



Organization for Security and Co-operation in Europe Mission to Croatia

Spot Report

Reactions in Croatia to the ICTY verdict on the “Vukovar Three”

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ICTY convicts two of the ‘Vukovar Three’; strong national criticism of verdict

On 27 September, the ICTY Trial Chamber convicted Mile Mrkšić and Veselin Šljivančanin, former senior officers in the Yugoslav People’s Army (JNA), for their roles in the murder and torture of nearly 200 Croat prisoners of war (POWs) taken from the hospital in Vukovar (eastern Croatia) after the fall of that city to JNA and Serb paramilitary forces on 18 November 1991. The Trial Chamber acquitted the third accused, Miroslav Radić. Mrkšić, who has been in ICTY custody since mid-2002, was found guilty of three counts of aiding and abetting murder, torture and cruel treatment and sentenced to twenty years. Šljivančanin, who has been in ICTY custody since mid-2003, was found guilty of one count of aiding and abetting torture and sentenced to five years. Radić, who had been in ICTY custody since mid-2003 was ordered immediately released and has returned to Serbia. The trial by the ICTY of a fourth accused, Slavko Dokmanović, who was arrested in 1997 by UN authorities in Eastern Slavonia, was cut short by his suicide in ICTY detention in mid-1998.

Given the scope and severity of the crimes as well as their historic and symbolic significance, there has been extensive public and official criticism in Croatia of the verdict as excessively lenient and unjust. A considerable amount of this criticism, which is taking place in the run-up to the Parliamentary election, has extended beyond the verdict itself to question the integrity and fairness of the Tribunal and the Office of the Prosecutor (OTP). OTP has indicated that it intends to appeal the verdicts and the sentences.

This report provides a brief summary of the Trial Chamber’s verdict as well as the withdrawal of an earlier motion to transfer this case to either Croatia or Serbia under Rule 11 *bis*. It also summarizes reaction in Croatia, including the Prime Minister’s letter to the Secretary General of the United Nations. In addition, the report describes the related ongoing re-trial in the Belgrade Special War Crimes Court of more than fifteen former Serb paramilitaries accused of the executions. Finally, it provides a short synopsis of other ICTY verdicts involving crimes in Croatia.

Reactions - Verdict is universally condemned; Prime Minister writes UN Secretary General that ICTY process is compromised

Almost immediately after the verdict was issued, local people, including veteran’s associations, families of the dead and missing, and former inmates of Serb POW camps, began gathering at the monument located on the site of the mass grave at Ovčara. The Prime Minister, the Deputy Prime Minister and the Speaker of Parliament flew from Zagreb to join them and many local and regional authorities in an evening vigil. Streets in both Vukovar and

Osijek were lined with candles in tribute to the dead and on 29 September, nearly 1,000 protesters gathered in Vukovar.

Reaction to the verdict in Croatia was swift, widespread, and intense. The verdict was uniformly condemned by leaders across the Croatian political spectrum as well as civil society and the Catholic Church.

Prime Minister Sanader commented that the verdict was a defeat for the idea of the Tribunal. In a letter sent to the Secretary General of the United Nations on the day after the verdict was issued, Prime Minister Sanader expressed his “disappointment and consternation” with the “shameful” ruling, which he said was “obviously at odds with the historical facts of the crimes.” He said the Trial Chamber’s verdict brought the Tribunal’s objectivity and fairness into question, adding that it was time for the UN to re-examine the Tribunal’s work, “particularly in the context of its failure to serve justice in a balanced, even and objective manner.” He went on to add that “no Croatian government will allow the memory of Ovčara to be tarnished and treated without respect,” indicating his view that the verdict “does exactly that.” The Government has indicated that it will present its views on the case during the presentation of the ICTY annual report already scheduled for later in the current UN General Assembly session.

The Trial Chamber’s verdict

At the outset, the Trial Chamber highlighted that the charges against the ‘Vukovar Three’ pertained solely to the murder and torture of Croat POWs taken from the Vukovar Hospital. The case did not relate to other crimes during the attack on Vukovar and following its fall, many of which are the subject of the ICTY’s separate indictment against Goran Hadžić, who remains a fugitive from the ICTY.

