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Montenegro: No justice for the disappeared

Amnesty International is deeply disturbed that a Montenegrin court last week was unable to reach a proper determination on the guilt or innocence of former police and government officials who were alleged to have committed war crimes and crimes against humanity against Bosniak (Bosnian Muslim) refugees during the war in Bosnia and Herzegovina.

The court failed to characterize the conflict in Bosnia and Herzegovina as an international armed conflict. It also did not recognize that the crimes that they allegedly committed should also have been characterized as crimes against humanity.

On 21 November, for a second time, and despite a revised indictment, the Higher Court in Podgorica, Montenegro has been unable to reach a proper determination whether nine former government and police officials, indicted on war crimes charges for the “deportation” of more than 80 Bosniak (Bosnian Muslim) refugees who came to Montenegro in 1992 to seek protection from Bosnian Serb forces were innocent or guilty for war crimes or crimes against humanity.

Instead of providing the refugees with protection, the Montenegrin police arrested them and handed them back to Bosnian Serb police and armed forces.

Almost all of them were killed, although the fate and whereabouts of 35 people still remains unknown. Nine of those sent to a prison camp in Foča survived, but another 21 men are believed to have been killed there. The remains of another six people were exhumed and identified at Sremska Mitrovica and Miljevina.

The defendants were indicted for the unlawful arrest and deportation of Bosniak refugees as war crimes, but not for crimes against humanity.

Although the Montenegrin court held that the defendants had unlawfully arrested the Bosniak civilians, the presiding judge acquitted the defendants of war crimes on the basis they were not participants or allied with any party to the war in Bosnia and Herzegovina, which the court characterized erroneously as a non-international armed conflict, even though the appellate court had made a determination when reversing the first judgment that the conflict was an international one. The court also held that the Bosniaks were not refugees.

The relatives now have the right to appeal the verdict.

Background

In March 2011, the nine former police officers and government officials in the “deportations” case were acquitted of war crimes against the civilian population on the basis that they could not be convicted on charges of war crimes because there was no armed conflict in Montenegro in 1992. The nine men had been charged with the “deportation” of 83 Bosniak civilians in 1992.

Amnesty International considered that the prosecution's charges in the first trial were based on the erroneous legal characterization of the armed conflict in Bosnia and Herzegovina as non-international. Hence, the Prosecution failed to indict the accused for crimes committed in the context of an international armed conflict.

An appeal against the first acquittal was lodged by the prosecution and the lawyers acting for the mothers of two of the victims. On 17 February 2012, the Appeal Court of Montenegro returned the "deportations" case for retrial on the basis that "the armed conflict in the territory of B & H has the character of [an] international armed conflict". The fact that the conflict in BiH in 1992 was an international armed conflict has been well established by the jurisprudence of the International Criminal Tribunal for the former Yugoslavia as well as by the courts in the countries of the former Yugoslavia.

The second legal error in the case was that the prosecutor failed to recognize that the "deportation" of the refugees, for which the police and government officials were alleged to have been responsible should have been characterized as a crime against humanity. Amnesty International's research indicates that these "deportations" were committed as part of a widespread and systematic attack directed at Bosniak refugees.

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