

Mandate of the Special Rapporteur on the independence of judges and lawyers

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolutions 26/7.

In this connection, I would like to draw the attention of your Excellency's Government to information I have received concerning allegations of the **arbitrary arrest, detention and sentencing of Mr. Djuro Kljaic**.

According to the information received:

In January 1996, Mr. Djuro Kljaic, a Serbian national, was convicted by the District Court in Beli Manastir, Republic of Srpska Krajina (now part of Croatia), and sentenced to 10 years of imprisonment. Mr. Kljaic, who had been held in pre-trial detention since 1995, started to serve his prison sentence in the Republic Srpska Krajina.

Following the reintegration of the Republic Srpska Krajina into Croatia in 1996, Mr. Kljaic was transferred to a prison in Sremska Mitrovica, Serbia, without any official agreement between Serbia and Croatia or legal basis.

The Republic Srpska Krajina was never recognized as an independent State by any country. Judgments passed in the Republic Srpska Krajina were reportedly never recognized as such by Croatia or Serbia. Moreover, Croatia is said to have annulled all the judgments passed by courts in the Republic Srpska Krajina. In Serbia, it is reported that a person can only be detained after being convicted by a Serbian court. In the case a person was convicted by a foreign court, Serbian law requires that the foreign court judgment be recognized and confirmed by a Serbian court to pass into domestic effect. In the case of Mr. Kljaic, it is reported that the

judgement of the District Court in Beli Manastir was never recognized and confirmed by a Serbian court.

In January 2000, Mr. Kljaic was released on 'vacation' from the prison in Sremska Mitrovica and did not return. He made no effort to hide and went to the police station of his place of residence many times for matters related to his ID card, driver's license and birth certificate. Mr. Kljaic was rearrested on 29 November 2011 and is currently serving the remaining of his sentence in a prison in Sremska Mitrovica.

In addition to the lack of legal ground for Mr. Kljaic's prison sentence, it is reported that, according to Serbian law, a judgment cannot be enforced if it has not been executed for more than ten years. Mr. Kljaic was out of prison for over eleven years.

On 5 March 2013, a request for the release of Mr. Kljaic was presented to the High Court of Sremska Mitrovica and then forwarded to the High Court in Novi Sad, which claimed jurisdiction. The request for release was refused by the Novi Sad High Court. This decision was then appealed to the Court of Appeal in Novi Sad, but the appeal was refused.

The Court of Appeal did not address the question of why the judgment against Mr. Kljaic did not undergo official recognition as prescribed by the Serbian Criminal Procedure Code. Regarding the issue of limitation for executing judgments, the Court stated that execution of the judgment against Mr. Kljaic was not prohibited because the warrant for his arrest was valid throughout the period Mr. Kljaic was out of prison. The Court did not address why, if a warrant was pending against Mr. Kljaic, he was not arrested in over 11 years, even when he visited the police station for administrative matters.

An appeal was presented before the Constitutional Court in January 2014 and has been pending since. Mr. Kljaic remains in detention.

Concern is expressed at the allegations that Mr. Kljaic's conviction, sentencing and detention have no legal ground and that the time limit set by domestic law to execute a sentence has passed. Further concern is expressed about the mental and physical integrity of Mr. Kljaic who remains in detention.

While I do not wish to prejudge the accuracy of these allegations, I would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

The above allegations appear to be in contravention of Mr. Kljaic's right not to be deprived arbitrarily of his liberty and right to fair proceedings before a competent, independent and impartial tribunal established by law, as set forth in articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), which Serbia acceded to on 12 March 2001.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

As it is my responsibility under the mandate provided to me by the Human Rights Council to seek to clarify all cases brought to my attention, I would be grateful for your observation on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information concerning the legal grounds for the arrest and detention of Mr. Kljaic and how these measures are compatible with international norms and standards as stated, *inter alia*, in the UDHR and the ICCPR.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers