

*Veljko M. Turanjanin, Ph.D., Assistant
University of Kragujevac
Faculty of Law Kragujevac
vturanjanin@jura.kg.ac.rs*

*Dragana S. Čvorović, Ph.D., Assistant
Academy of Criminalistic and Police Studies
Belgrade
dragana.cvorovic@kpa.edu.rs*

SARAJEVO 1914: TRIAL PROCESS AGAINST YOUNG BOSNIA – ILLUSION OF THE FAIR PROCESS

Abstract: *The authors in the work deal with the trial process against members of the Young Bosnia for the assassination of the Austro-Hungarian heir Archduke Franz Ferdinand and his wife Sophie Chotek in Sarajevo 1914. That issue attends scientific and lay public attention over the hundred years. Authors divided their article into few parts. After the introductory remarks they explain conditions in the country before the assassination, especially problem of the Bosnia and Herzegovina's annexation and its ratification within the Austro-Hungarian legislation. After that, they remind on the ultimatum that the Dual Monarchy referred to Serbia, which was not accepted, but which "caused" the First World War. The main part of the work is dedicated to the criminal proceeding against the Youngbosnians. They analyze criminal procedure in that time, behavior of the participants, especially president of the judicial council, and defense attorneys, which was shameful, except the defense of the Dr. Rudolf Cistler. Consequently, he had borne numerous negative consequences after the judgment.*

Key words: *Young Bosnia, Sarajevo assassination, criminal procedure, murder, Rudolf Cistler.*

INTRODUCTION REMARKS

“Whenever Europe is sick, it is looking for a cure for the Balkans.”
Milorad Pavic, *Writing Box*

Marking the centenary of the assassination in Sarajevo raised the issue of the trial against the members of the Young Bosnia, accused for the crime. There is no doubt about the persons who carried out an assassination on the Austro-Hungarian heir Franz Ferdinand and his wife Sophie Chotek, but, we could find many questions about the judicial proceedings against the members of the Young Bosnia, both in Serbia and in the foreign literature. In addition, the onset of the centenary of the Sarajevo assassination reopens the old questions of both the responsibility for the war.¹ As we know, Austro-Hungarian government used an assassination as an excuse for the long-planned war against Serbia, which has been declared as responsible for the sad events in Sarajevo, in the Jun 1914. However, initial conflict between two countries grown into the largest starvation in that time, into the World War I. After it, we can find many papers and works that explain events that led to the war, and some of them describe at margins trial process against Gavrilo Princip and others. Of course, in certain works there are attempts for justification of the role of the particular participants on the trial. Due to the volume of this work, instead long introduction, on the first place we will briefly describe annexation of the Bosnia and Herzegovina and ratification process in the Dual Monarchy, and, an ultimatum given to the Serbia, whose government did not have any connection with the assassination. Bosnian authorities conducted proceeding against twenty five defendants for the felony of the high treason, which was then, and it is now, very doubtful. This fact was emphasized by one of the attorneys in this proceeding, which was legally justified. Later in the text we will try to clear the reasons for this attitude.

ANNEXATION AND THE PROBLEM OF ITS RATIFICATION (PRELIMINARY ISSUE FOR THE SARAJEVO PROCESS)

In order for us to be able to process the trial against Gavrilo Princip and his comrades, we have to go back 36 years in the past, to the period when the Berlin Congress was held, and during the occupation of Bosnia and Herzegovina. Bosnia and Herzegovina, as a country “in which wars of others have fueled internal conflicts of Bosnian society and have fed them”, was located on the northern borders of the Ottoman Empire, and therefore, was directly affected by the wars with the Austro-Hungarian Empire², which for years, being on the torment of Tantalus, had been trying to extend its sovereignty.³ Its aspirations had become

¹ See, for example , the collection of works: Günter Bischof, Ferdinand Karlhofer, Samuel R. Williamson, Jr., *1914: Austria-Hungary, the Origins, and the First Year of World War I*, University of New Orleans Press, New Orleans 2014.

² Ksavije Bugarel, *Bosnia: Anatomy of the War*, Fabrika knjiga, Belgrade 2004, 46.

³ Srdjan Djordjevic, Srdjan Vladetic, „Rudolf Cistler – viva vox Serbiae! The trial and the defense of the participants of the Sarajevo assassination”, *Srpska politicka misao* 2/2014, 98. In

more prominent in 1878, during the Berlin Congress. The very same Congress brought about some fluctuations regarding the occupation and annexation of Bosnia and Herzegovina, as the Count Andrassy once thought that the act of occupation, under the current circumstances, was equated with the annexation.⁴

Shortly before the conclusion of the congress, he concluded a secret treaty with Turkey, by which he had acknowledged the sovereignty of the Sultan in the Bosnia and the temporary character of the its occupation,⁵ which made the Austro-Hungarian Emperor Franz Joseph extremely dissatisfied, because he wanted annexation, and often grasped at this issue.⁶ However, he realized the advantages of the position of his country and he believed that he had implicitly been given the authority to carry out the annexation in the impending time.⁷ Thus, the Austro – Hungarians, on the one side, achieved great success at the Berlin Congress,⁸ while on the other hand, Serbia was, disappointed in the behavior of Russia, suffering failure.⁹ Soon the Berlin treaty is ratified by the parliaments of both monarchies.

