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Serbia - ICTY trials and tribulations

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Serbia seems to be again upset and confused. On November 29, the International Criminal Tribunal for the former Yugoslavia (ICTY) acquitted the former commander of the Kosovo Liberation Army (KLA), Ramush Haradinaj, on all counts of the indictment. The court for a second time found no evidence of criminal activity, although Belgrade claims that this was only because several potential witnesses were eliminated. Less than two weeks earlier, the ICTY Appeals Chamber acquitted the Croat generals Ante Gotovina and Mladen Markač for war crimes against Serbs during Operation Storm in August 1995. The two Croatian generals were acquitted by a majority of one judge, a ruling that was criticised internationally by many experts and transitional justice activists.

The two verdicts have triggered emotional reactions in the countries involved. In Croatia and Kosovo the atmosphere was filled with jubilation and triumphalism. The heroes' welcome the acquitted generals received in the two countries added insult to Serb injury. And in both cases many public figures quickly generalised that the cases proved no misconduct whatsoever. In contrast, most Serbs felt angry and humiliated. The emotional reactions of all sides resembled much more the nineties than the more sober and conciliatory atmosphere that had started to spread in recent years.

In the case of Serbia, the two acquittals can potentially have negative consequences. In the political arena, the current situation may prove a fertile ground for parties that wish to build ethno-populist strategies that capitalize on people's frustration, rather than develop platforms for serious progress on the EU accession process. In society, the existing euroscepticism may be further strengthened to seriously challenge the pro-European orientation of the country. The bitter taste of defeat has the capacity to shake Serbia's internal political scene and also undermine the country's readiness to deliver satisfactory results in important issues such as regional cooperation, EU integration process and the dialogue with Kosovo.

Serbian reactions to the Gotovina and Markač ruling

The rulings met the uniform condemnation by virtually all political and civil society figures in Serbia. In response to the rulings the government reduced cooperation with the ICTY to technical level. President Tomislav Nikolić was yet more vocal calling for all Serbs to "be released from The Hague tribunal". He also stated that thanks to this verdict Croatia legitimately celebrates "the biggest crime in modern Europe after the Second World War", which is going to have a negative impact on the political stability of the region. Prime Minister Ivica Dačić said that the acquittal represents a "disgrace" for the international community and the UN, which confirms the claims of those who say that the ICTY is not a court and its only purpose is to accommodate a political agenda. Serbian Minister of Justice Nikola Selaković described the ICTY decision to release Gotovina and Markač as nothing but a "mockery of justice, victims, the entire Serbian nation and international criminal law." Rasim Ljajić, Chief of the National Council for Cooperation with the ICTY, said that following this verdict, the ICTY had lost its credibility, while Serbia's Chief Prosecutor for War Crimes Vladimir Vukčević called the verdict "scandalous".

The democratic opposition parties reacted in a similar manner. The mayor of Belgrade and the new president of the Democratic Party (DS) Dragan Đilas named the ICTY verdict as "probably one of the biggest disgraces in the

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history of mankind”. The UN General Assembly President and former Minister of Foreign Affairs in the DS-led government Vuk Jeremić scheduled for April 2013 a public debate on the role and performance of the Hague Tribunal and other ad hoc courts founded by the UN.

The nationalist opposition was the most vocal in its criticism calling for termination of any further cooperation with the ICTY. They also grabbed the opportunity to question the country’s pro-European orientation and the goal of EU accession negotiations. The Democratic Party of Serbia (DSS) published a proclamation entitled “Serbia under threat”, requesting from the government to withdraw from the EU integration process and declare political neutrality. The far right movement *Dveri* declared that the EU is no friend of Serbia and that the ICTY verdicts are “dictated by Brussels.”

Particularly interesting is the fact that the ICTY verdict has been condemned by Serbian civil society activists who rarely ever question the actions and decisions of the Hague tribunal and have defended the ICTY in the most difficult of times. Nataša Kandić, the executive director of the Humanitarian Law Centre, said that the verdict did not bring justice to the victims of Operation Storm, adding that the prosecution of those responsible for war crimes before the Croatian courts will now be seriously hampered. “Women in Black” activists from Belgrade also stated that the ICTY has undermined its credibility. The well-known historian Dubravka Stojanović was disappointed with the court’s “lack of seriousness”, while the leader of the Serbian Renewal Movement (SPO) Vuk Drašković complained that the verdict “legalized the ethnic cleansing of Serbs in Croatia.”

Many now expect that euroscepticism will now further rise in Serbia. In the past the ICTY issues influenced the Serbian attitudes towards the EU. More recently, negative or lukewarm attitudes towards Europe have increased as a result of the Kosovo problem. Citizens’ support for joining the EU has been constantly decreasing, reaching 47% in October 2012. At the same time, the number of citizens who are against EU accession increased by ten percentage points between from June to September, reaching 35%. After the furore over the ICTY rulings, and unless some really positive development happens soon, many analysts now think that the popularity of EU accession in the public opinion may hit unprecedented lows.

