

**UNITED
NATIONS**

International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-98-32/1-A
Date: 2 November 2009

IN THE APPEALS CHAMBER

Before: Judge Mehmet Güney, Presiding
Judge Fausto Pocar
Judge Liu Daqun
Judge Theodor Meron
Judge Carmel Agius

Registrar: Mr. John Hocking

THE PROSECUTOR

v.

MILAN LUKIĆ and SREDOJE LUKIĆ

PUBLIC

PROSECUTION APPEAL BRIEF

The Office of the Prosecutor:

Mr. Paul Rogers

Counsel for the Respondent:

Mr. Tomislav Višnjić and Mr. Dragan Ivetić for Milan Lukić
Mr. Đuro J. Čepić and Mr. Jens Dieckmann for Sredoje Lukić

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I. OVERVIEW

1. On 14 June 1992, Sredoje Lukić aided and abetted the killing of 59 Muslim civilians on Pionirska street, Višegrad.¹ Sredoje Lukić also regularly and severely beat Muslim and non-Serb detainees at the Uzamnica camp.² For these crimes, the Chamber found Sredoje Lukić responsible for murder and cruel treatment as violations of the laws and customs of war, and of murder, persecutions, and inhumane acts as crimes against humanity.³ The Chamber noted that his participation in these crimes was a cruel inversion of the duty he owed, as a police officer, to the citizens of Višegrad.⁴

2. The Chamber, however, committed two legal errors concerning Sredoje Lukić. The legal errors resulted in the Chamber failing to convict Sredoje Lukić for aiding and abetting extermination, a crime against humanity (Count 8), for the killing of the 59 Muslim civilians at Pionirska street, and failing to convict him for committing persecutions, a crime against humanity (Count 1), in relation to the beatings at the Uzamnica camp.

3. Pursuant to Article 25 of the Statute and Rule 111 of the Rules, the Prosecution requests the Appeals Chamber to correct these errors of law and grant the appropriate relief as detailed in the following two grounds of appeal.

II. GROUND ONE: EXTERMINATION

A. The Chamber erred in law by failing to convict Sredoje Lukić for aiding and abetting the extermination of 59 Muslim civilians at Pionirska street

4. Sredoje Lukić aided and abetted the killing of 59 Muslim civilians on 14 June 1992 at Pionirska street, Višegrad.⁵ The Muslim civilians were first shut into a house on Pionirska street that had been soaked in “fire accelerant”.⁶ Then the house was set on fire.⁷ The Chamber found the killing of the 59 Muslim civilians to be an act of

¹ Judgement, paras.929, 932-933. This finding was made by majority.

² Judgement, paras.841, 990.

³ Judgement, paras.934, 986, 991, 1040, 1104-1105.

⁴ Judgement, para.1090.

⁵ Judgement, paras.929, 932-933. This finding was made by majority.

⁶ Judgement, para.560.

⁷ Judgement, paras.558, 569.

extermination.⁸ Nevertheless, the Chamber found Sredoje Lukić guilty only of murder (Count 9), rather than extermination (Count 8), for his involvement in the killing. The Chamber thereby erred in law invalidating its Judgement at paragraphs 953 and 1103.

5. The Chamber made all the factual and legal findings necessary to convict Sredoje Lukić for aiding and abetting extermination for the killing of 59 Muslim civilians at Pionirska street. It found that the general requirements of Article 5 of the Statute were satisfied in relation to Milan Lukić's and Sredoje Lukić's crimes.⁹ It held that the killing of 59 Muslim civilians at Pionirska street was killing on a large scale and so constitutes extermination.¹⁰ It found that Sredoje Lukić aided and abetted this killing.¹¹ The Chamber's findings that Sredoje Lukić was aware that the 59 victims would be killed and that his acts and conduct contributed to the commission of their murder¹² show that he was aware that he was contributing to murder on a large-scale, which satisfies the mental element required for aiding and abetting extermination.¹³ Despite having made all these findings, the Chamber acquitted Sredoje Lukić of extermination at Pionirska street. In so doing, the Chamber erred in law.