Having successfully completed the occupation, the monarchy was gradually getting ready to perform the final act of annexation. Preparing the ground for it, it was sending a delegation to Bosnia, in order for the people to plead for the annexation, where it had, in fact, the Russian help. The final annexation plan was adopted at a meeting held on 10th September 1908,¹⁰ a mere act of annexation was carried out by the imperial proclamation a month later, on 5th October the same year, in order for this act, among other things, to thwart plans of Serbia to

the process of colonizing the Dual Monarchy was intended to gain access to the Aegean Sea through Thessaloniki by irritating the Slovenian Balkan countries. Mitar Djuric et al., *World War II – General History*, Izdavacko-stamparsko preduzece „Obod“, Cetinje 1976, 7.

⁴ Shortly before the Berlin Congress Andrassy (Count Gyula Andrassy de Csikszentkiraly et Krasznahorka) met Jovan Ristic, who renounced the extension of Serbia to Sandzak of Novi Pazar (which was the aim of the dual monarchy, which would, along with Bosnia and Herzegovina, would limit Serbia in all aspects) and Kosovska Mitrovica, in exchange for obtaining Nis, Pirot and Vranje, See: Branko Beslin, *European influences on Serbian Liberalism*, Izdavacka knjizernica Zorana Stojanovica, Novi Sad 2005, 706.

⁵ Vladimir Corovic, *History of the Serbs*, Edicija, Belgrade 2010, 684. Turkey insisted for the Convention to be inserted a sentence on the temporary nature of the occupation. For more about all of the above: Grgur Jaksic, *Bosnia and Herzegovina at the Berlin Congress (discussion of diplomatic history)*, Srpska akademija nauka, Belgrade 1955, 62-64.

⁶ Joseph M. Baernreither, *Fragments of a Political Diary*, Macmillan and Co., Limited, London 1930, 41.

⁷ Alex Dragnich, „Bosnia-Herzegovina: A Case Study of Anarchy in the Third World“, *Cardozo Journal of International & Comparative Law*, vol. 3, 1995, 164.

⁸ Dual Monarchy was entrusted the double task: to restore order and peace in the country, and to provide legal security and administration offices on the one hand, and to solve the agrarian question, on the other hand. Veselin Masleša, *Young Bosnia*, Kultura, Belgrade 1945, 44, 183-185.

⁹ V. Corovic, 644.

¹⁰ J. M. Baernreither, 47.

expand the territory¹¹ and extinguish the aspirations for liberation of South Slavonic nation.^{12,13}

This had affected both the interests of the Serbs in Bosnia and Herzegovina (which experienced the annexation as an oppression and economic exploitation)¹⁴ and Serbia, as well as Turkey, and the act had brought negative reactions from Europe. Despite efforts to hold a world conference because of the enforced annexation, for Turkey it was clear that they had lost Bosnia and Herzegovina¹⁵, while for Serbia, this act had made the Dual Monarchy economically closed.¹⁶ However, Turkey had not lost all its influence in this area, because the very act of annexation did not mean to automatically set up the whole system to lose its legal force. Due to many accumulated problems, Bosnia and Herzegovina had started to implement shari'a combined Austro-Hungarian legal system, which functioned extremely badly.¹⁷ The fact is that the Dual Monarchy annexed Bosnia and Herzegovina. However, while most researchers explain the annexation, the minority of them have been explaining the legal side of the annexation. Or, more precisely, its rightlessness. The annexation of Bosnia had deeply shaken the foundations of international law, i.e., it can be said, only the beginning. It had become obvious that, both then and now, this does not apply to large forces. While, in fact, this act was carried out, it did not get legal confirmation.

In fact, this move of the state should have gone through the process of ratification in the Parliament, which was not done. As a result, the annexation had not been confirmed by the state, which brought it into effect at the first place! If we take just one segment of the consequences of non-ratification, and that is the inability to trial members of the Young Bosnia for committing the offense of

¹¹ Richard Frucht, *Encyclopedia of Eastern Europe: from the Congress of Vienna to the Fall of Communism*, Garland Publishing, Inc., New York-London 2000, 66.

¹² M. Djurisić et al, 13.

¹³ It is interesting to mention that the monarchy, despite the annexation of Bosnia and Herzegovina, had tried to highlight their individual rights in Serbia. For example, when the Serbian Catholic Church solved its position by the concordat with the Vatican, Austro-Hungary realized that it was losing its protectorate right, and handed a note to Rome and Belgrade, demanding rights for themselves in the Catholic Church in Serbia. However, it received a negative answer from Serbia, while Vatican thanked them for their merits in the appropriate manner. Vjekoslav Wagner, "The history of the Catholic Church in Serbia in the XIX century [from 1800. to concordat 1914.]", *Bogoslovna smotra* 21/1934, 133-134.

¹⁴ Annette Monika Fath-Lihić, *Nationswerdung zwischen innerer Zerrissenheit und äußerem Druck. Die bosnischen Muslime auf dem Weg vom ethnischen Bewusstsein zur nationalen Identität*, Universität Mannheim, Worms 2006, 96; Robin Okey, *Taming Bosnian Nationalism: The Habsburg 'Civilizing Mission' in Bosnia 1878-1914*, OUP, Oxford 2007, 31.

¹⁵ V. Corovic, 685.

¹⁶ Jovan Cvijic, The annexation of Bosnia and Herzegovina and the Serbian Question, <http://www.rastko.rs/antropologija/cvijic/govori-clanci/jcvijic-aneksija.html>, Jun 12 2016.

¹⁷ Tomislav Jonjic, „Dr. Ivo Pilar – Attorney in Tuzla“, *Casopis za društvene i humanisticke studije*, 3/2007, 13; S. Djordjevic, S. Vladetic, 98-99.

treason, the whole process, of which will be analyzed later in the work, is illegal. But before that, we will chronologically go back to the beginning of the War in a few sentences.