The Trial Chamber based its verdict on the following facts, which it established. On 18 November 1991, Mrkšić was the commander of all Serb forces, including JNA and paramilitaries, in the Vukovar area. On 19 November, he ordered the evacuation of Vukovar hospital, putting Šljivančanin in charge. Under an agreement reached the prior day between Croatia and the JNA, the hospital was to be under the protection of the International Committee of the Red Cross (ICRC) and the evacuation monitored by the European Community Monitoring Mission (ECMM). A JNA officer informed these international representatives in Mrkšić’s presence that members of the Croatian forces would not be allowed to leave the hospital in the evacuation because Serb paramilitaries would attack the convoy. Instead, they would be held as POWs.

In the early morning of 20 November, JNA soldiers at the hospital ordered more than 200 men and two women who were or who were believed to be members of the Croatian forces to board buses. The JNA, in particular Šljivančanin, prevented ECMM and ICRC from reaching the hospital until after the buses had departed. Prior groups of Croatian forces captured in Vukovar had been taken by the JNA to a POW camp in Serbia. However, per the demand by local Serb authorities, including Goran Hadžić and Slavko Dokmanović to which the JNA, including Mrkšić acquiesced, the JNA took these prisoners to a farm at Ovčara, outside Vukovar. Upon getting off the buses, the POWs had to pass through a gauntlet of mostly Serb paramilitaries who beat them severely. The POWs were confined to a hangar where severe beating continued and as a result of which it is likely that several died. That evening, Mrkšić ordered the JNA military police, which had been guarding the POWs, to withdraw, leaving

the POWs in the custody of Serb paramilitaries. On the night of 20/21 November, the POWs were taken in small groups to an isolated spot and shot, their bodies buried in a mass grave that had been dug earlier in the day.

Finding that the murdered Croats were singled out because they were, or were believed to be part of the Croatian forces, the Trial Chamber rejected claims that those killed were civilians. As a result, all charges related to crimes against humanity were dismissed. The Trial Chamber also found that the Prosecution had failed to establish that the three accused had acted together in a 'joint criminal enterprise,' the common purpose of which was to murder the POWs by relinquishing them into the custody of Serb paramilitaries.

The Trial Chamber also rejected claims that the three accused had ordered the crimes that occurred.

The Trial Chamber found that Mrkšić ordered the JNA's withdrawal even though he was aware of the serious risk to the POWs, thus facilitating their murder. He also failed to reinforce JNA guards at Ovčara, thus facilitating the continued torture of the POWs. Šljivančanin, who was in command of the JNA military and was present at Ovčara while the POWs were in the JNA's custody, was found to have failed to have taken any steps to prevent the torture of the Croatian POWs, thus facilitating its continuation. Finally, the Court found that Radić, while present at the hospital and initially responsible for providing JNA security, was not involved in the separation of the Croatian POWs, not present at Ovčara, and neither knew nor had reason to know that soldiers under his command had committed crimes.

In discussing sentencing, the Trial Chamber indicated that one of the factors it considered was the sentencing structure in the former Yugoslavia under which twenty years is the maximum penalty for war crimes.

Ongoing re-trial in Belgrade against those accused of 'Ovčara' executions and torture

The Trial Chamber found that the perpetrators of the murders and torture of the Croat POWs taken from the Vukovar hospital were Serb paramilitaries led by Mirosljub Vujović. The re-trial of seventeen Serbs, including Vujović, accused of these offences, is currently ongoing at the Belgrade special war crimes court, which case was significantly assisted by the transfer of information from the OTP to the Belgrade prosecutor. An initial verdict in which 14 were convicted and sentenced to between 5 and 20 years and two were acquitted, was reversed by the Supreme Court of Serbia in December 2006. During this first trial, a number of witnesses from Croatia participated in the Belgrade proceedings.

Consideration of referral to Croatia or Serbia under Rule 11 bis discontinued

The intensity of feeling about the crimes at Ovčara seen in the outcry in Croatia in response to the verdict was evident when in late June 2005, the ICTY Referral Bench granted the request of the Chief Prosecutor to withdraw her motion that the case be transferred to either Croatia or Serbia under Rule 11 *bis*. As noted by the Referral Bench, the ICTY Prosecutor withdrew her Rule 11 *bis* request after discussions with officials from both Croatia and Serbia indicated that transfer was not desirable. The Tribunal found that this was confirmed by the intensity of feeling of both countries' presentations to the ICTY, which the Tribunal found were no doubt matched by that of witnesses and victims, and the "pronounced symbolic significance" of the events at the Vukovar hospital. The Referral Bench noted that the intensity of feeling

engendered by this case ‘brings into sharp focus the question whether, even today, a trial held in either country would be generally accepted as reflecting the fair administration of justice.’”

