

LJN: BQ4586, Rechtbank 's-Gravenhage , Reference UTL-I-2007.005.295 - In camera number 08/3524 (English translation)

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Rechtsgebied: Straf

Soort procedure: Eerste aanleg - meervoudig

Inhoudsindicatie: Double punishability. War crime under Dutch law? International or non-international (internal) armed conflict? Effective remedy under article 13 European Convention on Human Rights and Fundamental Freedoms. The court declares permissible the extradition of the person claimed by Bosnia and Herzegovina for an international crime, in this case wilfully taking the life of a prisoner of war. The court understands from the documents in the case file that "prisoner of war" according to Bosnian law means: anyone who participated actively in an armed conflict as referred to in article 156 of the Criminal Code of Bosnia and Herzegovina then in force, and who, as a result, is deprived of his liberty irrespective of whether he enjoyed military status in the sense of international humanitarian law. Under Dutch law this constitutes an offence pursuant to article 6, subsection 1 opening words sub a of the Dutch International Crimes Act: committing a violation of the common article 3 of the Geneva Conventions, namely making an attempt on the life of, or particularly, taking the life of persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat'. Whether the authorities of Bosnia and Herzegovina also wish to review the status of that conflict according to international humanitarian law is of no concern to the court as it must only consider the request for extradition and whether the offences can fall within the requirements of article 2 of the European Convention on Extradition (Bulletin of Treaties 1965, 9) and article 5 of the Dutch Extradition Act. On behalf of the person claimed it has been submitted that the authorities of Bosnia and Herzegovina have waited so long with the issuing of a request for extradition that there can be no question of a fair trial as referred to in article 6 of the European Convention on Human Rights and Fundamental Freedoms, so that a flagrant violation of article 6 ECHRFF threatens and the request for extradition must be declared inadmissible. The court rejects this defence with reference to the principle of legitimate expectations and in this case considers as follows. On April 24, 2002 Bosnia and Herzegovina signed the European Convention on Human Rights without any special stipulations and without adding an interpretative explanation to its final act. On July 12, 2002 the European Convention on Human Rights was ratified, and the entry into force of the Approval Act occurred on that same day. This means that the ECHR is self-executing for Bosnia and Herzegovina, too, and is immediately enforceable in all its warranties. This entails that the person claimed in case of violation of any right under the Convention is entitled to an effective remedy as referred to in article 13 of the ECHR after his extradition for the purpose of criminal prosecution. All other defences submitted by and on behalf of the person claimed have been rejected by the court.

Vindplaats(en): Rechtspraak.nl

Uitspraak

JUDGMENT

DISTRICT COURT OF THE HAGUE

Criminal Law Section

Extradiction Division

Reference UTL-I-2007.005.295

In camera number 08/3524

The District Court in The Hague, Extradiction Division rules as follows in the request for extradition by Bosnia and Herzegovina of:

[person claimed],
born [date of birth], 1968 in [place of birth]
(former Federal Republic of Yugoslavia),
living in the address [address],
at present detained in the Penitentiary Institution Haaglanden, Penitentiary Complex
Scheveningen, Remand Centre unit 1, The Hague,

hereafter referred to as the person claimed.

1 The request for extradition

By letter of March 13, 2007 the Minister of Justice of Bosnia and Herzegovina requested the Minister of Justice of the Kingdom of the Netherlands for the extradition of the above person claimed for the purpose of prosecution.

2 Documents produced

In relation to this request the following documents have been submitted:

1. a letter from the Minister of Justice to the Chief Public Prosecutor in The Hague dated September 8, 2008 received September 10, 2008 with the following enclosure:

1.1. a letter written in the Bosnian language (with a translation into English) from the Ministry of Justice of Bosnia and Herzegovina to the Netherlands Ministry of Justice in The Hague dated August 25, 2008 with the following enclosures:

a. a statement written in the Bosnian language (with a translation into English) from the Subdistrict Court in Bihac dated April 17, 2007 about the guarantee to extradite back the person claimed;

b. a letter written in the Bosnian language (with a translation into English) from the Public Prosecutor in the Subdistrict Court in Bihac dated August 18, 2008 about the refusal to transfer the case against the person claimed to the Netherlands;

