

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 74321**

**REFUGEE APPEAL NO 74322**

**REFUGEE APPEAL NO 74323**

**REFUGEE APPEAL NO 74324**

**AT AUCKLAND**

**Before:**

J Baddeley (Chairman)  
R Towle (Member)

**Counsel for the Appellants:**

S Laurent

**Appearing for the NZIS:**

No appearance

**Dates of Hearing:**

17 & 18 August 2005

**Date of Decision:**

19 December 2005

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**DECISION DELIVERED BY R TOWLE**

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[1] These are appeals against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the New Zealand Immigration Service (NZIS), declining the grant of refugee status to the four appellants, all citizens of the Republics of Serbia and Montenegro. They claim that they will be persecuted because of their mixed ethnicity by Serb nationalists if they were to return to their home country and that the state is unable or unwilling to offer them effective protection.

[2] The determinative issue in these cases is the well-foundedness of their fear of persecution.

## **INTRODUCTION**

[3] The first appellant, the father of the family, is an ethnic Croat. The second appellant, his wife, is an ethnic Serb and they have two daughters: the third appellant, who is in her early 20s, and the fourth appellant, who is in her late teens. Both children are of mixed Serb and Croat ethnicity.

[4] The family arrived in New Zealand on 21 April 1998 and lodged an application for refugee status with the RSB on 3 July 1998. They were interviewed by the RSB on 27 March 2001 and their claim to refugee status was declined by the RSB on 13 September 2002. Each appellant has appealed against that decision to this Authority.

[5] During the hearing, each appellant gave evidence but the principal account of the family's claim to refugee status was provided by the first appellant.

## **THE APPELLANTS' CASE**

[6] The following is a summary of the appellants' claim as presented to the Authority. Its credibility is assessed later.

### **THE FIRST APPELLANT'S EVIDENCE**

[7] The first appellant is an ethnic Croat in his mid forties. He was born and raised in SM which lies in the western part of the province of Vojvodina in the now constituted Republics of Serbia and Montenegro (formerly the Federal Republic of Yugoslavia). His parents, both ethnic Croats, had moved to the region many years earlier and had settled in the largely ethnic Croat village of Hrtkovici.

[8] Prior to 1990, the first appellant was raised as a "Yugoslav" citizen and was not particularly conscious of his own ethnicity. He was a practising Catholic and remembers SM and the surrounding area as a peaceful multi-ethnic community comprising Croats, Muslims, Roma and, the majority, ethnic Serbs.

[9] His early years were unremarkable. He received a sound education, underwent his military service in the early 1980s and then found work as a technician in a local factory. He performed well and was duly promoted over a period of time.

[10] In 1982, he married the second appellant, an ethnic Serb, who was born and raised in the same city. They had two daughters, now aged 22 and 19 years

respectively who were also born in SM and are of mixed Serb and Croat ethnicity.

[11] Before the eruption of inter-ethnic hostilities in the former Federal Republic of Yugoslavia (FRY), the appellant and his family lived a normal life. The family had a sound income, its own home and the opportunity for overseas travel. The children were having good education and the appellant expected, for himself, that he would have steady employment and a pension on his retirement.

### **OUTBREAK OF CONFLICT 1990/1991**

[12] Their lives changed irreversibly in 1990 as inter-ethnic tensions and nationalism began to rise throughout the region and as the Federal Republic of Yugoslavia began to disintegrate.

[13] There was marked escalation of tensions between the ethnic Croat minority and the Serb majority. The Serb dominated media began a hate campaign against the Croats and there was an alarming rise of Serb nationalism in his area. Serb paramilitary units began to intimidate minorities, particularly the Croat minority, and to drive Croats from their homes. This was even before the conflict between Serbia and Croatia broke out formally in 1991.

[14] In 1991, Slovenia and Croatia began to secede from the former FRY union. The first appellant was ordered to mobilise but went into hiding for fear of being drawn into combat against his own people - ethnic Croats - in what is now the Republic of Croatia.

[15] In SM, his family found itself in an increasingly difficult situation, polarised between the two ethnic groups and carrying the stigma of being “a mixed Serb Croat” marriage. There was no middle ground in which a mixed ethnic family such as his could sustain a normal life and no one could be a “Yugoslav” from then on.

[16] From 1991 onwards, he and his family began to receive disturbing telephone threats from strangers at all times of the day and night. Specifically, threats were made against himself and his youngest daughter, the fourth appellant. In 1991 or 1992, his daughter, who was then aged five years, received a number of abusive and threatening telephone calls of a violent and sexual nature.

[17] On another occasion, while he and his wife were at work, an unknown person came to the window of the house, made threatening gestures and tried to force his way into the home where the young girl was staying unattended.

Fortunately, the intruder did not gain access to the house and went away. The family informed the police but they were unable, or unwilling in the volatile and polarised environment at the time, to prevent these kinds of threats. The police were comprised largely of ethnic Serbs who had little sympathy for Croats living in the area.

[18] The second appellant also received threatening telephone calls, in particular, calling her “*Ustasha* bitch!” and making derogatory and cruel comments about her relationship with an ethnic Croat.