ULTIMATUM

- ... But no one is going to war over some little Balkan country.
 - ...Do you think there's going to be a war?
 - Over some minor archduke being assassinated? No.
Sidney Sheldon, *Master of Game*

The war had happened. The largest up to that time. And just because of a small Balkans country.

The monarchy, at the time ruled by Franz Ferdinand, who was followed by a reputation to be pro-war oriented, and additionally being the enemy to Serbia¹⁸ was preparing for war in advance, knowing that it was inevitable and waiting for an immediate reason for it.¹⁹ In particular, the question here is what Dual Monarchy truly wanted to achieve by the war. Not even those who created the ultimatum were sure about this, and as possible targets they stated vision of punitive expedition against Serbia, annexing part thereof or joining Serbia and making triple the country.²⁰

One piece of evidence for the aforementioned can be found in the meeting of the two emperors in the spring of 1914, when the German Kaiser Ferdinand asked if he could count on the help of Germany in the war with Serbia.²¹ However, no decisions regarding the entries of individual countries on the side of the monarchy were based on contractual obligations. Germany had taken its side, whereas Italy had declared its neutrality, at least at the beginning of the war.²² But

¹⁸ V. Corovic, 709; Ivan Kranjcevic, *The Memories of One of the Participants in the Sarajevo Assassination*, Svjetlost, Sarajevo 1964, 48.

¹⁹ This is also reflected in the fact that General Konrad von Hecendorf suggested for twenty-five times an armed showdown with Serbia between 01 January 1913 and 01 June 1914. Petar Tomac, *First World War 1914-1918*, Vojnoizdavački zavod, Beograd 1973, 12. The Monarchy believed to be supported by Germany (reasonably) and Italy (groundlessly – since all the moves for years before the war, carried out without consultation with it, as a member of the Triple Alliance, which included military alliance in all defensive wars (which could not count war with Serbia). See: Miodrag Lekic, *History of the Italy*, Daily Press, Podgorica 2011, 167.

²⁰ Alan John Percivale Taylor, *The Habsburg Monarchy 1809-1918: A History of the Austrian Empire and Austria-Hungary*, Hamish Hamilton, London 1947, 231; S. Djordjevic, S. Vladetić, 101; Bernadotte E. Schmitt, “Serbia, Yugoslavia, and the Habsburg Empire”, *Yugoslavia*, (ed. Robert Joseph Kerner) University of California Press, Berkeley 1949, 55.

²¹ B. E. Schmitt, 50.

²² Holger Herwig, „Military Doomsday Machine”? The Decisions for War 1914“, *Journal of Military and Strategic Studies* 13(4)/2011, 3.

all this was preceded by the famous ultimatum sent to Serbia. Its inadmissibility was more than evident, and its expected refusal should stand as a formal reason for the beginning of the war. Although the amended text of diplomatic notes between Austro-Hungary and Serbia varies in different translations (which leads to erroneous interpretations)²³, it was the cause of the crisis between the two countries and served as a cause of war. However, the essence lies in the fact that Serbia humiliated itself in accepting all the points except one. With huge diplomatic efforts and resourceful, the Serbian government had decided to accept almost all the requirements of the Monarchy. The only issue that was absolutely unacceptable was the sixth, which proclaimed the Austro-Hungarian authorities to be involved in the investigation against the participants in the conspiracy and assassination, who were located on the territory of Serbia.²⁴ However, this was the sufficient reason to provoke a World War. Baron Giesl (Wladimir Rudolf Karl Freiherr Giesl von Gieslingen) glanced at the response of Serbia, which he had received a few minutes before 18:00, and half an hour later he left Belgrade, breaking off diplomatic relations with Serbia. At 21:23 of the Austro-Hungarian emperor ordered the mobilization of the eight corps for the impending war against Serbia.²⁵

SARAJEVO PROCESS

The members of the Young Bosnia were on trial for the crime of high treason in Sarajevo. Among other things, the *actus reus* of this crime consisted of the attack on the country in its internal existence,²⁶ and as forms crucial for the proceedings were the murder or an attempted murder of a ruler, an attack aimed at changing the system of government or avulsion of territory (Article 111th of the

²³ Note to document: The Original Texts of the Austrian Note of July 23, 1914, and the Serbian Reply of July 25, 1914, With Annotations. For example, you can find a multitude of documents related to the war at: <http://www.gwpda.org/1914.html>, Jun 05 2016.

²⁴ In addition, Serbia was asked to: ban all publications written against the monarchy, compromising its integrity; to dissolve the “National Defense” and all similar associations; to change the curriculum by deleting all the negative propaganda against the Austro – Hungarian Empire; to remove from office all the magistrates and officers who are against the Austro – Hungarian Empire; to accept the cooperation of the monarchy in the suppression of the subversive movement directed against the territorial integrity of the Monarchy; to arrest Tankosic and Ciganovic; to prevent illicit trafficking in arms and ammunition across the border and to strictly punish persons who had helped the three assassins to cross the border; to explain statements by senior officials against the Austro -Hungarian given after the assassination, and to report to monarchic government on the measures taken. See more in: Silvia Curic, *Golgotha and the Resurrection of Serbia from 1914 to 1915*, Zrinski – IPO “Beograd”, Belgrade 1985, 9-13.

²⁵ B. E. Schmitt, 62.

²⁶ Franz von List, *The German Criminal Law*, State Printing House of the Kingdom of Serbia, Belgrade 1902, 637.

