



Serbs for Justice & Democracy Australia Incorporated
P O Box 153, Liverpool, NSW 1871
www.serbsforjustice.com e-mail info.serbsforjustice@gmail.com INC 9886060

Dr STEPHEN McDONALD
UNIVERSITY OF ADELAIDE

helen.marshall@adelaide.edu.au

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Dear Dr McDonald

**RE: INVOLUNTARY DETENTION AND THE SEPARATION OF JUDICIAL POWER
& EXTRADITION OF AUSTRALIANS TO NON-RECIPROCAL COUNTRIES**

I am writing to you to see whether there are matters of mutual benefit that could assist you and our organisation.

Your article **Involutary Detention and the Separation of Judicial Power** - (Federal Law Review, Vol 35 No 1 (2007), has been of great benefit to us in exposing the on-going tension between the arms of government and the delicate balances and counter-balances that exist in relation to the exercise of power over Australia Citizens.

In the current Australian political climate we have become aware of a particular example of one of those tensions between, on the one hand the protection of Australian Citizens' rights to be protected by their Country from potentially malicious threats (ie Civil Rights), and on the other hand the need for the Australian Government to be seen to be co-operative with other nations (especially in relation to the exchange of persons designated as "criminals" or "alleged criminals") (ie International Crime). You are no doubt well aware of the intrigues that can be associated with the definition of these terms by various countries and regimes.

A very difficult example of this tension has arisen from the act of the Australian Government in passing a Regulation (ie the *Extradition Croatia Regulation 2004*) pursuant to the Extradition Act, thereby recognising Croatia as a country which can request the extradition of Australian Citizens.

Prior to 1990 the former Yugoslavia and Australia respected a Treaty between the United Kingdom and Serbia for the Mutual Surrender of Fugitive Criminals of 6 December 1900, as still being applicable to both as successor countries.

However with the unilateral succession of Croatia from the former Yugoslavia, that new country, Croatia, adopted a Constitution that specifically prohibited the extradition of its citizens to any other country. Provision 9 of *THE CONSTITUTION OF THE REPUBLIC OF CROATIA* states: "9. No citizen of the Republic of Croatia shall be exiled from the Republic or be deprived of citizenship, and shall not be extradited to another state."

Clearly that new country has repudiated the concept of any Mutuality or Reciprocity with Australia. Further, there are still indicators that the new country of Croatia still suffers from the mindset of the fascist ideologies that were so prevalent during WWII, of which you may be aware.

For reasons not yet fully apparent, the Australian Government has sought to re-establish a bi-lateral extradition agreement with the new Croatia and passed the *Extradition (Republic of Croatia) Regulations 2003* which had commenced on 28 October 2003 and which had sought to make Croatia a Treaty Country for the *Extradition Act 1988* based on the Treaty between the United Kingdom and Serbia for the Mutual Surrender of Fugitive Criminals of 6 December 1900. As previously noted, the Croatian Constitution does not recognise or allow for Mutuality.

Subsequently, the Australian Government moved to repeal the 2003 Regulation and instead introduced the *Extradition (Croatia) Regulations 2004* which commenced on 8 December 2004. Again no mention was made of the fact that the Croatian Constitution does not recognise or allow for Mutuality or Reciprocity.

Recently there have been some moves in the Balkans for Croatia to discuss the possibility of it amending its Constitution to allow for the Extradition of its Citizens. Surrounding countries such as Bosnia & Herzegovina are seeking at least 40 persons in Croatia who are Croatian citizens, including Generals Ivan Andabaka and Ivan Medic. In Croatia there was a backlash with experts, law professors and interested Veterans associations joining with newspaper claims that up to 5,000 'loyal defenders' could be extradited. Nothing has changed.

However the adoption in Australia of the *Extradition (Croatia) Regulations 2004* with no fanfare or publicity has created another unnecessary public policy black hole, into which Australian Citizens can be sucked-in, held in jail for several years without charge, and made to fight for their civil rights, while Australia pours tens of thousands of dollars into fighting against its Citizens.

Here Croatia can request an Extradition, the person can be arrested, and held in jail pending the finalisation of the extradition process. Croatia, being a non-common law country, does not need to produce proof of the allegations it is making against the Australian Citizen, it only needs to show that somewhere in its legal system there is an allegation against an Australian Citizen, and that the Australian Citizen is needed in Croatia for the Croatian legal system to investigate that person with a view to determining whether or not to proceed to a prosecution of that person. The Citizen is left with the task of proving his/her innocence in Australia, without having seen the alleged evidence against them.

In relation to this tension, we have taken the view that this *Extradition (Croatia) Regulations 2004* should be immediately repealed, and no further arrangements put in place by Australia until the new Croatia accepts the concepts of Mutuality and Reciprocity with Australia.

You may not have been aware of this tension, and I am writing to you to inform you of this Civil Rights issue, so that if at some time you are asked for an opinion which touches on this issue, you are better able to be informed so as to not be drawn into a position which you may not wish to support. As journalist of note your reputation is something that you no doubt wish to protect.

I would be pleased to further discuss these matters with you, if these are of interest to you.

Yours faithfully,

Serbs for Justice & Democracy

P.DOBRICH
SECRETARY

Mob: 0414 418 139