

Пише: Tim Workman
четвртак, 29 јул 2010 14:10



1.

In these proceedings the Government of the Republic of Serbia seeks the extradition of Dr Ejup Ganic in respect of offences said to have been committed in Bosnia in May 1992. In the course of the 6 day hearing I have received a substantial amount of evidential material amounting to some 20 lever arch files. I am greatly indebted to Counsel both for the Government and for the defendant for their various schedules and skeleton arguments which have guided me through that material. I have also considered the evidence of 17 witnesses of which 6 were called to give evidence personally on behalf of the defence and 1 in rebuttal on behalf of the Government. The proceedings are brought under the Extradition Act 2003 and Serbia is a Part II Territory. It is an accusation request certified by the Secretary of State on the 12th April 2010, the defendant having been arrested under a provisional warrant and first appearing before the court on the 1st March 2010.

2.

Mr James Lewis QC, Mr Ben Watson and Miss Rachel Scott appear for the Government of Serbia. Mr Edward Fitzgerald QC and Mr John Jones appear on behalf of Dr Ganic. There are no issues over the certification of the request or over the identification of the defendant. In opposing an order for extradition the defence raise a number of issues. They are:– Abuse of Process

The conduct alleged does not amount to an Extradition Offence Extradition would be barred by Section 81(a) and (b) on the grounds that the request is made for the purpose of prosecuting or punishing him on account of his race, religion, nationality and political opinions The defendant would be entitled to functional immunity.

That extradition should be barred under Section 82 of the Act by reason of passage of time That extradition would be incompatible with his Human Rights particularly Articles 2, 3, 6 and 8.

3.

Extradition Offences

Section 137(3) of the 2003 Act requires:-

(a)

The conduct occurs outside Category 2 Territory

(b)

That conduct is punishable under the Law of the Category 2 Territory with imprisonment or another form of detention for a term of 12 months or a greater punishment

(c)

In corresponding circumstances equivalent conduct would constitute an extra territorial offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment.

4.

The conduct complained of all occurred within the territory of Bosnia and Herzegovina and

Пише: Tim Workman
четвртак, 29 јул 2010 14:10

therefore outside the Category 2 Territory of Serbia. Under the terms of the Criminal Code of the Socialist Federal Republic of Yugoslavia, which applied to Serbia at the relevant time, Article 143 (War Crimes against the Wounded and Sick) was punishable by a term of imprisonment of not less than 5 years or by capital punishment; Article 146 (the Unlawful Killing and Wounding of the Enemy) was punishable by imprisonment of not less than 1 year and Article 148 (the Use of prohibited means of warfare) was punishable by a term of imprisonment of not less than 1 year. Similar conduct which would give rise to allegations of grave crimes would be prosecuted in the United Kingdom under the Geneva Conventions Act 1957 and all such offences carry more than 12 months imprisonment.

5.

If the conduct amounts to a grave crime under the Geneva Conventions, I am satisfied that such offences would have been punishable by virtue of Criminal Code of the Socialist Federal Republic of Yugoslavia by imprisonment of not less than 12 months imprisonment. I am also satisfied that Section 196 of the Extradition Act 2003 would have applied had there not been any law in force in respect of the time and place where the conduct was alleged to have occurred, which would have rendered the conduct an Extradition offence.

6.

Therefore, if the conduct in this case is capable of amounting to one or more of the grave breaches of the Geneva Conventions 1949, the conduct would amount to an extraditable offence.

7.

In considering whether the conduct does amount to a grave breach of the conventions I have examined the conduct alleged in the request itself. In due course it will be necessary for me to examine the evidence that has been tendered during the course of this case together with the written materials. From that evidence I will make certain findings of fact which I shall need to apply to other facets of this case. For the purpose in deciding whether there is an extradition offence I have considered solely the conduct alleged in the request itself. The allegation is: On 2nd May 1992, in the absence of the President, the defendant, in the capacity of Acting

Пише: Tim Workman
четвртак, 29 јул 2010 14:10

President of the Presidency of Bosnia and Herzegovina, personally commanded an attack on the military hospital, the JNA Officers' Club and a column of medical vehicles. On the 3rd May 1992 it is alleged that the defendant personally issued the command to start an attack on JNA column in Dobroviļjacka Street (Volunteers Street).

