

Except that the nature of the media in general is fast changing. What the elites formed in the 1990s control are traditional outlets that still dominate local media scenes. That dominance will no doubt continue for some time. Yet the advent of new media is bound to diversify those scenes as increasing numbers of consumers get their news from the Internet, where both production and dissemination are dramatically cheaper and will be getting cheaper still. What's more, a lot of cost-effective new media production is just as suitable for dissemination through traditional outlets, an element bound to increase pressure on them to open up their editorial approach as well. Which is also where a glimmer of hope for RECOM comes from.

Rather than waiting for now dominant dailies or national TV channels to take the issue seriously, RECOM should instead unashamedly establish a strong multimedia production of its own as well as web presence in the form of a powerful multimedia portal, whose content will then be mirrored throughout the Balkan cyberspace, putting in turn pressure on traditional outlets to take RECOM seriously.

The Role and the Duty of the Media in Post-Conflict Reconciliation

Florence Hartmann

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Transitional justice encompasses not only prosecutions, reparations, preventing impunity, and building the rule of law, but also extends to include truth-telling, restoring the dignity and preserving the memory of victims, building peace, creating respect for human rights and democracy. Together, they create the pre-condition for reconciliation. Tools for achieving these goals include, in addition to trials, truth commissions such as RECOM, and commemorations. But such a process will always remain incomplete if it does not instigate changes in the historical narrative of the groups involved in conflict. Education has long been absent from the transitional justice discourse. Neither the wider education system nor the teaching of history - both what is taught, and how - has rarely been considered by the institutions that transitional justice has aimed to reform.

Article 45 of the proposed RECOM Statute seeks a specific mandate to make recommendation on mechanisms that will help integrate the established facts into the educational systems of the Parties to the Agreement. But it will take time before RECOM is established, its Final Report issued and its recommendations implemented and textbooks or specific materials are produced and teachers receive adequate professional training.

For the time being, an entire post-war generation has already been educated with different and most often conflicting historical narratives, in a system in which history and education, and transitional justice have proceeded on two different tracks, and where none of the tribunals, international or domestic, have included in their mandate the production of didactic materials specifically aimed at education.

Everyone agrees that the representation of the past, matters in post-war societies. But so far these representations have been often, not to say always, left in the hands of those whose aim is to maintain divisions among the groups involved in the conflict, instead of responding to the intense need for peace, justice, democratization and intergroup reconciliation. They have been left in the hands of those in power, tainted by their association with earlier perpetrator regimes, or simply keen to promote reconciliation as a means of public amnesia.

The revision of history textbooks in the aftermath of massive human rights abuses tends to take a long time. But before transitional justice mechanisms and their findings impact on educational reform, there are other means that can help improve public knowledge of the recent violent past and contribute -along with civil society - to the initiation of changes to the historical narratives of the groups involved in the conflict. And I am thinking here, of the media.

The media can contribute that the facts established are known and that the accepted historical narratives do not whitewash acts that inflicted major suffering and do not exclude the experiences of the other groups, including the violence perpetrated by the states involved in an international conflict, as in the Former Yugoslavia.

Very few media or journalists in this region have taken up this task. Media have often played a great role in engineering violence and mass abuses through hate speech, de-humanization of the enemy and by promoting war policies. They

therefore have a special duty to 'repair' their wrongdoing of the past by promoting the need to reduce the number of lies that can be circulated unchallenged in public discourse, one of the most important goals of transitional justice mechanisms.

The media can indeed contribute by proposing counter-narratives to challenge wholesale stereotypes present among their audience, or by offering a narrative that can be endorsed by the different sides of the conflict and that does not obliterate distinct voices even if they remain, to some extent, contradictory.

Through the coverage of the war crimes trials or the activities of truth-telling processes, the media can help develop a new framework for public discourse, discussion and analysis, in order to engage new audiences and young members of the concerned societies. Especially when so far there has been no government support for vehicles to institutionalize court findings, before the ICTY or domestic courts, in schools or anywhere else.

