

BOOK REVIEW

Ozan Erözden, *Geçmişle Yüzleşme ve Ceza Adaleti: Yugoslavya Deneyimi*. Ankara: Dost Kitabevi Yayınları, 2017, 263 sayfa. ISBN: 0000-0003-1081-9397.

Nazlıcan Çınar Aslan*

The author of the book, Ozan Erözden is a professor at the Faculty of Law at MEF University since September 2015. He was graduated from Istanbul University, Faculty of Law. He worked as a research assistant and lecturer in the Department of Public Law at this university between 1989-1999. Then, he worked in Croatia as human rights monitor within the Organization for Security Cooperation in Europe between 1999 and 2001. Ozan Erözden carried out his post-doctoral research at the Faculty of Law at the University of Cologne between 2006-2007 as an Alexander von Humboldt Stiftung fellow. He worked as a researcher in two international projects (supported Bluebird supported by UNDP and JURISTRAS supported by EU Commission) and a national TÜBİTAK 1001 project. He has publications in Turkish, English, French, and Croatian about theory of the state, theories of nationalism, human rights, transitional justice, and legal philosophy. He has been worked as a lecturer at different universities in since 2002.

* Yıldız Technical University, ORCID ID: 0000-0003-1081-9397;

In 2017, Prof. Erözden published his book “Coming to Terms with the Past and Criminal Justice: The Yugoslavian Experience”. This book is based on his research which he conducted while working at the University of Cologne.

The book consists of an introduction, five chapters, and a conclusion. It also has an extensive bibliography and a well-selected index for readers to understand easily.

In the introductory part of the book, the author deals with the question of how to solve social problems created by armed conflict or by abusive regimes via transitional justice mechanisms, that aim “to come to terms with the past”. At the same time, the author emphasizes that he wrote his book with the concern of being involved in this ongoing debate. He provides examples for democratic transition processes in different countries. He mentions Germany as an exception for being successful in the first wave of democratic transition. Contrary to first and second waves, third wave of democratic transition was not bloody; however, only Yugoslavia experienced bloody conflict. During this conflict, the International Criminal Tribunal for Yugoslavia (ICTY) was founded. According to the author, ICTY was a success in the history, because all defendants were judged except dead ones.

The first main part of the book is the conceptual framework. The author defines the terms “transition to democracy” and “transitional justice”. It deals with the process of transition to democracy with the dimension of coming to terms with the past. He mentions that every regime transformation is painful, however, transitions from a totalitarian regime to a democratic regime are problematic from the perspective of transitional justice. He explains the term “coming to terms with the past” by using Yugoslavia example. The disintegration process of socialist Yugoslavia started with the declaration of independence of Slovenia and Croatia in 1991 and ended with the declaration of independence of Kosovo in 2008. The developments and conflicts in this process can be considered to continue even today. Coming to terms with the past is a very important issue while trying to establish a new democratic regime especially after the criminal regimes or large-scale social conflicts. In democratization processes, previous regimes can be judged for criminal responsibility in such cases it is of crucial importance which legal system will be used (old or new one). He defines four main acts of international crime: Crimes Against Humanity, War Crime, Genocide, and Crime of Assault. It focuses on “individual criminal responsibility” as an important problem in the transition to democracy in the states where these acts are

committed. According to the author, the regimes involved in crimes should not be the part of the society without getting any punishment after they lose their power. He argues that the aim of coming to the terms with the past is both to take the responsibility of the former illegal acts and to reveal the truth. According to the author, revealing the truth undermines the legitimacy of the criminal regime and invalidates its arguments for the conflict. Thus, in a democratic regime with solid foundations, the danger of the criminal regime coming back to power is eliminated. He believes that coming to terms with the past should be supported through public disclosures and informing new generations.

The second main chapter of the book focuses on the historical context. According to the author, the possibility of the emergence of a criminal regime in the future can be prevented by coming to terms with the past. He gives some historical examples. Germany is taken as a positive example and Yugoslavia as a negative example. The trial of the Nazi regime is a successful example of coming to terms with the past. This trial also aimed to create a “pedagogical” effect in the society. According to the author, as a result of the process of coming to terms with the Nazi regime, anti-democratic totalitarian political movements can find only a limited social support in today’s Germany. The author states that the Nuremberg trials eliminated the possibility of total denial of crime, as they reveal the dimension of the crimes committed under the Nazi regime and how systematically they were committed. The author emphasizes that other trials, in which the defendants do not have the title of “main war criminal”, are also important in coming to terms with the past. According to the author, in Germany the process of coming to term with past was carried out with the aim of revealing the criminality of the Nazi regime and preventing the emergence of an authoritarian regime in Germany again. Erözden states that while evaluating whether the Nazi trials were successful in terms of reaching this goal, it is more accurate to evaluate whether they created public awareness about the Nazi’s past, despite their shortcomings. Author found trials successful since the Nazi trials made the criminality of the Nazi regime an undeniable fact in the vast majority of the public. It created a universal standard. Germany is a good example for coming to the term with the past, as it preserved the dynamism of this process. At this point, the author compares Yugoslavia with Germany.