8.

The request refers to the conflict as "The International Combat Conflict" whereas the grave war-crimes of the Geneva Convention would only be applicable if there was an international armed conflict. For the Government Mr Lewis submitted that this were merely an error in translation and that it was acknowledged by Serbia that the conflict at the time was one of an international armed conflict. Mr Fitzgerald QC on behalf of the defendant submitted that the term "International Combat Conflict" was coined to avoid a finding that it was an international armed conflict which might have rendered Serbia responsible in international law for aggressively entering Bosnia, thereby becoming responsible in international law to pay reparations to Bosnia. It is said that for that reason Serbia has always claimed that the conflict in Bosnia was an internal conflict.

9.

On this aspect it is not for me to consider the consequences which would flow from this decision but it is in my view entirely clear that the events in Sarajevo on the 2nd and 3rd May 1992 and in the weeks prior to that weekend amounted to an international armed conflict.

10.

"Grave Breaches" of the four Geneva Conventions of 1949 only apply to international armed conflicts which arise between two or more of the High Contracting Parties to the conventions. The independent State of Bosnia and Herzegovina was created by a declaration of independence on the 3rd March 1992 which was recognised by the European Union and others on the 6th April 1992. At that time Serbia formed part of the Federal Republic of Yugoslavia which was the successor to the Socialist Federal Republic of Yugoslavia. It is submitted that it was not until the 14th December 1995 that Serbia as part of the Federal Republic of Yugoslavia recognised Bosnia and Herzegovina as a Sovereign State. It is submitted that Serbia could not

Пише: Tim Workman
четвртак, 29 јул 2010 14:10

have claimed at the time to have been a high contracting party to the Geneva Conventions. However it would appear that the Federal Republic of Yugoslavia assumed the obligations of the Socialist Federal Republic of Yugoslavia. This is a complex area of law and this court does not have the expertise to give an authoritative ruling on this issue. For the purposes of these proceedings I have concluded that the Geneva Conventions apply in the conflict that was taking place in Bosnia in May 1992.

11.

If the defendant was responsible for giving the command for an attack upon the military hospital in Sarajevo and the command for the attack on the medical vehicles on the 2nd May these would amount to allegations of grave crimes under the Geneva Convention and are therefore extradition offences. 12.

It is alleged that the defendant in his capacity as Acting President of Bosnia and Herzegovina personally commanded the attack upon the JNA Officers' Club. There is nothing in the request to indicate why in an international armed conflict such an attack would constitute a grave crime contrary to the Geneva Conventions. I therefore find that no war crime is committed by the attack on the JNA Officers' Club.

13.

The following day a group of 30 JNA vehicles left the officers' club to restore President Izetbegovic to the Bosnian Presidency. It was also seized upon an opportunity to arrange for the evacuation of JNA forces and military equipment from the officers' club to a destination outside the city. There is nothing within the request which would bring the conduct alleging issuing a command to attack a military convoy within the meaning of a grave breach of the Geneva Conventions 1949. However there is a reference to an Ambulance within the convoy and the request alleges that Dr Ganic expressly ordered an attack upon the Ambulance within the convoy. To that limited extent I am satisfied that the conduct alleges an extradition offence. I am not satisfied that the rest of the convoy had any right to protection or that the soldiers in the 30 vehicles were prisoners of war.

14.

