

National Consultation with Legal Professionals in Serbia on the Initiative for RECOM

Belgrade, Serbia
April 23, 2010

A national consultation with legal professionals in Serbia on the Initiative for RECOM was organized by the Humanitarian Law Center on April 23, 2010. The consultation was held in the City of Belgrade Town Hall and was attended by 32 legal professionals, mostly attorneys, several judges (Justice Snežana Nikolić – Garotić from the Belgrade High Court, Justice Miroslav Alimpić from the High Court of Novi Sad, and Dragan Jančićjević, President of the High Court in Jagodina), personnel of the War Crimes Department of the Belgrade High Court, Mioljub Vitorović from the Office of the War Crimes Prosecutor of the Republic of Serbia, and representatives of the Organization for Security and Cooperation in Europe (OSCE) and the Council of Europe (CoE) in Serbia. Nataša Kandić from the Humanitarian Law Center in Serbia gave an introductory speech and moderated the part of the discussion titled “The Mandate, the Goals, and the Relationship between RECOM and War Crimes Trials.” Dragan Popović from the Youth Initiative for Human Rights led the “Why RECOM” part of the discussion, and Jasminka Hasanbegović, law professor at Belgrade University’s Faculty of Law, discussed issues regarding the establishing of RECOM and other qualifying legal facts.

Suggestions and Opinions of Participants:

RECOM will prevent historical revisionism and relativization of crimes

So, this commission and its findings can offer a clear picture about what happened in the past. It can provide an accurate list of victims, but not just any list and any number. It can provide a register of victims with a description of the circumstances under which those victims lost their lives. That will at the same time prevent what is going on today in all post-Yugoslav republics – historical revisionism on the one hand, and on the other hand, relativization of the crimes that some groups in that specific country don’t like, or the crimes for which they don’t want to accept responsibility for. (Dragan Popović, Youth Initiative for Human Rights, National Consultation with Law Professionals in Serbia on the Initiative for RECOM, Belgrade, Serbia, April 23, 2010).

RECOM is an opportunity for all people from the territory of the former Yugoslavia to hear the voice of the victims.

A commission like this offers something that victims value the most – the existence of a public platform for victims of war crimes and serious human rights abuses. They will finally have an opportunity to speak to the public through a body like this, which will enable their word to be heard. They want all people living on the territory of the former Yugoslavia to learn about their suffering. (Dragan Popović, Youth Initiative for Human Rights, National Consultation with Law Professionals in Serbia on the Initiative for RECOM, Belgrade, Serbia, April 23, 2010).

RECOM will not attempt to establish one truth. Its goal is to help create a substantial documentation base which will be used by prosecutors, historians, and all those who want to know the truth.

RECOM will not be attempting to be the one to establish that one truth, the only possible and official truth. Something like that is definitely not possible, but what RECOM can and will do is to help create a substantial documentation base which will be used by all those interested in learning the truth about the recent conflict – prosecutors, historians, and all those who want to know the truth. That's something we owe the victims as fellow human beings and fellow citizens, especially those of us dealing with it professionally and in legal terms. (Jasminka Hasanbegović, Faculty of Law, Belgrade, Serbia, National Consultation with Law Professionals in Serbia on the Initiative for RECOM, Belgrade, Serbia, April 23, 2010).

Documents should be stored in several locations.

I appeal to you to make sure that the documents acquired by RECOM are not only stored on the territory of post-Yugoslav countries but elsewhere, too. (Jasminka Hasanbegović, Faculty of Law, Belgrade, Serbia, National Consultation with Law Professionals in Serbia on the Initiative for RECOM, Belgrade, Serbia, April 23, 2010).

It enables not only victims, but all those who directly participated in the war to have a platform to speak, so that the truth from the other side can be heard, too.

(...) the goal of this documentation process is to allow everyone to speak, and not only the victims, but all of those who directly participated in the war, so that they can tell their stories and see the subjective, individual truth from the other side. I think that we cannot understand the whole concept if we only focus on one narrow concept of the victim, and consequently, of all those events. (Jasminka Hasanbegović, Faculty of Law, Belgrade, Serbia, National Consultation with Law Professionals in Serbia on the Initiative for RECOM, Belgrade, Serbia, April 23, 2010).

The most important contribution of RECOM is its documentary function.

