

United Nations
Nations UniesInternational Criminal Tribunal
for the former Yugoslavia
Tribunal Pénal International
pour l'ex-Yougoslavie

“BOSANSKI ŠAMAC” (IT-95-9/1)

STEVAN TODOROVIĆ



STEVAN TODOROVIĆ

Convicted of persecutions

From April 1992 until December 1993, chief of police and a member of the Serb crisis staff in Bosanski Šamac in north-eastern Bosnia and Herzegovina

- Sentenced to 10 years' imprisonment

Crimes convicted of (examples):

Persecutions on political, racial and religious grounds (crimes against humanity)

- Stevan Todorović beat a man in the hallway of the police station of Bosanski Šamac. The victim died as a result of this mistreatment.
- Over a period of eight months, he beat five men and repeatedly beat seven men.
- He ordered three individuals over whom he had superior responsibility to torture a man.
- He ordered six men to perform fellatio on each other at the police station in Bosanski Šamac, beat these men and on one occasion laughed while he watched the men perform oral sex.
- He ordered and participated in the interrogation of detained persons and ordered them to sign false statements. Stevan Todorović Issued orders and directives that violated the rights of non-Serb civilians to equal treatment under the law.

Born	29 December, 1957 in Donja Slatina, Bosnia and Herzegovina
Indictment	Initial: 21 July 1995; second amended: 11 December 1998; second amended (redacted): 25 March 1999
Arrested	27 September 1998, by the multinational Stabilisation Force (SFOR)
Transferred to ICTY	27 September 1998
Initial and further appearances	30 September 1998, pleaded not guilty to all charges; 21 January 1999, pleaded not guilty to all charges
Guilty plea	13 December 2000, pleaded guilty to persecutions
Trial Chamber sentencing judgement	31 July 2001, sentenced to 10 years' imprisonment
Sentence served	11 December 2001, transferred to Spain to serve the remainder of his sentence; credit was given for time served since 27 September 1998; 22 June 2005, granted early release; deceased on 3 September 2006

STATISTICS

As the plea agreement was reached before the beginning of trial, no trial was necessary.

TRIAL CHAMBER SENTENCING JUDGEMENT	
31 July 2001	
Trial Chamber III	Judge Patrick Robinson (presiding), Judge Richard May, Judge Mohamed Fassi Fihri
Counsel for the Prosecution	Nancy Paterson, Gramsci Di Fazio
Counsel for the Defence	Deyan Brashich, Nikola Kostić

RELATED CASES <i>by geographical area</i>	
KARADŽIĆ & MLADIĆ (IT-95-5/ 18) "BOSNIA AND HERZEGOVINA" & "SREBRENICA"	
MILOŠEVIĆ (IT-02-54) "KOSOVO, CROATIA & BOSNIA"	
PLAVŠIĆ (IT-00-39 AND 40/1) "BOSNIA AND HERZEGOVINA"	
ŠEŠELJ (IT-03-67)	
SIMIĆ <i>et al.</i> (IT-95-9) "BOSANSKI ŠAMAC"	
STANIŠIĆ & SIMATOVIĆ (IT-03-69)	
STANIŠIĆ, MIĆO (IT-04-79)	

INDICTMENT AND CHARGES

The initial indictment against Stevan Todorović, Blagoje Simić, Miroslav Tadić, Simo Zarić, Milan Simić and Slobodan Miljković was confirmed on 21 July 1995. Following the death of Slobodan Miljković on 7 August 1998, the indictment against him was withdrawn.

On 27 September 1998, Stevan Todorović was transferred to the ICTY. He pleaded not guilty to all charges on 30 September 1998.

A second amended indictment was confirmed against Stevan Todorović, Blagoje Simić, Miroslav Tadić, Simo Zarić and Milan Simić on 11 December 1998. At a further appearance on 21 January 1999, Stevan Todorović pleaded not guilty to all charges contained in the second amended indictment.

The indictment was further changed on 25 March 1999 to remove references to aliases. Stevan Todorović maintained his not guilty position until 29 November 2000 at which time a joint motion was filed on his behalf reflecting a negotiated plea agreement whereby Stevan Todorović would plead guilty to count 1 of the indictment, namely persecutions on political, racial and religious grounds as crimes against humanity. The hearing on the joint motion was held on 13 December 2000. On 24 January 2001, the Trial Chamber issued an order separating the proceedings against Stevan Todorović from those of his co-accused (see Simić *et al* IT-95-9).

Stevan Todorović was charged on the basis of individual criminal responsibility (Article 7(1) of the Statute of the Tribunal) and superior criminal responsibility (Article 7(3)) with:

- Persecutions on political, racial and religious grounds; deportation; murder; inhumane acts; rape; torture (crimes against humanity, Article 5),
- Unlawful deportation or transfer; wilful killing; wilfully causing great suffering; torture or inhuman treatment (grave breaches of the Geneva conventions, Article 2),
- Murder; cruel treatment; humiliating and degrading treatment; torture (violations of the laws or customs of war, Article 3).

PLEA AGREEMENT/GUILTY PLEA

The Tribunal's Rules of Procedure and Evidence provide for a plea agreement procedure (Rule 62 *ter*). The Prosecutor and the Defence may agree that, upon the accused entering a plea of guilty to the indictment or to one or more counts of the indictment, the Prosecutor can apply to the Trial Chamber to amend the indictment accordingly and ask for a sentence within a specific range or agree to the sentencing range suggested by the Defence. The Trial Chamber is not bound by any such agreement.

