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Judge keeping eye on Ratko Mladic trial - Advertiser, The (Adelaide, Australia) - June 11, 2011 - page 032
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As the world watches the trial of the ``Butcher of Bosnia'', court reporter SEAN FEWSTER talks to the barrister who successfully defended an Adelaide man accused of wartime atrocities.

ALMOST 20 years ago,

a teary Ivan Polyukhovich walked out of the Supreme Court with his reputation restored.

Mr Polyukhovich, 77, had been tried and acquitted in May 1993 of complicity in the murder of 850 Jewish people at Serniki, in then German-occupied Ukraine, during World War II. He owed his freedom to a jury's verdict and the work of his legal team.

But, at the time, his barrister was loathe to speak about the high-profile case, which had stretched across three years and two countries.

``He's a very old man and he's very upset,'' the barrister said of Mr Polyukhovich, who died in 1997 aged 81.

Today, that barrister is better known as Supreme Court Justice Michael David - and he has never forgotten Mr Polyukhovich.

Thick volumes related to the case fill shelves in his judicial chambers.

On the wall hangs a framed copy of Time magazine's coverage of the trial, while his personal collection of military history books fills another set of shelves.

``I remember every day of those three years,'' Justice David said.

``I've always had an interest in the Second World War, and I was a criminal barrister - putting them together was, for me, an exciting time.

``It was fantastic stuff because all of a sudden, in little old Adelaide, you had investigations into something that you'd only seen in movies.''

The case against Mr Polyukhovich was a sensation, filling hours of media coverage and spawning two books.

It began in January 1990, when investigators accused Mr Polyukhovich of participating in the Holocaust.

They supported their allegations with the exhumation of bodies from mass graves and eyewitness testimony.

In the years that followed, Mr Polyukhovich was prosecuted under the federal War Crimes Act (1945), which states any serious offence committed during the course of a war or occupation is a war crime.

A person also is guilty if they committed an offence ``in the course of political, racial or religious persecution'' or ``to destroy'' an ``ethnicity, religion or racial group''.

``If a soldier murders someone during the execution of their duty, that is a war crime,'' Justice David said. ``But if someone murders someone else for another reason - say, a fight over a woman - during a time of war, that is not a war crime.''

In Mr Polyukhovich's case, counsel did not deny the Holocaust occurred - a tactic used in war crimes trials overseas.

``(The witnesses were) very angry because they had been through a lot in their lives, seeing atrocities,'' Justice David said.

``We agreed that the Holocaust did happen, because it's just nonsense to say otherwise. This case was fought on the basis of whether or not specific people committed specific crimes in a time of war.''

While the rules of engagement were easily determined, the case was by no means simple. ``War crimes trials are always complex and always difficult,'' Justice David said.

``They call for greater flexibility, because the people you are dealing with have lived through things that mainstream Australia will never experience.

``Getting that across to a jury is very difficult.''

Language barriers and cultural differences added to the problem, he said.

``A lot of them are uneducated and have lived all their lives in a village and haven't been exposed to a Western lifestyle at all,'' he said.

``And you have real difficulties when your witnesses come from Communist countries. When they come into a courtroom, the shock is a bit much.''

The greatest issue was the passage of time.

``Your witnesses are very old . . . 50 years is such a long time and, really, outside most of our experiences,'' Justice David said.

``You wonder how much (witnesses) have remembered, and how much they'd picked up by talking about it.''

Though his area of interest is World War II, Justice David admits to ``keeping an eye'' on the latest war crimes trial.

Former Bosnian Serb army commander Ratko Mladic is accused of orchestrating the murders of 100,000 people during the 1992-95 Bosnian War. His alleged acts - said to be the worst since World War II - include the ``ethnic cleansing'' of non-Serbs, the shelling and sniping campaign that terrorised Sarajevo and the 1995 slaughter of 8000 Muslim men and boys in Srebrenica.

Though ill, the ``Butcher of Bosnia'' has reacted defiantly to the 11 charges.

Mladic marked the first day of his trial with a mock salute, smiled coldly at the mothers of his alleged victims and dubbed the process ``obnoxious''.

``The whole world knows who I am,'' he told the Hague.

``I defended my people, my country and now I am defending myself. I want to live to see that I am a free man.''

Justice David said those involved in Mladic's trial faced an unenviable task.

``The main difficulty (with Mladic) is also time,'' he said.

``The Second World War trials began when the war was finished . . . when the war's over, it's easier to round up everyone and try them.''

Justic David said that with the Mladic trial, political turmoil in the region had yet to settle which meant it was like ``plucking people out of the middle of the battlefield and trying them''.

``That creates all sorts of problems,'' he said.

Justice David fears the trial may suffer the same criticisms as the Nuremberg Trials, which prosecuted Nazi leaders.

``One of the criticisms there was that it was `victor's justice', and you have to be very careful of that,'' he said.

``War crimes trials must be above the politics of the sides - it must be about immutable concepts of justice.''

Whatever the difficulties, Justice David says war crimes trials are vitally important.

His experiences in the Serniki ghetto, now part of Poland, made that very clear.

``I walked down the main street, where the Jews walked,'' he said.

``It was amazing, the atmosphere was incredible, because the place hadn't changed in 60 years. For the people who were watching me, the villagers, the war was still on. It had never left.''

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