



Dobbeltstraf mv. i Serbien

Fact-finding mission til Beograd

9. - 11. april 2003

København, maj 2003

Udlændingestyrelsen

Ryesgade 53

2100 København Ø

Tlf.: 35 36 66 00

Hjemmeside: www.udlst.dk

E-post: dok@udlst.dk

Oversigt over fact finding-rapporter m.v. udgivet i 2002 og 2003

Forhold for kurdere, statsløse palæstinensere samt retsforhold m.m. i **Syrien**

Februar 2002: 1

Menneskeretsforhold, værnepligtsforhold samt ind- og udrejseforhold i **Sudan**

Februar 2002: 2

De tidligere OPON-styrker i **Aserbajdsjan** m.m.

Marts 2003: 3

Security and Human Rights Situation,
Entry and Exit Procedures and Personal Documentation in **Sri Lanka**

Maj 2002: 4

Report on political situation, security and human rights in **Rwanda** 2002

Maj 2002: 5

Politiske forhold, sikkerhedssituation og menneskerettighedsforhold i **Afghanistan**

Juni 2002: 6

Report on political, security and human rights developments in southern and central Somalia, including South West State of Somalia, and Puntland State of **Somalia**

Juli 2002: 7

Fact finding mission to Amman and Ankara regarding **Iraqi** asylum seekers

August 2002: 8

Politiske forhold, sikkerhedssituationen og menneskerettighedsforhold i **Afghanistan**

November 2002: 9

Sikkerheds- og beskyttelsesforhold for minoritetsbefolkninger, kvinder og børn i **Somalia**

Marts 2003: 1

Menneskerettighedsforhold i **Burundi**

Maj 2003: 2

Dobbeltstraf i **Serbien**

Maj 2003: 3

Indholdsfortegnelse

1. INDLEDNING.....	3
1.1 KOMMISSORIUM.....	3
1.2 BESØGETS AFVIKLING	3
2. ”DOBBELTSTRAF” (NE BIS IN IDEM) I SERBIEN OG MONTENEGRO	5
2.1 PROBLEMSTILLING	5
2.2 OPLYSNINGER FRA BELGRADE CENTRE FOR HUMAN RIGHTS	5
3. KLAGEMULIGHEDER OVER POLITIET	7
4. SITUATIONEN I FÆNGSLERNE.....	9
5. KILDEFORTEGNELSE.....	10
6. BILAG.....	11
6.1: BILAG 1	11
6.2. BILAG 2.....	15

1. Indledning

1.1 Kommissorium

Udlændingestyrelsen har fået en del henvendelser fra anklagemyndigheden om, hvorvidt jugoslaviske (nu serbiske og montenegrinske) statsborgere ved udsendelse til hjemlandet risikerer at blive straffet for de samme forseelser, som de allerede er blevet straffet for i Danmark. Det vil sige, hvorvidt "ne bis in idem" eller dobbeltstrafprincippet eksisterer i jugoslavisk strafferet.

Udlændingestyrelsens 3. familiesammenføringskontor har tillige anmodet om oplysninger om dobbeltstraf i Serbien og Montenegro.

Det fremgår af Montenegros forfatning, at dobbeltstraf ikke må finde sted. Det har imidlertid ikke været muligt at få tilsvarende oplysninger for Serbiens vedkommende.

Udlændingestyrelsen rettede den 8. marts 2002 henvendelse til Udenrigsministeriet for at få belyst spørgsmålet.

Ved skrivelse af 18. november 2002 har ambassaden i Beograd oplyst, at man har identificeret den juridiske ekspertise i Beograd, der vil kunne give de fornødne oplysninger om "ne bis in idem". Udenrigsministeriet har efterfølgende oplyst, at man forventer, at Udlændingestyrelsen selv tager kontakt med kilderne i Beograd.