Serbia and Croatia: steps backward?

For a major part of the Croatian society, the acquittal of Gotovina and Markač was perceived as a confirmation of the innocence of the nation itself, and as a means of legitimating the war-time effort. Although many Croats do not deny the fact that crimes were committed, they see the ICTY ruling as proving that these crimes were only the unfortunate consequence of the four years of Serbian occupation, which Croatia had the legitimate right to end. The Croatian government, however, tried to distance itself from overly strained interpretations of the Tribunal’s verdict. Croatian Prime Minister Zoran Milanović called the acquittal an “important moment for the country”, thanking the two generals “for enduring so much for Croatia.” Although President Ivo Josipović stated that the ruling was evidence that “the struggle for the freedom of Croat defenders was just and honorable”, he also emphasized that the Croatian state still has a responsibility to prosecute all those responsible for crimes committed by Croatian forces during Operation Storm. The President said that it is unrealistic to expect Croatia and Serbia to see some aspects of history the same way, but that he believes that the time will come when the two countries will have similar views of the political dimension of the war.

Serbian officials seem to believe that the ICTY’s latest ruling will have negative consequences on the already fragile relations between Serbia and Croatia. President Tomislav Nikolić has used particularly harsh words, stating that it is obvious that Serbia cannot cooperate in a sincere and open manner with a country which celebrates its crimes. The first consequence has been noted only a day after the ICTY ruling, when Deputy PM for European Integration Suzana Grubješić cancelled her official visit to Croatia, stating that the subjects which were supposed to be discussed with the Croatian delegation are “minor” comparing to the current state of affairs between the two countries. The ICTY verdict can also determine the process before the International Court of Justice regarding the two countries’

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mutual genocide lawsuits. Current dynamics give a strong boost to the Croatian side, while at the same time the Serbian position is severely weakened, making a possible bilateral agreement to withdraw the claims look highly unlikely.

Even more worrisome is the fact that the ICTY decision is going to seriously hinder the reconciliation process between the two peoples. The growing triumphant nationalism in Croatia and the popular conviction that the ICTY judgment has freed the entire Croat nation in terms of the alleged crimes, can lead to a failure in punishing perpetrators as well as in providing conditions for refugee return. On the other side, the rising nationalism in Serbia can lead to more self-victimization and strengthening of theories advocating the existence of international conspiracies against Serbs. Nationalist and far right political options are certainly capable of using the current social frustration to gain extra popularity and attract more sympathizers.

Serbia and Kosovo: mixed messages and some optimism

Many now are trying to assess whether the latest ICTY rulings will have a negative impact on the ongoing EU-mediated dialogue between Belgrade and Priština and therefore on Serbia's efforts to meet the conditions necessary for opening the accession negotiations with the EU. One would expect the rise of euroscepticism in Serbia to put in danger the future of the dialogue. The almost certain inclusion of the acquitted former commander Haradinaj in the Kosovar government - in his capacity as a popular politician and leader of the party Alliance for the Future of Kosovo (AAK) - may strengthen the position of the rejectionists yet more. This outlook can be seen in President Tomislav Nikolić's refusal to attend the Regional Cooperation Summit in Montenegro due to the presence of Kosovo's president Atifete Jahjaga.

However, some believe that the situation is more optimistic than it appears at first sight. After all, Kosovar Prime Minister Hashim Thaci has been from the start of the dialogue Belgrade's interlocutor despite the fact that most Serbs consider him as responsible for war crimes. Similarly, most Kosovars associate Serbian Prime Minister Ivica Dačić with the regime of Slobodan Milošević, but this has not prevented Kosovo officials from participating in the dialogue with his government.

Indeed, only last week the progress achieved in the dialogue between Serbia and Kosovo reveal that optimism may not be misplaced. Under the auspices of Lady Ashton, Hashim Thaci and Ivica Dačić met in Brussels and reached an agreement on the implementation of the border crossing deal. Previously, in more than one occasion, the Serbian PM stressed the importance of continuing the dialogue for Serbia's EU perspective, stating that "if the two sides could fight, they can talk, too." But the fact that the recent agreement came only a few days after the acquittal of Haradinaj and the commotion that this produced flies in the face of those who think that the government would do something to jeopardise the achievement of the long-fought for goal of Serbia: the opening of accession negotiation with the EU. Dačić demonstrates his government is willing to push forward negotiations with Kosovo, no matter how unpleasant and unpopular this line of action is, as EU accession is the only viable solution for Serbia. At the same time, he's signalling to Europeans that he's perhaps the new voice of moderation in the Serbian political elites and a much more reliable and dependable political figure that the unpredictable Serbian President.

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