Пише: Tim Workman
четвртак, 29 јул 2010 14:10

Section 81 Bar to Extradition by virtue of Extraneous Circumstances and Abuse of Process The procedural history of the investigation with a view to prosecution is long and complex. Serbia began a lengthy investigation, a file was prepared and forwarded to the Republic of Serpska. Serpska in turn forwarded the case to the International Criminal Tribunal for former Yugoslavia (ICTY) and in 2002 and 2003, pursuant to the Rome Agreement of 1996, (which has become known as "Rules of the Road"), the ICTY carried out an investigation and a review of the evidence. Having reviewed all the evidence, the investigators found that there was no case against Dr Ganic. That decision was binding upon Serbia at the time but the arrangements under the Rome Agreement have now lapsed. It is quite properly submitted by the Government that this is not a case where a court has tried an issue and reached a conclusion. Therefore, the Government submits, the investigation remains open and can be reviewed and prosecutions commenced by their War Crimes Prosecutions Office. Whilst I accept that the decisions of the investigators at the International Criminal Court do not give rise to a bar in the sense of *Autrofois*, it raises a very significant obstacle to any other prosecution. The ICTY was set up as an independent international organisation to deal with alleged war crimes so that trials could be conducted without it being said that defendants had to face trial by their enemies. I therefore attach considerable weight to the fact that no prosecution was brought.

15.

In May 2002 the High Representative in Bosnia and Herzegovina established a Prosecutors Office for the State of Bosnia and Herzegovina which was to be an international and independent investigative team. The investigation was most thoroughly undertaken by a team led by a British CPS Lawyer, Mr Alcock, who gave evidence to me. He had read of the arrest of Dr Ganic and realising that he had material evidence contacted Dr Ganic's Solicitors.

16.

Mr Alcock gave evidence before me. I reached the conclusion that he was a dedicated, thorough and entirely independent investigator lawyer. In giving evidence he was precise and extremely careful to give accurate, clear and unambiguous answers to the questions that were put to him. He was clearly a witness of truth and his investigations were extensive, including taking evidence in Canada from the United Nations Commanding Officer at the time.

Пише: Tim Workman
четвртак, 29 јул 2010 14:10

17.

He examined all the evidence which had been obtained and in many instances obtained further evidence from witnesses which clarified the earlier statements and their evidence was then “a lot less damaging than it had been”. He examined the witness statements, film footage, historical documents and books about the events of 1992.

18.

In respect of the events of 2nd May 1992 Mr Alcock reached the conclusion that Dr Ganic could not and was not “responsible in any war-crime guilt sense for anything at all, and could not have been on the facts that he knew at that time.” In respect of the events of 3rd May he looked more critically at the evidence because by that time Dr Ganic had been assigned the role of Acting President. Mr Alcock told me “I believe it is in the interest of justice that war crimes that took place in Dobroviljacka Street are brought to trial but it is very much in the interest of justice to make sure one brings the right people to trial. As far as Dr Ganic is concerned I can see nothing, except a politically motivated trial against him to justify an indictment”.

19.

Mr Damir Arnaut gave evidence to me in person. He is the adviser for Legal and Constitutional Affairs to the President of Bosnia and Herzegovina. He has played a significant part in the diplomatic aspects of these extradition proceedings. He told me something of the diplomatic moves which occurred between Bosnia, Serbia and the Turkish Governments. It seems that these extradition proceedings come at a sensitive time for Serbia whose Government were anxious to proceed with the various stages of an application to join the European Union. One of the aspects of their application concerned the adoption of what is known as the Srebrenica Declaration which was designed to provide proof to the European Union that Serbia was distancing itself from the Milosevic Regime. That declaration would not be as effective if the Bosnian Muslims in Bosnia and Herzegovina were to criticise the declaration. The Serbian Government was anxious to avoid including the word genocide in the declaration but the Bosnians equally felt that the word should be included in the declaration. It is obviously a very sensitive issue. It seems that in attempting to resolve the issue the Turkish Ambassador had received an assurance from the Serbian Government that they would not send the extradition request in time for the certification deadline thus bringing the extradition proceedings to an end. However the United Kingdom Ambassador in Belgrade confirmed that the extradition request

Пише: Tim Workman
четвртак, 29 јул 2010 14:10

had been received although a Serbian Government Minister claimed that the United Kingdom Ambassador must be mistaken. He was not and the extradition request had been received. The Serbian Ministry of Foreign Affairs in Belgrade reported that the extraction request "comes at a very sensitive time when the declaration on Srebrenica is expected to be adopted in the Serbian Parliament and the political climate in Serbia is in a very sensitive phase".

20.

