

Is Croatia Joy at ICJ Genocide Case Decision Premature?

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Observers say country's legal team could face difficulties in presenting its case.

As Croatian politicians celebrate the recent International Court of Justice, ICJ, decision to let their country present its genocide case against Serbia, experts have warned that there are serious challenges ahead.

Ivan Simonovic, who is both Croatia's justice minister and its representative at the ICJ, told jubilant Croatians that the court's decision, though significant, was just the beginning of a long legal battle against Serbia.

"We should keep in mind that this is only the first round. In the second round, we will have to present our case to the ICJ judges and hear their verdict," he said.

Croatia's president Stjepan Mesic heard the news that the court had agreed to hear the case in the eastern town of Vukovar, where he was commemorating the 17th anniversary of the fall of this town to Serb forces, who then massacred more than 200 Croatian soldiers and civilians at the Ovcaras farm.

"It is really symbolic that we received the news here in Vukovar, while we were remembering the victims from Ovcaras, the destruction of the town of Vukovar and its inhabitants, while we were remembering the heroism of those who defended Vukovar," he told journalists.

"This is symbolism, but it is also justice."

Croatia launched the lawsuit against Belgrade in 1999, arguing that a campaign of ethnic cleansing during the four-year war in Croatia yielded "a form of genocide which resulted in large numbers of Croatian citizens being displaced, killed, tortured, or illegally detained, as well as extensive property destruction".

According to Zagreb, the campaign which claimed more than 10,000 lives was directly controlled from Belgrade. About one third of the victims were civilians - including women, children and the elderly.

At a preliminary hearing held at the ICJ in May this year, Serbia argued that the court had no jurisdiction to hear the case. It also said that crimes committed in Croatia during its 1991-95 war did not amount to genocide.

But on November 18, the ICJ passed a final and binding decision, which is not subject to appeal, that it does have authority to hear the case.

Croatia is the second country to bring a genocide case against Serbia at the ICJ.

Bosnia filed its own genocide lawsuit in 1993. However, in February 2007, ICJ judges acquitted Serbia of direct responsibility for the 1995 Srebrenica genocide, finding it guilty only of failing to prevent and punish

the perpetrators of this crime.

Sakib Softic, Bosnia's own representative at the court, said that much of the evidence presented during his country's case could prove useful to Croatia.

"During Bosnia's genocide case against Serbia, a great deal of evidence was presented that Serbia was directly involved in the wars in Bosnia and Croatia. These two countries were one battlefield, in which Serb forces committed crimes banned by the Genocide Convention," he said.

"All the evidence Bosnia used is available to Croatia, so the Croatian team will not have to gather it all over again."

However, the country's legal team may face similar problems to those experienced by Bosnia in gathering other key evidence.

Bosnia's lawyers were unable to access transcripts from meetings of Serbia's Supreme Defence Council, SDC, which they believed were crucial to proving the case.

Although minutes from these meetings are widely believed to contain vital information about Belgrade's involvement in the wars in Bosnia and Croatia, their most relevant parts have been granted confidential status by the judges of the International Criminal Tribunal for the former Yugoslavia, ICTY.

While the Bosnian team asked the ICJ judges to demand these documents from the ICTY, they refused to do so, saying that they already had enough evidence to make a judgement.

ICJ judges' reluctance to get hold of these documents could undermine Croatia's case, said Kasim Trnka, who represented Bosnia at the ICJ.

"Unfortunately, the Bosnian team did not have the protected SDC transcripts at its disposal, which were the most important argument in proving [genocidal] intent. If Croatia, learning from our experience, insists that the ICJ issues an order for those documents to be submitted as evidence, it will definitely have an advantage over Bosnia," he said.

Serbian ambassador to The Netherlands, Radoslav Stojanovic, who led a legal team representing Serbia in Bosnia's genocide lawsuit against his country, said he believes Croatia has prepared its case better than Bosnia, yet he still doubts that Croatia will win.

"There was no genocide [committed against the non-Serb population] in Croatia [during the Nineties conflict] and therefore the Croatian team will not be able to prove otherwise at the ICJ," he said.

"If the proof existed that Serb authorities in the Republic of Serb Krajina (an internationally unrecognised Serb entity in Croatia) committed genocide and that they were practically Belgrade's extended hand, then one could argue that Serbia might be responsible for this crime," said Stojanovic.

However, he pointed that that former leaders of the self-declared Serb republic who have been indicted at the ICTY have not been indicted with genocide.

“None of the Serb Krajina leaders indicted by the ICTY have been charged with or convicted of genocide. So if the Serb Krajina authorities – even if they were linked with Belgrade – were not convicted of genocide, then how can the Serbian state be responsible for something that did not happen?” asked Stojanovic.

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