[19] Between 1991 and 1996, there were many violent incidents against his family and against other ethnic Croats in the area:

- (i) In 1992, Serb nationalists and paramilitaries evicted by force most of the Croat inhabitants of his ancestral home of Hrtkovici;
- (ii) The Catholic church in the town was bombed and Croats were prevented from attending the church. The first appellant had been a regular church-goer prior to that time but ceased after the bombing of the church;
- (iii) Serb nationalists threw bombs into the garden of one of his relatives who then left the country;
- (iv) In 1993, the first appellant was dismissed from his work position. Ostensibly, he was told it was because there was insufficient work but, in reality it was because he was an ethnic Croat. Thereafter, he was unemployed but managed to eke out a living through odd jobs. It had a very severe impact on the quality of the family’s living standards and they were soon reduced to a subsistence level;
- (v) In 1994, the first appellant was in a local market when he was attacked by ethnic Serbs, who were, themselves, refugees displaced from other parts of the former FRY. The town and surrounding countryside had been flooded by ethnic Serbs, forcibly displaced from Croatia, who were angry about their own displacement and who vented their fury and frustration against ethnic Croats such as the appellant. On this occasion, he was threatened with a gun and called “*Ustasha!*”. He feared that the incident would deteriorate but was fortunate that the

police arrived. As the Serbs were leaving, they said they “hadn’t finished with you yet”;

- (vi) There were no ethnic Croats in the police force so any complaints would have been pointless. He decided to keep away from the refugee areas after that. The Serb refugees occupied many of the homes of ethnic Croats who had left the town and countryside villages. Officially, the police were there to protect the ethnic minorities, but in practice, they did not or could not;
- (vii) Around 1994/1995, the third appellant was assaulted by a fellow student on her way home from school. She was victimised because of her mixed Serb/Croat ethnicity. She also received a threat of physical violence from some other Serb students;
- (viii) The threatening telephone calls against various members of the family continued until 1996.

[20] By 1995/1996, the situation had become intolerable. The combination of poverty and inter-ethnic conflict and war had reduced the first appellant and his family to a level of humiliating subsistence. He had no work, no money and no income. The area was increasingly dangerous for ethnic Croats because of the increasingly large numbers of Serb refugees who had been forced from the Krajina areas by Croatian forces in 1995. There was also a constant threat of violence against Croats and the families of mixed marriages were particularly at risk.

### **PLANS TO LEAVE SERBIA**

[21] By 1996, the family decided to join the many Croats leaving the area. The second appellant made enquiries about emigrating to New Zealand. She had nursing qualifications and translated these from the Serb to the English language in order to satisfy New Zealand immigration and work visa formalities. Because of the war, the state of the bureaucracy and her mixed ethnicity marriage, it took her more than two years to get the necessary documentation. The situation was made worse because she had lost her original diploma and had to get a certified copy before she could start the process.

[22] In 1997, they were issued with passports and sold the family home. The proceeds were used to buy air tickets for the whole family. They sold their home

to ethnic Serbs at about one-seventh its real value. As an ethnic Croat and because of the volatility of the situation, the first appellant could not command a fair sale price. Many other ethnic Croats had gone or were leaving at this time and properties were being taken very cheaply by ethnic Serbs, particularly refugees from Croatia and Bosnia Herzegovina.

[23] In early 1998, inter-ethnic tensions rose again. Serb nationalism in the Vojvodina region became more extreme due, in part, to the escalating conflict in Kosovo between Serbs and ethnic Albanians. Serb nationalism became more extreme in the SM area because of the influence of the Radical Party of Serbia under the control of Vojislav Seselj. This man was the architect of Serb nationalism in the area and from behind the scenes controlled the Serb paramilitaries who were victimising ethnic Croats from 1990 onwards. Seselj is now facing war crimes before the Hague Tribunal.

#### **KNOWLEDGE OF EVENTS SINCE DEPARTURE**

[24] The first appellant has not kept in close contact with political developments in Serbia since he left in 1998. He was aware of the death of Premier Djindjic in 2003 and a resurgence of the Serb Radical Party under Seselj at the local level. He believes that although Seselj is in The Hague, his brand of nationalism and its proponents are still highly influential in the city of SM and the surrounding area. They are the same people and the same kind of party as during the "Milosevic" era.

#### **LIFE IN NEW ZEALAND**

[25] The family arrived in New Zealand in early 1998 and the first appellant was humiliated as a father and a husband, in not being able to provide adequately for his family.

[26] Initially, they stayed with a fellow national whom they had known before they left. He abused their trust and vulnerability by stealing money from them and, the first appellant believes, lodging a false complaint to the NZIS about the second appellant's work qualifications in Serbia. Although these complaints were entirely false, they had a devastating effect on the second appellant's chances of getting work in New Zealand. Because of the NZIS concerns over the authenticity of her work diploma, she was not issued with a work permit. This, in turn, stalled the family's opportunities of obtaining residence in 1998 and 1999.

[27] The first appellant believes that the betrayal by his “friend”, an ethnic Serb, is another example of the prejudice and inter-ethnic tensions that exist between ethnic Serbs and Croats and which transcend even international boundaries.

[28] It took the family many months to clarify the NZIS record and in the meantime, the damage had been done to his wife’s employment opportunities. Without a permit she has been unable to work for the past seven and a half years and this has caused her significant suffering, emotional stigma and loss of self-esteem.

[29] In 2000, the family was issued with new passports by the Federal Republic of Yugoslavia (then comprising Serbia and Montenegro, including Kosovo). The appellant has been advised that these are valid travel documents, notwithstanding the declaration in 2003 of a newly-named state of Serbia and Montenegro.

[30] The first appellant cannot face the prospect of returning to Serbia. He fears that he would face criminal charges for deserting his military conscription in 1991. As an ethnic Croat, he will be seen as not trustworthy and not “patriotic” and will have to go to prison. Despite the fact that a formal amnesty of draft evaders/deserters appears to cover his situation, he does not believe that it would be honoured in practice. He does not believe that, as an ethnic Croat, he would be able to settle easily in Croatia. He has an estranged sister on the Dalmatian coast whom he hardly knows. He has no other family in Croatia, no work, no pension and no support system in that country. Moreover, even if he were able to satisfy Croatian nationality requirements, he would be unable to go there with his family because his daughters are of mixed ethnicity and his wife is an ethnic Serb.

[31] Despite the passage of time since he and his family left the country, Serb nationalism is still powerful in Serbia and particularly in his home region. If he is to go back there, he and his family would still be at risk of serious harassment, intimidation and possibly violence from the Serb nationalists, the ethnic Serb refugees and others who manipulate inter-ethnic relations in the area.

