

Bosnian Court Should Try Plavsic ^[1]

Author: [Edina Becirevic](#) ^[2]

Regional war crimes prosecutors must learn from Hague tribunal's mistakes.

Prisons in Sweden are famous for their enlightened attitude towards inmates - hardly surprising given that the country's human rights standards are the best in the world.

But Biljana Plavsic, a former Bosnian Serb leader and the first woman sentenced for war crimes at International Criminal Tribunal for the former Yugoslavia, ICTY, might disagree.

Ever since she was transferred from The Hague to the Hinseberg Prison for Women, Sweden's only national prison for females, her letters have been full of complaints, some quite bizarre - air-conditioning too strong, a birthday cake presented to her by wardens not big enough.

In January 2007, Plavsic asked the Swedish government for an amnesty. Although that request was declined, she did not give up. Just two weeks ago, media in Bosnia and in Serbia reported that she had tried again. The tribunal and the Swedish government are yet to respond.

The Plavsic case should serve as a lesson for future plea agreements at the war crimes chamber of the Bosnian state court. Like the tribunal, this has no mechanisms for punishing those war criminals who admit their guilt and then, after receiving minor sentences, protest their innocence.

Following her plea agreement with Hague prosecutors in 2002, Plavsic accepted partial responsibility for war crimes committed against non-Serbs in Bosnia during the 1992-95 war, including one count of persecutions on political, racial and religious grounds.

She made a formal apology and was subsequently sentenced to only 11 years in prison in 2003. Crucially, prosecutors dropped genocide charges against her.

While Plavsic pleaded guilty and showed repentance at her trial, her subsequent protestations of innocence and requests for amnesty tell a very different story.

In her recently published memoirs, "Hunt: Me and War Criminals", former Hague chief prosecutor Carla Del Ponte said Plavsic claimed to be innocent to tribunal prosecutors after she was sentenced.

Shortly after her conviction, Plavsic began again to expound her racial theories of Serb superiority. She said her repentance for her actions was false - a show to deceive the Hague prosecutors and judges, as well as the public in the former Yugoslavia.

Indeed, in her book, Del Ponte admits that she should never have relied on the former politician's honesty.

Unfortunately, there is nothing the tribunal can do following Plavsic's change of heart.

A close examination of the chain of events that led to the deal between Hague prosecutors and Plavsic could be instructive for the Bosnian court and help it avoid making the same mistakes.

As part of Plavsic's plea deal, she laid the blame for "devising and executing the objective of ethnic separation by force" of non-Serbs from Bosnia on the late former Yugoslav president Slobodan Milosevic, and on war crimes fugitives ex-Bosnian Serb leader Radovan Karadzic and his army chief Ratko Mladic.

She, on the other hand, only "supported and endorsed" the objective.

In a statement, Plavsic admitted to the court that she was repeatedly told about crimes against non-Serbs, yet she refused to accept they happened.

"Our leadership, of which I was a necessary part, led an effort which victimised countless innocent people," she admitted.

She blamed her behaviour during the conflict on an obsession with not letting the Serbs suffer as they had during the Second World War.

Even though the media reported her plea favourably, emphasising the positive role her admission of guilt could play in the reconciliation process, there were some who doubted her honesty. Her apology was certainly too little, too late for Bosniak victims' societies.

The sceptics were proven right. Her later claims of innocence and requests for amnesty show Plavsic has not come to terms with what she did, nor accepted her punishment.

So where did the Hague prosecutors go wrong?

The Plavsic plea agreement was a clumsy combination of retributive and restorative justice. The retributive part, or the punishment, was reduced by the restorative part - her apology and the potential for reconciliation this could bring.

Theoreticians believe there are three steps necessary for restorative justice to be valid.

The first is for the criminal to understand the consequences of their actions and feel truly guilty; secondly, show a desire to repair the damage done; and, thirdly, accept punishment willingly.

In Plavsic's case, the first condition appeared to be met when she made her apology in the ICTY courtroom. However, this principle was violated when prosecutors agreed to drop the genocide charges against the defendant.

The natural second step would be for her to call for multiculturalism across Bosnia. The Bosnian Serb entity of Republika Srpska, RS, emerged partly as a result of Plavsic's support for ethnic separatism and her political successors continue to advocate the same thing, as well as secession from Bosnia.

Therefore, if Plavsic wanted to redeem herself, it would be reasonable to expect that while she was in prison she should send messages calling for peace and multiculturalism and warning about the dangers of nationalism – which she has not done.