In the third main part of the book, the author describes the collapse of Yugoslavia in a historical context and focuses on the process, actors, and political currents that led to the armed conflict. He gives information about the conflicts and the current situation in the former

Yugoslav countries between 1991-2001. This issue is the basis of the criminal cases in the following two parts of the book. Yugoslavia broke up with a bloody conflict in the early 1990s. According to the author, this disintegration was of concern for the international community, both because it was the biggest war after the Second World War, and it directly evoked the crimes against humanity committed in the Second World War. Disintegration process of Yugoslavia was problematic because of nationalism, political elites, and ethnic problems. The development of Serbian and Slovenian nationalism is also explained by economic situation. One of the examples of economic explanation can be given from Kosova. The first major crisis was experienced in Kosovo because of its poor economy and high unemployment rate after Tito's death in 1981. Ethnic identities became important in Yugoslavia election. According to the author, by 1991, it was impossible for the Yugoslav Socialist Federal Republic to maintain its own existence, and it could not maintain its integrity even by transforming itself from a federation to a confederation. In 1990, Croatia and Slovenia's proposal to convert the Socialist Federal Republic of Yugoslavia into a confederation was rejected. The request of the presidents of Bosnia and Herzegovina and Macedonia to transform into an asymmetrical federation was also rejected. The military coup planned in March didn't happen due to the indecision of the generals. As a result disintegration of Yugoslavia happened. The armed conflict started with the disintegration of the Socialist Federal Republic of Yugoslavia and continued in a 10-year period. During this conflict, acts that are considered crimes in international law were committed intensively, and many trials were held at the international and national level for the elimination of this victimization and the punishment of the perpetrators. In the next section, the author gives information about the intensity of the conflict in different region of Yugoslavia. The book suggests that the conflicts in Croatia, Bosnia and Herzegovina, and Kosovo were more intensive than the conflicts in Slovenia and Macedonia.

The fourth main chapter of the book deals with the activities of the International Criminal Tribunal for the former Yugoslavia as an ad hoc international criminal court. He emphasizes the importance of international criminal justice in coming to terms with the past. The author deals with the activities of the court since 1993 from the perspective of coming to terms with the past and focuses on historical events. The International Criminal Tribunal for the former Yugoslavia is important as it is the second international criminal court established in history after the Nuremberg Tribunal. The International Criminal Tribunal for the former

Yugoslavia was established with the aim of preventing the commission of crimes under international law, punishing those who are responsible and finally establishing and maintaining peace in the Yugoslavian geography. According to the author, the court was established from the very beginning as a political judicial body and this court has different functions for different purposes. According to him, peace can be created when the people who are responsible for crimes are punished, and after the punishment, the victims can also contribute more voluntarily to the process of bringing peace. Punishing the perpetrators of the crimes committed is a deterrent for those who have the potential to commit the same crimes in the future. He emphasizes that the dominant perception of the public about the conflict process will change with the elimination of the effects of the discourse spread in the society by the regime that was in power during the conflict. He also focuses on the importance of changing the discourse of the political elites for the elimination of the psychological damage caused by the conflict process. The International Criminal Tribunal for the former Yugoslavia can provide this with individual criminal responsibility. It is important in this context that political elites also cooperate with international judicial bodies. National courts are important to extent the capacity of war crimes and crimes against humanity trials in accordance with universal standards for peace, however the author emphasizes that national courts are generally ineffective in areas of intense conflict, which is why international courts became important. In this context, in the case of Yugoslavia, it is mentioned that the ICTY judged the top politicians, administrators and officials, whom the national courts did not judge. The author makes a general assessment of the impact of the ICTY in coming to terms with the past and discusses the ICTY with its pros and cons. Considering its plus sides, ICTY is very inclusive in time and place, neutral and independent on the criterion of ethnicity. According to the author, the court's greatest contribution to the process of coming to terms with the past is prevention of possible conflict. On the negative side, he emphasizes that some of the recent decisions of ICTY can be related with the political pressure. It includes the allegations made by Frederik one of the ICTY judges, in his e-mail in 2013. The author argues that despite the shortcomings of the ICTY, it has a pioneering character by making sexual assault a crime against humanity, adjudicating that genocide was committed in Srebrenica, bringing together many documents related to the conflict between 1991 and 2001, and contributing to the discovery of the truth.