The President of Bosnia was invited to issue an official press release praising the adoption of the declaration and in return it was said that the United Kingdom Home Office would receive an oral message to the effect that:- "The Republic of Serbia does not object to a decision by the UK Home Secretary not to certify the Republic of Serbia's request for extradition of Ejup Ganic to Serbia provided that the Attorneys for Ejup Ganic submit to the United Kingdom Home Secretary a written guarantee that Ejup Ganic will immediately return to Bosnia and Herzegovina and further provided that the authorities of Bosnia and Herzegovina submit to the United Kingdom Home Secretary a written guarantee that they will issue him such travel documents that allows only for his travel to Bosnia and Herzegovina".

21.

It seems that further negotiations over future dealings with prosecutions for war crimes were attempted but came to no agreement. Following the agreed text, a letter was sent from Bosnia to the United Kingdom Home Office providing the written guarantee that had been sought about travel documents. It seems that Serbia's message had not been conveyed to the Home Office but pressure was still being put upon the Bosnia and Herzegovina Government not to condemn the declaration because of the absence of the word genocide against "unmistakable warnings that the Ganic matter depended upon statements following the adoption of the declaration".

22.

Mr Arnaut's evidence on these political moves was largely unchallenged but he also dealt with matters relating to witness 'A'. He made it clear that this witness had approached him unsolicited and had attended at his offices on the 16th March. He produced and was able to show to the prosecutor the record of the attendance log showing the witnesses attendance.

Пише: Tim Workman
четвртак, 29 јул 2010 14:10

Because the witness was protected there was no mention of witnesses identity in court and it was not disclosed to me. Mr Arnault commented that the witness had told him that he was surprised to give evidence about Dr Ganic, that the investigating magistrate had switched the tape recording off from time to time and that the two police officers who approached him had offered as an inducement some form of employment with the Serpska Police. The Government countered this evidence with allegations that Mr Arnault had offered bribes to the witness. I found Mr Arnault's evidence to be truthful and compelling both in relation to the creditability of witness 'A' and in relation to the political and diplomatic pressures that were being exerted.

23.

Dr Schwarz-Schilling attended to give evidence before me. He was the High Representative of Bosnia and Herzegovina from 2005 – 2007 and also the Special Representative of the European Union. He told me that he was “of the absolute opinion that the prosecution was politically motivated and that it was geared towards achieving political aims.” He pointed out that the Prime Minister of the Republic of Serbska had “made statements to the effect that it was about high time that Mr Ganic ended up behind bars”. He commented that this was a statement from a high ranking politician. In his view the War Crimes Prosecution Office in Serbia was not independent of political influence and that it would be impossible for the proceedings to take place fairly. He explained that this was political because “it was important for the Serbian side to demonstrate that Bosnian people and been brought in front of the court ... and we are going to satisfy the requirements of the population”. In his view it will be impossible to obtain a fair trial in Serbia under these conditions.

24.

Dr Schwarz-Shilling acknowledged in cross-examination that he had not seen the evidence that was presented under the Rules of the Road Agreement or to the international prosecutor in the Bosnian State Prosecutors Office but in his view “two courts have been concerned with this matter already. The political situation is such that there is quite likely a political motivation.”

25.

Lord Ashdown the former High Representative of the European Union, whose evidence was

Пише: Tim Workman
четвртак, 29 јул 2010 14:10

given in statement form, said that in his “firm view, based on what I know about Dr Ganic’s case and about Serbia and its national politics, the request is about politics rather than justice”. Whilst I accept the general observation based upon his extensive knowledge of the region, I note that it is in part based upon the fact that Dr Ganic was arrested on the day that Radovan Karadzic was due to give his opening statement to the ICTY. In Lord Ashdown’s view this was no coincidence and indeed the defence have submitted that this was a contrived situation brought about deliberately by the Serbian Government. However, on careful examination of the chronology it is apparent that the proceedings against Dr Ganic in Belgrade begun considerably earlier and that it is likely that the date of his arrest was dictated largely by the date of his arrival in the United Kingdom 2 days before his arrest. I am satisfied that it is more likely than not that the arrest was made on the day that Karadzic was giving his opening statement was coincidence rather than design. I am therefore not taking that fact into account in considering the evidence of political motivation.