They have a great role to play in serving the goal of enhancing critical thinking and empathy skills, the willingness to question simplistic models and the ability to disagree about interpretations of the past and their implications for current social issues, without resorting to violence and new inequities.

Press coverage of trials and testimonies as well as history textbooks are looked at by the victim groups and other audiences to gauge the intent of community that former

perpetrators of violence belonged to and the sincerity of their commitments not to repeat the past, as well as to assess whether a political and social group has truly changed, to become a reliable partner in the transition process.

But in most cases, the media coverage instead of contributing to the strengthening of the process of awareness, often use polarizing approaches and wording in the way they cover (or do not cover) the trials.

Live broadcasts of war crimes trials did not provide adequate commentators to help understand the context: Instead of making a break with the violent past, the coverage contributed often to perpetuate (by other means) the wartime stereotypes and hatred. The trials before the ICTY were aimed at proving the crime as well as preventing a nation from deluding itself and from building a new myth in which it figures exclusively as the victim but they failed due to the often unprofessional media coverage.

Journalist training is generally weak and the common approach includes often uncritical thinking and lack of independence toward the political and institutional structures. So this emphasis on the role of the media, as an actor in the transitional justice processes, may seem idealistic. But the effort needs to be seen as a form of reparation for the past role of the media in issuing hate speech and in contributing to the explosion of mass violence. They have therefore a duty to contribute to addressing the contested issues and to help bring history education and transitional justice on closer tracks.

PART IV

Transitional Justice from the ICTY Perspective

John Hocking

Last month, one day after the Tribunal's 18th birthday, Ratko Mladić was finally arrested and transferred to the Hague. His capture means that of the 161 accused, that the tribunal has indicted, now only one, Goran Hadžić remains at large. We have completed proceedings against 126 accused, we currently have 34 accused persons, either on trial or awaiting judgment.¹ Millions of pages from political and military archives have been made public by the Tribunal. Over six thousand witnesses have walked through our doors, and told their stories in our courtrooms and from these testimonies, numerous facts have been established about the crimes that were committed in the former Yugoslavia during the 1990s. Those found responsible have been punished. The Tribunal's track record has surpassed even the wildest expectations of its founders. The ICTY turned accountability from a dream into a reality. The highest echelons of power are now no longer untouchable. And this accountability is spreading throughout the world.

But the criminal trial process, however, is not the only way to confront human rights violations. A wide variety of transitional justice mechanisms provide tools for social transformation. Criminal justice is a critical element, but it is not the sole element. Nor should it be. Today's forum demonstrates exactly this.

The United Nations recognizes the importance of taking a broader perspective when dealing with post-conflict societies and it often takes the lead in this process. The former United Nations Secretary General [Kofi Annan] stated that justice, peace and democracy are not mutually exclusive objectives, but rather, mutually reinforcing objectives.

Approaches focusing only on one or another institution, or which ignore civil society or victims will not be effective. And this means that we have to approach these issues comprehensively. We have to pay attention to all of the inter-dependent institutions. We have to be sensitive to the needs of key groups and mindful of the need of complementarity between transitional justice mechanisms.

The tribunal is an international court sited far from the locations of the crimes, but its impact must not be limited to the courtrooms in The Hague, and our Outreach Programme is a key instrument of the ICTY's transitional justice work. Outreach has helped the Tribunal to realize this broader vision, as expressed by the Secretary General. Seeing justice being done is a necessary precondition for peace, but as our mandate draws to a close, the mission of the ICTY and in particular outreach becomes more important than ever. The remaining few years present our last opportunity to ensure that the evidence that we have gathered, the testimony of those 6,000 witnesses, the judgments that we have rendered, that this vast wealth of

¹ Figures were accurate at the time of the address. On 20 July 2011, Goran Hadžić, the Tribunal's last fugitive was arrested making this the only international court to secure the arrest of all its indictees. 35 accused persons are currently on trial or awaiting judgment."

objectively tested facts are made publicly available both to the national courts and to the citizens of the region, without ethnic or political slant.