The most significant contribution of RECOM, in terms of civilization, history, law, civic, and political activity is first of all in its documentary function. It will enable everyone to speak and it will also provide storage locations for existing documentation and documentation obtained during the process. Then legal experts will be able to analyse the validity of documents for the purpose of criminal prosecution; historians will analyse the relevance of these documents in establishing historical truths; sociologists and psychologists will study various pathologies or other social or individual deviations for their research. And, naturally, the public will also have an opportunity to find out those truths. (Jasminka Hasanbegović, Faculty of Law, Belgrade, Serbia, National Consultation with Law Professionals in Serbia on the Initiative for RECOM, Belgrade, Serbia, April 23, 2010).

If the job is not done properly now, our children will be dealing with the same difficulties we had to face.

But if that job is not done now, future generations will be dealing with the same problems we had to face with respect to the Balkan wars, in spite of fascinating documentation which nobody probably knows about because we have been taught to be fed one official historical truth. (Jasminka Hasanbegović, Faculty of Law, Belgrade, Serbia, National Consultation with Law Professionals in Serbia on the Initiative for RECOM, Belgrade, Serbia, April 23, 2010).

Reconciliation cannot happen without the participation of religious communities.

All right, if reconciliation is our goal, we must understand that it cannot happen if religious communities are not included into the process. (Toma Fila, attorney, Belgrade, Serbia, National Consultation with Law Professionals in Serbia on the Initiative for RECOM, Belgrade, Serbia, April 23, 2010).

Religious communities should take part in the election of RECOM members.

(...) religious communities should by all means be included in the election of RECOM members. (Vesna Petrović, Belgrade Center for Human Rights, Serbia, National Consultation with Law Professionals in Serbia on the Initiative for RECOM, Belgrade, Serbia, April 23, 2010).

Option A is a better proposal for the election of RECOM members – it prevents political calculations and deals.

In my opinion, Option A is essentially better, especially because, and that's something I truly care about, it helps curb any political calculations and deals between member states. What I don't like about Option B is that if every state does it individually, then candidates may not be accepted or simply they may not be perceived as the right individuals for such a commission. The regional approach in my opinion guarantees a more or less unified methodology in dealing with the issue in the entire region. (Silvija Panović-Đurić, the Council of Europe, Belgrade, Serbia, National Consultation with Law Professionals in Serbia on the Initiative for RECOM, Belgrade, Serbia, April 23, 2010).

Representatives of the European Union and the Council of Europe may only have an advisory role in RECOM.

We talked about whether representatives of the European Union and the Council of Europe, maybe even representatives of the United Nations should be included in this whole process – well, my opinion is – YES, but only with an advisory role. So, maybe an option should be in the Statute to separate these two functions. Sometimes people who come from a different environment are less emotionally involved and their approach is more objective which increases their advisory capacity. (Silvija Panović-Đurić, the Council of Europe, Belgrade, Serbia, National Consultation with Law Professionals in Serbia on the Initiative for RECOM, Belgrade, Serbia, April 23, 2010).

RECOM should not suggest amnesty for perpetrators who repent. Extenuating circumstances should only be considered for perpetrators who provide relevant facts.

(...) I don't think that the commission should propose amnesty to a person who repents. I am sorry, but for me personally that is unacceptable (...) Therefore, I support the previous suggestion, that if a person provides information relevant for establishing the truth, it should be considered as extenuating circumstances. (Jasminka Hasanbegović, Faculty of Law, Belgrade, Serbia, National Consultation with Law Professionals in Serbia on the Initiative for RECOM, Belgrade, Serbia, April 23, 2010).

The goal of RECOM should be dealing with the past through public debates, regional cooperation, and processing of war crimes perpetrators...

(...) reconciliation between the nations is a goal that is very difficult to achieve. Therefore, I think that a more realistic goal should have been chosen - dealing with the past through public debates, regional cooperation, and criminal prosecution of war crimes perpetrators - not only

before war crimes trial chambers, but also before courts which are specifically in charge for issues of organized crime. (Aleksandar Resanović, Office of the Commissioner for Information of Public Importance and Personal Data Protection, Belgrade, Serbia, National Consultation with Law Professionals in Serbia on the Initiative for RECOM, Belgrade, Serbia, April 23, 2010).

Now that the Resolution on Srebrenica was adopted, anyone trying to repudiate the crime in Srebrenica should be criminally prosecuted. (Rajko Đurić, Senior Advisor, Office of the Ombudsman of the Republic of Serbia, National Consultation with Law Professionals in Serbia on the Initiative for RECOM, Belgrade, Serbia, April 23, 2010).