26.

Marco Hoare’s evidence concluded that the prosecution was brought for political reasons at a time when the Serbian Government was attempting to pass a resolution in the Serbian Parliament apologising for the Srebrenica Massacre of 1995. He believes there is also a more general desire to rewrite the history of the war in Bosnia in order to “equalise the guilt of the parties”.

27.

The defence submit that there is an absence of detail within the extradition request which had it been included would have demonstrated that the offences were not extradition offences. The submission is therefore, that as these facts, known to the Serbian Government, were withheld there is an inference that can be drawn that the request is made for the purpose of prosecuting him or punishing him on account of his religion, nationality or political opinions. I have received considerable volume of evidence from a large number of witnesses from which I make the following findings of fact:—

(a). That the siege of Sarajevo began on or about the 5th April 1992.

- (b). That the city suffered severe bombardment each night.
- (c). That there was fierce fighting within Sarajevo on the morning of the 2nd May
- (d). That the military hospital also housed units of the Yugoslavian National Army.
- (e). That although attacked subsequently it is more likely than not that the military hospital was not attacked on the 2nd May. (as per the prosecution evidence of Dr Tausan)
- (f). That the JNA Officers' Club was occupied by soldiers and was a legitimate military target.
- (g). That the President of Bosnia and Herzegovina was detained by enemy forces at the airport and held as hostage.
- (h) That there was an attack on the JNA Officers' Club at about 11am on the 2nd May.
- (i) That two ambulances were dispatched from the medical hospital together with other military vehicles to attend the wounded at the JNA Officers' Club.
- (j) That somewhere between 12 noon and 1pm on the 2nd May those vehicles became involved in fighting, although the accounts of how this arose are irreconcilable.
- (k). That in the absence of the President, the State of Bosnia was under the authority of the Presidency which included at least six Vice Presidents.

Пише: Tim Workman
четвртак, 29 јул 2010 14:10

(l). Dr Ganic as one of those Vice Presidents received authority from the President, then being detained, to assume the role of Acting President, that authority being given at about 7pm on the 2nd May 1992.

(m). With the assistance of the United Nations the President was taken, together with his daughter, to the JNA Officers' Club where he was detained against his will.

(n). Dr Ganic negotiated for the President's release and agreed that the President and his daughter would be released in return for the safe passage of General Kukanjac. It was not agreed that a military convoy should leave the barracks with soldiers and military equipment.

(o). Between 250 and 400 JNA Troops together with military equipment attempted to leave in the convoy. The leading UN vehicles containing the President and the General.

(m). The convoy was divided by irregular forces and the military part of the convoy came under attack during which some 7 soldiers were killed. 28. I am satisfied that by the time the extradition request was made the Serbian Investigators were aware of evidence to support these facts and the withholding of this information in the request is a matter which I shall have to consider in relation to the submission on abuse of process.

29.

Abuse of Process in the light of Earlier Investigations On the 18th February 1996 Serbia, Bosnia and Herzegovina and Croatia entered into the Rome Agreement which became known as "The Rules of the Road". Amongst other things it provided that serious violations of international humanitarian law would be considered by the International Tribunal only if the evidence had been reviewed and deemed consistent with International Legal Standards by the International Tribunal. The Office of the Prosecutor for the ICTY was set up with responsibility for carrying out that review. The investigation and review was properly carried out and on the 17th June 2003 the ICTY concluded that the evidence was insufficient to provide reasonable grounds for believing that the defendant committed any serious violations of international humanitarian law.

30.