Ved skrivelse af 12. marts 2003 har ambassaden oplyst, at man gerne vil være behjælpelig med at arrangere møde mellem repræsentanter for Udlændingestyrelsen og de juridiske kilder i Beograd.

Dertil kommer, at spørgsmålet om hvorvidt og i givet fald i hvilket omfang der foregår systematisk tortur af indsatte i de serbiske fængsler, herunder af arrestanter i politiets varetægt, i stigende grad optræder i asylansøgningerne fra serbiske og montenegrinske statsborgere. Ved møderne med de juridiske kilder i Beograd vil dette spørgsmål tillige kunne blive drøftet.

Udover de af ambassaden identificerede kilder påtænker Udlændingestyrelsen ved besøget at mødes med 2-3 Ngo'er, der fremstår som troværdige på det retssikkerhedsmæssige område.

1.2 Besøgets afvikling

Besøget fandt sted i perioden 9.-11. april 2003. Sikkerhedssituationen i Beograd var præget af mordet på premierminister Djindjic den 12. marts 2003 og den efterfølgende undtagelsestilstand. Den serbiske regering har indledt et opgør med den organiserede kriminalitet som menes at stå bag Djindjic's død. Undtagelsesbestemmelserne, der løber til udgangen af april, giver politiet udvidede muligheder for at tilbageholde mistænkte uden at disse får adgang til at kontakte advokat og familie. Undtagelsestilstanden blev ophævet den 22. april 2003. De konsulterede menneskerettighedsorganisationer så med bekymring på udviklingen, idet de frygtede, at politiet på længere sigt ville få beføjelser, som krænkede de generelle menneskerettigheder. Alle var enige om, at menneskerettighedssituationen i Serbien var blevet radikalt forbedret siden Milosovics fald i oktober 2000. Undtagelsestilstanden var en afbrydelse i den positive udvikling.

Delegationen afviklede møderne med de jugoslaviske Ngo'er og FN's menneskerettighedskontor uden tolk, henset til at alle de konsulterede kilder, talte et udmærket engelsk. Alle var indforstået med at blive citeret i denne factfinding rapport. Henset til at spørgsmålet om dobbeltstraf er det centrale tema i rapporten, giver den alene et begrænset bidrag til forståelsen af menneskerettighedssituationen i Serbien. Der henvises i den forbindelse til de årlige rapporter fra blandt andre det amerikanske udenrigsministerium, Amnesty International, Human Rights Watch, Helsinki Committee og lokale jugoslaviske NGO'er.

2. "Dobbeltstraf" (ne bis in idem) i Serbien og Montenegro

2.1 Problemstilling

Når en udlænding i Danmark dømmes for et strafbart forhold, kan det, afhængig af forholdets karakter, i dommen være fastsat, at den pågældende skal udvises efter endt afsoning. Før udsendelse kan effektueres, vil det blive vurderet, om der i hjemlandet er "risiko for dobbeltstraf" i anledning af det pådømte og afsonede strafbare forhold.¹

Rigspolitichefen har tidligere meddelt, at man principielt ikke oplyser hjemlandets myndigheder om, hvorvidt en person, som skal hjemsendes, har afsonet en straffedom i Danmark, ej heller i forbindelse med en tvangsmæssig udsendelse.

"Dobbeltstraf" i almindelig dansk juridisk sprogbrug betegnes som "ne bis in idem" (på engelsk "double jeopardy"). I dansk ret er dette princip (at en person ikke må blive strafforfulgt to gange for den samme lovovertrædelse) fastlagt i straffelovens § 10 a og 10 b. Princippet er ligeledes indeholdt i Europarådskonventionen af 28. maj 1970 om straffedommes internationale retsvirkninger, "European convention on the international validity of criminal judgments". Serbien og Montenegro er ifølge Europarådets traktatfortegnelse ikke deltager i konventionen.