6. Having held the murders at Pionirska street rose to the scale required for extermination,¹⁴ and having characterised this crime as extermination when convicting Milan Lukić for committing it at Pionirska street,¹⁵ the Chamber erred by not applying the same legal characterisation to the Pionirska street killing when considering Sredoje Lukić's individual criminal responsibility as an aider and abettor.¹⁶ Sredoje Lukić aided and abetted the crime that Milan Lukić committed, along with others.

⁸ Judgement, para.945. This finding was made by majority.

⁹ Judgement, paras.887 (finding that Sredoje Lukić was aware of the armed conflict occurring around Višegrad), 888 (finding that Milan Lukić's and Sredoje Lukić's crimes were closely related to the armed conflict), 895 (finding that Milan Lukić's and Sredoje Lukić's crimes formed part of a widespread or systematic attack and that they were aware that their acts were part of the attack).

¹⁰ Judgement, para.945.

¹¹ Judgement, paras.929, 932-933.

¹² Judgement, para.933. This finding was made by majority.

¹³ See *Brdanin* AJ, paras.487-488; *Stakić* AJ, paras.259-260. The *mens rea* for aiding and abetting is met if the aider and abettor "is aware that one of a number of crimes will probably be committed, and one of those crimes is in fact committed" and that his acts or omissions assist the commission of the crimes; *Simić* AJ, para.86. See also, *Mrkšić* AJ, paras.49, 63; *Blaškić* AJ, paras.45, 50.

¹⁴ Judgement, para.945.

¹⁵ Judgement, paras.947, 1100. This finding was made by majority.

¹⁶ Judgement, paras.953, 1103.

7. The Chamber's reason for acquitting Sredoje Lukić of extermination at Pionirska street is unsustainable in light of its own findings. Contrary to the Chamber's statement that it could not form a majority in order to convict Sredoje Lukić for extermination at Pionirska street,¹⁷ it had already made all the legal and factual findings necessary to enter the conviction.¹⁸ The Chamber had found that the numerical threshold required for extermination was satisfied.¹⁹ This finding was binding on the Chamber and should have been applied when assessing Sredoje Lukić's individual criminal responsibility for the same incident.²⁰ Likewise, the Chamber had found that Sredoje Lukić aided and abetted the Pionirska street killing.²¹ This finding was also binding on the Chamber and should have been applied when assessing Sredoje Lukić's individual criminal responsibility for extermination. Instead of treating the Judgement as a "bundle of opinions of individual judges",²² the Chamber should have applied its collective factual and legal findings and convicted Sredoje Lukić for aiding and abetting the extermination at Pionirska street.

B. Relief sought: the Appeals Chamber should convict Sredoje Lukić for aiding and abetting extermination and increase his sentence

8. The Appeals Chamber should correct the Chamber's error of law, set aside Sredoje Lukić's acquittal for extermination and convict him for aiding and abetting extermination, a crime against humanity (Count 8), to properly reflect his criminal

¹⁷ Judgement, para.953.

¹⁸ See above, para.5. Indeed, Judge Robinson stated that he considered the majority of the Chamber to have found "beyond reasonable doubt that Sredoje Lukić aided and abetted in the murder and extermination of 59 people" at Pionirska street; Separate Opinion of Judge Robinson, para.1112.

¹⁹ Judgement, para.945. See also, para.949. This finding was made by majority.

²⁰ Majority findings are permissible and binding under the Statute and Rules (Article 23 of the Statute; Rule 87 of the Rules).

²¹ Judgement, paras.932-933.

