

EXTERNAL

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DOCTOR CHARGED WITH SERVICE IN AN ENEMY ARMY

**Jadrana Funduk
CROATIA**

Jadrana Funduk is a female doctor of Croatian nationality and citizenship currently living in the Croatian capital Zagreb. She has been charged with "Service in an enemy army" under Article 108 of the Basic Criminal Law of the Republic of Croatia. This allows for punishment of five years' imprisonment or longer. The charge relates to a period of time she spent working in a military hospital in Belgrade between late 1991 and early 1993. Her trial opened on 13 October 1993 but was immediately adjourned to permit the gathering of further evidence. No date has yet been set for the resumption of the trial.

In July 1991, following Croatia's declaration of independence from federal Yugoslavia the previous month, armed conflict broke out between the Croatian armed forces on one side and the Yugoslav National Army (JNA) on the other. In December 1991, having worked as a civilian doctor in a military hospital in Zagreb, Dr Funduk left Zagreb with the withdrawing Yugoslav army and went to work at the main military hospital in Belgrade (the Military Medical Academy - *Vojna Medicinska Akademija* [VMA]) which was known as the best equipped hospital in the former Yugoslavia. She had been offered a job there which would allow her to specialize in anaesthesiology and saw this as an opportunity to improve her medical skills.

Jadrana Funduk occasionally visited her family in Croatia, but continued to work in the Belgrade military hospital until February 1993 when, on returning home for a visit on 28 February, she was called in for questioning by the police a few days after her arrival in Zagreb. (Her mother had been questioned the previous month about Jadrana's whereabouts and activities.) On 5 March, after her first interview, the civilian police passed Dr Funduk to the military police and on the same day a military investigating judge ordered that she be held in custody for 30 days. This initial period of custody was then extended for a further two months, although she was released on 15 April 1993 after appealing against the custody order, and has since remained at liberty.

In a statement made to Amnesty International, Dr Funduk states that, although she had access to a lawyer, she was held in solitary confinement for the first week and was not allowed contact with her mother during the first three weeks of her detention.

An indictment was brought against Jadrana Funduk on 28 April in which she was charged with having "committed a criminal act against the security of the Republic of Croatia - service in an enemy army". The indictment notes that the JNA was proclaimed by the Croatian parliament to be an aggressive occupying army on 9 October 1991.

In her defence, as recorded in the indictment, and in statements to Amnesty International, Jadrana Funduk maintains that she was merely carrying out her duties in

accordance with the Hippocratic Oath and that the VMA in Belgrade had received and treated patients without discrimination. The VMA accepts some civilian patients in addition to military ones. There is nothing in the indictment to suggest that Jadrana Funduk advocated or used violence or discriminated against anyone in her care, nor is it alleged that she held any military rank while working at the Belgrade hospital. The indictment does refer to records found in the military hospital in Zagreb where she had previously worked which refer to her as a "civilian on service in the JNA".

Dr Funduk has stated that the indictment was not delivered to her until September 1993 when she was informed that her trial would take place on 13 October. This is despite the indictment having been issued at the end of April; a copy seen by Amnesty International was marked 19 May 1993 as the date on which it had been received by the military court in Zagreb.

In 1991, following the outbreak of conflict, President Franjo Tudjman decreed various changes to the law governing the competence of courts and to the application of the Codes of Criminal Law and Criminal Procedure. The changes included the expansion of the competence of military courts to cases in which civilians are charged with offences "from the military sphere". Thus, although a ceasefire came into effect in January 1993, Dr Funduk's case is being heard before military court. Amnesty International does not consider that her exercise of medicine can under any circumstances be deemed to constitute an offence "from the military sphere". Internationally accepted codes of medical ethics stress the neutrality of the medical practitioner and the practitioner's duty to provide care without discrimination. This is recognized in the First Additional Protocol to the Geneva Conventions of 1949 which states:

"Under no circumstances shall any person be punished for carrying out medical activities compatible with medical ethics, regardless of the person benefiting therefrom." (Article 16.1)

Similarly, the World Medical Association's Regulations in time of Armed Conflict, originally adopted in 1956 and revised in 1957 and 1983, state:

"Medical Ethics in time of armed conflict is identical to medical ethics in time of peace... The primary obligation of the physician is his professional duty; in performing his professional duty, the physician's supreme guide is his conscience... The fulfilment of medical duties and responsibilities shall in no circumstances be considered an offence."