## **THE SECOND APPELLANT’S EVIDENCE**

[32] The second appellant is an ethnic Serb who was born and raised in the same town in western Serbia. Her own family background is unremarkable. When she met the first appellant, her family’s reaction was somewhat negative. As an ethnic Serb family, they recalled only too clearly their family’s treatment at the hands of Fascist *Ustasha* during WWII. They had relatives who had lost their

lives at Jasenovac, a well-known *Ustasha* concentration camp in Croatia. Over time, however, her family became reconciled to her marriage. Their ethnic differences were overcome during the period of "Tito's Yugoslavia" because life was stable and Tito emphasised the Yugoslavian character of the peoples, rather than their ethnicity.

[33] At the start of hostilities in 1990 and 1991, the second appellant was working as a qualified nurse in the hospital system. Some ethnic Croat nurses being dismissed from their positions and others were harassed and abused. At first, the second appellant escaped the worst excesses of this harassment because she was an ethnic Serb. However, prejudices intensified against her between 1991 and 1995 when she found herself the butt of abusive comments. She was called a traitor, unpatriotic and "*Ustasha* bitch!". She was abused and humiliated at work on a number of occasions because of her marriage to an ethnic Croat.

[34] Between 1990 and 1996, she became very worried about the safety of her two young daughters. She confirmed the first appellant's evidence that they had received many violent and abusive telephone calls during this period. This took its toll on the health of the individual members of the family. Her youngest daughter had severe difficulties with her immune system following the threats that she received.

[35] As the family's financial circumstances deteriorated, the second appellant managed to keep her job as an "outpatients" nurse but was not paid on a regular basis. This was a very stressful period for the family. She confirmed the first appellant's account of the difficulties she had in obtaining the work diploma and the consequences of their "so-called friend" undermining her work opportunities as a nurse in New Zealand. For her, the seven year wait in New Zealand without work has had a devastating effect on her self-esteem and her health. She has been very stressed throughout this period.

[36] She recently spoke to her step-sister who is still living in SM. She was told that the situation is still "very bad" following local body elections in 2003 when the Serb radical party gained the balance of power in their locality. Even today, the living situation for Croats and those of mixed marriages would be very difficult.

[37] Apart from a step-sister, all of her family and friends have now left the area. Some Croat families have settled in Croatia and others have gone further afield. There is no life at all for people of mixed marriages going back to their home area.



[38] The second appellant is deeply concerned also for her two daughters if the family were to return to Serbia. She is worried that the incidents of threats, insults and violence they experienced between 1990-1998, will be repeated against them, particularly because of the presence of displaced Serb refugees and of Serb nationalism in the area. Recently, 20,000 Serb nationalists gathered in the Ravna Gora area and this is an example of how the radicals and nationalists are still prevalent and powerful in Serbia.

### **THE THIRD APPELLANT'S EVIDENCE**

[39] The third appellant was only 15 years old when she left Serbia. She does not recall events particularly clearly but there were a few incidents which scare her even to this day:

- (i) At school she was easily identified as a "Croat" because of her family name and her accent. When the war started, she had to write down her "nationality" at school but did not know what to write. She was teased, harassed and humiliated by other students and by a teacher. She was labelled as an "outcast" and received threats from other children;
- (ii) Before 1991, she had never defined herself other than Yugoslav. She only became aware, painfully, of her mixed ethnicity after 1991;
- (iii) In the mid-1990s she was coming home from school on a bicycle when she was pushed off her bicycle by a Serb student and injured her back. She was abused by Serbs in a derogatory way and the teachers did nothing about it;
- (iv) On another occasion, she was physically assaulted by Serb boys in the locker room at school when she was only 11 years old. Again, she was insulted and abused as an "outcast". Even her good Serb friends at school did not defend her when these incidents occurred;
- (v) On other occasions she remembers missing days of school because of fear or stress. She hardly went out and was very scared because of the constant threat of violence and harassment both at school and in the community;
- (vi) She recalls abusive and obscene telephone calls being received at the family home, in particular, by her younger sister;

- (vii) During the conflict, her family was very poor and she could not afford school books like other children. After the war finished, she remembers the abject poverty in which the family lived.

[40] After more than seven and a half years in New Zealand, she is worried about returning to Serbia, a country that is full of painful memories for her. She now regards herself “not as a Serb or a Croat but a Kiwi”.

#### **THE FOURTH APPELLANT'S EVIDENCE**

[41] The fourth appellant was only 11 years old when she left Serbia. She wants to forget the many sad incidents that happened to her while she was at school but remembers these to include:

- (i) She was always called *Ustasha* and other derogatory names to do with her mixed Serb/Croat ethnicity. It “was always being like that as long as I can remember”;
- (ii) On one occasion, she was grabbed by a teacher at the kindergarten and was abused because of her ethnicity. At the time, she did not know what the insulting term meant and thought that people “just did not like me”;
- (iii) She cannot recall the date but remembers clearly receiving obscene and violent telephone calls in “a stalker’s voice” on a number of occasions when she was at home;
- (iv) She recalls another occasion when somebody came to the house and tried to get in the window. She pretended that nobody was at home and after some time, the man left.

[42] She has made a new life in this country in the last seven years and is scared at the prospect of returning to Serbia.

#### **OTHER EVIDENCE**

[43] In addition to their oral evidence, the appellants provided a number of documents in support of their appeal. These include attestations as to the character of the family from a number of people in New Zealand, various documents attesting to the first and second appellants’ qualifications and employment in SM prior to their departure, and a letter from the embassy of the Federal Republic of Yugoslavia dated 23 July 2002, attesting to the fact that the

appellants' present passports entitle them to be considered as citizens of Yugoslavia, now the Republics of Serbia and Montenegro.