Criminal Code of Bosnia and Herzegovina). The assassination of the heir to the throne, which was taken as the key determinant of the offense, happened on 28 June 1914.²⁷ However, both during the trial a hundred years ago, and today, the legal qualification of the offense is a controversial issues. This issue was already initiated by Rudolf Cistler defending his defendant, but we will analyze it in greater detail during the analysis of the criminal procedure. Bosnia and Herzegovina had applied the Austrian criminal procedure, under the influence of which countries in the region had fallen.²⁸ It consisted of an investigation (which was divided into preliminary investigation and inquiry, but without significant accruals) and the trial before the court.

The aim of the preliminary investigation was to investigate whether the deed which the national authorities found out about was really a criminal offense, whether it was committed intentionally or negligently (with evil intent or negligence), to investigate the aggravating and mitigating circumstances in order to determine damage and find witnesses, all this being led by an investigating judge (Art. 66-67 of the Law). Once the degree of suspicion was raised against a person suspected of having committed an offense, he or she receives the status of the defendant, and the investigation starts.²⁹ After investigating, judge had collected all the evidence in the investigation and after he had questioned suspects, he was to forward the case file to the prosecutor, who filed charges or to ask for additional investigation. In the indictment, there was a right to complain, after which the main trial was determined.

One of the goals supposed to be achieved in the investigation, emphasized by the Leo Pfeffer, investigating judge in the Sarajevo assassination, is to discover the motive which led the perpetrator to a crime, but when it comes to assassin, one should determine both internal motives and external circumstances affecting the motive.³⁰ Multiplicity of motives for the Sarajevo assassination in conjunction with the political situation had brought to the idea of the assassination of Ferdinand to be born, and for several attempts to happen, a few years before it actually occurred

²⁷ The choice of the date for the visit had only aggravated the outcry of the people, but the literature had made imaginary comparison with the visit of a British monarch Dublin on St. Patrik. Bosko Bajovic, «L' attentat de Sarajevo 1914 – La Jeune au et la «Main noire»», *Guerre & Histoire*, septembre – octobre – novembre 2002, 3. However, there were pressures (unsuccessful) to the Principle to postpone the idea of assassination. Vladimir Dedijer, “Sarajevo Fifty Years After”, *Foreign Affairs* 42/1963-1964, 583.

²⁸ Even despite the pronounced antagonism between the states, the Code of judicial procedure in criminal offenses of Serbia represented abbreviated translation of the Austrian Code. Marko Pavlovic, *Legal Europeanization of Serbia 1804-1914*, Faculty of Law, University of Kragujevac 2008, 232.

²⁹ The status of the accused could be easily acquired when it comes to the crime of treason, which expressly enumerated the reasons which reinforce the suspicion of this crime.

³⁰ Leo Pfeffer, *Investigation into the Assassination in Sarajevo*, Nova Evropa, Zagreb 1938, 4.

in Sarajevo.³¹ It was felt that such a move Young Bosnia³² would eliminate the threat of war against Austria-Hungary.³³ Then, one of the immediate reasons for the assassination, was the unresolved agrarian problem, which was also mentioned by Cabrinovic during trial, and which at that time caused discord between Serbs and Muslims,³⁴ but he stated that he was personally encouraged for the assassination by revenge for the injustice suffered by the Serbian people.³⁵ Finally, the third, and the one that the prosecution found the most suitable, was found in the desire of a part of the Bosnian population for annexation to Serbia and creating a unified state of all Slavs with King Peter as their sovereign.³⁶ Only in this way could the monarchy justify a trial for the crime of high treason for which the prosecution had charged the assassins, and for the execution of which the death penalty or life imprisonment were possible punishments.³⁷

Even through Pfeffer's book, which is not devoid of subjectivity in high degree,³⁸ the fact that the suspects were in custody under torture by the police authorities appears.³⁹ During the interrogation, at the very beginning, Nedeljko Cabrinovic and Gavrilo Princip were arrested, and based on the hearing, Danilo

³¹ Ivan Muzic, *Freemasonry in Croatia*, Laus, Split 2000, 58, 62; S. Djordjevic, S. Vladetić, 101.

³² The members of the Young Bosnia were inspired by the Russian revolutionary movement, which was reflected in the literature that was found with them after their arrest. Latinka Perovic, *People, Events and Books – Young Bosnia and Russian Thought*, The Helsinki Committee for Human Rights in Serbia, Belgrade 2000, 87.

³³ Franz Ferdinand was not popular in his own country; we can even say that his removal of his suited the Monarchy. Just pay attention to the fact that after Cabrinovic had set the bomb, the visit of the heir continued. Potjorek did not, during the preparation of the visit, take special precaution measures, as was the case a couple of years ago during the visit of the emperor. Some justifications for this move were found in the fact that very provision to invalidate the effect of the visit, but they think that Potjorek still had to be aware of the consequences of their decisions. Pfeffer also notes that the legal officer had not asked (because you forgot or did not dare) Potjorek, why Cabrinovic after the bomb had not even alerted a police car or a chauffeur who was driving the heir. L. Pfeffer, 24, 39; B. E. Schmitt, 59. The assassination of Ferdinand served the political goals of the Dual Monarchy, but did not cause greater sorrow in this country. Gerald Meyer, *A World Undone: the Story of the Great War, 1914-1918*, Bantam Dell, New York 2006, 39; I. Muzic, 67-68; S. Djordjevic, S. Vladetic, 101.

³⁴ Djordje Beatovic, Dragoljub Milanovic, *High-Treason Processes against Serbs in Austro-Hungary*, NIRO "Literary Gazette", Belgrade 1989, 57-58. The monarchy had taken some steps in the implementation of agrarian reform only in 1911, which was a bit late in the development of agriculture. Priscilla T. Gonsalves, "A Study of the Habsburg Agricultural Programmes in Bosanska Krajina, 1878-1914", *The Slavonic and East European Review* 63(3)/1985, 352.