On the basis of the available information, Amnesty International considers that, if Dr Funduk were to be found guilty and imprisoned on the basis of the current accusations, she would be a prisoner of conscience. The organization would then call for her immediate and unconditional release.

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To: Medical professionals
From: Medical Office / Research Department - Europe
Date: 19 October 1993

MEDICAL LETTER WRITING ACTION

JADRANA FUNDUK
CROATIA

Keywords

Theme: Potential POC

Profession/association: Doctor

Summary

Jadrana Funduk is a 34-year-old Croatian doctor who has been charged with "service in an enemy army" as a result of having worked in a military hospital in Belgrade between December 1991 and February 1993. She is being tried by military court in Zagreb. The trial, which opened on 13 October 1993, was immediately adjourned to allow further evidence to be gathered. Please see the details attached.

Recommended Actions

Letters are requested from medical professionals to the addresses below:

- expressing concern that Dr Jadrana Funduk has been charged with endangering the security of the Republic of Croatia through service in an enemy army, although there is no evidence that she held any military rank or used or advocated any violence against the Republic of Croatia
- noting that this charge has been brought as a result of her having worked in the *Vojna Medicinska Akademija* in Belgrade and expressing concern that such a charge has been brought against a doctor solely for having exercised her profession
- noting that universally-accepted codes of medical ethics dictate that a doctor must provide medical services to the sick without regard to religion, nationality, race, party politics or social standing
- noting, in particular, that Article 16.1 of the First Additional Protocol to the Geneva Conventions states that "*Under no circumstances shall any person be punished for carrying out medical activities compatible with medical ethics, regardless of the person benefiting therefrom.*"

- letters could also quote from the World Medical Association's "Regulations in Time of Armed Conflict"
- further expressing concern that Dr Funduk is being tried by a military court, although not a member of the armed forces, and noting that the *Vojna Medicinska Akademija* in Belgrade receives both military and civilian patients
- noting and expressing concern that in contravention of legal guarantees in national and international law, Dr Funduk reportedly did not see a copy of the indictment against her until six months after it had been issued
- urging that the charges against Dr Funduk are dropped forthwith

Addresses

(President of the Republic of Croatia)
 Dr Franjo Tudjman
 Predsjednik Republike Hrvatske
 Visoka 22
 41000 Zagreb
 Croatia
Fax: +385 41 444 532
Salutation: Dear President

(Minister of Defence)
 Mr Gojko Sušak
 Ministarstvo za narodnu obranu Republike Hrvatske
 Opati_ka 1
 41000 Zagreb
 Croatia
Salutation: Dear Minister

(Minister of Justice)
 Mr Ivica Crni_
 Ministar
 Ministarstvo za pravosuđe i op_u upravu Republike Hrvatske
 Šavska cesta 41
 41000 Zagreb
 Croatia
Salutation: Dear Minister

(Minister of Foreign Affairs)
 Dr Matz Grani_
 Ministar
 Ministarstvo inozemnih poslova Republike Hrvatske
 Visoka 22
 41000 Zagreb
 Croatia
 Fax: +385 41 42 7594
Salutation: Dear Minister

Copies to:

(Public Prosecutor of Croatia)
Mr Stjepan Hrgov
Dr_avni odvjetnik
Dr_avno odvjetništvo Republike Hrvatske
Vukovarska 84
41000 Zagreb
Croatia

(Minister of Health)
Dr Andrija Hebrang
Ministar
Ministarstvo zdravlja
Baruna Trenka 42
41000 Zagreb
Croatia