[44] On the family's behalf, the appellants' representative has provided the Authority with documentation concerning the human rights situation prevailing throughout the Balkans during this period. Counsel has also made written submissions dated 11 August 2005 and, subsequent to the hearing, further submissions dated 14 September 2005. These address a number of issues:

- (i) The first appellant's acquisition of Croatian citizenship;
- (ii) The effect of local body elections in Serbia in 2003 and 2004 and in particular, whether radical and Serb nationalist elements in the area are still influential and able to persecute ethnic minorities;
- (iii) The extent to which the inter-ethnic conflicts of the region have changed the demographics in Vojvodina and what impact this would have on ethnic Croats and persons of mixed ethnicity such as the appellants;
- (iv) The family's present fears of being persecuted if returned to Serbia, notwithstanding the substantial changes in the country since their departure in 1998.

[45] In summary, counsel submits that the first appellant has a well-founded fear of being persecuted on account of his nationality (Croat ethnicity) if he were to return to Serbia. He concedes that the first appellant may be able to obtain Croatian nationality without too much difficulty but that other members of the family would not be so entitled and that this would impact on "his right to [...] a life and to maintain the unity of his family". Counsel submits that the first appellant's family members would not be able to join him in Croatia and that the first appellant should "be included with his wife ... as a recognised refugee ..." from Serbia.

[46] Counsel also submits that the second, third and fourth appellants face a well-founded fear of being persecuted, on cumulative grounds, because of their membership of a particular social group, a family of mixed ethnicity.

## **THE ISSUES**

[47] The Inclusion Clause in Article 1A(2) of the Refugee Convention provides that a refugee is a person who:

... owing to well-founded fear of being persecuted for reasons of race, religion,

nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

[48] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

## **ASSESSMENT OF THE APPELLANTS' CASE**

### **CREDIBILITY**

[49] Before addressing the principal issues, it is necessary to determine whether the appellants are credible witnesses.

[50] The appellants' evidence was given in a forthright and spontaneous way. Any apparent discrepancies arising from the immigration record were adequately explained during the hearing and the Authority finds the appellants to be credible.

### **WELL-FOUNDEDNESS OF THE CLAIMS**

[51] Refugee status determination is a "forward-looking" process and the determinative issue in this case is whether each of the appellants has a well-founded fear of being persecuted if he or she were to return to Serbia and Montenegro in the future. For the reasons that will be outlined below, the first appellant's eligibility for Croatian nationality will also be considered.

[52] In making their claim, the appellants were at some disadvantage because they left the country in 1998, at a time of great political and inter-ethnic turmoil. Since then, they have had little contact with friends and family in the region and have no first-hand knowledge of the extent to which any positive changes that have occurred in the country might affect their own situation if they were to return.

### **SITUATION BETWEEN 1990 AND THE APPELLANTS' DEPARTURE IN 1998**

[53] The rise of nationalism which swept the Balkans and led to the rapid disintegration of the former Federal Republic of Yugoslavia is well documented: United States Department of State *Country Reports on Human Rights Practices*

*for the Federal Republic of Yugoslavia: 1991-1998.*

[54] Country information indicates that before the massive population movements of the 1990s, the largest concentration of Croats in Serbia lived in the Vojvodina region which borders Croatia. Croats constituted 5.4 percent of the 2 million people in the Vojvodina region. It is difficult to determine the current composition of the population due to the forced displacement of all ethnic groups within the former Yugoslavia, but particularly, ethnic Serb refugees who came to the Vojvodina region of Serbia from Croatia in 1991 and Bosnia Herzegovina, particularly in 1995. However, a national census conducted in 2002 indicates that ethnic Croats now represent only 3 percent of the population in Vojvodina.

[55] The autonomy of the Vojvodina region, known for its multi-ethnic composition, changed irreversibly when Serbian President Milosevic came to power in 1988. He forced the government of Vojvodina to resign and was able to exert significant influence over the reconstituted Vojvodina authorities. At various levels, he also supported policies to intimidate and drive out non-Serbs from the region and to relocate ethnic Serbs into the region.

[56] From as early as 1990, right wing Serb nationalist groups and paramilitary units roamed the area of what is now western Serbia, including the city and region of SM. This intensified in 1991 when extremists began to force ethnic Croats out of the Vojvodina region. The campaign included the bombardment of Croat villagers close to the border of Croatia.

[57] In September 1991, more than 100,000 ethnic Serb refugees from Croatia came to Vojvodina, having been displaced by the conflict and population displacements in what was to become the new Republic of Croatia. At around this time, non-Serbs were purged from official positions in the Vojvodina government and from local body institutions. The authorities in Vojvodina began to use repressive methods against anyone publicly expressing opposition to the government policies. In addition to telephone taps and a tolerance of threats and intimidation by Serb extremists, the police began searching households in the villages of west Vojvodina on the pretext of searching for weapons.

[58] In late 1991, the Serb media began a campaign accusing Croats in Vojvodina of being affiliated with the extremist Croatian *Ustasha* movement. This media hate campaign, that continued sporadically throughout the region for the next eight years, created a permissive environment and culture of impunity for countless acts of discrimination, harassment and violence against ethnic minorities

in Vojvodina, particularly the Croats.

[59] On 22 May 1992, Serb armed militia groups, controlled by Seselj, attacked Hrtkovici, a predominantly Croat village in the Srem region and forced out most of the non-Serb population, principally Croats and Hungarians. The former Croat population of 1,800 persons of the village was reduced to 400 and it was renamed Srbaslavci (home of the Serbs) in 1992. Hrtkovici was the first appellant's ancestral home village: The Humanitarian Law Fund: *Pressure on Non-Serbs in Vojvodina, the case of Hrtkovici* FECL 14 (April 1993); Ivan Radovanovic, *The Ugly Side of War* and *The Moving Out Continues*, Vreme News Digest, (13 July 1992).

