

**Case: Gnjilane Group, the indicted Fazli Ajdari and others**  
**Belgrade Court of Appeals – War Crimes Department**  
**No. of case: KŽ 1 Po2 No. 2/13 (appeal)**

**Trial Chamber:** judge Sonja Manojlović (the Chair), judges Sretko Janković, Omer Hadžiomerović, Vučko Mirčić and Miodrag Majić (Chamber members)

**Office of the War Crimes Prosecutor:** Mioljub Vitorović, Deputy Prosecutor

**Session: May 13, 2013**

**Report:** Marina Kljaić, the observer on behalf of HLC

The reporting judge presented in short the content of the verdict<sup>1</sup> and the evidence upon which the first instance court based its decision. Regarding the part of verdict where 11 indicted were found guilty for the felony of war crime against civilians, the first instance court undoubtedly found that the indicted, as members of KLA in Gnjilan/Gjilan, in period of June 17-23, 1999, caused bodily injuries, tortured and raped the injured parties C1 and C2. This court decision was based on the testimonies of the injured parties given during the main trial, and which were clear, logical, and complementary to each other. Their testimonies were also confirmed by the brother of the injured party C1, medical documentation, and the expertise by a psychiatrist. The injured parties also recognized individual indictees in the courtroom as the perpetrators. While considering the appropriate sentences, the court took into consideration the seriousness of consequences that followed, as well as brutality and persistence that the indicted showed during the act. The first instance court also considers that there was an armed conflict at the time of the felony, which lasted in the region of Kosovo and Metohija until June 20, 1999, that is, until the final withdrawal of FRY armed forces and police forces of Republic of Serbia. In regard to another 20 counts of indictment, all 17 indictees were acquitted because the felonies, they were indicted for, happened after June 20, 1999, in a period when the armed conflict, which is an objective condition for indictment, ceased. Also, there were no evidence that the indictees committed the felonies they were indicted for. Deputy War Crimes Prosecutor stated that he stays with the appeal submitted by the Office of the War Crimes Prosecutor. He thinks that the acquittal was made because of rejection of the testimony from the cooperative witness „Božur 50“ and the wrong interpretation of the term “armed conflict”. The armed conflict in Kosovo and Metohija was of international and of internal character. The conflict of international character ceased on June 20, 1999, while the conflict of internal character lasted much longer, until the end of 1999 and demilitarization of KLA, and it is confirmed by the fact that crimes were still happening after June 20, 1999. Therefore, the first instance court had to interpret the armed

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<sup>1</sup> The Higher Court in Belgrade – War Crimes Department, rendered on September 19, 2012, a guilty verdict sentencing Samet Hajdari to 15 years of imprisonment, Ahmet and Nazif Hasani to 13 years each, Agush Memishi, Burim Fazliu, and Selimon Sadiku to 12 years each, Faton Hajdari to 10 years, Kamber Sahiti, Ferat Hajdari and Sadik Aliu to 8 years each, and Shefqet Musliu to 5 years of imprisonment. They were found guilty of committing a criminal act of war crime against the civilian population in Gnjilane/Gjilan during the period June 17-23, 1999, against protected witnesses C1 and C2, while they were acquitted of the remaining 20 counts of indictment. The indicted Ajdari Fazliu, Aliji Rexhep, Shaqir Shaqiri, Idriz Aliji, Nuhi Shemsiju and Ramadan Halili were acquitted of all the counts of indictment. The defense of the indicted which were found guilty appealed against this verdict, as well as the Office of the War Crimes Prosecutor which appealed in regard to the acquittal of the indictees.

conflict in a more comprehensive way, in the spirit of international law, which norms were established in order to protect civilians. The way in which the court interpreted these norms leaves a great number of civil victims without any protection, what was definitely not the aim of this law. Deputy War Crimes Prosecutor thinks that the first instance court made a mistake in consideration of the testimony from the cooperative witness „Božur 50“ as unacceptable. The court didn't believe the cooperative witness that he was a member of KLA, based on report from BIA, which was not deployed in the field at the time and couldn't have correct data. The witness described in detail the torture procedure in the boarding-school in Gnjilan/Gjilan, saying that all the present members of KLA had to take part in it, because the order was to kill the Serbs and to remove the bodies of the murdered. The cooperative witness even recognized the photos of the victims Stojanče and Zorica Mladenović in a photo-album, as it was his duty to take them to the boarding-school. He described that the bodies were dismembered and taken to a container, and this part of his testimony was confirmed by finding of the body parts of the victims. Medical expert also confirmed his testimony, because the fractures of the bones of the victims could be made by the tools that the witness described as the tools used to torture the people in the boarding-house. Deputy War Crimes Prosecutor pointed out that the court didn't trust this witness' statement that he was in the boarding school, while the injured party C2 recognized him. He thinks that the court had to pay more attention while considering the testimony of this witness, especially considering the intimidation of the witness, because this sends a bad message to all potential cooperative witnesses, who risk their own lives and lives of their families when giving testimonies and the court doesn't accept them. He also pointed out the inconsistency of the court in regard to the consideration of time when there was armed conflict. So, the court considers that the detention and torture of the injured parties C1 and C2, which happened in period of June 17-23, 1999, took place during the time of the armed conflict, while at the same time it acquitted the indictees from the charges of torture of the witness A5, which took place on June 16, 1999. Because of all the presented reasons, he suggested the immediate hearing of the cooperative witness „Božur 50“ and to amend the appealed verdict so that all the indictees be rendered guilty for all the acts, which were enumerated at the specified indictment, and that the prison sentences of appropriate duration be pronounced.