

Yugoslavia. It was about the current debate in Australia over the prospect of alleged war criminals being tried there under a 1988 Australian law for events that happened nearly 50 years ago in Europe. The programme was a serious, in-depth treatment of the topic. It canvassed such questions as whether the quest was for justice or merely for revenge; whether the innocent might be branded; the lapse of time since the events, with the result that some witnesses are dead and the memories of others are unreliable; the mixed feelings about war crimes trials in the Jewish community; whether the War Crimes Amendment Act 1988 had been politically aimed at securing the Jewish vote; whether the style of investigators was overbearing; the fact that the actions of the Australian armed forces were outside the scope of War Crimes Act and whether Australia had the power to try people for crimes committed elsewhere.

Also considered was the enormity and horror of atrocities committed during the Second World War. The programme used some archive material but most of its visuals were interviews with participants in the current debate.

The programme developed its investigation by telling the story of Srecko Rover, a Croatian immigrant who had been mentioned in Parliament as one suspect and named in the Menzies report on War Criminals in Australia. Mr Rover was chosen because his name was already public. The mention of others not previously publicised would have run the risk of prejudicing their trials. It was clear that he had already been a public figure in Australia for some years, as a spokesman for a Croatian liberation group.

The story of Mr Rover could not have been told without mentioning his ethnic origin. The complainants thought that other countries where atrocities occurred should also have been mentioned, by way of balance. The Tribunal disagrees. It is not necessary for a programme to carry out an extensive balancing exercise to deal with every secondary fact or aspect. It is understandable that the complainants focused on Mr Rover's nationality. However, the reality is that his nationality was secondary. The fact that he was Croatian was incidental to the possibility that he was a member of a roving court-martial which sent members of ethnic minorities to their deaths under a puppet regime.

Further, as TVNZ pointed out, Croatians were not the only people whose actions were mentioned in connection with atrocities. There was archive film of an Australian bomber crew who strafed lifeboats carrying unarmed Japanese. There was also mention of a person involved in extermination programmes in Latvia.

The Tribunal does not consider that the programme was unbalanced by showing the Croatian club named after Dr Ante Pavelic. Rover did go there. Nor does it consider that this needed to be balanced by showing the statue in Canberra.

We record however that the complainant's evidence made clear to us that most Croatian clubs in Australia and elsewhere do not display pictures of Pavelic and condemn those that do.

The complainant took particular exception to the narrator's words, "Good Australians all these may doubtless be. The wartime posts of other Croats may be open to question", while showing members of the Pavelic club. He took from it that all Croatians are under suspicion. The Tribunal does not agree. On the plain meaning of the words, the script differentiated between "good Australians" of Croatian descent and others whose pasts were questionable. The interpretation placed on this by the complainant rather reflected their feelings of being not understood by other New Zealanders.

Having considered TVNZ's reply in detail, the Tribunal takes issue with hardly any of it. The Tribunal does not accept Mr Gilich's contention that "many of the statements ... are either incorrect, unproven allegation[s] or speculation". Some of the factual areas traversed remain controversial. The Tribunal cannot resolve controversies on which historians are divided.

The complainant has not shown that the programme was inaccurate on any significant point.

There is no evidence of partiality by TVNZ in its decision to run the programme. There was no sign of editorial selectivity to support a particular view in the programme. It presented a range of views in a balanced way. Not every secondary or side-issue raised in a programme calls for extensive balancing. The programme was not unfair in the manner claimed by the complainant.

The complainant has not made out his claim that the programme was a racial slur on New Zealand residents of Croatian origin. The statement produced at the hearing to the effect that friends of friends of Mr Gilich had asked about Croatian war criminals is not particularly strong evidence of a racial slur. There is always a risk that a programme about crimes allegedly committed by members of a small ethnic group will affect the feelings of some of the public towards other members of that group. However, the only way of ensuring that this does not happen is to have no airing at all of such issues. Clearly it would be against the public interest to suppress discussion of matters of legitimate news value. The Tribunal has to find the line in each case between legitimate free public discussion on the one hand and a general racial slur on the other.

The complainant's concern is understandable, in that the programme may be the only recent media mention that many New Zealanders have seen of Croatia or Croatians. However, as Mr Norris submitted, the general ignorance of New Zealanders about a particular country should not determine whether a programme is broadcast.

Whether New Zealanders are better off without a detailed education in the bitter history, the ethnic enmities and continuing rivalries inside and among those European communities which are represented in New Zealand is a question we were not required to answer. We can only say that, sincere and genuine though the complainant is, the history he has referred to us has more than a little affected his judgment of the *Foreign Correspondent* programme.

The complaint is not upheld.

Co-opted Members

Messrs Carter and Stephenson were co-opted as persons whose qualifications and experience were likely to be of assistance to the Tribunal. They took part in the deliberations of the Tribunal but the decision is that of the permanent members.

Signed for the Tribunal.

B. H. SLANE, Chairman.
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Indecent Publications Act 1963

Decision No. 49/90

Reference No.: IND 61/90

Before the Indecent Publications Tribunal

In the matter of the Indecent Publications Act 1963, and in the matter of an application by the Comptroller of Customs for a decision in respect of the publications contained in application No. IND 61/90. These publications are more particularly referred to by title and publisher in the categories specified in the decision which follows:

Chairperson: P. J. Cartwright.

Members: K. A. R. Hulme, W. K. Hastings and S. C. Middleton.

Hearing at Wellington on the 16th day of August 1990.

Appearances: No appearance by or on behalf of the importer. M. J. Wotherspoon on behalf of the Comptroller of Customs.