It is for this very reason that as Registrar, I have made outreach a key strategic priority during our final years. It is the work we do now that will cement our legacy. What we do today will define our place in history.

The work of the Tribunal has always ultimately been about local ownership – it has been a guiding principle of the Tribunal's outreach efforts. And that's what makes it a good partnership with the RECOM initiative. RECOM opens a new chapter in the post-conflict transformation of the former Yugoslavia. It represents an alternative voice of those who want to tell their stories without constraints, and generate debate about the past atrocities and how to come to terms with them. It is an enterprise by the community for the community.

Over the past quarter century, many countries have grappled with how to deal with the tragic legacies of conflict. A number have created truth telling bodies which have been tailored to suit the needs of their particular society. RECOM follows this path. Experience shows that such mechanisms have the potential to transform a society – look at the experience in South Africa, Argentina, and Rwanda.

Confronting the past is not a simple process and in my view it requires two elements. One is the ability to understand and accept the past. The other is accountability for the past. Truth telling mechanisms and criminal prosecutions can contribute to both. Truth telling initiatives such as RECOM are more aimed towards the process of understanding the past. Criminal prosecution, the Tribunal, local courts – they play a dominant role in accounting for the past. Although their methods differ, ultimately they share the same fundamental goal, and both can and should complement each other and contribute to post-conflict recovery.

But they play a different role, they have different aims, and they have different procedures. I'll just highlight few of those differences.

The ICTY's cases focus on selected incidents where evidence is presented, based on what is most suitable to support the stringent demands of the legal process. During the course of the Tribunal's trials, vast amounts of evidence has been presented and tested through this rigorous legal process. All of this is aimed at establishing individual

responsibility beyond reasonable doubt. The evidence before the ICTY is not primarily intended to produce a comprehensive record of history. It cannot do this.

Truth commissions, such as RECOM, on the other hand have a different intent – to assemble a much more expansive record, including an analysis of the role of national institutions. This is something that cannot be done by the criminal justice system. Truth telling processes are not subject to the rigorous rules of admissibility of evidence or cross examination which are fundamental for criminal trials. This will bring benefits, but it will also bring limitations and it is very important to recognize and fully acknowledge this.

Both processes create a record that is victim-centered. The role of the victim in criminal trials at the ICTY is crucial. Without the witnesses and their testimony there would be no trials. Those thousands of brave witnesses who have come to testify at the Tribunal have enabled the voice of many of the victims to be heard and remembered. In this context, the criminal trials serve both the public and the victims' interest to be heard, and ultimately, punish those responsible.

Truth commissions place the victims even closer to the heart of the process. They aim for a full record of the sufferings. Truth telling is an essential component of individual and public healing. It happens in both contexts but under different conditions and with different aims.

Education also plays a critical role in preventing future oppressive behavior and is critical in reinforcing respect for the rule of law.

Both criminal courts, whether they be domestic courts or international courts and truth finding mechanisms function as vehicles for educating communities of past wrongdoings. The Tribunal does this through its court proceedings, through its judgments, and through its Outreach Programme. Similarly, RECOM has this educational aspect as one of its key goals – the prevention of the spreading of lies in public.

It is critical for these differences be spelled out so that expectations can be managed. The needs of victims can differ dramatically from individual to individual. Not all victims will be content with criminal punishment expressed by a term of imprisonment. Many may feel that their suffering and loss cannot be compensated by such means. These victims may find solace in the non-retributive mechanisms offered by truth telling bodies.

Transitional Justice from the ICTY Perspective

The region of the former Yugoslavia demands justice and reconciliation. No one institution or mechanism can alone satisfy this need. Criminal prosecutions, be it by the ICTY or domestic courts, and alternative truth telling mecha-

nisms - both have a key role to play. A sharp juxtaposition between the two mechanisms must be shunned. We must take a holistic approach to justice and look for synergies if we are to build a lasting peace.

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