2. a letter from the National Office of the Public Prosecution Service in Rotterdam to the Public Prosecutor in The Hague dated July 28, 2008 with photocopies of the request for extradition;

3. a letter from the National Office of the Public Prosecution Service in Rotterdam to the Assistant Minister of the Sector for International and Inter-Entity Legal Assistance and Cooperation of [the Ministry of Justice of] Bosnia and Herzegovina dated July 14, 2008 requesting for a guarantee to extradite back and for the transfer of the case file against the person claimed to the Netherlands for the purpose of prosecution;

4. a letter from the Minister of Justice to the IRC in The Hague dated June 2, 2008 with the following enclosure:

4.1. a letter written in the Bosnian language (with a translation into English) from the Minister of Justice of Bosnia and Herzegovina to the Ministry of Justice in The Hague dated May 26, 2008 being a covering letter with the following enclosure:

- a. a letter written in the Bosnian language (with a translation into English) of the Public Prosecution Service in Bihac to the Ministry of Justice in The Hague dated May 15, 2008 containing answers to question submitted by the National Office of the Public Prosecution Service in Rotterdam;
5. a letter from the Ministry of Justice to the IRC in The Hague dated July 29, 2008 with the following enclosure:
 - 5.1. a letter from the Ministry of Justice in The Hague to the Ministry of Justice of Bosnia and Herzegovina dated April 24, 2008 containing several questions concerning the person claimed;
6. a letter from the Ministry of Justice to the IRC in The Hague dated June 20, 2007 concerning the request for extradition of [person claimed]; announcing that the person claimed has been arrested and detained in the district of The Hague; however, the detention was lifted when it turned out that the Bosnian authorities had failed to send the original request for extradition to the Netherlands Ministry of Justice within 20 days; with the following enclosure:
 - 6.1. a covering letter written in the English language from the Embassy of Bosnia and Herzegovina in The Hague to the Ministry of Justice dated June 15, 2007; with the following enclosures:
 - a. a request for extradition of the person claimed written in the Bosnian language (with a translation into English) from the Ministry of Justice of Bosnia and Herzegovina dated March 13, 2007 for a crime committed within the territory of Bosnia and Herzegovina;
 - b. a document written in the Bosnian language (with a translation into English) for the identification of the person claimed;
 - c. a document in the Bosnian language (with a translation into English) containing a survey of the offences for which the person claimed was convicted in Bosnia and Herzegovina;
 - d. a decision in the Bosnian language (with a translation into English) of the Subdistrict Court in Bihac dated November 16, 2001 to start a judicial inquiry into the person claimed;
 - e. an order in the Bosnian language (with a translation into English) of the Subdistrict Court in Bihac dated January 8, 2007 to issue an international warrant for the arrest of the person claimed;
 - f. a decision in the Bosnian language (with a translation into English) of the Subdistrict Court in Bihac dated January 8, 2007 to detain the person claimed as soon as he is arrested;
 - g. a certificate in the Bosnian language (with a translation into English) of the municipality of [municipality] (Bosnia and Herzegovina) dated March 7, 2007 stating the nationality of the person claimed;
 - h. a demand in the Bosnian language (with a translation into English) of the Public Prosecutor in the Subdistrict Public Prosecutor's Office in Bihac dated August 23, 2001 to start a judicial inquiry into the person claimed;
 - i. a document in the Bosnian language (with a translation into English) containing article 156 of the former Criminal Code of the Federation of Bosnia and Herzegovina;
 - j. a covering letter written in the Bosnian language (with a translation into English) from the Public Prosecution Service of Bosnia and Herzegovina Subdistrict of Bihac dated November 28, 2006 concerning the case file against the person claimed;
 - k. a letter written in the Bosnian language (with a translation into English) from a judge in the Subdistrict Court in Bihac to the Ministry of Justice of Bosnia and Herzegovina dated April 17, 2007 on the guarantee of extraditing back the person claimed;
7. a letter from the IRC in The Hague to the Ministry of Justice dated February 27, 2007 containing the request to urge the authorities in Bosnia and Herzegovina to see to it that the original documents for the extradition reach the Public Prosecutor's Office in time because if they do not, the detention can not be extended;
8. an application in the English language from Interpol Sarajevo to the IRC in The Hague for the tracking down and provisional arrest of the person claimed for the purpose of extradition;
9. a translation into Dutch of the documents referred to in 6.1.a through 6.1.k;
10. the demand made by the Public Prosecutor of the District Public Prosecutor's Office in The Hague dated November 7, 2008 and incoming November 25, 2008 to deal with the request for extradition of the person claimed and to order his arrest/detention ;
11. a letter from the District Court in The Hague to the Public Prosecutor in The Hague dated

