



Dealing with the Past Principles

Principle: Wrongdoings and war crimes must not be attributed collectively

Case Study



Dealing with the Past Principles

Dealing with the Past Principles is a civic initiative, promoted by an informal coalition of 5 organizations and an expert: Humanitarian Law Center Kosovo, Kosova Rehabilitation Center for Torture Victims, Integra, Youth Initiative for Human Rights, BIRN and Nora Ahmetaj. The group has taken a joint initiative to design and approve a set of principles that will inform and guide political and public figures on how to deal with victims, survivors, the painful past and historical narratives. The initiative aims to prevent harmful discourse and actions related to the conflict legacy and will serve as a reference document, where anyone who violates his/her principles should be held morally responsible. Therefore, the aim is to apply these principles and respect the values and feelings they embody, in order to ensure that victims and survivors are not harmed and that actions related to dealing with the past will contribute to the reconciliation process.¹ Now that the principles have been developed and organized, as well as well explained, it is crucial that they be presented to the general public and promoted correctly. We believe that one way to get people to understand the importance of principles is to talk about the damages, consequences and pain that can be caused in situations where principles are violated. Therefore, the coalition will publish some analysis which will be compiled by the Humanitarian Law Center Kosovo (HLC Kosovo) and we will try to bring concrete examples from the past where the principles have been used properly or even misused. One of these principles is “Wrongdoings and war crimes must not be attributed collectively.”

Wrongdoings and war crimes must not be attributed collectively

Wrongdoings and war crimes must not be attributed collectively to a group or ethnicity, but it is individuals who must be held responsible for their crimes related to the conflict. While it is important to fight impunity and to plea for the victims’ justice through criminal trials to hold those individuals responsible for committed crimes, it is unacceptable to blame parts or the whole of an ethnic group or community for these crimes. Criminal responsibility is solely held on an individual basis, and as such, only the individual can be prosecuted. Attributing war crimes collectively to a group or ethnicity will prevent the process of establishing justice for victims and will hinder the process of reconciliation. No accountability can be required from the entire nation if its government ordered the state and non-state actors to commit war crimes against unarmed civilians.

Introduction

Criminal liability is an individual category which refers solely to the perpetrator of the criminal offense and as such, each perpetrator is held liable only for his/her act or omission². Therefore, any war crimes, or other conflict-related crimes, should be attributed only to the perpetrators who are criminally liable for them. This is because the Criminal Code itself attributes the criminal offense and criminal liability only to natural persons who are mentally capable at the time of the commission of the criminal offense. Article 17 of this Code, in its first paragraph, states that “The perpetrator of a criminal offense is criminally liable if he/she is mentally competent and has committed the criminal offense intentionally or negligently³”. Consequently, only persons who are criminally liable can be held responsible for the crimes committed, but not those who are not criminally liable. Crimes committed during the war in Kosovo should be attributed only to those who committed them and not to the ethnic group of perpetrators.

In our public discourse, war crimes are often attributed to a particular ethnicity, regardless of the fact that individual criminal liability is regulated by law. Therefore, persons without proper knowledge of laws often fall prey to such a discourse by taking this fact for granted. We must stop the existing practice wherefore different individuals are unjustly

¹ [Principi ALB \(yihr-ks.org\)](http://Principi.ALB(yihr-ks.org))

² Commentary on the Criminal Code of Kosovo, Article 17, Point 12, Page 74

³ Criminal Code of the Republic of Kosovo, Article 17, Point 1, Page 5, [ActDetail.aspx \(rks-gov.net\)](#)



blamed because of their ethnicity or the group they belong to, therefore, we vouch for all decision-making institutions to take appropriate measures.

Hence, to justify the significance of the principle we are elaborating, we have further analyzed a case where the abovementioned principle has been violated, with an individual being targeted as a war criminal, for the sole fact that she belongs to an ethnicity which often is attributed war crimes collectively.

The targeting of D.G. as a war criminal in Gjakova

In June 2021, D.G., an elderly woman from the Serb community, had returned to Gjakova in an apartment that had been granted to her use. This right of usage was guaranteed to her in 1997 by a decision of the former Municipal Assembly of Gjakova. The apartment was actually a property of the Municipality of Gjakova, but the decision endorsed her to use the apartment. D.G. had requested the re-possession of her property based on the above decision, a request which was submitted to the Kosovo Property Comparison and Verification Agency (KPCVA). This institution had acknowledged her decision and on this occasion had vacated D.G.'s apartment, with her moving there on June 6, 2021.

Her return had caused a lot of dissatisfaction for several days in a row to the families of war victims, to some non-governmental organizations operating in this municipality, as well as to the assembly members of the Municipality of Gjakova. All of them had publicly demanded that she leaves Gjakova, considering her as an unwelcome person in the city and labeling her as a war criminal. Most of them had seen her return to the city of Gjakova as a provocation.

