CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 17837/03
by Milovan TOMIC
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 14 October 2003 as a Chamber composed of:

Mr M. PELLONPÄÄ, *President*,
Sir Nicolas BRATZA,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr S. PAVLOVSCHI,
Mr J. BORREGO BORREGO,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 9 June 2003,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Milovan Tomic, is a Croatian national, who was born in 1962 and, at the time of lodging the application, was detained in Bedford police station. He was represented before the Court by Ms Savic, a solicitor practising in London.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant is an ethnic Serb from Croatia, brought up in Vinkovci in the region of Eastern Slavonia which was at the time in the Federal Republic of Yugoslavia.

In 1990, the applicant was beaten up by Croatian police because of his Serb origin and was unable to walk for two weeks.

In April 1991, the applicant joined the Territorial Defence Unit set up by Serbs when it became clear that war was imminent.

On 25 June 1991, Croatia declared independence. Hostilities followed with the Yugoslav Republic and the Serb minority living in Croatia. In October 1991, the Serb Autonomous Regions, which included Eastern Slavonia, were set up in Croatia. After the conflicts escalated, the applicant joined a special forces unit called "the Scorpions" where he became commander of a unit with the rank of lieutenant. He participated in the heaviest battles of the war in Croatia and Bosnia.

In January 1992, the applicant married. He claims that his wife was killed by Croats on 25 August 1992.

In May 1995, the Croatian Army entered the region of Western Slavonia where the applicant was based. In November 1995, Croatia and the Federal Republic of Yugoslavia signed the Erdut-Zagreb Agreement which sanctioned the setting up of an interim United Nations Transitional Administrative Area in Eastern Slavonia before the transfer of the region to Croatia on 15 January 1998.

On 12 December 1997, the applicant moved to Serbia as he feared imprisonment by the Croatian authorities because of his involvement with the Scorpions.

In 1999, the applicant claims that his brother-in-law, Milovan Jeremic, died following a beating by Croat. The applicant's sister went to live in Ireland.

On 29 March 2001, the applicant left Serbia as he had no legal status or rights there. He claimed asylum in Ireland but this was refused.

On 14 December 2001, the applicant entered the United Kingdom illegally and applied for asylum on 14 January 2002.

By letter dated 25 February 2002, the Secretary of State rejected his claim on the basis that there was no longer any real risk in the applicant returning to Croatia. He referred to the amnesty introduced in March 1998 for those who had participated in the 1991-1995 conflict and the recognition of the interests of ethnic Serbs introduced in changes to the Croatian Constitution.

On 19 August 2002, the Adjudicator heard, and granted, the applicant's appeal. She accepted that the applicant had never been involved in war crimes but that he was reasonably likely to be arrested on such charges if returned to Croatia, particularly due to his position as commander of one of the special units. There was a reasonable likelihood that he would face lengthy incarceration without receiving a fair trial on political motives. She also found that the level of discrimination that he would face as an ethnic Serb on a general level would cumulatively amount to persecution, which was either state-sponsored or in respect of which there was an insufficiency of protection by the State. The Secretary of State appealed to the Immigration Appeal Tribunal.

While the appeal was pending, the Immigration Appeal Tribunal issued its decision in a case concerning claims of ethnic Serbs who claimed that the general situation in Croatia placed them at risk of persecution and severe discrimination. In its decision, *SK and others* [UKIAT] 0563, issued on 17 December 2002, it concluded that "unless the situation deteriorates to a significant extent or special circumstances can be shown in an individual case, no ethnic Serb should be able to establish a claim under either Convention".

On 20 December 2002, the Immigration Appeal Tribunal heard the applicant's appeal. In its decision of 26 February 2003, it relied on its findings in *SK* about the general situation in Croatia and found that the applicant's rank as a special unit officer, the death of his wife in 1992 and his brother-in-law some time later did not amount to special circumstances.

The Court of Appeal refused leave to appeal to the applicants in the *SK* case on 20 May 2003.