December 9, 2008 containing a referral for further inquiry;

12. an e-mail message on behalf of the Public Prosecutor of the District Public Prosecutor's Office in The Hague dated January 5, 2009 with an attachment containing a written report of inquiries in public sources by an employee in the Netherlands Embassy in Sarajevo in connection with the letter referred to in 11;
13. a fax message from the defence counsel of the person claimed dated January 9, 2009 incoming on January 9, 2009 plus enclosures;
14. a letter written in the Bosnian language (with a translation into English) from the Ministry of Justice of Bosnia and Herzegovina dated February 12, 2009 with enclosed a letter in the Bosnian language (with a translation into English) from the Public Prosecutor in the Subdistrict Public Prosecutor's Office in Bihac dated February 4, 2009 containing answers to the questions submitted by letter from the District Court dated December 8, 2008;
15. a copy of the Wikipedia article on [A], submitted by the defence counsel of the person claimed during the hearing of March 4, 2009;
16. a copy of a web page dated April 2, 2009 of the Court of Bosnia and Herzegovina (written in the English language) containing information on the suspect [B];
17. a copy of a web page dated April 3, 2009 of the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law committed within the territory of the former Yugoslavia since 1991 (ICTY) (written in the English language), containing the weekly press briefing of January 6, 1999;
18. a copy of a web page dated April 3, 2009 of the Institute for War and Peace Reporting (written in the English language) concerning the arrest and prosecution of [A];
19. a report of the International Committee of the Red Cross (ICRC) in Geneva, dated January 5, 1995 (written in the English language) on its activities in Bosnia and Herzegovina;
20. an e-mail message from the Office of the Public Prosecutor of Bosnia and Herzegovina (written in the English language) referring to the report mentioned in 19;
21. numerous pages from annual reports of the ICRC (written in the English language) for the years 1993 and 1994; the pages are numbered 18-30;
22. a copy of an agreement between representatives of the Republic of Bosnia-Herzegovina, the Serbian Democratic Party, the Party of Democratic Action and the Croatian Democratic Community (written in the English language), signed in Geneva on May 22, 1992;
23. a copy of a web page dated March 17, 2009 of the ICRC (written in the English language), containing the annual report for 1994 concerning the Conflict in Bosnia-Herzegovina;
24. a copy of an indictment written in the Bosnian language (with a translation into English) dated December 25, 2007 concerning the suspect [B];
25. a copy of a judgment of the District Court in Karlovac (Republic of Croatia) written in the Croatian language dated July 30, 2002 (with a translation into Dutch), containing the sentence of the suspect [A];
26. a copy of the judgment of the Supreme Court of the Republic of Croatia of March 30, 2004 (with a translation into Dutch) upholding the above sentence;
27. a copy of the sentence of the Council of the Supreme Court of the Republic of Croatia dated February 8, 2005 written in the Croatian language (with a translation into Dutch), upholding the sentence referred to in 26. above;
28. an official country report from the Minister of Foreign Affairs in The Hague dated April 7, 2009 with the following enclosures: a letter from the Minister of Justice in The Hague dated December 16, 2008 to the Ministry of Foreign Affairs in The Hague; a fax message written in the Bosnian language dated February 13, 2009 to the Ministry of Foreign Affairs in Bosnia and Herzegovina and the letter referred to above in 14. dated February 4, 2009;
29. an e-mail message dated April 8, 2009 from Professor Doctor A.W.M. Gerrits of the Netherlands Institute of International Relations Clingendael, Department of European Studies concerning the questions submitted by the Court;
30. the e-mail message written in the English language dated April 8, 2009 from [C], head of the sector legal advice in the Office of the Public Prosecution Service of Bosnia and Herzegovina to the