[60] Throughout 1992, there are many reports of violence against the ethnic Croat population of the area. Threats and violence by Serb extremists included bombings, gunfire, beatings, death threats and threats of rape. Those communities with the majority non-Serb populations were the particular target of these attacks. In the latter part of 1992, ethnic Serb refugees from the Krajina and parts of Croatia resettled in the area. This raised ethnic tensions and increased the frequency and intensity of attacks and harassment against the ethnic Croat population. Many homes vacated by ethnic Croats were occupied by the incoming Serb refugee population. Serb paramilitary organisations, such as the "Serb Falcons", continued to attack and harass ethnic minorities in the region. Croat cultural institutions, television stations and schools were damaged or closed: Human Rights Watch, *Annual Human Rights Reports for FRY* in period 1992-1998.

[61] The intensity of threats and intimidation against the Croat population continued until early 1995 when there was a decrease in violence. However, the level of violence and intimidation of ethnic Croats increased again in August 1995 following the large expulsion of ethnic Serbs from the Krajina area and this placed greater pressure on housing. Many homes owned by ethnic Croats were sold or exchanged with properties in Croatia or Bosnia Herzegovina.

[62] Between 1996 and 1998, the incidence of overt attacks against ethnic minorities in Vojvodina decreased but nonetheless continued to be reported.

[63] The influx of Serb refugees from Croatia and Bosnia to the Vojvodina province drastically increased unemployment and the levels of tension between the ethnic minorities and the Serb majority. Pressure on Croat families to leave their homes to make way for ethnic Serbs continued. Police were not able or

willing to enforce eviction orders to protect the rights of ethnic Croats.

[64] In 1998 and early 1999, the Yugoslav army and Serb military police stepped up its campaign against ethnic Albanian separatist groups in Kosovo. This caused a backlash against ethnic minorities in other parts of Serbia, including Vojvodina.

[65] Throughout the period 1990 to 1998, ethnic Croats lost their jobs, were marginalised from positions of power and responsibility, received threats and intimidation from ethnic Serb refugees and from paramilitary organisations intent on reducing the influence of Croats in the area. Well targeted acts of violence were committed against Croat properties, religious institutions and occasionally against the people themselves.

[66] Serb nationalist groups operated in an environment of relative impunity. There were few ethnic minorities in the police force and the predominantly Serb law enforcement agencies were unable or unwilling to offer any real protection against these acts of violence.

[67] There are no reliable figures as to the number of Croats leaving the country at this time or the number of Serb refugees coming to the area. Most Croats sold their homes to ethnic Serbs at greatly reduced values or swapped their homes and properties with ethnic Serbs who had been displaced from other parts of the region.

[68] The effect of this ethnic re-engineering of the region was not reversed after the cessation of hostilities in Croatia in 1992 and in Bosnia Herzegovina after the Dayton Peace Accords in 1995. Whilst it is apparent that large numbers of internally displaced persons have returned to their homes within Bosnia Herzegovina following the Dayton agreement, the same does not appear to be the case with ethnic Serbs and Croats refugees displaced from Serbia and Croatia. Young families have remained in their places of displacement and despite considerable encouragement, the only returnees appear to be the elderly.

[69] The large influx of more than 300,000 displaced Serb refugees has significantly altered the demographic contours of the area. This has created a volatile cocktail of anger, frustration and poverty that has been, and continues to be, a fertile ground for nationalism and extremism. This was highlighted during the conflict in Kosovo and in municipal elections in 2003 and 2004 when the fears and resentment of ethnic Serbs in the Vojvodina area were fuelled by the strategies of extreme groups in Serb politics, especially the Serb radical party led by Vojislav

Seselj.

[70] Seselj is now facing charges before the *ad hoc* War Crimes Tribunal in The Hague. The indictments ([www.un.icty.indictment.english/ses-ii030115e.htm](http://www.un.icty.indictment.english/ses-ii030115e.htm)) include, *inter alia*, accusations that he:

“espoused and encouraged the creation of a homogeneous "Greater Serbia", encompassing the territories specified in this indictment, by violence, and thereby participated in war propaganda and incitement of hatred towards non-Serb people.” (Article 10(c) of the Indictment)

and

“In public speeches he called for the expulsion of Croat civilians from parts of the Vojvodina region in Serbia and thus instigated his followers and the local authorities to engage in a persecution campaign against the local Croat population.” (Article 10(d) of the Indictment)

and

“He recruited Serbian volunteers connected to the SRS and indoctrinated them with his extreme ethnic rhetoric so that they engaged in the forcible removal of the non-Serb population in the targeted territories through the commission of crimes as specified in this indictment with particular violence and brutality.” (Article 10(g) of the Indictment)

## **CONCLUSION ON EVENTS 1990-1998**

[71] From this broad analysis of developments in the western part of Serbia from 1990 to 1998, the Authority concludes that the family’s account of their own experiences is entirely consistent with the broader pattern of harassment, intimidation and insecurity for the minority Croat population between 1990 and 1998.

## **EVENTS FROM 1998-2005**

[72] It is not necessary to describe in detail the major political changes in the region which, again, are well-documented: United States Department of State *Country reports on Human Rights Practices for Serbia and Montenegro* in these years; European Parliament paper on the *Political and Economic Situation of Serbia and Montenegro and Relations with the European Union* (29 November 2004); for a summary of key chronology: Jonathan Fox, *Croats in Yugoslavia* (1 July 1999) [www.bsos.umd.edu/cidcm/mar/yugcroat.htm](http://www.bsos.umd.edu/cidcm/mar/yugcroat.htm).