2.2 Oplysninger fra Belgrade Centre for Human Rights²

Lederen af Belgrade Centre for Human Rights, juridisk professor Vojin Dimitrijevic, oplyste³ den 10. april 2003, at den jugoslaviske (føderale) forfatnings artikel 28 ikke fuldstændigt udelukker dobbeltstraf⁴, men at den montenegrinske forfatnings artikel 27 udelukker dette, hvorimod den nye serbiske forfatning ikke indeholder bestemmelser om emnet.

Den oprindelige lovgivning om strafferetlige emner Criminal Procedure Act (CPA) fra 1976, der blev implementeret af det tidligere i kommunistiske styre, gav anledning til generelle betænkeligheder i forhold til internationale menneskerettighedsstandarder, men professor Dimitrijevic havde ikke kendskab til konkrete retssager under det tidligere kommunistiske styre,

¹ Domstolssystemet i Kosovo-provinsen styres i praksis af internationale eksperter, herunder internationale dommere og anklagere, der i praksis anvender internationalt anerkendte principper, herunder princippet 'ne bis in idem' (forbuddet mod dobbeltstraf), desuagtet det statsretlige tilhørsforhold til Serbien og Montenegro. Vedrørende Kosovo som selvstændig provins se rapport fra 2003 fra U.S. Department of State vedrørende Yugoslavia, Federal Republic of, samt FN's Sikkerhedsråds resolution 1244.

² Konsulteret person: Professor Vojin Dimitrijevic

³ Se også bilag 1: Notits af 4. februar 2003 vedrørende The Principle of ne bis in idem – the overview of relevant standards and legislation in the FRY

⁴ I forhold til internationale standarder for menneskerettigheder i artikel 14 (7) ICCPR og protokol 7, artikel 4 (1) ECHR

hvor spørgsmålet havde været behandlet, eller hvor en jugoslavisk statsborger var blevet straffet i Forbundsrepublikken Jugoslavien for en forbrydelse, der var begået i udlandet.

Den nye lovgivning om strafferetlige emner Code of Criminal Procedure (CCP), der trådte i kraft i marts 2002, var ifølge professor Dimitrijevic en generel forbedring af serbisk og montenegrisk strafferet, herunder for så vidt angår spørgsmålet om dobbeltstraf.

Professoren havde ikke kendskab til konkrete retssager under det post kommunistiske styre, hvor spørgsmålet havde været behandlet, eller hvor en jugoslavisk statsborger var blevet straffet i Forbundsrepublikken Jugoslavien for en forbrydelse, der var begået i udlandet.

Professoren oplyste endvidere, at eventuelle undtagelser til spørgsmålet om dobbeltstraf eller modifikationer heraf kunne være retssager, hvor en serbisk og montenegrisk statsborger i udlandet var tiltalt for et strafferetligt forhold og blev dømt herfor, men unddrog sig afsoning af dommen. En sådan person kunne risikere straf i Serbien og Montenegro. Såfremt en forbrydelse på tværs af landegrænser, der var begået, men ikke pådømt i udlandet, eksempelvis flykapring, kunne en serbisk og montenegrisk statsborger endvidere risikere at blive straffet herfor i Serbien og Montenegro.

Professor Dimitrijevic oplyste endelig⁵, at den seneste forfatningsmæssige lovgivning udelukkede dobbeltstraf i såvel teori som praksis, idet artikel 21, der er på forfatnings- og føderalt niveau, udelukker dobbeltstraf.

⁵ Se bilag 2: European Commission for Democracy through law (Venice Commission), Draft Charter on Human and Minority Rights and Civil Liberties of Serbia og Montenegro artikel 21, der foreligger i den serbiske udgave vedtaget og oversat med ændringer, men uændret for så vidt angår artikel 21

