



HLC On War Crimes Trial In Niš

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On 11 October this year, the Military Court in Niš, central Serbia, handed down the first ruling in a case of a war crime committed during the armed conflict in Kosovo. The Court based its judgment on the confessions of Danilo Tešić and Mišel Seregi, formerly soldiers of the Yugoslav Army, to killing two unidentified Kosovo Albanian civilians and burning their bodies, and a statement made by Capt Rade Radojević during the investigation that the murders were ordered by a senior military security officer, Lt Col Zlatan Mančić. Mančić was sentenced to seven years, Capt Radojević to five years, and Tešić and Seregi to three years in prison respectively.

This trial was important in both political and legal terms since it was the first before a military tribunal in Serbia for war crimes. The Humanitarian Law Center (HLC), however, has some serious reservations with regard to how the Court applied the Geneva Conventions and determined the facts of the case.

The Court, for instance, failed to identify the two murdered civilians although this could have been done by consulting the International Red Cross list of missing persons in Kosovo. The names of Miftar (born 1933) and Selman (born 1929) of Kušnin (Kushin) appear on page 47 of the list, along with the note that they were last seen on 5 April 1999 in their native village.

Furthermore, the Court wrongly invoked the IV Geneva Convention relative to the Protection of Civilian Persons in Time of War, which is applied in the case of international armed conflicts. The International Criminal Tribunal for the Former Yugoslavia defined the conflict

between the Serbian security forces and the Kosovo Liberation Army as an armed conflict not of an international character, meaning that only Common Article 3 of the Conventions, which contains provisions that the parties to a conflict are bound to apply, is applicable in this case. Prior to sentencing, the Court accepted an amendment of the indictment whereby the prosecutor waived application of Common Article 3, which prohibits "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture." By accepting this approach, the trial panel presided by Col Radenko Milinković in effect subscribed to the widely held view in Serbian military, political and legal circles that the fighting in Kosovo was a conflict between the Serbian security forces and Kosovo Albanian terrorists and NATO aggressors. Hence the panel opted to invoke Article 33 in conjunction with Article 5 of the Convention, which deals with individual protected persons who are detained as spies or saboteurs, or under definite suspicion of activity hostile to the security of the state.

The Court found Lt Col Mančić guilty of violating Article 33 (3) of the Convention, which prohibits reprisals against protected persons, in conjunction with Article 5 on the protection of civilians in international armed conflicts, which regulates when protection under the Convention may be denied in respect of spies, saboteurs and others engaged in activities hostile to the security of the state.

The lenient sentences handed down by the Military Court reinforce the impression that the presiding judge and the members of his panel were biased in favor of the defendants. The Military Court in Niš thus failed to uphold a hallowed principle of justice - that the punishment must fit the crime.

Facts of the case

In the indictment of 19 July 2002, the military prosecutor charged Lt Col Zlatan Mančić and Capt Rade Radojević with incitement to murder (Art. 47, para. 2, Serbian Criminal Code, in conjunction with Article 23, Federal Criminal Code); and privates Danilo Tešić and Mišel Seregi as accomplices (Art. 47, para. 2, Serbian Criminal Code, in conjunction with Art. 22, Federal Criminal Code). Mančić was in addition charged with abuse of official position over a longer term (Art. 174, para. 1, Federal Criminal Code).

At the instructions of the Supreme Military Prosecutor, the military prosecutor in Niš on 16 September 2002 amended the indictment, and charged the two officers with a war crime against the civilian population (Art. 142, para. 1, Federal Criminal Code), and the two former privates as accomplices. The count of abuse of official position in respect to Mančić was retained in the amended indictment.

At the last session of the trial on 11 October, and before imposition of the sentence, the prosecutor again amended the indictment against chief defendant Lt Col Mančić and, instead of a violation of Common Article 3 of the Geneva Conventions, charged him with violating Article 33 (3) in conjunction with Article 5 on the protection of civilians in international armed conflicts.

The Court established that Lt Col Mančić in early April 1999 ordered Private Tešić and another soldier to shoot two Albanians in Kušnin village, alleging that they were passing information on Yugoslav Army positions to the Kosovo Liberation Army. On the same occasion, Mančić ordered Capt Radojević to assign another private to assist Tešić. Radojević complied and assigned Private Seregi, upon which the two soldiers took the Albanians in the direction of Prizren. Somewhat later, Tešić told the Albanians to proceed to Prizren on their own. When the two had traversed some 10 meters, Tešić fired at one of the Albanians and killed him. Seregi fired at the other and hit him in the back, and asked Tešić to finish him off. Tešić did so and the two privates then burned the bodies. A few days later, Private Tešić reported the crime to the military police in Prizren and was interrogated by them.

In late March 1999, Lt Col Mančić stopped an Albanian on the Orahovac-Mališevo road near Vran Stena and, by shouting and slapping him, forced the Albanian to hand over an unspecified sum in deutsche marks. Mančić continued such activities until 9 May 1999 when he was arrested by military police who found on him 470 deutsche marks, a pair of earrings, a broken ring, a Sony video camera, and two photo cameras. Mančić came upon these objects in the course of searches and retained them for himself.

Mančić denied that the murders occurred, saying they were figments of the imaginations of Privates Tešić and Seregi. Capt Radojević confirmed the incident but denied any involvement in giving or conveying the order for its commission.

Recommendation

The Humanitarian Law Center urges the Supreme Military Court to carefully examine the records of this case, to take into consideration the observations of the HLC, and to order a retrial before the Niš Military Court.