National Office of the Public Prosecution Service in Rotterdam;

31. the wording of article 175 of the present Criminal Code of Bosnia and Herzegovina submitted by the Public Prosecutor to the Court, in the English language;

32. a letter written in the English language dated May 11, 2009 from [C], head of the sector legal advice in the Office of the Public Prosecution Service of Bosnia and Herzegovina to Public Prosecutor Mr W.N. Ferdinandusse (with a translation into Dutch) containing an explanation of the notion of 'armed conflict' within the meaning of article 156 of the old Criminal Code of Bosnia and Herzegovina;

33. an official report drafted and signed by Public Prosecutor Mr W.N. Ferdinandusse in Rotterdam on May 19, 2009 in which he states to have received from the aforesaid [C] in Sarajevo on May 11, 2009 a copy of the Bulletin of Acts and Decrees of Bosnia and Herzegovina containing publication of the wording of article 175 of the Criminal Code of Bosnia and Herzegovina, with enclosed:

a. the aforesaid copy of the Bulletin of Acts and Decrees of Bosnia and Herzegovina (with a translation into Dutch).

3 Other documents

At the hearing of April 9, 2009 of the Extradition Division, Public Prosecutor Mrs E.M.A.F. Vos, submitted a written summary containing her view on the admissibility of the request for extradition, and Public Prosecutor Mr. W.N. Ferdinandusse LL.M. explained this view further by reference to the document "Notes of the Public Prosecutions Department".

4 Statement of the circumstances of the request

According to the decision referred to above in paragraph 2 item 6.1.d. of the Subdistrict Court in Bihac dated November 16, 2001 the person claimed is suspected of having committed war crimes against prisoners of war, which offence is described as follows in the decision:

[that he]

On November 11, 1993, during the war, in the region Johovica - district hill Omice, municipality of [municipality], was a member of the so-called People's Defence of the Autonomous Province [of Western Bosnia]. After members of the 5th Corps 517.1 Brigade of the Army of Bosnia and Herzegovina had been taken captive and after they had put down arms and lain down on the ground, the person in question fired numerous shots from an automatic gun at the head, neck and back area of prisoner of war [X]. [X] died immediately from the injuries sustained as a result. This is a violation of article 23, item C of the Regulations Concerning the Laws and Customs of War on Land (addition to the 1907 The Hague Convention) and article 3 paragraph 1 item A III of the Geneva Convention of August 12, 1949 relative to the Treatment of Prisoners of War.

The person claimed therefore committed an offence - a war crime against prisoners of war - according tot article 156 of the (former) Criminal Code of Bosnia and Herzegovina.

According to Bosnian law this is an offence punishable by a custodial sentence of at least one year.

5 The examination in court

At the hearing of January 12, 2009 the presiding judge gave notice of the request for extradition as well as the contents of the documents referred to above in 2.1 through 2.13. At the hearing of April 9, 2009 the presiding judge gave notice of the contents of the documents referred to above in 2.14 through 2.31. At the hearing of May 25, 2009 the presiding judge gave notice of the contents of the documents referred to above in 2.32 through 2.33.

The person claimed appeared at the hearings of January 12, 2009; March 4, 2009; April 9, 2009 and May 25, 2009. At the first hearing he was represented by counsel for the defence mrs. H.J.

Roks, solicitor in Breda. At the hearings of March 4, 2009; April 9, 2009 and May 25, 2009 he was represented by mr. J.P.W. Nijboer, solicitor in Utrecht.

At the hearing of January 9, 2009 the person claimed stated that he is not the person referred to in the request for extradition, that he possesses exclusively Dutch nationality and that he opposes his extradition as requested. Hereafter in 6.6 the court will address this defence as well as the other defences put up by and on behalf of the person claimed at the hearing of May 25, 2009. Public Prosecutor mrs. E.M.A.F. Vos, stated in the summary referred to in 3 that the extradition requested is admissible.