3. Klagemuligheder over politiet

Natasa Novakovic, Helsinki Committee for Human Rights in Serbia, oplyste den 9. april 2003, at det på grund af undtagelsestilstanden for tiden ikke er muligt for organisationen at tale med arrestanter. Derimod kunne man fortsat komme i kontakt med indsatte i fængslerne. Mens der ikke foregik tortur eller anden form for mishandling i fængslerne, gav det fortsat grundlag for bekymring, at politiet undertiden mishandlede (slog) personer, der var i deres varetægt (police custody). Slagene var oftest et i led i en afhøring for hurtigt at fremkalde en tilståelse. Men ændringerne i retsplejeloven gav nu (bortset fra perioder med undtagelsestilstand) arrestanter mulighed for straks at kontakte deres advokat og i øvrigt ikke udtale sig, førend advokaten var tilstede. Det havde begrænset politiets hårdhændede opførsel en del.

For så vidt angår klagemulighederne oplyste repræsentanten for Helsinki-komiteen, at det altid var muligt at klage over politiets opførsel til distriktets politidirektør. Dernæst kunne man klage til distriktets statsadvokat. Endeligt kunne man gå til domstolene og indgive klage. I den forbindelse ville de mange lokale menneskerettighedsorganisationer, som f.eks. Helsinki-komiteen, kunne yde bistand.

Det var problematisk, at der manglede gennemsigtighed i, hvordan politidirektøren og statsadvokaten behandlede klagerne. Det var endvidere problematisk, at domstolene undertiden skulle anvende lang tid (op til 1 år), inden klagen blev realitetsbehandlet. Det var sværere at indgive klage i et mindre lokalsamfund, hvor alle kendte hinanden, end i Beograd, hvor de formelle regler i større omfang blev overholdt.

For nyligt havde byretten i Beograd netop tilkendt et større erstatningsbeløb til en person, der med Helsinki-komiteens hjælp havde klaget over politiets opførsel.

Goran Miletic, Humanitarian Law Center, oplyste den 10. april 2003, at menneskerettighedssituation var forbedret væsentligt gennem de seneste år. Undtagelsestilstanden gav anledning til bekymring, især hvis det senere viste sig, at nogle af undtagelsesbestemmelserne blev gjort permanente. Serbien og Montenegro var nyligt blevet optaget i Europarådet, hvilket gav nogle forpligtelser på menneskerettighedsområdet.

For så vidt angår politiets behandling af arrestanter, var der ikke tale om systematisk tortur. Politiet var henset til den økonomiske situation ikke i besiddelse af mere avancerede midler og følte det derfor undertiden nødvendigt at slå arrestanter for at fremtvinge en tilståelse eller vidneudsagn. Den generelle modvilje mod romaer i samfundet bevirkede tillige, at romaer var i større risiko for at blive slået end andre serbiske statsborgere.

Det var muligt at klage over politiet til politiets eget interne kontrolkontor og til politidirektøren. Det var indtrykket, at klage kun sjældent blev behandlet seriøst. Man kunne derudover klage til statsadvokaten. Problemet her var, at sagsbehandlingen var langsom. Gennem egen advokat eller ved hjælp af en NGO kunne man gå til domstolene og indgive klage. Problemet var ofte, at ansatte i politiet, hos statsadvokaten og i retten kendte hinanden i forvejen og samarbejdede. Der eksisterede

endnu ikke nogen Ombudsmand. Man forventede Ombudsmandsinstitutionen indført, men vidste ikke hvornår, det ville ske. Såfremt der var tale om egentlig tortur, kunne man klage FN's torturkomité. Humanitarian Law Center kunne være behjælpelig med at få formuleret klagen. Endeligt forventede man i forbindelse med Serbien og Montenegros optagelse i Europarådet, at der tillige kunne klages til den Europæiske Menneskerettighedsdomstol.

Paul Miller, UN High Commissioner for Human Rights, oplyste den 11. april 2003, at klagemulighederne over politiet var mere formelle end reelle. Han opfordrede Udlændingestyrelsen til direkte at rette henvendelse til de serbiske myndigheder om spørgsmålet. Dels ville de serbiske myndigheder kunne oplyse om detaljer, dels ville en udenlandsk fokusering på spørgsmålet kunne medføre yderligere forbedringer.

