

VIEW FROM THE HAGUE

ACCUSED DEFY JUSTICE, AND AUTHORITIES ALLOW IT

Last week, in their address to the Security Council of the United Nations, ICTY President Theodor Meron and Chief Prosecutor Carla Del Ponte both stressed that SCG was failing to arrest persons indicted by the Tribunal. Prosecutor Del Ponte said she believed that at least 12 of the 20 fugitives were living in Serbia.

During the discussion that was held in the Security Council, Serbian government minister Zoran Lončar claimed that "since January 2003 as many as 24 indicted persons from the territory of SCG have been transferred to the custody of the Tribunal." This number is grossly incorrect.

In fact, SCG has transferred 10 persons to the Tribunal since January 2003, and, what is most alarming, only one single person, Colonel Ljubiša Beara, in the last year. Chief Prosecutor Del Ponte noted before the Security Council that Beara's transfer happened only because OTP gave precise information on his location to the Serbian authorities and monitored his residence.

Minister Lončar said before the Security Council that Serbia and Montenegro fully accepts its obligation to cooperate with the Tribunal. Yet, indicted persons freely participate in public life in Serbia. Nebojša Pavković, Vladimir Lazarević and Sreten Lukić have been living openly in Serbia for over a year since they were indicted for participating in a host of crimes against Kosovo Albanian civilians in Kosovo in 1999, crimes which include deportation, murder, torture, sexual assault, looting and destroying property. This is a rather unique example in which the authorities of a country do not even try to hide the fact that fugitives from the ICTY openly live at large.

State officials keep repeating that voluntary surrender is the preferred model of cooperation with the ICTY. Of course, the accused are most welcome to surrender voluntarily. But the possibility of voluntary surrender certainly does not relieve the authorities of their duty to arrest those accused who fail to do so. Are individuals accused of ordinary crimes, such as robbery, rape, murder, etc. allowed to move freely and participate in TV talk shows or are they arrested as soon as a warrant is issued? Why would the criteria be different for those accused of some of the most heinous crimes known? Do ordinary citizens feel safe in such an environment? This is exactly what is happening in Serbia. Persons accused of being criminally responsible for the intentional murder of civilians, including women and children, are openly defying justice, and the state authorities are allowing that to happen. The government's proclaimed policy of "cooperation through voluntary surrender" effectively equals ridiculing justice.

Claims that the ICTY has indicted some individuals "because they are Serbs" or "because they defended their country" are gross misconceptions. Every accused before the

Tribunal is indicted on the basis of evidence that indicates criminal responsibility for crimes such as murder, torture and deportations. Such crimes are not part of legitimate warfare. They are acts that are prohibited everywhere in the world, including by domestic laws in SCG and elsewhere in the former Yugoslavia.

It must also be stressed that every accused before the Tribunal enjoys the presumption of innocence, and will be set free, if it is not proven before the court beyond reasonable doubt that he or she is criminally responsible. This has happened several times.

Regardless of the number of persons who have been previously transferred, it is the legal obligation of SCG to arrest and transfer to The Hague every indicted **person. But even regardless of their international obligations, it is difficult to understand how the authorities can justify failing to even attempt to bring to justice individuals accused of horrendous crimes, such as the murders of two year-old Afrim Imeraj, killed on 26 March 1999 in the village of Padalište. Afrim is one of 36 children murdered in Kosovo in 1999 under the age of 15 whose names are listed in the indictment against Pavković, Lazarević, Lukić and Vlastimir Đorđević.**

If the state authorities of Serbia and Montenegro indeed believe that "the State must not be held hostage to The Hague indictees," then they should arrest them all immediately and transfer them to the Tribunal.

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