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Focus

**Prosecutor v. Biljana
Plavsic
Sentencing Judgement
Case No. IT-00-39&40/1
27 February 2003**

“The Trial Chamber accepts that acknowledgement and full disclosure of serious crimes are very important when establishing the truth in relation to such crimes. This, together with acceptance of responsibility for the committed wrongs, will promote reconciliation. In this respect, the Trial Chamber concludes that the guilty plea of Mrs Plavsic and her acknowledgement of responsibility, [...] should promote reconciliation in Bosnia and Herzegovina and the region as a whole.”

**Has the ICTY made the first steps towards restorative justice?
Plavsic’ sentence**

On 27 February 2003, the ICTY sentenced Biljana Plavsic to 11 years imprisonment. This decision garnered various kinds of reactions from the international community. While for some, the sentence was excessively lenient, for others it was too harsh. Few thought of it commensurate to the atrocious crimes she had committed during the armed conflict in Bosnia-Herzegovina and to her individual circumstances.

The list of crimes committed by Plavsic is long and seemingly never-ending. However as she decided to plead guilty (Plea Agreement signed on 30 September 2002) on the count of persecution as a crime against humanity (Count 3), the ICTY dropped the charges under the other counts, notably that of genocide, on 20 December 2002. In a document describing the factual basis establishing the crime described in Count 3 of the Indictment, Plavsic acknowledges the crimes that took place during the war in Bosnia as well as the extent of her involvement.

The case of Plavsic entered the broad daylight of the international arena not only because she was second to the Bosnian Serb leader Radovan Karadzic but also because she expressed remorse for the horrors committed against non-Serbs during the Bosnian war. For many, her attitude showed the path to national reconciliation in the Federation of Bosnia-Herzegovina, a country which is now divided into two autonomous entities, Bosnia-Herzegovina and the Republic of Srpska.

The ICTY had to agree on an appropriate sentence taking into account the gravity of the acts committed as well as the personal circumstances. The Court reiterated its position that the main principles in sentencing for international crimes are retribution and deterrence. To achieve both aims “the cardinal feature in sentencing is the gravity of the crime”. Having regard to the crimes, the Court, on numerous occasions, stressed that “undue lenience would be misplaced” because “these crimes did not happen to a nameless group but to individual men, women and children who were mistreated, raped, tortured and killed.”

Yet, the court gave Plavsic credit for pleading guilty together with expressing remorse and speaking in favour of reconciliation, for her voluntary surrender to the Court and for her post-conflict conduct (she tried to implement the Dayton agreement while she was President of the Republic of Srpska). Additionally, the Court took into account her 72 years of age but to a lesser extent than the defendant’s lawyer wished.

The reason for such upheavals in the international legal community lies within the lack of clear sentencing guidelines. The judges have to take into account the aggravating and the mitigating circumstances but it is entirely left to them to determine what those are and to which degree they must count in the sentence. It appears that Plavsic’s attitude had a substantial impact on the judges. The judgement itself shows how much the court paid heed to the possibility it had to create national reconciliation on the basis of a judicial decision and probably to convince other indictees to come forward. It may be argued that the Court, instead of clinging to the principle of retribution and deterrence, made a first step towards restorative justice.

Responsibility

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