4. Situationen i fængslerne

Natasa Novakovic, Helsinki Committee for Human Rights in Serbia, oplyste den 9. april 2003, at situationen i fængslerne var blevet væsentligt forbedret. Standarden var ikke længere dårligere, end hvad den var i andre (øst) europæiske lande. Helsinki-komiteén besøgte regelmæssigt fængslerne. Der var ikke længere politiske fanger. Der var ingen klager over tortur eller anden mishandling fra de indsatte. På grund af kampagnen mod den organiserede kriminalitet var fængslerne begyndt at blive overfyldte.

Goran Miletic, Humanitarian Law Center, oplyste den 10. april 2003, at der ikke længere sad politiske fanger i de serbiske fængsler. På grund af undtagelsestilstanden kunne NGO'erne ikke for tiden besøge indsatte i fængslerne. Den generelle situation var acceptabel sammenlignet med andre østeuropæiske lande. Der er var ingen klager over tortur eller mishandling. Fordi mere end 2.000 personer var blevet arresteret i forbindelse med bekæmpelsen af den organiserede kriminalitet, var fængslerne blevet overfyldt, og der var mangel på senge. Der var en tendens til, at stærke fanger tiltog sig kontrollen med visse fængselsafsnit, hvilket gik ud over de mere svage fanger, herunder romaer.

Fængselspersonalet var mangelfuldt uddannet og lavtlønnet, hvilket havde medført udbredt korrupsion indenfor hele fængselsvæsenet. OSCE havde arrangeret kurser for fængselsbetjentene, hvilket man kunne håbe ville få en positiv effekt.

5. Kildefortegnelse

Professor Vojin Dimitrijevic, Director, Belgrade Centre for Human Rights

Goran Miletic, Regional Coordinator, Humanitarian Law Centre

Natasa Novakovic, Legal Advisor, Helsinki Committee for Human Rights

Paul Miller, Human Rights Officer, UN-Office of the High Commissioner for Human Rights

6. Bilag

6.1 Bilag 1

04/02/2005/bilag 1

Borko Nikolic to the ECHR. The European Court of Human Rights has found that the Belgrade Centre for Human Rights prohibit the repetition of criminal proceedings that have been concluded by a final decision, and it does not otherwise apply before new proceedings have been opened". Accordingly, the Court has held that there has been a

The principle of *ne bis in idem* – the overview of relevant international standards and the legislation in the FRY

The principle of *ne bis in idem* may be a subject to derogation in international law. The Human Rights Committee has held that even when there is a final judgement of the courts of one country, a person may be tried again for the same offence in another country. Differences between the legal systems of these two countries.

International standards

International human rights treaties provide that no one may be tried or punished again in criminal proceedings for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of each country (Art. 14 (7), ICCPR; Art. 4 (1), Protocol No. 7 to the ECHR). The term "in accordance with the law and penal procedure of each country" restricts the applicability of Article 4 (1) of the Protocol No. 7 to the national level.

Unlike the ICCPR, the provisions of the ECHR allows departure from this rule of procedure by stating that a case may be reopened "if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case" (Art. 4 (2), Protocol No. 7 to the ECHR). The term "new or newly discovered facts" refers to a new evidence unlike the evidence that in fact existed at the time.

The Yugoslav and the Montenegrin Constitutions in their respective articles 28 and 27 It can be safely assumed that the provision of Article 4 of the Protocol No. 7 allows reopening of the procedure or revision of the judgement in favour of the accused person. However, the position of the accused person in criminal matters under the provision of Article 4 makes it possible for the accused to be also a subject of other proceedings, such as civil or disciplinary procedure.