³⁵ Vojislav Bogicevic, *Sarajevo Assassination, Letters and Statements*, Svjetlost, Sarajevo 1965, 41.

³⁶ S. Djordjevic, S. Vladetic, 102.

³⁷ *Ibid.*

³⁸ Regarding the fact that the book was written maliciously, and about what has not entered into it, see: Vladimir Dedijer, *Sarajevo 1914*, Prosveta, Belgrade 1966, 554.

³⁹ L. Pfeffer, 50.

Ilic and Trifko Grabez were arrested, as well as the other participants in the assassination. The only person who was not caught was Muhamed Mehmedbasic, who escaped from Montenegro. It may be noted that the investigation had begun even before Princip fired the shots at the heir, because at the time Pfeffer was already designated as the investigating judge who was supposed to examine Cabrinovic.⁴⁰ Having completed the investigation, which lasted for a relatively short period of time and was superficial,⁴¹ on September 19th, Pfeffer gave away the files to the prosecutor for indictment. The indictment was handed out to the accused only six days later, and they had waived their right to lodge a complaint. Although the investigation was led for the crime of murder,⁴² the indictment charged the accused of a crime of high treason, whereby the majority of the Young Bosnia's members were accused to be the perpetrators, while three had been charged to be accomplices. Criminal prosecution for this offense shows a political element in this "impartial justice system".

The main trial was set for 12th October, under the chairmanship of Alois Kurinaldi (Luigi von Curinaldi), and the jury consisting of Bogdan Naumovic and Mayer Hoffman. Twenty five defendants were found in the indictment, although only seven persons participated in the very assassination: Gavrilo Princip, Nedeljko Cabrinovic, Trifko Grabez, Veljko and Vaso Cubrilovic, Mitar, Jovo, Blagoje, and Nedjo Kerovic, Ivan Kranjcevic, Nikola Forkapic, Danilo Ilic, Lazar Djukic, Dragan Kalember, Obren Milosevic, Jakov Milovic, Marko Perin, Mico Micic, Cvetko Popović, Cvijan Stjepanovic, Ivan Momcinovic, Angela and Francis Sadilo, Branko Zagorac and Mihajlo Jovanovic.⁴³ The prosecutor was Franjo Svava, while the accused were represented by six defense attorneys: Dr. Rudolf Cistler, Dr. Max Feldbauer, Dr. Konstantin Premuzic, Dr. Srecko Perisic, Franc Strupl, Malek Vencel, appointed by the court *ex officio*.

According to the former Austrian legislation, the whole process was in the hands of the chairman, who had a duty to establish the truth, examine the defendant and witnesses, and determine whose turn it is to speak. Likewise, his jurisdiction was to estimate which questions might have led to the delay of the criminal procedure, which stood as the option he used on several occasions, interrupting Cistler in defense of Cubrilovic, Kranjcevic and Nedjo Kerovic. In this way he steered the discussion in the direction that suited him and the monarchy, but not the truth. As it is said: "...Murder would imply a personal crime directed against

⁴⁰ Joachim Remak, *The Story of a Political Murder Sarajevo*, Criterion books, inc. New York 1959, 182.

⁴¹ Luciano Canfora, *1914*, Sellerio, Palermo 2006, 32.

⁴² L. Pfeffer, 75.

⁴³ Almost all the accused were under twenty years of age, so conducting such proceedings and later pronounced sentence, caused an unpleasant surprise in the foreign literature, Robert W. Seton-Watson, „The Sarajevo Murder Trial“, *The Slavonic Review* 4(12)/1926, 646.

two individuals while high treason meant that the crime was directed against the Austro-Hungarian Government, against Austria-Hungary. The assassination was a crime committed against a state, and if Serbian Government complicity could be established, it could be shown that it was a crime committed by one state against another.⁴⁴

Criminal proceedings of that time, like today, were characterized by the principle of publicity. However, only limited part of public was allowed to participate in this process, so only the persons with special passes were allowed to attend,⁴⁵ but we have to emphasize the Cabrinovic's remark addressed to Kurinaldi that the public does not really exist in this process because there were no opposition journalists.⁴⁶ The very trial was in some arid phases without sensational cross-examination, except in some moments (which belonged to Rudolf Cistler).⁴⁷ The process started following legal rules, polling accused and examining them about the general info: the name of their father, their residence, occupation, marital status, assets acquired and their value, with the fact that some of the accused were asked how they had acquired their property. Kurinaldi complied with the Law. Having called the witnesses, he informed the accused about their rights, and went on reading of the indictment, after which he checked whether the defense attorneys were present and determined the schedule of interrogating the accused.

In the next stage of the procedure, the accused were interrogated, starting with Nedeljko Cabrinovic. The chairman's task was to hear the accused about everything he was indicted for, whereby the accused had given a statement if he finds himself guilty for what he was indicted for at the beginning of the trial. Statements of the members of Young Bosnia had differed in particular details. In that manner, Cabrinovic pleaded guilty for the murder of Archduke Franz Ferdinand, while Princip pleaded not guilty, because he "*killed the one who had done evil*".⁴⁸ By the way, the procedure happened in the way that the Chairman was the one

⁴⁴ Carl Savich, "Serbia, Pan-Slavic Nationalism, and the Origins of World War I: The Assassination of Archduke Franz Ferdinand", <http://www.serbianna.com/columns/savich/009.shtml>, Jun 13 2016.

⁴⁵ V. Dedijer (1966), 561.

⁴⁶ V. Bogicevic, 276-277.

⁴⁷ J. Remak, 213.

