

Reconciliation through Criminal Proceedings/Trials

THE CASE OF RATKO MLADIC ET AL.: SURRENDER FAILED, EU ACCESSION DENIED?

A. CASE STUDY

Remember that criminal proceedings are among the numerous means that the newly emerging democratic societies in South East Europe could use in overcoming their past. These criminal proceedings would be initiated against those individuals who have committed criminal acts during the communist totalitarian/authoritarian regime, and/or the wars in the former Yugoslavia respectively.

The European Union links the entry of the countries of the former Yugoslavia into the EU with the arrest and surrender of prominent war criminals to the International Criminal Tribunal for the Former Yugoslavia (see below).

Let's imagine that you are in a position to exercise political decision-making power with regard to Serbia's accession to the European Union (EU):

- How would you go about the issue of non-surrender of prominent war criminals in former Yugoslavia in the context of negotiations for the respective countries' accession to the European Union?
- Would you link the entry of the countries of the former Yugoslavia into the EU with the arrest and surrender of prominent war criminals, or would you plead for continuing accession negotiations despite the failed surrender of war criminals such as Mladic?

Bring forward arguments, both for and against linking the entry into the EU with the arrest of prominent war criminals.

The following questions may help you to develop such arguments:

- What would best serve the process of democratization of the respective country?
- Can any method used to legally overcome the past and to create justice reach its aim if adopted as a result of external pressure?
- Does the lack of criminal justice impose such a big danger to the process of democratization/ stabilization/ normalization that external pressure must be used in order to ensure that justice will be done?

B. BACKGROUND INFORMATION

The state of accession negotiations between Serbia and the EU The European Union (EU) insists on arresting Ratko Mladic, the Bosnian Serb general (former Bosnian Serb military commander) accused of war crimes. It treats the surrender of prominent war criminals as one of its political criteria for accession (according to the so called Copenhagen criteria, the political conditions for EU-accession are: Stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities).

On May 3rd, 2006, the EU broke off talks on closer ties with Serbia over its failure to arrest and transfer fugitive genocide suspect

Konrad-Adenauer-Stiftung e. V.

**RULE OF LAW PROGRAM
SOUTH EAST EUROPE**

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Ratko Mladic to the International Criminal Tribunal for the Former Yugoslavia (ICTY), i.e. the EU called off the negotiations on the Stabilisation and Association Agreement. The negotiations are unlikely to resume until Serbia demonstrates complete cooperation with ICTY.

Ratko Mladic was indicted in 1995 by the ICTY for genocide, crimes against humanity, and war crimes perpetrated during the siege of Sarajevo, during the war in Bosnia and Herzegovina 1992 – 1995, and during the massacre at Srebrenica. In July of this year, Serb Prime Minister Kostunica presented an action plan regarding cooperation with the War Crimes Tribunal for the Former Yugoslavia (ICTY) in Bruxelles. The primary goal of the action plan is the arrest and surrender of Ratko Mladic. In reaction to the action plan, European Enlargement Commissioner Rehn refrained from declaring a new date for the resumption of the association talks. He instead announced: "Much more important than the action plan itself is its implementation. Full co-operation with The Hague means the arrest and surrender of Ratko Mladic and alike suspected war criminals."

The European Commission's argument runs as follows: Serbia failed to keep a pledge that Mladic – alleged to be hiding in Serbia protected by renegade army and intelligence officers – would be handed over to the ICTY by the end of April, a deadline set by the EU.

Olli Rehn, European Enlargement Commissioner:

"This issue is about the rule of law. Serbia must show that nobody is above the law, and that anyone indicted for serious crimes will face justice. It is also about achieving democratic maturity."

Serbia argues as follows: Serbian Prime Minister Vojislav Kostunica stated that, for the first time in their history, the entire country suffers because one former officer, i.e. Ratko Mladic, is doing great harm to the state and national interest by not surrendering himself.

According to Kostunica, the entire network of Ratko Mladic's accomplices has been discovered, and therefore discovering Mladic's hiding place is a technical question only.

Reactions after the death of Slobodan Milosevic:

Quote from Swissinfo, July 10, 2006: *"Ethnic Albanians were angry that Milosevic's death robbed them of a verdict on the crimes he was accused of in Kosovo. They hope the trial of Milutinovic and his co-accused will help provide justice for victims of war crimes in the province."*