At the meeting of the Municipal Assembly of Gjakova, on June 28, 2021, the issue of the return of citizen D.G. to Gjakova was discussed as the first item on the agenda. In this meeting, a number of assembly members criticized the mayor Ardian Gjini, for allowing the return of D.G. to the apartment which was given to her for use by KPCVA. Some assembly members used hate speech against her and labeled her a war criminal.⁴

The assembly member who had proposed the item on the agenda in the Municipal Assembly, Ali Tafarshiku, publicly labeled the citizen as a criminal. In this meeting he stated: "Gjakova does not prohibit free movement. Gjakova prohibits the return of criminals, for whom there are proven facts that they have committed war crimes, and Gjakova prohibits the entry of any citizen, of any ethnicity into municipal property without procedures." In this statement, he unjustly included her among the persons who had committed crimes during the period of conflict in Kosovo, without providing any evidence for his allegations.

In the same way, another assembly member of the Municipality of Gjakova, Mimoza Shala, was against the arrival of D.G. there. According to her, this topic had affected every citizen of Gjakova, stating: "we all know how many crimes each Serb who lived in the Municipality of Gjakova has committed. "I do not know any of them who did not commit crimes in our municipality."

With her statement, the assembly member attributed the war crimes to each of the citizens of the Serb community who had lived in the Municipality of Gjakova, and among them D.G. as well. Although Shala said that it was not her intention to prejudice, she added that the fact that the citizen had worked as a cleaning lady at the police station in the pre-war period, was an indicator that she could also have been a participant in the numerous crimes committed in the city of Gjakova.

In his reply to Mimoza Shala, Ardian Gjini said that D.G. had worked as a cleaning lady in the Serbian Police, a fact which did not prove that she had committed war crimes.

⁴ Online Video, TV Syri Vision, Meeting of the Municipal Assembly of Gjakova, 28.06.2021, <https://www.facebook.com/tvsyrvision/videos/111377627760698>



Even the assembly member Muharrem Musa during his statement said that "for us such a thing is unacceptable, such a return of a criminal or any other criminal, will not be accepted." Similarly, with his statement, Musa targeted D.G. as a criminal, merely because she was Serbian.

From the quotations above, it is obvious that D.G. was accused without any evidence of war crimes and completely dishonestly. Moreover, the criminal legislation in force recognizes the principle of "presumption of innocence"⁵, which stipulates that a person cannot be considered guilty, until his/her guilt is proven by a final court verdict. Therefore, in a democratic society no one has the right to make such public statements and attribute crimes to one person, just because he/she is a part of a certain community.

Consequences of collective blame attribution

As a consequence of her targeting as a war criminal merely because she belonged to a certain ethnicity, D.G. faced a hostile environment, where actions taken by individuals and institutions made it difficult for her to exercise her right to return to her apartment and enjoy her fundamental rights.

On June 28, protests were announced by the families of the war victims, due to the dissatisfaction caused by the arrival of the citizen from the Serb community in Gjakova, but these protests were ultimately canceled.

According to an interview conducted by ATV with D.G., they were informed that the same had been attacked several times, thus she had been under constant surveillance by the Kosovo Police. Other citizens had even harassed and attacked her in various ways. She had stated: "they stoned my windows, they are damaged a bit. And they attached some pictures, which seemed to me like a threat that they would kill me. The police have protected me, but when the police leave, they come again and harass me"⁶.

The attacks on D.G. had made her feel insecure about continuing her stay in that apartment. Therefore, due to her insecurity, on June 30, D.G. had tried to change the front door of her apartment, but such a thing was impossible for her. This is because according to a report by the online portal Telegrafi, who had contacted the Kosovo Police Spokesperson in Gjakova, Nusret Xhurkaj, it was said that "the police did not allow D.G. to install an armored door, because according to the police, this requires the permission of the municipality"⁷. And as of this date, D.G. has vacated the apartment and was staying with her sister as she was no longer feeling safe there⁸.

From the information above, we understand that D.G. by no means endangered or harmed any Albanian residents or any member of other communities. Furthermore, when she had returned to the Municipality of Gjakova, she was possessing all the documents needed in order to be able to access her apartment. Therefore, her categorization as a criminal by the citizens of Gjakova and imputing war crimes to her is against her fundamental rights and freedoms. By no means should we generalize the situation and violate the rights of a person as a result of a painful past. Such a thing, in addition to being contrary to the Dealing with the Past Principles, is at the same time against the legal and democratic principles. Unfair attribution to a person and incitement of hatred towards the same, exceeds moral responsibility, but can also be considered a criminal offense.