In *Gradinger vs. Austria* (A-328-C, 1995), the Regional Court convicted Mr. Gradinger of causing death by negligence while driving his car under the influence of drink, and sentenced him of fine with 100 days' imprisonment in default of payment, according to the Criminal Code. A three months later, the district authority issued a "sentence order" imposing a new fine on him with two weeks' imprisonment in default, for driving under the influence of drink according to the Road Traffic Act and on the basis of a different medical report. The applicant's appeal was dismissed and ill-founded by the Constitutional Court as well as by the Administrative Court of Austria.

Mr. Gradinger complained to the European Commission for Human Rights that, by fining him pursuant to the Road Traffic Act, the district authority had punished him in respect of facts that were identical with those on the basis of which the Regional Court had decided that he did not have a case to answer the appropriate article of the Criminal Code. The applicant maintained that, as both these provisions in substance prohibited driving a vehicle with identical blood alcohol level, there has been a breach of Art. 4 of

Protocol No. 7 to the ECHR. The European Court of Human Rights has found that "the aim of Art. 4 of Protocol No. 7 is to prohibit the repetition of criminal proceedings that have been concluded by a final decision, and it does not therefore apply before new proceeding have been opened". Accordingly, the Court has held that there has been a breach of Art. 4 of Protocol No. 7 to the ECHR.

The principle of *ne bis in idem* may be a subject to derogation in international law. The Human Rights Committee has held that even when there is a final judgement of the court of one country, a person may be tried again for the same offence in another country in cases when there are differences between the legal systems of these two countries.¹

Under the provision of Article 10, par. 2 of the Statute of the International Criminal Tribunal for the Former Yugoslavia, the principle of *ne bis in idem* has been interpreted assymetrically. It is prescribed that "a person who has been tried by a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the Tribunal only if the act for which he or she was tried by the Tribunal was characterised as an ordinary crime or, the national proceedings were not impartial and independent, were designed to shield the accused from international criminal responsibility, or the case was not deligently prosecuted."

Yugoslav constitutional provisions

The Yugoslav and the Montenegrin Constitutions in their respective articles 28 and 27 lay down principle of *ne bis in idem*. On the other hand, the Serbian Constitution is silent on this point.

The Yugoslav Constitution is dealing with the *ne bis in idem* principle inappropriately since the provision of its Art. 28 only prohibits trying and/or convicting a person for the same offence and not, as it is prescribed by the ECHR and ICCPR provisions, also the instituting of proceedings against a person who has already been tried for the same offence and the case was finally disposed of. Therefore, the provision of Art. 27 need to be revised and modified in order to be in comformity with Art. 4 of the Protocol No. 1. The provision of Art. 27 of the Montenegrin Constitution can be considered as a much better solution since it prescribes that "no one may be held responsible twice for the same punishable offence." However, the term "to be held responsible" would need to be defined more precisely.

The prohibition of double jeopardy in a way it is prescribed by the provisions of the ECHR and the ICCPR would need to be incorporated in the new Serbian Constitution.

¹ *A.P. vs. Italy*, 1998, GAOR, 43 Session, Suppl. 40.

The Yugoslav Code of Criminal Procedure

Criminal procedure in the FRY has been governed until recently by the federal Criminal Procedure Act (CPA) of 1976, with the amendments adopted in 1985. The criminal procedure law contained some features that can be considered inconsistent with the provisions of the Yugoslav Constitution, especially those guaranteeing the protection and promotion of fundamental human rights standards. After the FRY Constitution has been adopted in 1992, it prescribed a two years' period in order to bring national legislation in conformity with the constitution itself. As far as procedural legislation in FRY is concerned, this period was not respected.

It can be safely assumed that the prohibition of double jeopardy has so far been recognised by the Yugoslav legislation, although not as a constitutional, but as a procedural principle prescribed by the Criminal Procedure Act. Unfortunately, the CPA did not explicitly define the *ne bis in idem* principle though there is no doubt it was recognised to a certain extent by courts.