Other comments and criticisms

Criticism extended beyond the verdict and sentencing, which were seen as too lenient, to questioning of the legitimacy and credibility of the Tribunal and Chief Prosecutor. Anger surrounding the verdict also extended to Croatia’s processing of war crimes, with veteran’s groups calling for the cessation of all national war crimes proceedings against members of the Croatian armed forces and others criticizing the Chief State Attorney for failing to do enough to prosecute and punish those responsible for crimes in Vukovar. In response, the Chief State Attorney noted that in 2002 the State had indicted the ‘Vukovar Three’ together with seven other high-ranking Serb political and military officials.

President Mesić, in New York attending the UN General Assembly, expressed disappointment with the verdict as well as hope that the verdict would be changed on appeal. He also emphasized the role of the Croatian judiciary in ensuring accountability for the crimes. The President further commented that it would not be good if the verdict became a subject of the Parliamentary election campaign.

Vladimir Šeks, Speaker of the Parliament, referred to the verdict as a repeated murder of the Vukovar victims, stating that the verdict caused resentment and concern for justice. The Croatian Party of Rights (HSP) called for suspension of legal provisions regulating Croatia’s co-operation with the ICTY and began a petition drive to garner support for a referendum on suspending co-operation. The leader of SDP denounced the verdict as “scandalous” and an insult to Croatia’s war victims. While he viewed the verdict as undermining the Tribunal’s credibility, he dismissed HSP’s proposal to suspend co-operation as “radical.” Other political parties, including Croatian Peasant’s Party (HSS) and Croatian Social Liberal Party (HSL), also dismissed the HSP proposal, but indicated they would press for a resolution by Parliament to express its dissatisfaction with both the verdict and the Tribunal’s work. The Croatian People’s Party (HNS) said that the verdict sent the message that nothing happened in Vukovar, expressing concern that the verdict could have serious consequences for other war crimes trials. Serb officials in Vukovar mainly refrained from commenting on the verdict, while noting that the Croatian public’s expectations had not been fulfilled. Several days after the verdict, one local Serb party, while acknowledging the offence felt by many in Vukovar, expressed concern that in the venting of frustration and widespread criticism of the Tribunal, there was a backlash against Croatian Serbs. This party called for justice for all victims in Croatia, both Croat and Serb, through initiation of proceedings against all those who committed war crimes.

The Iustitia et Pax Commission of the Croatian Catholic Bishop’s Conference issued a statement acknowledging the rightful disappointment and disbelief of Croatian citizens at the Tribunal’s inability to admit the truth and provide international justice. The Commission went on to state that *inter alia* the verdict resulted from the Tribunal’s lack of a clear definition of aggressor and victim, lack of knowledge about the context of the crimes, and doubts about the OTP. A coalition of NGOs issued a statement indicating that victims experienced the verdict as a new victimization and non-recognition of their suffering.

Other ICTY verdicts involving crimes in Croatia

The ICTY has issued at least four other verdicts related to war crimes in Croatia. Most recently, the Trial Chamber in June 2007 convicted Milan Martić of participating in a joint criminal enterprise, which included a systematic campaign of fear and crimes against non-Serbs in areas of Croatia and Bosnia and Herzegovina. His conviction and 35-year sentence is currently under appeal. [See Fortnightly Report No. 12/2007]. In 2005, Pavle Strugar was convicted of crimes committed in the shelling of Dubrovnik and was sentenced to eight years imprisonment. His appeal is currently pending. In 2004, Milan Babić pled guilty to numerous crimes against non-Serb civilians and was sentenced to 13 years imprisonment. Babić committed suicide in ICTY custody in 2006. Also in 2004, Miodrag Jokić pled guilty to crimes committed in the shelling of Dubrovnik. He was sentenced to 7 years.