The Criminal Law of Genocide

The Slovenian Perspective

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1. From the Point of View of a Slovenian Lawyer

Allow me to start with a few words on Slovenia and a short overview of the relevant legislation in the Republic of Slovenia.

From the times of the Second World War on, the Republic of Slovenia had formed part of the Socialist Federal Republic of Yugoslavia (SFry). It was situated in the northernmost part of the former SFry, then and today surrounded by Italy (West), Austria (North), Hungary (East) and Croatia (South).

The Republic of Slovenia has already had, as a part of the SFry, the status of a sovereign state. Like all other republics of former SFry (Croatia, Bosnia and Herzegovina, Serbia, Montenegro and Macedonia) Slovenia exercised only part of its sovereign rights within the SFry.

In December 1990 the Slovenian people and citizens expressed their will in a plebiscite and soon after that the Parliament of the Republic of Slovenia enacted The Basic Constitutional Charter on the Independence and Sovereignty of The Republic of Slovenia. That was the basic ground for Slovenia, by that time one of the federal units of SFry, to declare its independence.

One of the reasons for that decision was the fact that the SFry was at that time found to be a state which did not observe the rule of law, and where human rights, minority rights and the rights of constituent republics and autonomous provinces (within the Republic of Serbia, Kosovo and Vojvodina existed as autonomous provinces) were grossly violated. The people of Slovenia and its administration also felt that the existing federal system in the SFry did not provide for the resolution of the current political and economic crisis. The constituent republics of the SFry had also been unable to reach an agreement that would have enabled them to achieve independence concurrently with the restructuring of the Yugoslav federation into an alliance of

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sovereign states. Slovenia’s way to independence was not without bloodshed – a short armed conflict between the federal army and Slovenian troops took place in 1991.

After taking all the required steps to become an independent state within the international community and also being recognised as an independent state, the Slovenian people decided to put all their efforts into reaching one of their most important future goals – membership in the European Union. In reaching this goal Slovenia has been quite successful. During the last decade we succeeded to meet all required EU-standards and Slovenia became a full member of the EU on May 1st, 2004.

As far as the creation of its own legislation is concerned, Slovenia, in the process of reaching independence, assumed all rights and obligations, which, by the Constitution of the Republic of Slovenia and by the Constitution of the SFRY had been transferred to federal authorities of the SFRY. In accordance with the Constitution of the Republic of Slovenia and with international agreements binding upon it, Slovenia guarantees the protection of the human rights and fundamental freedoms of all persons within the territory of Slovenia, irrespective of nationality and without any discrimination whatsoever.

2. Slovenian Legislation, Regarding the Issue of Genocide

As I have already explained, former Yugoslav legislation in fields that were in the former SFRY regulated by federal authorities remained in use in Slovenia until our parliament (the National Assembly) enacted its own statutes. This was also the case in the field of legislation that pertains to criminal justice. Before enacting the Penal Code and the Law on Criminal Procedure (in the following text referred to as PC and LCP, both entered into force on January 1st, 1995), the former Yugoslav PC and LCP remained in use.

In accordance with the Federal Constitution of the former Yugoslavia, all rules of criminal procedure (LCP) were rules under federal jurisdiction. It was the same case with general principles and general provisions of the Penal Code. In addition, it should be mentioned that in the former Yugoslavia each of its republics also had its own penal code which mainly contained the formulations of criminal offences which were under the jurisdiction of republics as constituent parts of the Yugoslav federation. But some of the criminal offences, for example all the criminal offences against humanity and international law (including Genocide, Article 141 of the former federal PC) were under federal jurisdiction.

The Slovenian penal code, which, as mentioned before, entered into force at the beginning of the year 1995, described genocide as a criminal offence