The Vučković Trial in Kosovo – Deportation and Forcible Transfer under the Definition of Genocide

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1. Introduction

On 22 May 1999 the Prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY) indicted Slobodan Milošević and four other persons from the Yugoslav and Serbian leadership for crimes against humanity and violations of the laws and customs of war, committed in Kosovo during the first six months of 1999. The indictment does not include the crime of genocide. There are no other indictments before the ICTY regarding crimes committed in Kosovo.

A number of trials have been held in Kosovo in which persons have been charged and convicted for different war crimes. Through the end of 2001, only one person has been convicted of genocide. Miroslav Vučković was indicted for genocide committed in Mitrovica municipality in the spring of 1999. The District Court of Mitrovica convicted Vučković for genocide but the Supreme Court decided to send the case back to the District Court after

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1 Prosecutor v. Slobodan Milošević et al., indictment, Case No. IT-99-37 (24 May 1999). The indictment has been amended twice since then (see Milošević et al., second amended indictment, 29 October 2001). The trial has been scheduled to commence in February 2002 (information from the homepage of the ICTY, http://www.un.org/icty, 26 January 2002).

2 There are two other Milošević indictments; one concerning crimes committed in Croatia 1991-92 (Prosecutor v. Slobodan Milošević, indictment, Case No. IT-01-50, 8 October 2001) and one concerning crimes committed in Bosnia-Herzegovina 1992-95 (Prosecutor v. Slobodan Milošević, indictment, Case No. IT-01-51, 22 November 2001). The latter includes charges of genocide.

considering that the defendant’s right to a fair trial had been violated. In addition to this, the Supreme Court commented more generally on the Milošević regime’s policy in Kosovo and the events of 1999. It stated that the policy was to deport Kosovo-Albanians from the province and that this could not be considered genocide under the definition, set out in the Genocide Convention and Yugoslav criminal law. The same reasoning might be behind the decision of the Prosecutor of the ICTY not to indict Milošević for genocide.

This article will deal with the question of whether some of the alleged acts committed by the Milošević regime in Kosovo, namely deportation and forcible transfer, fall under the definition of genocide – something that was denied by the Supreme Court of Kosovo.

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4 The Mitrovica District Court is currently considering the case. Many of the war crimes trials in Kosovo have been criticised for not being in accordance with the international human rights standards on fair trial (see OSCE reports, supra note 4).


6 UNMIK Regulation 1999/24 establishes that the applicable law in Kosovo is ‘[t]he regulations promulgated by the Special Representative of the Secretary-General and subsidiary instrument issued thereunder [and] [t]he law in force in Kosovo on 22 March 1989’ (Regulation No. 1999/24 on the Law Applicable in Kosovo, UNMIK/REG/1999/24, 12 December 1999). Accordingly, the here relevant applicable law is The Criminal Code of The Socialist Federal Republic of Yugoslavia of 1977. Article 141 of the Code reads: ‘Whoever, with the intention of destroying a national, ethnic, racial or religious group in whole or in part, orders the commission of killings or the inflicting of serious bodily injuries or serious disturbance of physical or mental health of the group members, or a forcible dislocation of the population, or that the group be inflicted conditions of life calculated to bring about its physical destruction in whole or in part, or that measures be imposed intended to prevent births within the group, or that children of the group be forcibly transferred to another group, or whoever with the same intent commits one of the foregoing acts, shall be punished by imprisonment for not less than five years or by the death penalty’ (unofficial translation).

7 See for example BBC News: Kosovo assault ‘was not genocide’ (7 September 2001) (available at: http://news.bbc.co.uk, 5 January 2002) and CBC News: UN court says Yugoslavia did not commit genocide in Kosovo (7 September 2001) (available at: http://www.cbc.ca, 5 January 2002). In general the Prosecutor of the ICTY and ICTR has been hesitant to indict for the crime of genocide for acts committed in the former Yugoslavia (see for example Prosecution v. Duško Tadić et al., judgement on defence motion to acquit, Case IT-95-8, 3 September 2001, para. 89).

8 The purpose of this article is not to deal with the possible guilt of Vučković, that is whether he had the specific intent required for being convicted for genocide, or to deal with the facts referred to in the case regarding the policy of the Milošević regime in Kosovo.