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The obligation of member states of the Council of Europe to co-operate in prosecution of war crimes

Motion for a recommendation¹

tabled by Mr Miljenko DORIĆ and other members of the Assembly

This motion has not been discussed in the Assembly and commits only those who have signed it

In [Resolution 1564 \(2007\)](#), the Assembly emphasised the importance of the prosecution of offences falling within the jurisdiction of the International Criminal Tribunal for the former Yugoslavia (ICTY) and pointed out that justice is an indispensable ingredient in the process of reconciliation and that impunity should be fought resolutely.

While recognising the importance of the work of the ICTY, the Assembly established that the tribunal – due to various limitations – will be able to bring to justice only a limited number of offenders. The vast majority of war criminals that are responsible for the fate of hundreds of thousands of victims are still free and many of them have not even been indicted by the ICTY.

The Assembly has drawn attention to the fact that the responsibility to take over from the tribunal and prosecute those responsible for war crimes who have not yet been brought to justice lies now primarily with the concerned states in the region. Special emphasis has been put on mutual co-operation between the countries concerned in order to ensure effective prosecution. In this respect, the Assembly has issued a call for the removal of all legal obstacles that may affect the course of justice.

However, the responsibility to accomplish this task cannot rest solely with the states of the region. Many of those indicted for war crimes have left the region and have found safe havens around the world, including in the member and observer states of the Council of Europe. Some cases that were recently mentioned in the media are those of Milan Spanović (United Kingdom), Veljko Kadijević (Russian Federation), Ilija Brčić (Italy), Goran Pavić (Canada/United States) and others.

In this respect, the Assembly particularly recalls the provision of Article 1 of the Additional Protocol to the European Convention on Extradition stipulating that crimes against humanity and violations specified under the Geneva Conventions, as well as any comparable violations of the laws of war, will not be considered as political offences for which extradition shall not be granted on the basis of Article 3 of the European Convention on Extradition.

The Assembly also reiterates its recommendation² to countries to introduce the customary law principle of *aut dedere aut iudicare* into their national criminal law, thus allowing that all perpetrators of war crimes, where there are obstacles to their extradition to the states where the crimes have been committed, can be tried in the countries of their present residence.

1. Referred to the Committee on Legal Affairs and Human Rights, for report: Reference No. 3494 (36th Sitting, 3 October 2008).

2. Recommendation 1427 (1999) on respect for international humanitarian law in Europe.



The Assembly notices with concern that, in several cases, when the charges were raised against some of these persons, the states of their present residence showed no willingness to either extradite them or to initiate domestic judicial proceedings, resulting in the virtual impunity of those indicted – and sometimes even convicted – for war crimes.

Signed (see overleaf)

*Signed*³:

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