²² *Prlić* Appeals Decision on Evidence, para.27 (the full quote reads "[w]henver a Chamber renders a decision in accordance with the Statute, the decision is that of the Chamber and not merely a bundle of opinions of individual judges."). While the subject matter of the *Prlić* Appeals Decision on Evidence differs from the issue at hand, the reasoning is applicable by analogy. The Appeals Chamber held that once the Trial Chamber had decided a prior issue (in that case the admission of documents into evidence), its decision constituted the basis on which the Trial Chamber would address subsequent issues (the ultimate assessment of the evidence). The Appeals Chamber rejected the argument that the Presiding Judge, having entered a dissent on the first issue, could then ignore the majority decision and assess the subsequent issues on the basis of his previous dissent.

responsibility for the killing of the 59 Muslim civilians at Pionirska street.²³ The Appeals Chamber should accordingly increase his sentence.

III. GROUND TWO: PERSECUTIONS

A. The Chamber erred in law by failing to convict Sredoje Lukić for committing persecutions in relation to the beatings at the Uzamnica camp

9. The Chamber erred in law when it concluded, at paragraph 1040 of the Judgement, that Sredoje Lukić aided and abetted persecutions in relation to the Uzamnica camp beatings. Instead, given its prior findings on Sredoje Lukić's responsibility for committing inhumane acts (Count 20) and cruel treatment (Count 21) at the Uzamnica camp,²⁴ it should have found that Sredoje Lukić committed persecutions in relation to this crime site.

10. The Indictment charged Sredoje Lukić with cruel and inhumane treatment (severe beating) of the detainees at the Uzamnica camp as underlying acts of persecution.²⁵ The Chamber was "satisfied that Sredoje Lukić repeatedly and severely beat detainees [...] in the Uzamnica camp."²⁶ It accordingly found him guilty of "*committing* cruel treatment [...] (Count 21), and inhumane acts [...] (Count 20) against Muslim detainees in the Uzamnica camp."²⁷ The Chamber further found that "Sredoje Lukić had a discriminatory intent when he beat the detainees."²⁸ Consequently, the Chamber should have found that Sredoje Lukić *committed* persecutions when he beat the detainees at the Uzamnica camp with discriminatory intent. The Chamber erred in law when it characterized Sredoje Lukić's participation as aiding and abetting.²⁹ This error invalidates the Judgement.

²³ See also Judgement, para.1045 (finding that convictions for murder and extermination as crimes against humanity are impermissibly cumulative).

²⁴ Judgement, para.991.

²⁵ Indictment, paras.4(b), 13-15.

²⁶ Judgement, para.990 (footnote omitted); see also, paras.841, 1039.

²⁷ Judgement, para.991. Italics added for emphasis.

²⁸ Judgement, para.1039.

²⁹ Judgement, para.1040.

B. Relief sought: the Appeals Chamber should convict Sredoje Lukić for committing persecutions and increase his sentence

11. The Appeals Chamber should correct the Chamber's legal error and convict Sredoje Lukić for committing persecutions, a crime against humanity (Count 1), in relation to the beatings at the Uzamnica camp.

12. Accordingly, the Appeals Chamber should also increase Sredoje Lukić's sentence to reflect his higher level of culpability. The Appeals Chamber has confirmed on several occasions that "aiding and abetting is a form of responsibility which generally warrants lower sentences than responsibility as a co-perpetrator."³⁰ It has also stated that a higher sentence is likely to be imposed on an accused who acted as a principal perpetrator as opposed to merely an aider and abettor.³¹ In increasing the sentence, the Appeals Chamber should take into account the discriminatory nature of Sredoje Lukić's crimes as a factor relevant to their gravity.³² In this context, the Appeals Chamber should bear in mind the finding of the Chamber that Sredoje Lukić was "an opportunistic visitor [in the Uzamnica camp] who had no reason to be there other than to beat the detainees" and that his methods were "equally savage" as those of Milan Lukić.³³

Word Count: 1721



Paul Rogers
Senior Appeals Counsel

Dated this 2nd day of November 2009
At The Hague, The Netherlands

³⁰ *Krstić* AJ, para.268. *See also, Simić* AJ, para.265; *Vasiljević* AJ, para.182.

