



Ref. no.: Ex-21/09

Date: 23rd June 2009

Pursuant to: Article 422, in conjunction with Article 415(1)(a) of the Criminal Procedure Code of BiH

Panel composed of: Judge Željka Marenčić, presiding judge
Judge Minka Kreho
Judge Nenad Šeleta

PROCEDURE FOR EXTRADITION

of the wanted person

BRANIMIR GLAVAŠ

Prosecutor of the Prosecutor's Office of Bosnia-Herzegovina:

Jadranka Lokmić Misirača

Legal representative of the wanted person Branimir Glavaš:

Attorney Nikica Gržić

Record-keeper:

Emil Pinkas

In the procedure for extradition of the wanted person Branimir Glavaš, born on 23rd September 1956 in Osijek, Republic of Croatia, bachelor of law, national of the Republic of Croatia and BiH, divorced, maintaining permanent residence in Ljubuški, Bana Jelačića St., renders the following:

D E C I S I O N

To refuse the application of the Ministry of Judiciary of the Republic of Croatia to extradite the wanted person Branimir Glavaš, son of Ljubo and Zora, nee Pandžić, to the Republic of Croatia.

This Decision is to be forwarded to the panel of the Appellate Division of the Court for the assessment of its validity and lawfulness.

E x p l a n a t i o n

The Preliminary Proceedings Judge of this Court, acting upon the application for extradition, made by the Ministry of Judiciary of the Republic of Croatia on 1st June 2009, application no. 214-05-01-01-09-16, following the review of the case file, on 12th June 2009 rendered an opinion noting that the wanted person Branimir Glavaš had been registered in the Register of Citizens by virtue of descent, that is, in this specific case, the right at hand was established for legitimate causes. Further on, the preliminary proceedings judge in his opinion outlined that the wanted person Branimir Glavaš, at the time of acquiring the citizenship of Bosnia-Herzegovina, had a manifest intent to acquire it in order to avoid prosecution and consequences of potential conviction for the criminal offence of war crime in the Republic of Croatia. Having reached such a conclusion, and being of the position that the legislator, when passing the Criminal Procedure Code of BiH and setting the prerequisites for extradition, had no intention to make Article 415 of the CPC BiH a tool for obstruction of justice, the preliminary proceedings judge concluded that the prerequisites to extradite the wanted person Branimir Glavaš to the Republic of Croatia have been met.

In view of the relevant facts that the preliminary proceedings judge established by reviewing the case file, and having in mind Article 415(1) of the CPC BiH, as well as Article 6 of the European Convention on Extradition, the Court rendered the decision stated in the operative part hereof for the following reasons:

The key circumstance relative to the rendering of the respective decision is reflected in the fact as to how the circumstances pertaining to the citizenship of Bosnia-Herzegovina, held by the wanted person Branimir Glavaš should be interpreted.

Article 415(1)(a) of the CPC BiH prescribes that the person holding the citizenship of Bosnia-Herzegovina cannot be extradited. There are no exceptions to this rule that would potentially have something to do with the way, that is, the conditions under which a wanted

person acquired the citizenship of BiH, which is not contrary to Article 6 of the European Convention on Extradition, which reads in Subparagraph a) that a Contracting Party shall have the right to refuse extradition of its nationals.

Rule 161 in the codification of the International Committee of the Red Cross, entitled Customary International Humanitarian Law, Volume I: Rules, defines that States must make every effort to cooperate with each other with respect to the prosecution of war criminals, inter alia to cooperate on the issue of extradition, or that the state that refuses to extradite, institutes or resumes the proceedings against a wanted person, and that in cases of extradition of war crimes suspects, conditions should be prescribed in accordance with Rule 158.

Other documents that the preliminary proceedings judge listed in his opinion (First Protocol and Second Protocol to the Hague Convention for the Protection of Cultural Property, Resolution no. 3(XXI) and Resolution no. 1988/47, adopted unanimously by the UN Human Rights Committee) also define the need for the states to cooperate in order to prosecute war criminals and crimes against humanity; still, they do not impose the duty to extradite one's nationals.

In view of the presented arguments, that is, the facts: (1) that the wanted person Branimir Glavaš has the citizenship of Bosnia-Herzegovina; (2) that Article 415(1)(a) of the CPC BiH explicitly rules out the possibility of extradition of nationals of Bosnia-Herzegovina; (3) that the obligation of Bosnia-Herzegovina to extradite, in this specific case, its national to the Republic of Croatia, does not ensue from any treaty or convention signed by Bosnia-Herzegovina, or from the international customary law; the Court ruled in the only possible way and refused the application for extradition of the wanted person Branimir Glavaš.

Therefore, as it found no other legal or international regulation that would rule out the application of Article 415(1)(a) of the CPC BiH, and in view of the fact that the wanted person Branimir Glavaš has the citizenship of Bosnia-Herzegovina, the Court ruled to refuse the application of the Ministry of Judiciary of the Republic of Croatia no. 514-05-01-01-09-16 of 1st June 2009.

PRESIDING JUDGE
Željka Marenčić

Decision is to be forwarded to the panel of the Appellate Division of the Court to assess its validity and lawfulness.