⁴⁸ Plea hearing of the rest of the accused is something that drew attention. In that respect, Grabez and Popovic, pleaded guilty for the assassination, whereas Ilic considered he *as guilty as he worked for it*. Vaso Cubrilovic pleaded himself guilty for wanting to kill Ferdinand, whereas Veljko Cubrilovic and Andjela Sadilo did not feel guilty for what they were charged for, with the fact that Veljko pleaded guilty for the contribution to the assassination. Jovanovic, Momcinovic, Milosevic and Franjo Sadilo pleaded innocent, whereas Lazar Djukic and Jovo Kerovic said they did not know if they were guilty or not. Kranjcevic pleaded guilty for not saying he had known that the assassination would take place, whereas Milovic said he was guilty for helping them cross the border. Eventually, Blagoje Kerovic said he considered himself guilty on the one hand, and not guilty on the other, whereas Nedjo Kerovic found himself maybe guilty. V. Bogičević, 28-254.

who asked the questions to the accused first, then the jury, the public prosecutor and the defense attorneys. In the case the defendant changed his testimony at the main trial, the presiding judge would have pointed to it and asked him why his statements differ (Grabez, for example, repeatedly few times changed the statement), and if there was a contradiction and ambiguity in the statements of the accused, there were up to their confrontations (for example, Princip and Cabrinovic). The hearing was largely correct, but there were also different examples. For example, Kurinaldi showed cunningness during hearing of Mitar Kerovic, by trying to make him confess that he was glad because of the assassination, making fun of his desire to remain silent because of the threat that he would burn down the house, knowing that they would get hurt from this or that.⁴⁹ Also, he had lost calmness in certain moments. For example, at one point Cabrinovic wanted to change a statement, and Kurinaldi replied: "Now shut up!"⁵⁰

They treated the witnesses in a fair manner, though it was noticeable that a lot of minutes supposedly made by the absent witnesses were only read. Kurinaldi gave the opportunity to witnesses who were legally entitled to that to be acquitted of the testimony. The majority of witnesses were clearly in favor of the prosecution, but their statements did not provide a lot of new information, although it was noticeable that some of their statements differed to a certain extent with what really happened. It even reached the point at which the minutes of the witness were read, and the very minutes asked for the confrontation with Grabez if their statements differed, although the witness himself had not even been present at the main hearing, and he had had a residence in Arad.

The conduct of the majority of defense attorneys in this process was disgraceful. The defense of the attorney Strupl consisted only 56 words.⁵¹ For instance, Premuzic tried to present the textbook *History of the Serbian People* as evidence, in order to prove that the members of the Young Bosnia were supporters of the idea of Great Serbia. This suggestion was denied by Kurinaldi on the grounds that this had already been established!⁵² The same outcome happened when Premuzic suggested the law as evidence! The same thing happened when the very same defense attorney asked Cubrinovic for evidence that no one but six people knew about the assassination. However, we should also mention the reaction of Cistler and somewhat Premuzic related to the proposal of the prosecution to get the minutes from the hearing of Dr. Ivo Pilar, which would supposedly prove that the initiations for high treason came from Serbia, from the Association "Soko" from Kragujevac. This caused harsh reaction by both attorneys since this would not lead to any evidence. On that occasion, Cistler pointed out that, although it

⁴⁹ *Ibid*, 229.

⁵⁰ *Ibid*, 314.

⁵¹ V. Dedijer (1966), 574.

⁵² See: V. Bogićević, 256.

stood as the explanation of the indictment, these were not the facts covered by the indictment, which by any means cannot be attributed to the responsibilities of the accused. Kurinaldi accepted the opinion of the defense attorneys and rejected the proposal of the prosecutor. Also, it is useful to mention that Kurinaldi rejected the prosecutor's request to read the record of the search of an apartment. The Prosecutor had repeatedly insisted for it to be read, explaining that it was compiled by the police, who were on the spot and that is why this should be treated as a police investigation. However, Pfeffer declared the report null and void in the investigation, which was something Kurinaldi drew prosecutor's attention to, but the latter kept insisting that it should be read although it was illegal! The defense lawyers had sought such pieces of evidence to be rejected (among others Premuzic – which was perhaps his only bright spot in the interest of defense in the process), and the Chairman had done so.

Having completed the evidentiary procedure, closing arguments were to be given. The prosecutor Franjo Svara had given a speech instead of the closing argument by which he meant to humiliate the accused in every possible manner. Instead of sticking to the legal facts and evidence, his final word was to a large degree related to the grief of the entire Austro-Hungarian Empire, its military successes in war and the very politics, whereby he made a mistake by qualifying Cabrinovic's bomb assassination attempt with indirect (*dolus indirectus*), instead of direct intent (*dolus directus*). Throughout the entire final word, the political element was omnipresent. He emphasized the fact that Francis Ferdinand was a friend of the Slavs, and that the very idea of Great Serbia was high treason, presenting it as evidence *per se!* He emphasized the fact that not all the perpetrators were caught, but that they would be caught and punished, and he demanded that all twenty five accused should be punished by the Law.

By defending Princip, Blagoje Kerovic, Milovic and Forkapic, Feldbauer presented weak defense, arguing that Princip is the victim of the nationalist ideas from Serbia, but it is notable that the emphasis in his closing statement was placed on the fact that his main client at the time of the assassination was not up to twenty years of age, which would eventually lead to avoiding the death penalty. Then, he provided the correct final word for Blagoje Kerovic, noting that he could never have committed the crime of high treason, which was the term which he did not know the meaning of. But when it comes to Milovic, he qualified him as an ordinary smuggler, without going deeper into his case. He specifically stood for Forkapic, considering that the prosecutor failed to prove his guilt, because he did not belong to any organization, asking the court to acquit him.