Considering that based on the legislation in force D.G. has the right to return to the apartment and possesses a permit to use it, any other obstacle which makes it impossible for her to exercise her rights, as well as unfair attribution of war crimes

⁵ Criminal Procedure Code, Article 3, Point 1, Page 1, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2861>

⁶ Online Video, ATV, 28.06.2021, [Central News of 19:00hrs - 28.06.2021 ATV - YouTube](#)

⁷ Telegrafi.com, 30.06.2021, [Dragica Gasic is not allowed to install an armored door in her apartment in Gjakova - Telegrafi](#)

⁸ Radio Evropa e Lirë, 06.07.2021, [Municipality of Gjakova sues Dragica Gashiqi \(evropaelire.org\)](#)



to her, is in direct conflict with the law and the democratic spirit.

On July 6, 2021, the Municipality of Gjakova had filed a lawsuit at the Basic Court of Gjakova⁹. The information obtained by the HLCK from Lekë Muqaj, the Public Information Officer of the Basic Court of Gjakova, shows that “The Basic Court in Gjakova had received a lawsuit from the Municipality of Gjakova, requesting the cancellation of the contract for lease of the apartment with an interim measure.”

An interim security measure is a measure proposed for securing a lawsuit by the plaintiff in a contentious proceeding and which may be requested on four different grounds. In relation to the lawsuit in question, the proposal for imposing a security measure may be requested "if there is a risk that without imposing such a measure the opposing party could significantly restrict or hinder the realization of such a request ..."¹⁰

Following the hearing at the Basic Court of Gjakova, on August 9, 2021, this court rejected the proposal of the Municipality of Gjakova to impose a security measure, which was requested to prohibit the plaintiff from personally staying, using or residing in that dwelling. The court had analyzed the case and after evaluating the evidence concluded that the imposition of a security measure at this stage was ungrounded and unnecessary.¹¹

Therefore, considering this ruling issued by the court prevented a possible violation of the basic rights of the citizen, thus enabling her to continue to use the apartment which she was entitled to. Prior to the issuance of this ruling, there had been various reactions regarding the lawsuit filed against D.G.

The Humanitarian Law Center in Kosovo together with the Youth Initiative for Human Rights in Kosovo, in a joint reaction had asked the Municipality of Gjakova to dismiss the lawsuit, since D.G. possessed all the necessary documents to return to Gjakova and the same were public. Furthermore, the Municipality of Gjakova was requested to enable a safe and dignified return of D.G. to the apartment¹².

On July 13, 2021, the Embassy of United States of America in Kosovo had reacted about this case through a post on the social network Facebook, which read "Victims deserve justice and displaced persons have the right to return to their homes. Dear Ministers and Mayors of Municipalities - please put politics aside and work together to ensure that all Kosovars enjoy peace and security, and are free from harassment and intimidation"¹³.

Such situations, where certain collective offences are attributed to certain persons, derive as a result of a practice of associating crimes to members of Serbian ethnicity. But these practices must end, since every person is entitled the right of not being unjustly prejudiced and to have their rights and freedoms respected. Therefore, any violation of citizens' rights, targeting them as criminals, is illegal and against the principles of a democratic state.

⁹ Radio Evropa e Lirë, 06.07.2021, [Municipality of Gjakova sues Dragica Gashiqi \(evropaelire.org\)](https://www.evropaelire.org)

¹⁰ Law on Contentious Proceedings, Article 297, paragraph 1, subparagraph b), Page 60 ([Microsoft Word - T-Law p \ 353r procedur \ 353n kontestimore-shqip.doc](#)) ([rks-gov.net](https://www.rks-gov.net))

¹¹ Facebook Post, Basic Court of Gjakova, 11 August 2021, [Basic Court Gjakova Facebook](#)

¹² Humanitarian Law Center Kosovo, Reaction to the lawsuit of the Municipality of Gjakova, 08.07.2021, [Reaction to the lawsuit of the Municipality of Gjakova - Humanitarian Law Center Kosovo \(hlc-kosovo.org\)](#)

¹³ US Embassy in Kosovo, 13.07.2021, <https://www.facebook.com/kosovo.usembassy/posts/6548774871815279>



Recommendations

In order to reduce cases where war crimes and offences are collectively attributed to a group or ethnicity and to avoid the consequences thereof, we recommend that “Dealing with the Past Principles”¹⁴ are respected and embraced by all political and public actors, as well as the media.

We recommend that defamation be returned as a criminal offence within the Criminal Code of the Republic of Kosovo, as was in the Provisional Criminal Code of Kosovo in 2004, to be penalized and prosecuted by the state prosecution, especially when dealing with cases related to war crimes, since it leads to violation of the safety of persons against whom defamation is made.

We request from Municipal Assemblies and the Assembly of Kosovo, as well as from other institutions, to include in the Code of Conduct or their regulations, the prohibition and sanctioning of the collective attribution of war crimes to a group or ethnicity by MPs, municipal councilors and representatives of institutions.

The media should be held accountable if they target a group or ethnic group collectively for war crimes. The Independent Media Commission should identify and take action against media or journalists that do so.

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¹⁴Principle ALB (yih-ks.org)

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