B. Relevant domestic law and practice

In its decision issued on 17 December 2002 in *Secretary for the Home Department and S.K.*, the Immigration Appeal Tribunal quashed the decision of the Adjudicator who had upheld the appeals against the refusal of asylum to ethnic Serbs on the ground that they would face persecution in Croatia. It also found that the applicants were not at risk of treatment contrary to Articles 3, 8 or 14. Materials before it included reports from the Home Office, UNHCR, OSCE, Human Rights Watch, Amnesty, the U.S. State Department, ECRI, the European Union and statements of three experts (Dr Milivojevic, Dr Gow and Mr Glenny).

> "... we turn to our assessment of the situation. The claimants recognise that unfair war crimes trials are of less significance in these cases (with the exception of MM) and that there is no sufficient evidence to suggest that in general there is a real risk that returning Serbs will face unfair war crimes trials. There must be some special factor to bring that concern into play. ... The essential complaints common to all are: -
>
> 1. Discriminatory loss of homes and livelihood.
>
> 2. Discriminatory denial of social and economic rights in the areas to which return is envisaged. No special efforts are being made to redress the wrongs suffered and help return to society.
>
> 3. Discriminatory denial of judicial assistance in reclaiming homes occupied by Croats.
>
> 4. Loss of stability and security because of the prospect of a marginalised and ostracised existence in a largely ethnically cleansed country. Only a small fraction of Serbs who used to live in Croatia now remain and the majority are the elderly who have returned to die in their homeland. ..."

It proceeded to examine the situation in Croatia, noting that there had been considerable improvements since the end of the Tudjman regime in 1999, with the Government making real efforts to overcome the legacy of hatred and taking positive steps to remove the obstacles to the return of refugees and discrimination against ethnic minorities. It noted that concerns had remained that the good intentions of the central government were being frustrated by local officials and by incompetence of, or unwillingness to apply the laws in favour of Serbs by, the judiciary. By May 2002, in the OSCE status report, it was found that property repossession remained at the core of the return process. An action plan had been drawn up by the Government to return some 19,000 properties by the end of 2002 and steps were being taken to address the tenancy problems. The tribunal reviewed other sources and noted that real difficulties and discrimination undoubtedly faced returning Serbs but that the Government was undoubtedly taking steps to improve the situation, for example undertaking to assist returnees in re-integration by providing basic assistance depending on monthly income for a six month period. It noted that the UNHCR directly supported the Government's return programme and was satisfied that it would not be encouraging returns if persuaded that there would be persecution, or treatment, contrary to Article 3 of the Convention.

It noted as regarded war crimes prosecutions:

> "War crimes prosecutions we can deal with relatively briefly having regard to the concession that unless there is a particular reason to believe an individual will be prosecuted or (as in the case of MM) has been prosecuted, they cannot be relied on as a barrier to return. .. The OSCE and UNHCR closely monitor prosecutions and in particular if a returnee is arrested, the UNHCR will 'very closely and thoroughly monitor' the situation. It notes that 'we found the trials have been very fair and correct in their procedure'. The numbers do not suggest there are widespread prosecutions let

alone an implementation of the lists to which we have been referred... In November 2001, we find OSCE noting:–

'... a positive trend in ... decisions by County Prosecutors and judges to reject war crimes and genocide charges against groups of Serbs due to the lack of evidence of individual crimes.'

Despite this, there remain some problems where trials in absentia have been held. MM is an example, he having been sentenced to 4 years imprisonment on the basis of charges which ... cannot properly be said to amount to conduct which can be reasonably regarded as constituting a war crime. He manned a barricade and was... offensive and threatening in a racist manner to Croats. An accelerated procedure has been put into effect to ensure a reconsideration and if necessary retrial of anyone convicted in absentia. But there may be a remand in custody of usually no more than one or two months while the matter is reconsidered. If it is clear that the case is too weak ..., release may be effected after a couple of days ... we find it impossible to say that there would be persecution or a breach of human rights if the question whether there should be a re-trial is investigated properly even if there may be a relatively short period of remand in custody while that is being done.