The Rules of the Road procedure closed in May 2004. A War Crime Chamber of the State Court of Bosnia and Herzegovina came into being. Mr Philip Alcock was appointed an International Prosecutor for war crimes and conducted an investigation into whether Dr Ganic was responsible for war crimes arising out of the events of the 2nd and 3rd May 1992. Mr Philip Alcock's evidence to me was clear and precise. He was undoubtedly a witness of truth but it was also apparent that he was an immensely careful and thorough investigator. He concluded that in respect of the events of the 2nd May this was "a day of simple war between two ethnic group in the horrible street fighting of that day, there is no evidence whatsoever to connect Dr Ganic with the commission of any war crime ... I never saw nor heard of any conduct on the part of Dr Ganic which would justify indicting him for any JNA deaths that occurred in Sarajevo street fighting on the 2nd May 1992. Until the evening of the day Dr Ganic was not the Acting President". Mr Alcock recounts the details of the investigation and his findings. He concludes "My assessment of Dr Ganic's role is that he is not culpable. While any suspicions obviously had to be investigated, I thoroughly investigated those suspicions and the results of the investigation demonstrated that there was no basis for proceeding against Dr Ganic". "I do not know of any subsequent evidence since I handed over my file in October 2009, which would change my opinion".

31.

Mr Lewis on behalf of the Government submits that first there is further evidence and secondly, because there is no finding of a court, the two decisions not to prosecute are decisions of prosecutors and that a third prosecutor might validly come to a different conclusion.

32.

The fresh evidence on which the Government rely is the evidence of Dr Tausan whose evidence suggest there was no attack on the military hospital on the 2nd May and two further witnesses who claim to have been injured or tortured after being taken prisoner in Volunteers Street on the 3rd May. It said that 5 witnesses who had already been interviewed both by the ICTY and Dr Alcock were interviewed again.

33.

Whilst I accept Mr Lewis' submission, in general, that nothing would prevent prosecution where a case is passed from one individual prosecutor to another and a different conclusion is reached. However I conclude that there is a distinction between the role of individual prosecutors and the role of the prosecutor within the ICTY. The ICTY set up with international agreement to deal with war crimes alleged to have been committed in the former Yugoslavia and has within its responsibilities the investigation and prosecution of those cases. The investigation was carried out on behalf of the ICTY and acting upon a report from their investigators and prosecutors it was the ICTY that concluded that there was no case against Dr Ganic. Until The Rules of the Road Agreement ended in May 2004 no other prosecutor would have authority to bring proceedings. The Bosnian War Crimes Office also established itself on an international basis and it was to investigate crimes alleged to have been committed within the State of Bosnia. That enquiry also concluded that there was no case against Dr Ganic. It is in my view not sufficient for the War Crimes Prosecutor in Serbia merely to say that they take a different view of the evidence where a decision has been made by the ICTY.

34.

I therefore have to consider whether there is any significant fresh evidence which was available to the Serbian War Crimes Prosecutor that was not available to the ICTY or to Mr Alcock in his review.

35.

I note that the District Court that issued the original proceedings did so on the 29th December 2008, the file having been received by Serbia only a few days earlier. I therefore conclude that the decision to issue proceedings was made solely on the evidence available to the ICTY and to Mr Alcock. It seems that "particularly striking testimonies" on which the Serbian Government have decided to continue with the proceedings that they started in December 2008 relate to 5 witnesses who had already been interviewed and 2 further witnesses who claimed to have been tortured and injured after the 3rd May attack on the convoy. All the witnesses included protected witnesses 'A' and 'B' were interviewed by Mr Alcock. Witness 'A' did not provide any new information and in Mr Alcock's view witness 'B' was a highly unreliable witness.

36.

I have not been provided with any new evidence that could be described as “striking” or substantial .

37.

The Government called Mr Milan Petrovic in rebuttal. Mr Petrovic is the Deputy Prosecutor of the War Crimes Prosecution Office in Belgrade and would have the responsibility of prosecuting if this matter were to be extradited. He gave me general information about the War Crimes Office in Serbia. In the course of his evidence he asserted that the War Crimes Office had not received any criticism or complaint and that the ICTY had been willing to transfer cases to them. I am satisfied that there has been criticism expressed and that applications to transfer cases to Serbia from the ICTY have been withdrawn because of concerns. He was a prosecutor in the case of Jurisic in which the defendant was convicted and sentenced to 12 years imprisonment based upon an agreement made on 27th April 1992. The witness acknowledged in cross-examination that no such agreement had been reached. I found his evidence unreliable.

38.