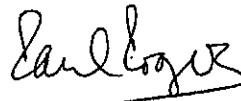
³¹ *See Semanza* AJ, para.388.

³² *See Blagojević* AJ, para.139. *But see Blaškić* AJ, para.683.

³³ *Judgement*, para.1085.

RULE 111 DECLARATION

The Prosecutor will exercise due diligence to comply with his continuing Rule 68 disclosure obligations during the appeal stage of this case. As of the date of this filing, the Prosecutor has disclosed, or is in the process of disclosing, to the Accused all material under Rule 68(i) which has come into his actual knowledge and, in addition, has made available to them collections of relevant material held by the Prosecutor.



Paul Rogers
Senior Appeals Counsel

PROSECUTION GLOSSARY

Pleadings, Orders, Decisions etc from Prosecutor v. Milan Lukić and Sredoje Lukić, Case No. IT-98-32/1-A

Abbreviation used in Prosecution Appeal Brief	Full citation
Appeals Chamber	Appeals Chamber in <i>Prosecutor v. Milan Lukić and Sredoje Lukić</i> , Case No. IT-98-32/1-A
Chamber	Trial Chamber in <i>Prosecutor v. Milan Lukić and Sredoje Lukić</i> , Case No. IT-98-32/1-T
Judgement	Judgement, <i>Prosecutor v. Milan Lukić and Sredoje Lukić</i> , Case No. IT-98-32/1-T, 20 July 2009
Indictment	Second Amended Indictment, <i>Prosecutor v. Milan Lukić and Sredoje Lukić</i> , Case No. IT-98-32/1-PT, 27 February 2006
Separate Opinion of Judge Robinson	Judgement, Separate Opinion of Judge Robinson, <i>Prosecutor v. Milan Lukić and Sredoje Lukić</i> , Case No. IT-98-32/1-T, 20 July 2009

Other ICTY authorities

Abbreviation used in Prosecution Appeal Brief	Full citation
<i>Blaškić</i> AJ	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-A, App.Ch., Judgement, 29 July 2004
<i>Blagojević</i> AJ	<i>Prosecutor v. Vidoje Blagojević & Dragan Jokić</i> , Case No. IT-02-60-A, App.Ch., Judgement, 9 May 2007
<i>Brđanin</i> AJ	<i>Prosecutor v. Radoslav Brđanin</i> , Case No. IT-99-36-A, App.Ch., Judgement, 3 April 2007
<i>Krstić</i> AJ	<i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-A, App.Ch., Judgement, 19 April 2004
<i>Mrkšić</i> AJ	<i>Prosecutor v. Mile Mrkšić & Veselin Štjivančanin</i> , Case No. IT-95-13/1-A, App.Ch., Judgement, 5 May 2009
<i>Prlić</i> Appeals Decision on Evidence	<i>Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, Berislav Pušić</i> , Case No. IT-

	04-74-AR73.13, App.Ch., Decision on Jadranko Prlić's Consolidated Appeal against the Trial Chamber's Orders of 6 and 9 October 2008 on Admission of Evidence, 12 January 2009
<i>Simić</i> AJ	<i>Prosecutor v. Blagoje Simić</i> , Case No. IT-95-9-A, App.Ch., Judgement, 28 November 2006
<i>Stakić</i> AJ	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-A, App.Ch. Judgement, 22 March 2006
<i>Vasiljević</i> AJ	<i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-A, App.Ch., Judgement, 25 February 2004

ICTR authorities

Abbreviation used in Prosecution Appeal Brief	Full citation
<i>Semanza</i> AJ	<i>Prosecutor v. Laurent Semanza</i> , Case No. ICTR-97-20-A, App.Ch., Judgement, 20 May 2003

Other Abbreviations

Abbreviation used in Prosecution Appeal Brief	Full citation
para.	paragraph
paras	paragraphs
Rules	Rules of Procedure and Evidence
Statute	Statute of the International Criminal Tribunal for the Former Yugoslavia established by the Security Council Resolution 827 (1993)