The tribunal concluded:

"... the material before us does not persuade us on the low standard required that there is a real risk that in general Serbs if returned to Croatia will suffer persecution or a breach of any Article of the European Convention on Human Rights. We recognise that the situation is far from pleasant and the deprivation and misery that will be faced. That stems from the war and the destruction caused by it. But that by itself cannot mean that surrogate protection is needed or that there will be a breach of human rights. We regard the steps taken by the Croatian government, despite difficulties at local level and the obstacles that still undoubtedly exist, as sufficient to provide the necessary protection. ... Even though there is discrimination coupled with the difficulties particularly of housing, employment and convalidation to which we have referred, we are satisfied that the threshold of Article 3, in particular of degrading treatment, has not been crossed. Equally, although we recognise that the Article 8 threshold is lower, we are not persuaded that it has been crossed. But even if it has, we are satisfied that removal is justified by proper control of immigration.

... unless the situation deteriorates to a significant extent or special circumstances can be shown in an individual case, no ethnic Serb should be able to establish a claim under either Convention."

C. Relevant international materials

1. Parliamentary Assembly of the Council of Europe

In Resolution 1223 (2000) on the Honouring of obligations and commitments by Croatia, the Parliamentary Assembly on 26 September 2000 adopted its recommendation closing the monitoring procedure concerning Croatia. It welcomed the significant progress that Croatia had made towards its commitments and obligations as a member state since its

accession to the Council of Europe on 6 November 1996 and in particular, since the parliamentary and presidential elections held at the beginning of 2000.

A post-monitoring dialogue with the Croatian authorities has continued through the Assembly's Monitoring Committee.

2. UNHCR War Crimes Monitoring – Croatia

Arrests of returnees on war crimes: 1999 (9); 2000 (16); 2001 (28); 2002 (16).

Suspects released: 1999 (7); 2000 (11); 2001 (26); 2002 (9).

Conviction on war crimes: 1999 (1); 2000 (3); 2001 (0); 2002 (1).

3. 2002 U.S. State Department Report on Croatia

"The Government generally respected the human rights of its citizens; however, although there were some improvements, serious problems remained. There were instances of arbitrary arrest and lengthy pre-trial detention. The Government continued to arrest and charge persons for war crimes committed during the 1991-1995 conflicts in Bosnia and Croatia. Domestic courts continued to adjudicate war crimes cases, taking steps to depoliticize cases against ethnic Serbs and opening or reopening investigations of members of Croatian military forces. However, ethnic Serbs remained incarcerated after being convicted in non-transparent politicized trials in past years. Reforms in the courts and prosecutors' offices resulted in some improvements in the judiciary; however, the courts convicted persons in mass trials and in absentia, particularly in Eastern Slavonia. The court continued to be subject to some political influence and suffered from bureaucratic inefficiency, insufficient funding and a severe backlog of cases. At times the Government infringed on privacy rights; restitution of property to refugees (mostly ethnic Serb) returning to the country remained slow and problematic.

... Ethnic minorities, particularly Serbs and Roma, faced serious discrimination, including occasional violence. While some progress was made, ethnic tensions in the war-affected areas remained high, and abuses, including ethnically motivated harassment and assaults continued to occur...

a. Arbitrary or unlawful deprivation of life

There were no reports of arbitrary or unlawful deprivation of life by the Government or its agents. ...

Domestic courts continued to adjudicate cases arising from the 1991-1995 conflicts in Croatia and Bosnia. Courts opened and reopened several war crimes cases involving Croatian forces, but despite their increased number, questions remained about the criminal justice system's ability to conduct fair and transparent trials in these complex and emotionally charged cases. Observers blamed inadequate training, shortcomings in the legal code, chronic witness intimidation, and an often hostile local public as hampering the war crimes process. ...

During the year, the Government took some steps to depoliticize cases against ethnic Serbs. The OSCE reported that at the year's end it was monitoring 59 ongoing

war crimes cases against ethnic Serbs. In October Zadar County Court sentenced Zorana Banic, an ethnic Serb accused of war crimes against civilians in Skabrnja in 1991, to 13 years in prison. In a previous in absentia trial she had been given a maximum 20 year sentence. The indictment included participation in the murder of 34 civilians. International monitors considered it a fair trial.