6 Assessment of the admissibility of the extradition requested

6.1 Conventions and Protocols applicable to the request:

- The European Convention on Extradition, signed in Paris December 13, 1957 (Bulletin of Treaties 1965, 9) (the Convention);
- The Additional Protocol to the Convention, signed in Strasbourg October 15, 1975 (Bulletin of Treaties 1979, 119) (the Protocol);
- The Second Additional Protocol to the European Convention, signed in Strasbourg March 17, 1978 (Bulletin of Treaties 1979, 120) (the Second Protocol).

6.2 Considerations relative to the requirement of double punishability.

The authorities of Bosnia and Herzegovina requested the extradition of the person claimed for the purpose of prosecution for - summarily put - the wilful killing of a prisoner of war. It is also explicitly set out that this is a war crime, so that the Court must establish pursuant to article 2 of the Convention and article 5 of the Extradition Act whether the offence by virtue of which the extradition is requested constitutes a comparable criminal offence under Dutch law.

In this context an interpretation of the notion of "armed conflict" was submitted on behalf of the authorities of Bosnia and Herzegovina at the hearing of May 25, 2009, which notion was used verbatim in article 156 of the Criminal Code of Bosnia and Herzegovina formerly in force and has been reproduced article 175 of the Criminal Code of Bosnia and Herzegovina now in force.

The authorities in Bosnia and Herzegovina state that in the latter article any armed conflict occurring within the territory of Bosnia and Herzegovina is referred to, irrespective of whether it is an international or a non-international conflict.

It follows that the term "prisoner of war" as used in the request for extradition is not used in the sense of article 8 of the Rome Statute of the International Criminal Court, nor therefore within the meaning of the 1949 Geneva Red Cross Conventions preceding that Statute or the 1907 War on Land Regulations on which the requesting party based itself in the international warrant of arrest dated January 8, 2007.

The Court therefore understands "prisoner of war" to mean anyone who participated in an armed conflict as referred to in article 156 of the former Criminal Code of Bosnia and Herzegovina, and who was deprived of his liberty as a result, irrespective of whether he enjoyed military status within the meaning of international humanitarian law.

It follows that the authorities of Bosnia and Herzegovina request the extradition of the person claimed for a fatal offence against the person of someone who was deprived of his liberty as a result of an armed conflict within the territory of Bosnia and Herzegovina. As the Court has not been able to establish whether the armed conflict referred to by the authorities of Bosnia and Herzegovina was international in nature pursuant to international law, the offences for which the extradition is requested constitute the offence qualified hereinafter, for which the Court shall allow extradition.

Whether the authorities of Bosnia and Herzegovina also wish to review that conflict according to international humanitarian law is no concern to the Court as it must only consider whether the offences can be qualified as such pursuant to the requirements of article 2 of the European Convention on Extradition and article 5 of the Extradition Act, so as an offence which constitutes a

comparable offence under Dutch law, which is manifestly the case according to the provisions submitted at the hearing of May 25, 2009 with accompanying explanation, on which the authorities of Bosnia and Herzegovina base the punishability of the offences quoted.

6.3 The documents submitted by the requesting party satisfy the requirements laid down in article 12 of the Convention.

6.4 The offence to which the documents in item 2. refer is also punishable according to Dutch law by a custodial sentence of more than one year. Pursuant to Dutch law this constitutes the offence punishable by virtue of article 6, subsection 1, opening words sub a of the Dutch International Crimes Act:

- in the context of a non-international armed conflict commit a violation of the common article 3 of the Geneva conventions, namely making attempts on or, more particularly, taking the life of persons taking no active part in the hostilities, including members of the armed forces that have laid down arms or persons placed 'hors de combat'..

6.5 The person claimed has Netherlands nationality.

6.6 In court the following defences have been put up by and on behalf of the person claimed.

6.6.1 In the first place the person claimed adopts the position that he is innocent and that he is not the person referred to in the request for extradition.

The defence takes the position that the documents in the request for extradition do not furnish adequate evidence of the identity of the person claimed. For this reason the request for extradition should be considered inadmissible. In support of this the following has been argued. The person claimed visited Bosnia several times between 2000 and 2006 and registered on every occasion at the local police station. No mention whatsoever is made of this fact in the case file. In the documents reference is made to the fact that he has the Bosnian nationality, whereas he has indicated that he possesses exclusively Dutch nationality. The documents state several different dates of birth. Possibly a different [name of person claimed] is wanted. The clearest indication for this is the fact that the person claimed does not fit the description of the person wanted; he does not have an ingrown ear lobe, has no teeth missing and his height, shoe size and scars do not match the description given. In the documents there is therefore insufficient evidence that there is no alternative other than that the person claimed is the person wanted by the authorities of Bosnia and Herzegovina.