In examining Mr Petrovic's evidence I have considered the evidence of Dr Noel Malcolm who gave evidence on behalf of the defence. He was asked about his view of the information contained in the request. He told me “In the errors of misrepresentations that I have found it seemed to me there was a pattern. This was not just random incompetence and getting things wrong. All the significant misrepresentations pointed in the same direction”. He told me of a culture within Serbia which amounted to “a very powerful current opinion which involves a fundamental denial of the origins nature and scale of what was done in Bosnia by Serb Forces”. Dr Malcolm reached the conclusion that Dr Ganic being a very prominent Bosnian Muslim Politician who was also a Bosnian Leader during the war would suffer prejudice at his trial on grounds of politics and ethnicity. 39. On the first day of this extended hearing I was satisfied that there was prima facie evidence of an abuse of process and as a result of that ruling evidence has now been adduced in relation to that issue. No evidence having been adduced to show a striking or substantial change in the evidence available to the ICTY or to Mr Alcock I have concluded that there is no valid justification for commencing proceedings against Dr Ganic. I am

Пише: Tim Workman
четвртак, 29 јул 2010 14:10

satisfied from the evidence of Mr Arnaut that during the course of these extradition proceedings attempts were made to use the proceedings as a lever to try to secure the Bosnian Governments approval to the Srebrenica Declaration. If indeed the Government was prepared not to pursue these extradition proceedings in return from Bosnian co-operation that in itself must be capable of amounting to an abuse of this process of this court. Some corroboration for Mr Arnaut's evidence could be found in the unusual circumstances in which an application to vary conditions of bail was made to this court to enable Dr Ganic to return to Bosnia. It would appear that that application was founded upon attempts at diplomatic agreements. I am also satisfied that the descriptions in the request are as Dr Malcolm described significant misrepresentations. The combination of the two leads me to believe that these proceedings are brought and are being used for political purposes and as such amount to an abuse of the process of this court.

40.

It is submitted that Section 81 provides a bar to extradition in these circumstances. The statutory protection from politically motivated prosecutions would arise if Dr Ganic would suffer prejudice at his trial on grounds of religion, race or politics. Two careful and thorough investigations have concluded that there is no evidence on which charges could be brought against Dr Ganic. The District Court in Serbia issued proceedings at the request of the War Crimes Prosecutor without any further evidence having been obtained. The evidence which has been subsequently obtained is not significant and does not justify any change in the initial decision. In the absence of any significant additional evidence there would appear to be only two possible explanations, that of incompetence by the Serbian Prosecutors or a motive for prosecuting which is based upon politics, race or religion. From the evidence I have received from Mr Petrovic I am satisfied that the War Crimes Prosecutors Office is far from incompetent. Mr Philip Alcock concluded that he could see nothing to justify an indictment other than a politically motivated trial. Dr Schwarz-Schilling told me that the prosecution was high on the political agenda and that he was "absolutely of the opinion that it is politically motivated". Dr Carole Hodge told me that in her view the prosecution was politically motivated and that there would be enormous pressure to convict because if he were acquitted there would be uproar in Belgrade. Dr Malcolm believed that Dr Ganic would be the target of Serb hostility.

41.

I am therefore satisfied that extradition is barred by reason of extraneous considerations by virtue of Section 81(a) and (b) in due course I will be ordering that the defendant be discharged.

42.

I have dealt in this hearing with issues relating to extradition offences, abuse of process and the Section 81 bar to extradition on the grounds of the defendant's race, religion, nationality and political opinions. Although they have been raised I have not heard full argument in relation to functional immunity, passage of time and incompatibility with human rights.

43.

Since reaching these conclusions I have been informed that the Chief War Crimes Prosecutor in Belgrade is reported as having informed the Press that Dr Ganic is wanted for the purposes of interrogation before a decision is made as to whether he is to be indicted. This is not evidence before me and I cannot be sure that the report is accurate but if it is the case that Dr Ganic is wanted for interrogation rather than prosecution extradition would not be permissible under the Extradition Act of 2003.

44.

The defendant is therefore discharged.

Tim Workman

Senior District Judge

City of Westminster Magistrates' Court

Пише: Tim Workman
четвртак, 29 јул 2010 14:10

27th July 2010