Courts continued the practice of convicting persons in mass trials. For example, in March 2001 mass trials in the 'Tompojevci group' case resulted in absentia convictions on war crimes charges for 15 defendants, and in June the Supreme Court confirmed 9 of these convictions. ...

d. Arbitrary Arrest, Detention or Exile

The Constitution prohibits arbitrary arrest and detention; however, the Government did not always respect this right in practice. ...

The Government granted amnesty under the 1996 Amnesty Law (which amnestied acts of rebellion by ethnic Serbs) to several individuals during the law, particularly returning ethnic Serb refugees. In July the State Prosecutor directed local prosecutors to review old war crimes cases to determine whether sufficient evidence existed to proceed with the prosecution. Arrest of ethnic Serbs for war crimes continued but decreased throughout the year. During the years, 34 Serbs and 3 Croats were arrested on war crimes charges and 21 Serbs and 13 Croats were released. In some cases of arrest on war crimes charges, the subject was released a few days after charges were dropped; however, in other cases, the persons were detained for long periods. The inability of judges to issue written verdicts was the leading cause of detention beyond the legal 6 month limit. ... Over the last few years, several ethnic Serb defendants convicted in absentia or at nontransparent trials continued to be held in detention for extended periods while their appeals progressed slowly through the overburdened judicial system. ...

Observers reported a decline in the practice of police summoning ethnic Serbs to police stations for 'voluntary informative talks' which amounted to brief, warrantless detentions intended to harass Serb citizens.

e. Denial of Fair Public Trial

Although the Constitution provided for the right to a fair trial and a variety of due process rights in the courts, at times citizens were denied these rights. Excessive delays, particularly in civil trials, remained a problem. Courts tried and convicted persons in absentia for war crimes. Courts convicted persons in mass trials and in trials with weak supporting evidence, particularly in Eastern Slavonia. In March 2001, mass trials in the 'Tompojevci group' case resulted in the in absentia convictions of nine ethnic Serbs... In May the Osijek County Court convicted and sentenced in absentia 12 Serbs in the 'Branjina' case. In June and July the Vukovar County Court continued in absentia trials against 6 Serbs in the 'Vukovar Group I' and against 11 Serbs in a retrial in the 'Bapska' case.

Activities that should have qualified for amnesty under the 1996 Law ... were classified mistakenly and prosecuted as common crimes or war crimes, although this practice declined and was under review by the Public Prosecutor. For those who had previously exhausted their appeal procedures, there was no mechanism to review their cases.

Nevertheless, the courts continued to adjudicate war crimes cases arising from the 1991-1995 conflicts in Bosnia and Croatia, initiated investigations into several allegations involving Croatian forces and took steps to depoliticize cases against ethnic Serbs. For example, the chief State Prosecutor initiated a case-by-case review of war crimes cases and sought to limit sharply the use of in absentia proceedings. County prosecutors were under instructions not to initiate criminal proceedings or in absentia proceedings without consultation with the State Prosecutor. ...

At year's end, approximately 21 individuals remained incarcerated on war crimes or related charges based on politicized or nontransparent trials held under the previous regime. ...

Section 5. Discrimination Based on Race, Sex, Disability, Language or Social Status

...

National /Racial/Ethnic Minorities

Ethnic minorities enjoy the same constitutional protections as other self-identified ethnic and religious groups; however, in practice a pattern of open and sometimes severe discrimination continued against ethnic Serbs in several areas, including in the administration of justice, employment, housing and freedom of movement. Ethnic Serbs in war-affected regions continued to be subject to harassment, intimidation, and occasional violence. In December after extensive discussion with minority groups and political parties, Parliament passed a Constitutional Law on National Minorities with broad political support. The OSCE generally assessed the new law positively. The law assures minority representation in local government bodies, creates minority councils from the local to national level to advise elected officials on minority rights, promotes the use of minority languages and symbols, and provides for the election of up to eight minority representatives in the next Parliament. ...