Finally, she should serve her 11-year sentence with dignity and without complaints. This is not happening.

If Plavsic did not accept responsibility and did not truly repent, why then did she bother to apologise at all? Some analysts see part of the answer in the wording of her apology.

“I came for two reasons: to confront these charges and to spare my people, for it was clear that they would pay the price of any refusal to come,” said Plavsic at the time.

Some believe this implied that she wanted to avoid the sanctions the international community was threatening to impose on RS if it refused to cooperate with the tribunal.

A greater insight into Plavsic's psyche can be found in “I Testify”, or Svedocim, the lengthy volume Plavsic wrote in prison and published in 2005.

The book is full of extreme nationalist messages in line with her wartime rhetoric, and its content flies in face of her agreement with Hague prosecutors.

In one of her most infamous statements, published in 1993 by the Belgrade weekly magazine Svet, she said Bosnian Muslims were “genetically spoiled material” which justified their destruction.

In I Testify, Plavsic speaks about sacrificing herself for the Serbian people, suggesting that she only pleaded guilty to save the Serb people from the burden of collective guilt.

It is curious that nobody from the ICTY has ever commented on her book – despite the fact that its contents contradict the statement she made following her plea agreement, in which she gave up her right to claim innocence.

Del Ponte's memoirs reveal more of what happened during negotiations for Plavsic's plea agreement.

At the time, she said, her office was surprised to hear from the accused's lawyers that she was willing to plead guilty – but not to the count of genocide. Now it seems clear that Del Ponte accepted this deal too readily.

In her book, Del Ponte writes that although Plavsic promised to testify against her former co-accused Bosnian Serb politician Momcilo Krajisnik, she changed her mind after she moved from the Hague detention unit to the Swedish prison.

“Dressed in a stiff tweed skirt, like a proper British lady, [Plavsic] informed me that she was a doctor of biology and proceeded to describe the superiority of the Serbian people. Her nonsense was nauseating, and I brought the meeting to an end. I wanted to seek life imprisonment against her,” said Del Ponte.

Now it seems the former prosecutor should have trusted her first impressions.

While Plavsic promised verbally to testify against other suspects, she refused to put it in writing.

“I had felt that my personal contact with Plavsic, despite her racial-superiority claptrap, had been so cordial that I could trust her,” said Del Ponte, admitting this was an error.

In her book, Del Ponte describes trying to rectify the situation.

“We must advise the Trial Chamber of what Mrs Plavsic is now saying,” Del Ponte told her team, at some point following Plavsic’s volte face. “Let’s present a motion to the court to put Biljana Plavsic on trial.”

In the former prosecutor’s memoirs, she recalls sending a motion to the tribunal president – although does not say when this took place. However, he apparently returned it, saying he lacked jurisdiction.

She then sent the same motion to the trial chamber that accepted the plea.

“I still await their response,” she wrote.

As the court’s deadline of 2010 draws closers, Del Ponte continues to wait for an answer.

She might as well be waiting for Godot.

However, there might be a job here for the Bosnian state court. While it is not possible to charge someone for the same crimes twice, the fact that the genocide charges against Plavsic were dropped could open the door for a new indictment against her.

If the judges in The Hague were to find that she violated her plea agreement, there is a real possibility for re-opening her genocide case at the Bosnian state court.

It seems increasingly unlikely that Mladic or Karadzic are ever going to see the inside of an ICTY courtroom. Since Plavsic was the highest-ranking Bosnian Serb politician to stand trial at The Hague, it

would be a right thing for the justice process to try her for all crimes she was suspected of having committed.

It would replace the ICTY's ill-advised restorative principle with the proper retributive justice Plavsic deserves.

Edina Becirevic is senior lecturer at the University of Sarajevo's Faculty of Criminal Justice Sciences.

Location: Balkans ^[3]

Serbia ^[4]

Bosnia and Herzegovina

^[5]

Topic: Comment ^[6]

Source URL: <https://iwpr.net/global-voices/bosnian-court-should-try-plavsic>

Links

[1] <https://iwpr.net/global-voices/bosnian-court-should-try-plavsic>

[2] <https://iwpr.net/people/edinabecirevic>

[3] <https://iwpr.net/global/balkans>

[4] <https://iwpr.net/global/serbia>

[5] <https://iwpr.net/global/bosnia-and-herzegovina>

[6] <https://iwpr.net/voices/comment>