Closing arguments of Premuzic and Perisic did not come as any surprise.⁵³ Premuzic's final word would be more suitable to the prosecutor than to the defense.

⁵³ J. Remak, 234.

Having said his famous statement, by which he started his speech, that it is difficult for him as a Croat to defend Serbian people for the assassination of the heir to the throne for whom Croats had high hopes, he continued his political speech of the existence of the Great Serbia ideas, exaggerated to the extent that Kurinaldi had to remind him that he would stop him if he did not stick to the case. Having said that, he provided a very weak defence, in not more than a few sentences, for Cabrinovic, Jovanovic, Zagorec and Mitar Kerovic. Perisic started his speech in a similar manner, by defending Popovic, Stjepanovic and Momcinovic and the Sadilos. However, it must be admitted that he had initiated the topic of the impossibility of trial to the members of the Young Bosnia for high treason only because Bosnia and Herzegovina was annexed. Rudolf Cistler further elaborated on this in his closing statement. Strupl's defense of Grabez, Micic, Perin and Jovo Kerovic did nothing to provoke attention, except that it did not tell almost anything. When it comes to the final word of Malek Vencela, it is enough for us only to quote one of his introductory sentences, in which he quoted Cicero: "If I heard that someone had taken over the defense of a man who was convicted of high treason to the homeland, I would consider that man the accomplice to the crime",⁵⁴ but then he admitted he would prefer to be a judge in such a process instead of a defense attorney.

Cistler's brilliant closing argument had attracted great attention.⁵⁵ During the hearing Cistler was the only one who behaved in a manner that befits a lawyer, which, among other things, can be noted by the way in which he interrogated his defendants. For example, during the interrogation of Veljko Cubrilovic, he constantly called attention to extenuating circumstances, such as the fact that he married out of love and earned for living by writing for the Serbian Academy, was helping his brother financially, that he feared for his family and only participated in the assassination in the attempt to protect his family. However, at the same time, he warned the court that they have to be impartial both when it comes to politics and pressures, pointing out the fact that the defense attorneys must be up to the task in a process as this one. Then he turned his attention to the essence of the problem – the accused could not be held responsible for the crime of high treason, but only for the crime of murder, because the heir himself did not have any special legal protection according to the former Law. Then he went on to explain the inability of the trial for the crime of high treason in a country that did not belong to the Dual Monarchy. Since parliaments of the monarchy had ratified the act of annexation, Bosnia and Herzegovina did not become a part of it, both legally and territorially. When it came to drafting the Berlin Treaty, by which the right to occupy Bosnia and Herzegovina was granted, only then was it ratified by both Parliaments. This did not happen when Bosnia was annexed. The fact that the

⁵⁴ V. Bogičević, 385.

⁵⁵ J. Remak, 235.

criminal act of high treason presupposes the intention to take away a part of a state, it is more than clear that this is not the case here. Cistler also questioned the conclusion of the prosecutor regarding the statements of some of the accused about their honest desire to unite with Serbia to be the act of high treason. By presenting stronger and stronger points about the attitudes he stood for, Kurinaldi started interrupting him more commonly and he constantly threatened to seize his speech. Having concluded that the former legislation was neglected, the chairman reprimanded him. Since he was too good a lawyer to base his defense on a single card,⁵⁶ he went on presenting his defense for each and every of his defendant separately (his client were Vasa and Veljko Cubrilovic, Ivo Kranjcevic and Nedjo Kerovic). For each of the defendants, he presented great arguments regarding why they could not commit the crime which they were charged for, whereby he again pointed to another illogical indictment, from a part of which it is clearly stated that the accused are charged for the criminal offence of murder, the point which was later rashly changed by qualifying it to their desire for the secession from the Monarchy! Then he continued by trying to prove that not even the act of high treason was committed, since there was no objective act by which secession was intended. The assassination was unable to represent that fact. He finished the final word by criticizing the indictment, by which the prosecutor sought for the same sentence for all the defendants, which is legally and logically impossible. It is assumed that Cistler found his strength to persevere in his intent and in his brave defense in the fact that he was aware that he participated in a historical process, so he continued to point out to the court that their decision will have historical significance.⁵⁷

The procedure was completed on the 23rd October, whereas the verdict was passed on 28th October. Princip, Cabrinovic and Grabez were sentenced to twenty years in prison; Vaso Cubrilovic was sentenced to 16 years of imprisonment, Popovic to thirteen years; Djukic to 10 years; Veljko Cubrilovic, Ilic, Milovic, Nedjo Kerovic, Jovanovic were sentenced to the death penalty by hanging; Mitar Kerovic to life hard labor, Kranjcevic was sentenced to 10 years in a dungeon, Stjepanovic to 7 years and Zagorac and Perin to three years in prison. Jovo and Blagoje Kerovic, Forkapic, Kalember, Micic, Milosevic and Franjo Momcinovic and Angela Sadilo were released from the indictment. Upon request, the death penalties for Milovic and Nedjo Kerovic were changed by the Emperor's decision, in a way that Milovic got 20 years of imprisonment in a dungeon, and Nedjo Kerovic got life imprisonment in a heavy dungeon.⁵⁸

⁵⁶ J. Remak, 238.

⁵⁷ S. Djordjevic, S. Vladetic, 106.

⁵⁸ There is a dominant view in foreign literature that all seven direct participants in the assassination were in fact innocent, which is the fact that particularly implies the innocence of the rest of the accused. Joachim Remak, „1914 – The Third Balkan War: Origins Reconsidered,“ *The Journal of Modern History* 43(3)/1971, 363.