Societal intimidation and violence against Serbs continued in war-affected areas... Weapons left over from the war, including firearms and explosives, were readily available and used in incidents of harassment during the year. Incidents largely occurred in the areas of return in central Dalmatia. In February Serb returnee Jovan Bosta was beaten to death in Benkovac near Knin; contradictory police reports were published and no arrests were made. Also in February two grenades were thrown into the yard of a house owned by a Serb family in the Dnris area. Police responded appropriately and an investigation was ongoing. In April a returnee's house in the Benkovac area and a local school were burned. In Glina a Serb returnee's shop was attacked after the screening of a war-related film in which the perpetrators allegedly recognised the owner as a former soldier. Returnee Serbs in the village of Donji Karin reported continuous destruction of crops and vineyards by a Bosnian Croat settler; despite repeated reports to the local police, no action was taken against the suspect. Ethnic Serbs in the area received verbal death threats and one family was pelted repeatedly by stones while working their fields...

An ongoing impediment to the return and reintegration of ethnic Serb refugees is the failure of the Government to recognize or 'convalidate' their legal and administrative documents from the period of the 1991-1995 conflict. Implementation of the 1997 convalidation law to allow the recognition of documents issued by the rebel Serb para-state was undermined by Ministry of Labour and Social Welfare instructions that seriously limited eligibility. While the law itself did not include a deadline for filing

> applications, a decree issued by the previous regime established an April 1999 deadline. Since more than half of the 71,000 Serbs who have returned to Croatia returned after April 1999, the filing deadline effectively excludes most of those who otherwise would be beneficiaries. Even persons who filed before this deadline experienced arbitrary delays and obstructions. Without the recognition conferred by law, citizens (almost exclusively ethnic Serbs) remained unable to resolve a wide range of problems including pensions, disability insurance, and ability to establish work experience. Most requests came from elderly persons and related to pension and employment histories from occupied territories during the conflict. ..."

COMPLAINTS

The applicant complained under Article 3 that his proposed expulsion to Croatia placed him at risk of inhuman and degrading treatment. Due to his past military service as an officer with a Serb paramilitary group involved in the conflict, he would be at risk of retributive action. He also referred to the open and severe discrimination against Serbs in several areas, affecting housing, employment, freedom of movement and the administration of justice and including harassment, intimidation and occasional violence.

The applicant complained under Article 8 of the Convention that his removal would damage his moral and physical integrity due to the adverse effects of the discrimination that he would face.

The applicant further complained that there was a real risk that he would be arrested and held for an indeterminate period on politically motivated trumped up charges of war crimes for which he would not receive a fair trial and would be likely to face a long period of imprisonment because of his Serb ethnic origin and past paramilitary service.

THE LAW

1. The applicant complained that he was at risk of inhuman and degrading treatment if expelled to Croatia, invoking Article 3 of the Convention which provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Court recalls that Contracting States have the right to control the entry, residence and expulsion of aliens. The right to asylum is not protected in either the Convention or its Protocols. However, expulsion by a Contracting State of an alien may give rise to an issue under Article 3 of the Convention, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that

the person in question, if expelled, would face a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the receiving country. In these circumstances, Article 3 implies the obligation not to expel the person in question to that country (see, among other authorities, *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-I, p. 1853, §§ 73-74).

The applicant's arguments appear to rest on two grounds: that as an ex-special unit commander he will be at particular risk of ill-treatment and that as a Serb he will be returned to a severely discriminatory situation.

As regards his status as an ex-combatant, it is not apparent that there is any suspicion against the applicant as having been involved in war crimes. Furthermore, a general amnesty has been issued for those involved in armed rebellion. The materials reviewed by the Immigration Appeal Tribunal and the various reports on Croatia do not identify any particular incidence of ill-treatment of ex-combatants by either State officials or others. The 2002 U.S. State Department Report noted that incidents of violence against Serbs had occurred, including stone-throwing, arson and, in one case, apparent murder. This does not however disclose a situation of endemic targeting of Serbs that the applicant can claim that he himself is at real risk of being a victim of such an incident. Although he refers to his wife being killed during the conflict and his brother-in-law being killed in or about 1999, he has not substantiated that he himself would be at particular risk on return in the current climate.

