

1992 DEPORTATION OF BOSNIAN REFUGEES CASE

On the day marking the 15-year anniversary of the deportation of around a hundred Bosnian refugees by the Montenegrin police to the Bosnian Serb Army soldiers who then slaughtered most of them, there is no positive news to be shared regarding the performance of the Montenegrin authorities. Only members of the civil society have marked the anniversary of the still uninvestigated crime for which no redress has yet been provided. Not a single representative of the government has attended the gathering and two days ago, the victims' families were laying flowers before the locked doors of the Montenegrin embassy in Sarajevo. That scene depicts the attitude so far presented by the Montenegrin government towards the victims, their grief and their claims.

The official position of the Government in the civil suits initiated by the victims starting from December 2004 remains that the state of Montenegro may not be held responsible for deaths of deportees, as the deaths occurred on the territory of another state.

This attitude has been explicitly repeated by the current Minister of Justice, Miras Radovic, in his statement published this morning, announcing that the officers of Montenegro had deported refugees in accordance with the law! This outrageous statement, ignorant of the international humanitarian law at the time in force also in the Republic of Montenegro, presents a powerful influence over the court, and the fact that it comes from a former Supreme Court judge is frightening also for the so much needed independence and impartiality of the Montenegrin judiciary.

INEFFICIENT INVESTIGATION

The criminal investigation into this war crime against civilian population, formally opened only on 23 February 2006, proves inefficient to date. Founded on a flawed request for initiation of the investigation by the State Prosecutor, qualifying illegal apprehension of civilians and their delivery as prisoners of war to the Foca concentration camp and other soldiers of Radovan Karadzic's army as „involuntary resettlement“; suggesting the Court should hear 16 dead victims of deportation; not citing a single written evidence in spite of dozens provided by victims' families in civil suits¹, and nominating only six former and low key officers of the Ministry of Interior as suspects for the war crime, suggests that the investigation had deliberately been set on a wrong foot. Moreover, although it is specified by law that an investigation should be completed within six months, this one has been dragging on for a year and three months without any achievement. The investigating judge had recently announced that it is difficult to get to the witnesses, although more than a hundred of witnessing family members visited Podgorica at their own expense in order to provide statements in civil trials before the very state prosecutor, also competent for the outcome of the investigation and indictment of the perpetrators. However, the state prosecutor never bothered to organize that they be

¹ Please see the selection of written evidence submitted to the state prosecutor and the civil court on: http://www.prelevic.com/deportation_written_evidence.htm

heard by the investigating judge at the same time, which also suggests that the state could not care less about investigating, prosecuting and punishing the responsible for this war crime.

DEFICIENT REDRESS, NO TRUE REPARATION

The 38 civil suits for redress, initiated by the six survivors and their families and the families of 32 victims who did not survive deportation are pending before the first and second instance courts. To date 17 first instance judgments have been received, two rejecting the claims for reasons of alleged time bar and alleged illegibility of siblings' of a victim to compensation, and 15 founding the state responsible for deaths of the refugees and awarding compensation to family members for emotional suffering due to death in the range of 15-30,000 euros. However, material damages were rejected due to an extreme standard of material evidence in all but two cases, the claims of brothers and sisters are generally rejected due to an extremely rigid interpretation of law, and the request for compensation for breach of Human Rights of the families of the disappeared victims (based on the claim of discrimination and inhuman and degrading treatment) was rejected in all cases. The state has appealed all judgments unfavorable to it, claiming statute of limitation and lack of causal link between the actions of Montenegro police and the death occurring on the territory of another state. The families have emphasized in their appeals the painful fact of the court dismissing their claims for violation of their human rights due inhuman and degrading treatment of the state that did not provide them with any and/or appropriate information on the whereabouts of their loved ones, nor had it performed a single action over those 15 years to the end of finding the remains of the missing and conducting any efficient investigation into their deaths. Also, to date not only that no one has been convicted of the crime, but no one has even been indicted, and moreover not a single survivor of deportation or any member of families has ever been summoned to participate in the investigation in any way. In order to support their claims for violation of their human rights, the families have cited the relating case-law of the European Court for Human Rights (mostly *Cyprus v. Turkey* judgment as well as other judgments involving breaches of ECHR Art. 2 and 3 against Turkey) and the practice of the Human Rights Committee. Nevertheless, most first instance judges found that the family members of the disappeared do not have a standing regarding Human Rights violation claims, and a few have cited one and only judgment of the European Court in Strasbourg only to make an argument against high damages request. At the same time, the judgment awarding the then prime minister Milo Djukanovic 15,500 euro for emotional pain suffered only due to defamation by the press (transmitting an article from a Croatian newspaper) stands out as an unfavorable reminder of the inexcusably low level awards for the emotionally and often physically destroyed family members of the disappeared.

CONFLICTING ROLES OF THE STATE PROSECUTOR

The victims – plaintiffs are facing in their civil suits the state prosecutor agents who defend the State, i.e. the Government. The Council of Europe requested from Montenegro to amend the conflicting roles of the same office that is on the other side supposed to decide on indictment of those state agents involved in the this war crime. However, the

state prosecutor continues to argue for a stop of all civil proceedings for redress until the final completion of the criminal proceedings, obstructed by the state prosecutor. Fortunately, the first instance court is now rejecting such requests.

THE ATTITUDE OF THE STATE

There was no apology whatsoever on behalf of any state official, no sincere investigation, only an intense fight against the victims in the civil court. The Prime Minister, Mr. Sturanovic never answered to two letters of the victims suggesting settlement negotiations. In the meantime, a total of four parents of the victims have died without seeing justice.

MONTENEGRIN CIVIL SOCIETY MARKS THE SAD 15TH ANNIVERSARY

On the other side, Montenegrin civil society has no doubts regarding the state's responsibility for the crime and a duty to apologize to the victims, i.e. their families, to investigate the crime and provide complete reparations to the victims. Ever since the families have initiated the law suits in 2004, the media extensively covered the development of the case, prominent intellectuals and NGOs regularly voicing their appeals to the government. Today's public gathering marking a civil society remembrance and commemoration of the 15th anniversary of the crime proved that the only ones promoting the impunity for war crimes and the self-content attitude in the face of the victim's pain is the government of Montenegro.

Today's event, organised by the Montenegrin independent weekly „Monitor”, where the prominent intellectuals apologized to the victims for not having done more in 1992 to prevent the crime from happening, gathered a packed auditorium of the city cultural centre but not a single duly invited government official.

REQUEST FOR ASSISTANCE

As we have done it the first time we addressed you in December 2004, we kindly ask you again to use the influence you may have over the persons and institutions that have the capacity to encourage the Montenegrin Government to start behaving in line with the principles of the rule of law, Human Rights and democracy – as they promised first to the United Nations and again to the Council of Europe and the European Union. Last but not the least; they should finally start performing as responsible state officers, in line with common standards of decency and humanity.² As we are certain that this may only happen under significant international pressure exerted by foreign governments and organizations, we continue to write to you.

² As reconfirmed as international law by the UN GA Res. 60/147 “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violation of International Humanitarian Law”.

Lawyers of the Prelevic Law Firm from Podgorica, Montenegro represent some 200 members of families of those who have not survived this war crime as well as six survivors of the Foca concentration camp.

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For all background information please see:

http://www.prelevic.com/human_rights_deportation.htm (in English) and/or
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