[73] From this general country information, the following conclusions can be made:

- (i) After the appellants’ departure in 1998, the formal Federal Republic of



Yugoslavia has undergone significant constitutional changes. In 2003, it was reconstituted as the Republics of Serbia and Montenegro;

- (ii) From March to June 1999 Serb and Yugoslav forces were in conflict with ethnic Albanian groups in Kosovo and with the NATO alliance. This raised tensions throughout the country, particularly between different ethnic groups;
- (iii) In October 2000, the President of Serbia, Slobadon Milosevic, lost power following a peaceful democratic process. The newly appointed coalition of parties under Federal President Kostunica and Serbian Prime Minister Zoran Djindjic made significant progress in ending the isolation and pariah status of Serbia and Montenegro;
- (iv) At the federal and republic levels, some progress was made to improve the economical stability of the country and to consolidate parliamentary democracy. There have also been improvements in the protection of the rights of minorities in the complex mosaic of ethnic relations throughout the country;
- (v) However, it is clear that although the government made some initial progress, it has been constantly hampered by deep ideological and other divisions within the parties and between their leadership. Although Milosevic was extradited to face war crimes in The Hague Tribunal in late 2001, the undercurrent of Serb nationalism and the politics that he espoused has continued to pervade and influence the political landscape in Serbia;
- (vi) In the early 2003, Serbian Prime Minister Djindjic was assassinated by interests associated with organised crime and big business. This had a significantly destabilising effect in the governing coalition and has retarded progress in almost every area of the programme for reform. This instability has strengthened the position of more conservative elements, such as the Serb Radical Party;
- (vii) The results of Serbian municipal elections in late 2003 and 2004 reveal a significant resurgence in the power and influence of the nationalists parties, particularly in Vojvodina. In the appellants' city, SM, the Serb Radical Party now holds 20 of the 61 seats in the Municipal Parliament and wields considerable influence in local body affairs;

- (viii) In March 2004, ethnic Albanians in Kosovo attacked the properties and religious monuments of the minority Serb population. This caused a backlash of violence by Serb extremists in other parts of the country and an increase in ethnic tensions in Vojvodina;
- (ix) The economic hardships of years of sanctions and isolation have hampered any significant progress to improve the socio-economic situation of ordinary people in the country. Nationalism is still an ugly feature of political life, particularly at the local community level;
- (x) The current demographic composition of the Vojvodina has changed significantly. According to a report published by the Committee on Foreign Affairs of the European Parliament (31 March 2005), ethnic Serbs make up 67 percent of the population of Vojvodina, followed by 14.28 percent Hungarians. Ethnic Croats make up only 3 percent of the residual ethnic minority population;
- (xi) There is very little information concerning the return of ethnic Croats to the Vojvodina region from outside the country but it would seem that the massive ethnic displacements that took place in the 1990s have not been reversed and that most ethnic Croats have found alternative solutions in Croatia or further a field. Few, if any, have returned to Serbia: Research paper by Miroslav Samardzic for Development of Civil Society (DCS), *Emigration under Pressure* Centre (1999);
- (xii) The situation for ethnic minorities in the depressed socio-economic environment of Serbia and Montenegro is very difficult, particularly where they are competing with ethnic Serbs for limited work and other opportunities.

#### Inter-Ethnic Relations in Vojvodina

[74] Although some progress has been made at the federal and republic levels to improve the situation of ethnic minorities, the reality at the provincial and municipal levels is complex and less certain. The situation for ethnic minorities in Vojvodina is still volatile and unpredictable. According to the mission report of the *ad hoc* delegation to Vojvodina of the European Parliament from 28 to 31 January 2005:

“There has been a disturbing and unacceptable upsurge of racially motivated incidents aimed at individuals belonging to the national minorities, particularly the Hungarians and Croats, and sometimes also at members of Serbian majority... .

The incidents take different forms; vandalising monuments, graffiti, verbal attacks, physical attacks and threats against minority leaders. Vandalism, seeking to destroy the minorities' historical and cultural heritage, is perpetuated against churches, monuments and cemeteries. There has also been a lot of racist, xenophobic and anti-Semitic graffiti, and of verbal and physical abuse, frequently amongst young people in schools, discotheques and football stadiums. Private property has also been attacked." [page 6]

[75] The Report identifies [page 7] three major causes for underlying ethnic incidents in 2004 and 2005:

- (i) The demographic changes which have taken place in Vojvodina over the last few decades (above all following the recent conflicts of the former Yugoslavia which brought an influx of 300,000 mostly Serb refugees);
- (ii) The fallout from the events in Kosovo in March 2004; and
- (iii) The climate of inter-ethnic tension which prevailed during the 2003 and 2004 election campaigns.

[76] The impact of dire socio-economic conditions has had an effect on inter-ethnic relations. The Report notes that:

"12.8% of the province's population are refugees, only 1% of whom have registered the jobs. Rising poverty has encouraged the emergence of hard line attitudes among the refugees and has heightened ethnic tensions, notably during the pre-election periods of November, December 2003 and September, October 2004 where an upsurge of ultranationalist attracted voters fed up with their difficult living conditions and angered by the March 2004 events in Kosovo."

[77] In considering whether the national authorities have been able or willing to take effective action against the perpetrators of inter-ethnic violence and intimidation the Report notes:

"That action taken on the inter-ethnic incidents by the police and security forces was ineffective. In particular security forces are accused of not arriving quickly at the scene of the violent clashes, attributing incidents of bad behaviour to alcohol and drug induced action of the victims and therefore failing to investigate the real nature of the incidents, preventing any legal follow up being taken to the complaints lodged by members of the minorities."

[78] The Report notes that the courts do not appear to have been effective in ensuring the rule of law. It highlights factors such as the slowness of court proceedings; the fact that no case involving exclusively inter-ethnic incidents has been tried in recent times; light sentences being brought down on those responsible; inadequate co-operation between the police, public prosecutor's office; and inadequate consultation with minority groups in the court system and police force.

[79] The Report recognises (paragraph 4.1.2) that serious initiatives had been taken to improve minority rights at the Federal level but some of these initiatives, including a National Council of Serbia's Minorities, had not been given the powers and resources required to make them functional and "*tangible results have yet to be forthcoming*".

[80] It also noted that a number of measures still need to be taken to prevent the recurrence of inter-ethnic incidents. There has, as yet, been no evaluation as to the effectiveness of any steps taken to implement these recommendations.