6.6.2 The Court rejects this defence, for in court, the person claimed has confirmed that

- his name is [name of person claimed];
- he is born on [date of birth], 1968 in [place of birth];
- his father's first name is [first name];
- his mother's name is [name]; and that
- [nickname] is his nickname,

as referred to in the documents submitted by the authorities of Bosnia and Herzegovina, including the decision of the Subdistrict Court in Bihac dated November 16, 2001 to start a judicial inquiry against the person claimed and the order by this same court dated January 8, 2007 to issue an international warrant for the arrest of the person claimed.

With regard to the defence's argument that different dates of birth are mentioned in the case file, the court establishes that only in the translation into Dutch of the request by the Public Prosecutor's Office in Bihac dated August 23, 2001 a different date of birth is referred to.

As in this document the date is given in figures, namely [.....]1968, and the original document and the translation into English each make reference to [.....]1968 the Court holds that this is manifestly a clerical error in the translation into Dutch.

In the opinion of the Court therefore the identity of the person claimed has been established sufficiently. In so far as the person claimed wishes to argue that there is insufficient evidence for the offence he is under suspicion of having committed and for which his extradition is requested, the Court notes that this is not for the Extradition Division to decide, but will be dealt with in the criminal case against the person claimed in Bosnia and Herzegovina, if and when it comes to that.

6.6.3 In the second place counsel for the defence has taken the position that the handling of the application did not occur within a reasonable period of time, which constitutes a violation of article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter: ECHR) and that there is therefore a bar to the prosecution in its demand to deal with the request for extradition. To this end it has been argued that the person claimed has been arrested by the police on three occasions since February 2007 and that he has been in detention since November 2008. The authorities both in Bosnia and in the Netherlands have been insufficiently expeditious in providing to the Court the information required for the request.

6.6.4 This defence already fails because what is argued by the defence counsel is a misstatement of fact. The deprivation of liberty in 2007 - from February 20 through to March 15, 2007 - as well as on February 9, 2008 was of fairly short duration. From the documents it further emerges that when the person claimed was arrested for the final time the authorities of both Bosnia and Herzegovina and the Netherlands certainly have been sufficiently expeditious in submitting the information required in support of the request to the Court. The fact that the Court suspended dealing with the request on several occasions in order to obtain further information, which caused a few months' delay to the proceedings, can be blamed on the circumstance that it was not clear to the authorities of Bosnia and Herzegovina for which purpose the Court requested certain information. In this context the Court points out that if from the offences described by the requesting state it cannot be inferred that the provisions of law submitted by the requesting state may apply, either further information needs to be applied for, or the request for extradition must be declared inadmissible. In the case in hand the requesting state had described offences (including the information submitted to the Court prior to May 25, 2009) from which it could not be concluded that the act blamed on the person claimed had occurred in the context of an international armed conflict whereas the provisions of law submitted appeared to refer exclusively to such an offence. It was not until the interpretation of national law by the authorities of Bosnia and Herzegovina had been produced at the hearing of May 25, 2009 that it became clear this was otherwise.

The Court notes here, perhaps unnecessarily, that in this context article 6 ECHR does not apply to the extradition procedure as such.

6.6.5 Furthermore, counsel for the defence argued on behalf of the person claimed that the authorities of Bosnia and Herzegovina waited thus long before issuing the request for extradition - considering the moment when the offence was allegedly committed (1993) and the time when the suspicion against the person claimed arose (2001) for which his extradition was requested - that there could be no question of a fair trial any longer as referred to in article 6 ECHR, so that a flagrant violation of article 6 ECHR threatened and the request for extradition should be declared inadmissible for this reason, as well.

