



The Honourable Irwin Cotler
Minister of Justice and Attorney General
284 Wellington Street
Ottawa, Ontario
K1A 0H8

by fax: 954-0811

March 15, 2004

Dear Minister Cotler,

Re: Dejan Demirovic

On behalf of the Canadian Centre for International Justice (CCIJ), I am writing with respect to the case of Dejan Demirovic. It is our hope that the Government of Canada will consider in particular one of two options: the extradition of Mr. Demirovic to Serbia and Montenegro or his trial in Canada under the new *Crimes Against Humanity and War Crimes Act*. This letter represents an overview of our analysis of the case.

The CCIJ was established shortly after the coming into force of the *Crimes Against Humanity and War Crimes Act*, (“the Act”) to monitor cases of alleged perpetrators of gross international human rights abuses who become present in Canada. The Board of Directors of CCIJ is made up of lawyers, torture treatment professionals, and human rights activists who share professional and personal concerns about Canada’s fulfillment of its international obligations to fight impunity for those who commit massive violations of human rights.

As an organization dedicated to international justice, CCIJ has been closely monitoring Mr. Demirovic’s case. We are eager to ensure that this matter is dealt with in a just and expeditious manner, and could offer research support, assistance in gathering evidence and other forms of assistance. We write you to submit the results of our research and deliberations to date, in hopes that the Canadian government will consider all viable options and take a course of action that will best serve the interests of international justice.

Mr. Demirovic is a former member of a Serbian reserve police unit called “The Scorpions”, and is accused in Serbia of committing war crimes and crimes against humanity. He is indicted in Serbia and Montenegro for his alleged role in a 1999 massacre of ethnic

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Albanians in Kosovo. The trial of Demirovic's co-accused, Sasa Cvjetan, has been ongoing in Belgrade for many months.

Mr. Demirovic fled to Canada in the summer of 2001 and lived with his parents, who are landed immigrants here. He was arrested in January 2003 on an Interpol warrant but later released on bail. He has applied for refugee status. Our last knowledge of the status of this claim is that his September, 2003 scheduled hearing was postponed until March 18, 2004. In the absence of any other governmental action, it appears likely he will be excluded under Article 1F(a) of the *Refugee Convention*, which denies refugee protection to persons believed to have committed a war crime. This, in our opinion, would be the least desirable response in that the interests of international justice would not be served by Mr. Demirovic's deportation.

From our analysis of this case, the options currently available to the Canadian government are the following:

1. Canada could immediately extradite Mr. Demirovic to Serbia and Montenegro so that he can stand trial there.
2. Canada could prosecute Mr. Demirovic under the *Crimes Against Humanity and War Crimes Act*.
3. Canada could press the International Criminal Tribunal for the former Yugoslavia (ICTY) to actively take up the case, in which case Canada would surrender Mr. Demirovic to the Hague.
4. Canada could rely on the refugee proceedings to deny Mr. Demirovic refugee status if there is sufficient evidence showing that he has committed war crimes. He would then likely be deported to Bosnia-Herzegovina.

There are a host of political and legal concerns that affect the viability of each of these options, but our conclusion to date is that one of the first two options would be most likely to result in justice being served.

1. Extradition

Canada has the option of extraditing Mr. Demirovic to Serbia and Montenegro to stand trial. While this option should be considered seriously, it is our view that it should only be chosen if the Canadian government is satisfied that local prosecutors have the will and means to prosecute the case effectively, and that the national court would act independently and impartially in accordance with international fair trial standards.

While Canada has no negotiated extradition agreement with Serbia, section 10 of Canada's *Extradition Act* allows for "specific agreements" to be made at the discretion of the Minister of Foreign Affairs:

10. (1) The Minister of Foreign Affairs may, with the agreement of the Minister, enter into a specific agreement with a State or entity for the purpose of giving effect to a request for extradition in a particular case.

Thus, if Serbia and Montenegro has made a request for Mr. Demirovic's extradition, there is legislated room for such a request to be granted.

CCIJ would like to express two thoughts on this possibility:

First, we support proceedings in the jurisdiction where egregious human rights crimes are alleged to have occurred to the extent that they are fair and effective. Such trials have important truth-telling functions that are crucial for the healing process of survivors and the larger local community. We applaud the fact that the trial of Mr. Cvjetan is taking place in Belgrade, as we appreciate the large political step it was for the governing administration to have war crimes trials from the 1990s carried out on home soil. If Canada extradited Mr. Demirovic to also stand trial in Belgrade for his alleged crimes, we would be lending our cooperation and support of Serbia and Montenegro's domestic prosecutions.