Since the process was led for the felony for which the members of the Young Bosnia were unable to be held responsible for, justice was shipwrecked, as Igo would say. The entire process gave away the illusion that the fair trial was taking place, but it was basically clear that the accused would be sentenced to high punishments. What is more, the very pronounced sentences do not reflect the real situation neither in the procedure, nor in their participation in preparing the assassination. Austro-Hungary did not manage to prove the involvement of Serbia in the assassination⁵⁹, but it had come up with the idea of continuing with the court processes for high treason in this region.⁶⁰ For example, the majority of the indictment in Banja Luka process referred to the attempt of proving that Serbian organizations in cooperation with the Government of the Republic of Serbia, prepared violent secession of the part of Austro-Hungary and its annexation to the territory of Serbia, which implies their responsibility for the assassination of the heir to the throne Franz Ferdinand and the outbreak of the war.⁶¹

CONCLUSION

Events in 1914 in Sarajevo launched the World War I. As responsible for the assassination, Austro-Hungarian found Serbia, and thus received a pretext for the armed conflict. Extremely fast investigation after the assassination and trial process have shown political situation in Bosnia, which authorities tried to demonstrate Bosnia's loyalty to the Dual Monarchy and alleged great love for their monarch. Trial procedure, in which just on the first sight authorities followed the law, was

⁵⁹ It is established even by Leo Pfeffer during the trial. P. Tomac, 14. It is clearly emphasized that the assassination had occurred due to the internal turmoil in the country, which is something Serbia cannot be held responsible for. Robert W. Seton-Watson, "The Murder at Sarajevo", *Foreign Affairs* April 1925, 492, 504.

⁶⁰ Dj. Beatovic, D. Milanovic, 18-19. It should be noted that the monarchy persevered certain "treacherous" processes on a regular basis, and in order to emphasize its power. One of such processes is the so-called Zagreb Process in 1908 when they arrest 52 persons and charged them with the act of high treason, eventually convicting 31 people. Foreign literature states that the process itself was unfairly led to a great extent, so the verdict were not accepted abroad. See: B. E. Schmitt, 43. Or, as Cistler had pointed out: "there is a comeback of high-treason processes in a constant cycle which had become as periodic as a chronic disease which becomes recurrent in constant intervals". V. Bogičević, 368. Perhaps it would be good for us to draw attention to the fact that the accused Serbian people in Zagreb process had a defense attorney who also gave his very best to defend them. In the same process, the defense attorney had said the same statement Cistler had said in the Sarajevo assassination, and that is the fact that Croatia and Slavonia did not become the part of the Monarchy. The defense attorney Hinkovic had been penalized for several times by the court and because of his defense. *Austro-Hungary Judicial Crimes: Persecutions of the Yugoslavs Political Trials, 1908-1916*, The Yugoslav Committee in North America, Chicago 1916, 21.

⁶¹ Dj. Beatovic, D. Milanovic, 20-21; Pierre Renouvin, *La Crise Européenne (1904-1914) at la Grande Guerre*, Librairie Félix Alcan, Paris 1939, 166.

everything except fair. Some could find this procedure as effective, which is aim in the present legislations, but it was not fulfilled minimal requirements of the fair trial. It is special issue was it possible to achieve anyway. However, the conduct of the judges and prosecutor had to be based on the law and moral, not revengeful. As we could see, trial council did not want to give a word to the defense every time when they had a defense line confronted to the court's interests. Thanks to it, among the other reasons, through the world is extended an image of the Princip as terrorist, although the true is far away from that. One bright spot in this process was defense council Dr. Rudolf Cistler, who showed that, despite the state apparatus, in every time we can find individuals who have the courage to tell the truth regardless to all negative consequences that may follow, and in this case, that followed this brave man through many years.

Др Вељко М. Турањанин, асисџенџ
Универзитџетџ у Кражујевцу
Правни факулџетџ у Кражујевцу
vturanjanin@jura.kg.ac.rs

Др Драгана С. Чворовић, асисџенџ
Криминалистџичко-џолицџјска академија
Београд
dragana.cvorovic@kra.edu.rs

Сарајево 1914: кривични поступак против Младе Босне – илузија правичног поступка

Сажетџак: Ауџори у раду размџирају суђење џријадницима Младе Босне за убисџиво аусџиро-уђарског џресџолонаследника Франца Фердинанда и његове суџруге Софије Хоџек у Сарајеву 1914. године, будуџи да џо џиџање и након виџце од сџо године заокуџља џажњу сџручне и лаичке јавности. Ауџори су рад џоделили у виџце целина, јер је након уводних размџирања било нужно џриказаџи услове у држави џре аџенџаџа, а џревасходно џроблем анексије Босне и Херцеговине и њене раџификације у оквиру аусџиро-уђарске леђислаџиве. Након џога су у краџким црџама џодсеџили на улџимџаџум који је Двојна монархија уџуџила Србији, који није џрихваћен, џосле чега је доџло до избијања Првог свеџског раџа. Центџрални део рада ауџори су џосвеџили кривичном џосџуџу џроџив Младобосанаца, анализирајуџи џадаџњи џосџуџак, џонаџање учесника, а џогоџово џредседника судећег већа и бранилаца окривљених, где је једина хвале вредна одбрана џријадала др Рудолфу Цисџлеру, услед чега је сносио многобројне негаџивне џоследице након окончања џосџуџа.

Кључне речи: Млада Босна, Сарајевски аџенџаџ, кривични џосџуџак, убисџиво, Рудолф Цисџлер.

Датум пријема рада: 20.06.2016.