RECOM should make recommendations for the improvement of reparations programs for victims of war crimes.

I believe that one very important feature this commission should have is making recommendations for the purpose of improving reparation programs in all countries in the region, especially in our country. That's why I believe that the commission should have an educational character regarding this issue, and the whole concept of reparations should be brought closer to the general public, to the judiciary, and to governmental institutions. It is important that they understand that compensation, simple financial compensation, is not the same as reparations. Reparation is a much wider concept and it influences in a more comprehensive way both the public and the victims of war crimes and serious human rights violations in general. (Tanja Drobnjak, attorney, Belgrade, Serbia, National Consultation with Law Professionals in Serbia on the Initiative for RECOM, Belgrade, Serbia, April 23, 2010).

The capacity of the courts is limited, which makes the Initiative for RECOM a welcome addition to the dealing with the past process.

In my opinion, the relationship between RECOM and the judiciary has two aspects. One is definitely the old, familiar aspect that the courts, including the Tribunal at The Hague, can contribute a great deal in establishing the truth about victims and perpetrators but that an initiative like this can offer a lot wider data base and help courts in their work. The capacity of the courts is definitely limited. (Miroslav Alimpić, judge, High Court of Novi Sad, Serbia, National Consultation with Law Professionals in Serbia on the Initiative for RECOM, Belgrade, Serbia, April 23, 2010).

RECOM can help offices of prosecutors find additional new evidence.

In my opinion this initiative, this kind of evidence collection through public testimonies of victims, is in a way a form of putting pressure on the courts and offices of prosecutors. I don't mean any disrespect; of course, I think that it is a good idea to influence the courts and offices of the prosecutor to understand where more evidence can be found for the purpose of initiating criminal proceedings, because they have so many times been in a situation where they were unable to find relevant and reliable evidence. (Miroslav Alimpić, judge, High Court of Novi Sad, Serbia, National Consultation with Law Professionals in Serbia on the Initiative for RECOM, Belgrade, Serbia, April 23, 2010).

Showing respect for other people and their truth is a precondition for dealing with the past and for reconciliation.

Showing respect for other people and their truth is an important step we have to learn to make. In reality, we are very far from that first step, and without it we can't even begin the dealing with the past process or expect reconciliation between the nations to happen. When I say other people and other truth, I mean in terms of personalities, views, in terms of participants, in terms of our qualifications of that participation, and in the end, if you want, in terms of someone else's truth. (Jasminka Hasanbegović, Faculty of Law, Belgrade, Serbia, National Consultation with Law Professionals in Serbia on the Initiative for RECOM, Belgrade, Serbia, April 23, 2010).

The time period RECOM will be investigating must be precisely defined, and it must be stipulated how long RECOM will take to finish the job.

When we speak about the time mandate of the commission, it must be clearly defined how long the commission will have to finish the job, because it will largely determine what time period RECOM will be investigating. If we go as far back as 1943, I think that is too long a period for RECOM to investigate and too many events to analyse and I am afraid it may divert the attention of the public and the media from the main goal of the commission – establishing the facts and the events that occurred on the territory of the former Yugoslavia in the recent past. We have to decide, it's either one or the other, because the commission cannot do it all. (Marko Karadžić, Ministry of Human and Minority Rights of the Republic of Serbia, National Consultation with Law Professionals in Serbia on the Initiative for RECOM, Belgrade, Serbia, April 23, 2010).

The commission should be authorized to file criminal complaints.

And the commission should also be authorized to file criminal complaints. (Marko Karadžić, Ministry of Human and Minority Rights of the Republic of Serbia, National Consultation with Law Professionals in Serbia on the Initiative for RECOM, Belgrade, Serbia, April 23, 2010).

The commission should insist on preserving the memory of the victims instead of trying to achieve reconciliation.

The essence of the work of the commission is to make sure victims are not forgotten. The commission should not insist on reconciliation because it is a personal, individual act, a relation an individual has with an event. It is the victim's own decision to reconcile or not, to forgive or not. For that reason I am convinced that the commission should insist on ways to preserve the memory of the victims and events instead of trying to achieve reconciliation. (Silvija Panović-Đurić, the Council of Europe, Belgrade, Serbia, National Consultation with Law Professionals in Serbia on the Initiative for RECOM, Belgrade, Serbia, April 23, 2010).