[81] In summary, it appears that the situation of ethnic minorities in Vojvodina is still volatile and unpredictable. The process of devolution and decentralisation in Vojvodina has not taken place at the pace anticipated. The unresolved final status of Kosovo and constitutional debates surrounding the viability of the union of Serbia and Montenegro are both destabilising factors that will continue to have a negative impact on inter-ethnic relations throughout the region, particularly in the Sandjak and the Vojvodina areas of Serbia.

[82] The Serb Radical Party is the largest single party and wields significant influence in local affairs. The largest city in Vojvodina, Novi Sad, has a mayor from the Radical Party. The brand of Serb nationalism that swept the region in 1990s cannot be discounted as a destabilising factor in Serbia, particularly in Vojvodina, for the foreseeable future.

#### Situation for families of mixed ethnicity

[83] According to a report of the Canadian Immigration and Refugee Board (11 April 2005), mixed Serb-Croat couples face particular difficulties. Children of these couples are usually forced to elect which religion they will follow and the situation for mixed couples appears to be worse in Yugoslavia (now Serbia and Montenegro) than in Croatia.

[84] The UK Immigration Nationality Directorate (IND) 2001 *Country Assessment for Yugoslavia* noted:

"Members of ethnically mixed marriages and their children have suffered abuse through the dissolution of the former Yugoslavia and they may have difficulty being accepted by any ethnic community." (October 2001)

[85] The same report refers to a study by the Open Society which concludes that "Mixed race couples are vulnerable but it depends where they are living now and where they lived during the war. The Open Society added that non-ethnic Croats as a whole experienced difficulties in Croatia and mixed marriages are out of

favour in the Balkans altogether. Serbs are generally regarded by Croats as traitors according to the organisation and not fit for Croats to marry.”

### Conclusions in relation to the appellants

[86] With this backdrop of events between 1990 and 2005, the Authority is able to draw the following conclusions:

- (i) Each appellant is a national of Serbia and Montenegro and, in principle, would not face any legal or other obstacle in returning to the territory of the state;
- (ii) The first appellant would not face any official sanction as a result of his evasion of military service in 1991. He lived in SM for a further six years after his evasion and no steps were taken by the authorities to enforce his conscription or to punish him for evasion. It is also clear from an amnesty law passed by the Federal Republic of Yugoslavia in May 1996 that all those who avoided the general mobilisation of 1991 could enjoy an amnesty. The first appellant is not at risk of any officially sanctioned punishment as a result of his evasion;
- (iii) If the family were to return to Serbia, they would have to go back to their former official address in SM;
- (iv) As members of a ‘mixed marriage’ family returning to a predominantly Serb area, they will be viewed with deep suspicion and hostility. This would carry the attendant risk of serious harassment, intimidation and violence directed against them by ethnic Serb population, particularly Serb refugees;
- (v) They would be at risk of similar forms of harm to (iv) from extreme nationalist groups who now hold the balance of power and influence in SM and its environs;
- (vi) In the event that they receive threats from non-state entities in their area, they could not expect adequate support and protection from the predominantly Serb agencies of law enforcement
- (vii) Their risk of harm would increase during local body regional, national or federal elections in the future. The uncertainty of events leading to final status talks on Kosovo, the union of Serbia and Montenegro, and the

extent of autonomy that Vojvodina will be able to achieve, are volatile and exacerbating factors;

(viii) They are also at risk of:

- (a) discrimination in finding adequate accommodation due to competition and hostility from ethnic Serb refugees who have changed the demographic composition of the area in 1990s, and their poor economic circumstances;
- (b) discrimination in gaining access to welfare and other social support and pensions;
- (c) discrimination in finding employment in an impoverished area where state owned enterprises have failed and where there are limited work opportunities even for ethnic Serb majority.

[87] Viewing these various forms of discrimination and other forms of harm on a cumulative basis, the Authority concludes that their cumulative effect “will lead to consequences of a substantially prejudicial nature” (paragraph 54 UNHCR Handbook) and that they amount to “being persecuted” in that they are a “sustained and systematic violation of the appellants’ basic human rights demonstrative of a failure of state protection”. *Refugee Appeal No 74665/03* (7 July 2004) refer [41].

[88] Although some of these socio-economic hardships also affect a large part of the Serbian population, the family’s vulnerability is clearly exacerbated because of its mixed ethnicity. Their nationality and membership of a particular social group – family of mixed ethnicity – are clearly “contributing factors” in the persecution that they fear: *Refugee Appeal No 72635/01* (6 September 2002) refer [173]

[89] The Authority concludes therefore that in relation to Serbia and Montenegro, the two framed issues in paragraph [48] are answered in the affirmative in relation to each appellant. The harm feared is on account of each appellant’s membership of a particular social group: a family of mixed ethnicity. The first, third and fourth appellants are also at risk of persecution on account of their “nationality” or “race” in the sense these terms are used in Article 1A(2) of the Refugee Convention. JC Hathaway *The Law of Refugee Status* (Butterworths, Toronto, 1991) pp141-145:

“It is generally suggested that nationality encompasses linguistic groups and other culturally defined collectives, thus overlapping to a significant extent with the

concept of race. Because many such groups share a sense of political community, distinct from that of the nation state, their claims to refugee protection may reasonably be determined on the basis of nationality as well as on race.”

## **DO THE APPELLANTS HAVE A SECOND NATIONALITY WITH THE REPUBLIC OF CROATIA?**

[90] The Refugee Convention requires that international surrogate protection is not available to anyone who is able to avail him or herself of the protection of his/her country of nationality. In the appellants’ situation, the question arises whether any of them is entitled to nationality from the Republic of Croatia. In the following assessment, the Authority uses the term “nationality” as being akin to “citizenship”.