As regards the general situation facing Serbs, the Court recalls that the Immigration Appeal Tribunal found that the Serb minority in Croatia continued to face problems of discrimination, although much had been done to improve matters by the Government and further improvements could be expected. It appears that the major problems identified in the country materials are repossession of property by returning refugees and recognition of documents and papers from the period of conflict, which causes difficulties in obtaining pensions and jobs. The applicant has not specified any particular difficulty that would face him on his return, regarding, for example, property or pensions. Insofar as he relies therefore on the general hardship and difficulty of the situation facing those in a war-affected region, the Court is not persuaded that this reaches the level of minimum severity required to engage Article 3 of the Convention. To the extent that reference has been made to *Cyprus v. Turkey* (judgment of 10 May 2001, no. 25781/94, ECHR 2001-IV), where discriminatory treatment was found to infringe Article 3 of the Convention, the Court would observe that this concerned the very different circumstances of the enclaved minority in northern Cyprus who were the object of very severe restrictions which curtailed the exercise of basic freedoms (*inter alia*, movement, family and private life, freedom of religion) such that the conditions under which that

population was condemned to live were debasing and violated the very notion of respect for the human dignity of its members.

Furthermore, the Court attaches importance to the fact that the case concerns expulsion to a High Contracting Party to the European Convention on Human Rights, which has undertaken to secure the fundamental rights guaranteed under its provisions (see *K.F. v. the Netherlands*, no. 12543/86, (dec.) 2 December 1986, DR 51, p. 272; *Popescu and Cucu v. France*, nos. 28152-3/95, (dec.) 11 September 1995, unreported).

The Court concludes that the applicant has not established in his case that there are substantial grounds for believing that he will be exposed to a real risk of treatment contrary to Article 3.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

2. The applicant complained that his expulsion would infringe his right to moral and physical integrity contrary to Article 8 of the Convention, which provides as relevant:

> "1. Everyone has the right to respect for his private ... life...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Court refers to its reasoning above and finds that the facts of this case also do not disclose a sufficiently real and imminent risk of harm capable of engaging the responsibility of the respondent Government under this provision.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

3. The applicant complained that on return to Croatia he was at risk of arbitrary arrest and detention and an unfair trial with long sentence of imprisonment.

Article 5 of the Convention provides as relevant:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed

an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ..."

Article 6 of the Convention provides as relevant:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The Court does not exclude that an issue might exceptionally be raised under Article 6 by an expulsion decision in circumstances where the person being expelled has suffered or risks suffering a flagrant denial of a fair trial in the receiving country, particularly where there is the risk of execution (see, *mutatis mutandis*, *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161, p. 45, § 113; *Ocalan v. Turkey*, no. 46221/99, judgment of 12 March 2003, §§ 199-213). Whether an issue could be raised by the prospect of arbitrary detention contrary to Article 5 is even less clear. However, the applicant's submissions do not disclose that he faces such a risk under either provision.

Although concerns have been expressed in the past as to the arbitrary arrest of suspected war criminals and the fairness of certain mass trials and trials of persons in absentia, it is apparent that steps have been taken recently by the Croatian authorities to introduce measures to check abuses. It is also apparent that the numbers of arrests of returnees on charges of war crimes and the numbers of those in detention pending trial are relatively small, with monitoring by various international organisations to verify fairness of procedures. Nor can it be regarded as insignificant in the circumstances of this case that Croatia is a Contracting State which has accepted obligations to provide procedural guarantees and effective remedies in respect of breaches of the European Convention of Human Rights. Against this background and given the lack of any concrete indication that this applicant is likely to be arrested as a suspected perpetrator of war crimes, the Court does not find that the risk of arbitrary or unfair procedures reaches the flagrant level necessary for the threatened expulsion to raise issues under Articles 5 or 6.

It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President