(...) if the judiciary in the countries in the region had done its work as they should have, there wouldn't be a need to create RECOM in the first place. But that was not the case. Criminals are still out of the reach of the courts; they haven't been processed or punished. That's why we need RECOM. (Velimir Lipovan, attorney, Kikinda, Serbia, National Consultation with Law Professionals in Serbia on the Initiative for RECOM, Belgrade, Serbia, April 23, 2010).

Victims who testify, as well as RECOM members, must be provided physical protection.

We have seen that even a powerful institution as the ICTY was not able to finalize a trial of, let's say, Ramuš Haradinaj, because the witnesses in the case were victims of exceedingly intense pressure. So what we need to discuss here is the safety of not only the members of the commission, but of the people who come to testify, too. (Velimir Lipovan, attorney, Kikinda,

Serbia, National Consultation with Law Professionals in Serbia on the Initiative for RECOM, Belgrade, Serbia, April 23, 2010).

It is imperative to ensure that after the end of RECOM's mandate there is a body which will exert pressure on institutions to abide by RECOM's recommendations.

I am not sure it is going to be quite possible to stipulate that RECOM is mandated to give binding recommendations, but it is up to the creators of RECOM, but also up to the civil society, professional associations, associations of legal professionals and victims' associations, too, to think about creating a body which will after the end of RECOM's mandate monitor the implementation of RECOM's recommendations, exert pressure on institutions, or at least advocate the implementation of RECOM's recommendations. (Marijana Toma, Impunity Watch, Belgrade, Serbia, National Consultation with Law Professionals in Serbia on the Initiative for RECOM, Belgrade, Serbia, April 23, 2010).

RECOM should focus on events not covered by judicial activity.

One of the purposes of the establishment of RECOM is to cover the events which were in the grey area and which were not covered by court judgments. (Tomislav Višnjić, attorney, Belgrade, Serbia, National Consultation with Law Professionals in Serbia on the Initiative for RECOM, Belgrade, Serbia, April 23, 2010).

It is important to define the relationship between RECOM and states in the region to avoid possible obstructions later.

It is important to define the relationship between RECOM and the states in the region so that any future obstructions could be avoided. It is also important, in terms of financing certain activities of RECOM, to define the obligations of the states and the obligations of RECOM. (Tomislav Višnjić, attorney, Belgrade, Serbia, National Consultation with Law Professionals in Serbia on the Initiative for RECOM, Belgrade, Serbia, April 23, 2010).

Reparation and other secondary goals of RECOM should be done after the facts are established.

Dealing with the issue of reparations and all other secondary goals of RECOM should only be done after the facts are established, or they should be removed from the end results of RECOM. Simply put, the success of RECOM will be directly proportional to the quality of the cooperation between RECOM and the states that need to support its work. (Tomislav Višnjić, attorney, Belgrade, Serbia, National Consultation with Law Professionals in Serbia on the Initiative for RECOM, Belgrade, Serbia, April 23, 2010).

Two major problems will be to obtain state-owned documentation and to subpoena witnesses.

(...) two of the important authorizations of RECOM are to obtain state-owned documents and to subpoena witnesses. These are important issues - someone has to negotiate with the states in the region on behalf of the RECOM. (Tomislav Višnjić, attorney, Belgrade, Serbia, National Consultation with Law Professionals in Serbia on the Initiative for RECOM, Belgrade, Serbia, April 23, 2010).

It is very unlikely that RECOM will be able to request territorial courts to issue subpoenas for witnesses. The commission should be able to subpoena witnesses independently from the courts.

I think it is more than unlikely that RECOM can request any territorial court in the region to subpoena a witness, simply because it will be impossible for courts to accept RECOM's recommendation on who they should subpoena. So, basically, they should issue a subpoena for a witness not to appear before the court but to appear before the commission. It is much more realistic to expect that the commission subpoenas witnesses independently because I think that part of the whole issue here is that witnesses should testify voluntarily. And, it is necessary that they really want to testify and tell us about what happened to them. Then we can ask them if they want to testify in a criminal trial. (Miroslav Alimpić, judge, High Court of Novi Sad, Serbia, National Consultation with Law Professionals in Serbia on the Initiative for RECOM, Belgrade, Serbia, April 23, 2010).