6.6.6 In view of this defence the Court considers as follows.

Generally, the court which must rule on the admissibility of the extradition for the purpose of prosecution of the person claimed has no jurisdiction to decide, in a case like this - in which both the requesting state and the requested state are signatories to the ECHR - on the question whether any rights guaranteed by the ECHR of the person claimed are or threaten to be violated in the context of this prosecution, for in principle the requested state must trust the requesting state to respect the provisions of the Convention. This principle can brook exception, however, if it turns out that the person claimed as a result of his extradition was exposed to such a risk of

flagrant violation of any right belonging to him under article 6 subsection 1 of the ECHR, that the obligation resting with the Netherlands pursuant to article 1 ECHR to guarantee that right bars compliance with the obligation to extradite under the Convention. Lapse of time could constitute a ground for declaring the extradition requested inadmissible if it is of such a nature that - all circumstances considered - there can be no question any longer of prosecution of the person claimed within a reasonable period of time as referred to in article 6 subsection 1 of the ECHR.

6.6.7 Bosnia and Herzegovina signed the ECHR without any special stipulations on April 24, 2002 and without adding an interpretative explanation to its final act. On July 12, 2002 the European Convention on Human Rights was ratified, and the entry into force of the Approval Act occurred on that same day. This means that the ECHR is selfexecuting for Bosnia and Herzegovina, too, and is immediately enforceable in all its warranties. This entails that the person claimed in case of violation of any right under the Convention is entitled to an effective remedy as referred to in article 13 of the ECHR after his extradition for the purpose of criminal prosecution.

6.6.8 It follows from what was considered in 6.6.6 and 6.6.7 that the third defence must be rejected, seeing that no facts and circumstances have been submitted on the basis of which it must be feared that the person claimed as a result of his extradition will be exposed to the risk of such a violation of article 6 ECHR, and that no effective remedy within the meaning of article 13 ECHR will be available to him. The Court notes, perhaps unnecessarily, that whereas it turns out from the documents submitted in support of the request for extradition that as early as in 2001 suspicion had arisen against the person claimed, but that by virtue of the "Rules of the Road" pertaining to matters which possibly fell within the jurisdiction of ICTY it could not be decided until November 28, 2006 by the Public Prosecution Service in Bihac that the criminal case against the person claimed shall be tried in Bosnia and Herzegovina.

6.6.9 Furthermore, it was argued by and on behalf of the person claimed that the Court explicitly includes in its decision that the extradition is exclusively allowed for the purpose of criminal prosecution on the basis of article 156 of the Bosnian Criminal Code.

6.6.10 The Court rejects this defence as it is not within the jurisdiction of the Netherlands District Court Extradition Division. It falls within the jurisdiction of the Criminal Court in Bosnia and Herzegovina. Extradition can strictly be declared admissible relative to the offences for which the extradition was requested.

6.6.11 Finally, it has been requested expressly on behalf of the person claimed to include in the ruling that the authorities in Bosnia and Herzegovina issued the guarantee that he will be allowed to serve any custodial sentence that may be imposed in the Netherlands. It does not fall within the jurisdiction of the District Court Extradition Division to make the admissibility of the extradition conditional upon this. This is at the discretion of the Minister of Justice of the Netherlands. In its advice with regard to the extradition requested the Court will draw the attention of the Minister of Justice to the statement by the Subdistrict Court in Bihac dated April 17, 2007 regarding the guarantee to extradite back the person claimed.

6.7 Nothing further was submitted by or on behalf of the person claimed of such a nature that the Court considers it an impediment to the admissibility of the extradition requested, nor has the Court found any such impediments of its own initiative.

7 The provisions of applicable law and conventional law
Applicable, besides the aforesaid articles of conventions, are articles 2 and 6 of the [European] Convention [on Extradition] and articles 2, 4 and 12 of the [Netherlands] Extradition Act.

8 Judgment
The Court,

Declares admissible the extradition to Bosnia and Herzegovina of the aforesaid [person claimed] for the purpose of criminal prosecution for the offence for which his extradition was requested, as described in the documents referred to above in 2.6.1.d, 2.6.1.e and 2.6.1.h.

This judgment was passed by

R.A.C. van Rossum LL.M., president
M.I. Veldt-Foglia LL.M. and G.A.M. Strijards LL.M., judges
in the presence of M. Gest LL.M., clerk of the court
and pronounced in open session of the court on June 5, 2009.