In Chapter 5, the author focuses on the experiences of the states that emerged from the former Yugoslavia in coming to terms with the

past through criminal proceedings. The first focused state in terms of coming to the terms with the past in the process of transition to democracy is Serbia. Cooperation with the ICTY in Serbia was problematic for a long time. Because the parties did not want to cooperate for nationalistic reasons. In addition, there were people who worked in army and police force committed crime during the war and were not punished. Therefore, parties in Serbia believed that the army and police forces would resist any possible cooperation with the ICTY. As a result of US pressure and encouragement, Milosevic was handed over to the ICTY, but other suspects lived in the society without punishment. After EU offered to cooperate with Serbia through membership, they felt under pressure and surrendered to ICTY. However, this is problematic for coming to terms with the past because This is characterized as heroism and patriotism in the society. All the suspects were handed over to the court in 2011.

In the subsequent elections, nationalist parties came to power in Serbia. Serbia's new rulers are not using the ICTY's activities for coming to terms with the past, but rather the opposite. In this period, national courts also play an important role in criminal proceedings in Serbia. These cases were few and incomplete, as the suspects were predominantly from the Serbian ethnic group. The second country is Croatia. Criminal proceedings in Croatia started much earlier and proceeded much more smoothly, both nationally and internationally. According to the author, this is because Croatia defines itself as a victim of the "Greater Serbia" project. Croatia's persistent refusal to submit the documents requested by the ICTY increased the possibility of Croatia facing international sanctions. This possibility caused the government to change with the incoming election, and a pro-cooperation government was elected. Although previous government was re-elected, cooperation with the ICTY continued. According to the author, national trials in Croatia have little importance for the process of coming to terms with the past, because the majority of suspects was from Serbian ethnic group. He focuses on a few studies on the local effects of coming to terms with the past, and these studies are not very positive. The author emphasizes that Serbia and Croatia created institutional infrastructure during the democratic transition process. In Bosnia and Herzegovina, there is a great need to come to terms with the past. He mentions that these activities are problematic due to the lack of federal institutions. He mentions that in Bosnia and Herzegovina, reasons of conflict remained the same. According to the author, 20 years after the end of the conflict, Bosnia and Herzegovina is far from being a success story in coming to terms with the

past. There are both external and internal reasons for this situation. The first of these is the Dayton agreement which ended the war in the country. With the Dayton agreement, an ethnic-based administrative and political structure was established, and this strengthened ethnic identities in the society. The system built on ethnic division, provokes ethnic nationalism. So, the nationalist parties are supported in this case. Ethnic nationalist parties also oppose the changes in the political system because they are aware that the system gives them an advantage. All parties take advantage of this system for their interests. According to the author, the ICTY jurisprudence could have been used very usefully in Bosnia and Herzegovina, but nationalist politicians acted in the opposite direction because of their own interests. Finally, he briefly mentions the examples of Slovenia, Kosovo, Macedonia, and Montenegro, where there is very limited effort to come to terms with the past.

In the conclusion part of the book, the author explains why he wrote this book and focuses on the main issues. He explains that coming to terms with the past is important because it can help to prevent another possible conflict. He emphasizes that the process of coming to terms with the past, the categories of collective victimization and collective aggression will disappear. He focuses on the continuing theme of collective victimization in Serbia, Croatia and Bosnia and Herzegovina. Because of these problems, The author emphasize that there will be a high probability of civil war in Bosnia and Herzegovina and a hot conflict between Serbia and Croatia.

Erözden's book is a remarkable work because it deals with the war and genocide in the disintegration process of Yugoslavia, which is described as the greatest human tragedy in Europe after the Second World War and emphasizes and discusses its importance for establishing peace through coming to the term with the past. While writing this book, the author aimed to emphasize the importance of coming to terms with the past for peacebuilding in post-conflict societies and gives a detailed account of this issue. In the book, the importance of coming to terms with the past is explained in detail. The example of Yugoslavia was compared with the example of Germany and the subject was reinforced with the method of comparison. While describing the disintegration process of Yugoslavia, the author also gave examples from the past and discussed the events with historical basis. The book is an important resource as it covers the ICTY decisions and process, which was established after the collapse of Yugoslavia, in a wide manner. At the same time, it is important because it emphasizes that the problems cannot be solved in these states unless they come to the terms with their past. Also, these

problems can create another hot conflict in this region. However, the frequent and extensive use of technical and legal terms in the book makes it difficult to read.