At the same time, Canada must consider whether a trial in Serbia will be effective and fair. Leading human rights organizations and international lawyers have expressed serious concerns about national trials in the former Yugoslavia, including lack of cooperation between states in the region, inadequate witness protection mechanisms, lack of competence on the part of prosecutors, and other problems. In Serbia, anecdotal stories have indicated there is no functioning witness protection program in place and that at least one key witness in Mr. Cvjetan's trial has received threats as a result of his testimony.¹ Moreover, the integrity of the Serbian judicial system remains a concern. Appointees of former President Slobodan Milosevic, himself under prosecution at the ICTY, are still in the system and corruption among judicial officials continues. Furthermore, the judiciary lacks effective separation from the political realm and politicians appear able to assert influence over the outcome of particular decisions and cases. The recent election of the nationalist Serb Radical Party suggests a heightened resistance to domestic war crimes prosecutions.

In light of these concerns, it would be important for the Government of Canada to satisfy itself that the trial of Mr. Demirovic in Serbia would be both effective and fair before choosing this option. It might be necessary, for example, for Canada to press the Serbian government to ensure Mr. Demirovic his procedural rights.

2. Prosecute Dejan Demirovic in Canada

Canada could prosecute Mr. Demirovic for crimes against humanity under domestic law and it is our view that it should do so if there is a decision not to extradite him to Serbia and Montenegro.

There appears to be substantial evidence (including eye-witness accounts by children who survived) that Mr. Demirovic may have participated in the 1999 massacre of ethnic Albania villagers as alleged. Such crimes fall squarely within the ambit of the Canadian *Crimes Against Humanity and War Crimes Act* ("*The Act*"). Section 6(3) of *the Act* defines crimes against humanity as meaning "murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group."

Canada has jurisdiction over the case for the following reasons. In cases where crimes against humanity are alleged, *the Act* under s. 6(1) explicitly extends application to crimes committed "either before or after the coming into force" of *the Act*. Mr. Demirovic's physical presence in Canada brings him under the purview of *the Act* as contemplated in s. 8(b), which simply requires that the accused be present in Canada at the time of prosecution.

¹ Nicholas Wood, "Serb Policeman Describes Massacre in Kosovo" *The New York Times*, December 11. 2003, A10.

Finally, for crimes that are alleged to have been perpetrated outside of Canada and are eligible for prosecution under *the Act*, s. 9(1) states that the person may be tried and punished as if the offence had been committed in the Canadian territory within which the prosecution is initiated.

3. Cooperation with the International Criminal Tribunal for the former Yugoslavia

After Serbia and Montenegro, the ICTY appears to have the clearest jurisdiction over this case. However, there is no indication that it intends to indict Demirovic. From its inception, resource constraints have meant that the ICTY direct its energies toward those with command responsibility, and the 2008 target date for completion of its work leaves little room for expansion of the docket. There are indications that the ICTY and the international community more broadly support domestic trials within Serbia for those who carried out atrocities directly.

The ICTY has provided documentary evidence to the Serbian prosecution about this case. The U.S. and Canada have supported the construction of a courthouse in Belgrade, with the intention that it be used for domestic war crimes trials. Furthermore, if the recent proceedings against Slobodan Milosevic are any indication, the ICTY is likely over burdened already and unlikely to be willing to take cases that could be pursued elsewhere.

For these reasons, it is CCIJ's position that extradition to Serbia or prosecution within Canada are preferable options to seeking cooperation with the ICTY.

4. Allow the Immigration and Refugee Board to refuse refugee status under Art. 1F of the *Refugee Convention*

In the absence of alternative action by the Department of Justice's War Crimes Unit, it appears most likely that Mr. Demirovic's refugee claim will be rejected due to Art. 1F(a) of the *Refugee Convention*. He will doubtless appeal this determination, and will enjoy the benefits of Canadian protection for months and possibly years while the appeal process unfolds. Eventually he will be deported. As a citizen of Bosnia-Herzegovina, it is possible he may not even be deported to Serbia and Montenegro, and will forever remain outside the ambit of the criminal justice system there.

This seems the least desirable option in terms of Canada living up to its international obligations to seek to expose and put an end to impunity for those who commit horrific atrocities like those seen in Kosovo in 1999. The Belgrade trial will lose the benefit of having Mr. Demirovic account for the crimes with which he is charged. From the point of view of Mr. Demirovic, he will not have an opportunity to present a defence to the accusations made against him.

If Canada fails to either initiate a prosecution against Dejan Demirovic or ensure that he is tried in a more suitable forum, there is the distinct possibility that justice will not be served. In fact, it is easily conceivable that no justice will be possible if our refugee system passively administers this case through quiet exclusion and removal.

We invite you to consider these concerns, and would welcome a meeting with you or your officials at your earliest convenience to discuss an appropriate response to this case. In the meantime, any information you could provide about the position of the War Crimes Unit in this case would be very much appreciated.

Sincerely,

Joan Simalchik
on behalf of the Board of Directors