[91] This Authority has established in previous decisions (*Refugee Appeal Nos 72558/01 and 72559/01* (19 November 2002)) that an appellant can be considered to hold a second nationality provided it can be acquired by a “mere formality”, as opposed to any discretion to give or withhold vested in the putative country of nationality.

### Process by which Croatian nationality can be obtained

[92] Article 8 of The Law of Croatian Citizenship, (22 June 1991, as amended 26 May 1992) contains five prerequisites for citizenship:

- (i) over the age of 18 years and capable of working;
- (ii) has surrendered previous citizenship or is able to submit proof that this will be surrendered if granted Croatian citizenship;
- (iii) has been registered a resident in the territory of the Republic of Croatia for a five year period prior to the application;
- (iv) is familiar with the Croatian language and Latin alphabet; and
- (v) it can be concluded from the applicant’s behaviour that he/she respects the legal order and customs of the Republic of Croatia and that he/she accepts Croatian culture.

[93] Article 16 provides that a member of the “Croatian people” who does not have a place of residence in the Republic of Croatia can, nonetheless, require Croatian citizenship if he/she meets paragraph (v) of Article 8 and issues a written statement that he/she considers himself/herself to be a Croatian citizen.

[94] The *European Commission against Racism and Intolerance: 2005 Third Report on Croatia*, 14 June (ECCOI), noted that ethnic Croats have a special status that allows them to obtain Croatian nationality more easily than persons of non-Croatian origin, and according to the US Immigration and Nationalisation Service report 2000, *Croatian information on citizenship for ethnic Croats* 24 February:

“An ethnic Croatian need not have been born in or have residency in Croatia in order to obtain citizenship ... An individual born to ethnic Croatian parents would be considered an ethnic Croat. ... Proof of ethnicity is required for the citizenship application. Acceptable documents include, but are not limited to, a registry card indicating ethnicity issued by the republic of residence during the Yugoslav regime, a birth certificate indicating ethnicity or the birth certificates or registry cards of the parents.”

[95] Country information indicates that, in principle, it is easier for ethnic Croats to apply for and receive Croatian nationality from outside Croatia because of the vast amount of time the process requires if an applicant were to remain within the Republic of Croatia.

[96] Although the legal criteria in the Law on Croatian Citizenship may be clear, their application, in reality, may be more abstruse and unpredictable. According to a non-governmental organisation working with displaced Serb and Croatian refugees in the Balkans, Grupa484, the situation for the families of mixed marriages is particularly difficult where there is often a gulf between the rhetoric of reconciliation and the reality in practice. For instance, Grupa484 was involved in the case of an ethnic Croat, Y, born to Croat parents in Rieka (in the north-east part of what is now the Republic of Croatia). She moved to Belgrade in the 1980s and married an ethnic Serb. During the course of long delays in processing her husband’s application for residence and citizenship, she discovered that the local Croatian authorities had deleted, unilaterally, her own Croat name from their records, replacing it with that of her Serb husband. They had also deleted her “Croat” nationality from their records and entered the words “unknown nationality”: (Grupa484, letter to RSAA, 15 November 2005).

[97] In effect, Y was stripped of her nationality because of her marriage to a Serb in Serbia. Such examples are not rare in a region where much will depend on the vagaries of inter-ethnic relations at the community level.

### **IS THE FIRST APPELLANT ENTITLED TO CROATIAN CITIZENSHIP?**

[98] A number of conclusions can be drawn from the foregoing:



- (i) The Law on Croatian of Citizenship would appear, prima facie, to bestow the first appellant with a Croatian nationality;
- (ii) However, in order to succeed in his application, the first appellant would need to “demonstrate from his behaviour” to the satisfaction of the Croatian authorities, that he respects the legal order, customs and culture of Croatia.
- (iii) In so doing, he would have to disclose his marriage to an ethnic Serb and his children of mixed ethnicity; that he has no real links with the Republic of Croatia; no property, family, friends or other cultural ties there; and that he has spent his entire life in Serbia, surrounded by Serb culture and traditions;
- (iv) Mixed marriages, such as the first appellant, are viewed with disfavour and hostility by both ethnic Serb and Croat communities. The anecdotal evidence of Grupa484, albeit limited, indicates the depth of prejudice where an ethnic Croat, born in Croatia, was stripped of her Croatian nationality by a bureaucratic decision taken unilaterally at the local level.

[99] In view of this country information, the Authority concludes that the first appellant may encounter serious difficulties, including protracted delays and even an outright refusal, in being able to satisfy the Croatian authorities that “*he respects the legal order and customs of ... the Croatia ... and he accepts Croatian culture*” as required by Article 8(e) of the Law on Croatian Citizenship.

[100] The Authority concludes that in their application, Articles 8 (e) and 16 of the Law on Croatian Citizenship may be subject to discretionary obstacles or protracted delays, imposed by the Croatian authorities, which are beyond the control of the first appellant. His eligibility for Croatian nationality is not, therefore, a mere formality.

#### **ARE THE SECOND, THIRD AND FOURTH APPELLANTS ENTITLED TO CROATIAN CITIZENSHIP?**

[101] The situation for the second, third and fourth appellants in respect of prospective Croatian nationality can be disposed of briefly. Under the Law of Croatian Citizenship, the three appellants would need to satisfy the five prerequisites prescribed by the law. They would have to relinquish their Serbian

citizenship, undertake a five year residence in the Republic of Croatia, and be able to demonstrate respect for the legal order and customs of the Republic of Croatia.

[102] Clearly, these prerequisites are not of a merely formal or technical nature. They involve a considerable discretion on the part of the Croatian authorities to refuse, or at least delay significantly, their acquisition of Croatian nationality.

### **CONCLUSION ON SECOND COUNTRY OF NATIONALITY**

[103] The Authority concludes that none of the appellants has a second nationality.

### **CONCLUSION**

[104] The Authority finds each of the appellants is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeals are allowed.

.....  
R Towle  
Member