The new Code of Criminal Procedure (CCP) was adopted in December 2001 (*The Official Gazette of the FRY*, No. 70/01), and came into force in late March 2002. The enactment of the new act was seeking to ensure its consistency with the Federal Constitution and human rights standards and obligations under international human rights treaties which are binding on the FRY (International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Racial Discrimination, Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, etc.). Additionally, some provisions of the old Criminal Procedure Act regulating rules of procedure, procedural guarantees and legal terminology have been dropped from the new CCP. The procedure for some criminal offences has been simplified in order to be more effective.

An important innovation with regard to the *ne bis in idem* principle is that the new CCP prescribes that this rule of procedure is an absolute principle, which means that it cannot be derogated by law (Art. 6, paragraph 1, CCP). Criminal procedure may not be reopened, not only when the defendant is finally acquitted, but also when the procedure has been terminated by final judgement or the indictment has been finally dropped. Furthermore, within the extraordinary remedy procedure the final judgement may not be changed to the detriment of the defendant (Art. 6, paragraph 2, CCP).

The former Criminal Procedure Act did not make any distinction between substantial and procedural judgements and requirements in cases when the procedure was terminated by the final judgement or the indictment was dropped. Following the formulation of the *ne bis in idem* principle, as it was adopted in the new CCP, these provisions of the former act were put under revision. The revision was necessary in order to avoid situations in which the defendant, protected by the provision stating that the procedure may not be reopened, could be formally excluded from the criminal prosecution. With this respect, in the new CCP a significant distinction has been made between the substantial and procedural judgements as well as between the substantial and

procedural requirements in cases when the procedure may be terminated by the final judgement or the indictment may be dropped.

The provisions of Article 6 of the CCP are in conformity with the requirements prescribed by Art. 4 of the Protocol No. 7 to the ECHR.

Jurisprudence

The principle of *ne bis in idem* has been so far recognised to a certain degree by the courts – the violation of this principle represented a basis for a decision of non-admissibility. However, in some cases the provisions of the former Criminal Procedure Act made possible departure from this rule of procedure and the trial might have been repeated to the detriment of the defendant (Art. 394, par. 5, Art. 402 – 404, CPA). Currently, the jurisprudence of Serbian courts is silent on the double jeopardy cases. According to the statements given by some judges from the Supreme Court of Serbia there are no cases which might be a clear example of the violation of this principle.

6.2 Bilag 2



Strasbourg, 18 February 2003

Opinion No. 234/2003

Restricted
CDL (2003) 12
English only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT CHARTER
ON HUMAN AND MINORITY RIGHTS
AND CIVIL LIBERTIES
OF SERBIA AND MONTENEGRO

*This document will not be distributed at the meeting. Please bring this copy.
Ce document ne sera pas distribué en réunion. Prière de vous munir de cet exemplaire.*

Everyone shall be entitled to have his rights and obligations and any charges against him determined promptly by an independent and impartial court established by law.

Rendering of judgement shall be public and trials are public, unless otherwise provided by law.

Right to Legal Remedy

Article 18

Everyone shall have the right to an appeal or other legal remedy against a decision on his/her rights, obligations or lawful interest.

Presumption of Innocence

Article 19

Everyone shall be innocent until his/her guilt for a criminal offence is established by a final court decision.

Ban on Retroactivity, Punishment only According to Law

Article 20

No one may be presumed guilty or sentenced for an act that did not constitute a penal offence under the law at the time it was committed.

Penalties shall be imposed according to law applicable at the time the offence was committed unless subsequent law is more beneficial for the offender.

Ne bis in idem

Article 21

No one may be tried twice for the same penal offence.

*The Right to Rehabilitation and Compensation for Miscarriage
of Justice in Criminal Proceedings*

Article 22

A person convicted of a penal offence without grounds shall have the right to rehabilitation and compensation by the state.

Right to property

Article 23

The right of ownership and the right to inherit is guaranteed.

No one may be deprived of property nor may it be restricted, unless in public interest determined by law, and with compensation that may not be below market value.

The competent court shall decide in litigation regarding the amount of compensation.