On 29 November 2000, the Prosecution and the Defence filed a motion which reflected a negotiated plea agreement whereby Stevan Todorović would plead guilty to the count of persecutions on political, racial and religious grounds as crimes against humanity. The agreement also provided that the accused would "*withdraw all motions pending before the Trial Chamber relating to the evidentiary hearing regarding the circumstances of his arrest and his request for judicial assistance*". Specifically, he would withdraw the allegations that his arrest was unlawful and that SFOR or NATO was involved in any unlawful activity in relation to his arrest. The Prosecution stated that it would formally request the withdrawal of counts 2 to 27 of the indictment against Stevan Todorović and would recommend to the Trial Chamber that it imposes a sentence of not less than 5 years and not more than 12 years. On 19 January 2001, the Trial Chamber entered "*a finding of guilt on the basis of the guilty plea*" having satisfied itself that the conditions laid down in Rule 62 *bis* were met - that the plea was voluntary, informed and unequivocal, and that there was a sufficient factual basis for the crime and the accused's participation in it.

A sentencing hearing was held on 4 May 2001. At the hearing, the Trial Chamber admitted certain witness statements submitted by the Defence, as well as two expert reports on the medical and psychological condition of Stevan Todorović. The Defence was permitted to call two witnesses, in addition to one of the medical experts. Prior to the Defence presenting its closing arguments, Stevan Todorović himself made a statement to the Chamber expressing his remorse.

STATEMENT OF STEVAN TODOROVIĆ

"Your Honours, never in my life did I want to be the chief of police, but perhaps destiny or a set of unfortunate circumstances put me in that position, and at the worst possible time, the time of war, and here I am today standing before you, before world public opinion, and before God. War is hell. The town of Bosanski Šamac, as well as the police station, throughout the war were actually on the very front line. Artillery shells were falling almost daily on the town, as well as throughout the territory of the municipality. Frequent deaths, the wounding of soldiers, civilians, and children occurred. Attending the funerals of my relatives, friends, and acquaintances was frequent.

The testimony of Serbs who came from Odžak and Orašje through a process of exchange, events followed one another at great speed, and at times, it was very difficult to act wisely. A great deal of fear, panic, fatigue, stress, and at times alcohol, too, influenced my actions. Under those circumstances, I made erroneous decisions and I committed erroneous acts. At the time, I didn't have sufficient courage or determination to prevent volunteers and local criminals from committing evil and plundering the non-Serb population, and for this I feel great remorse.

Before the war, I had not planned ethnic cleansing or persecution, nor was I aware of any such plan. Two weeks into the war, I realised that a large number of non-Serbs had left and were continuing to leave the territory of Šamac municipality. I realised but I lacked courage to prevent the illegal and inhuman activities that were going on and that --such treatment of non-Serbs, due to which those people left the territory of Šamac municipality. Some of them left out of fear even before the conflict, some via Yugoslavia to western European countries, while a certain number left through the exchanges and against their own will. Those exchanges in those days seemed to me as a temporary solution. I realise today that those exchanges were unfair and unjust.

In the autumn of 1992, I realised that the volunteers from Serbia had done more harm and evil than good. As I was still afraid of them, secretly we undertook to get rid of them and to expel them into Serbia. After that, they were arrested and transferred to the military prison in Banja Luka. And during that year, the year of 1992, I became aware that Croats and Muslims had suffered a great deal, to my great regret. That is why I feel very profound repentance and remorse. I pray to God every day for forgiveness for my sins. I have cooperated fully with this Tribunal, and I'm ready to continue to do so. I am ready to testify, to cooperate, and to say everything I know in the interests of truth and justice. My wish and hope is, and that depends on you, Your Honours, to go back to the wonderful prewar times that we had when all the people of Bosnia lived in unity and happily together. Unfortunately, I cannot change history. I would wish and am ready, if you give me such a chance, to try and improve the future. If fate gives me such a chance, I will dedicate myself to my family and my children. I'm also ready to invest every effort in the new multi-ethnic Bosnia, to have a positive effect on the surroundings so that the inter-ethnic wounds should heal as soon as possible and that peoples and nations should live in mutual respect and harmony and thereby to atone for my sins up to a point, my sins towards men and to God.

Though I stand before you, Your Honours, as the accused, I do thank you very much for your attention, for your reasoning, and for your protection of my rights. Thank you, Your Honours." (Stevan Todorović, sentencing hearing, 4 May 2001)

TRIAL CHAMBER SENTENCING JUDGEMENT

In 1991, almost 17,000 Bosnian Croats and Muslims, of a total population of about 33,000, lived in the municipality of Bosanski Šamac in the Republic of Bosnia and Herzegovina. By May 1995, fewer than 300 of the Bosnian Croat and Muslim residents remained. On 17 April 1992, Serb military forces from Bosnia and elsewhere in the former Yugoslavia seized control of the town of Bosanski Šamac. Because of its location at the north-western edge of the "Posavina Corridor", control of the town was important to Serb efforts to create a Serb-controlled land bridge between Serbia and the Krajina Serbs in Croatia and western Bosnia and Herzegovina.

After seizing control through a military takeover, Serb authorities undertook a campaign of terror designed to force most Bosnian Croat and Muslim residents to leave the area. Bosnian Croat and Muslim men in the municipality were arrested and detained. Detention camps were set up where prisoners were killed, beaten, tortured, sexually assaulted and otherwise mistreated. Units of paramilitary soldiers from Serbia were allowed to enter the detention camps to kill and beat the prisoners.

Non-Serb residents were forced to leave their homes and Serbs were permitted to move into the vacated homes. Bosnian Croat and Muslim men, women and children were forced to work on labour projects, such as digging trenches and other work at military confrontation lines. They were robbed of their cars, cash and valuables and their homes were looted. Orders were issued prohibiting Bosnian Croats and Muslims from congregating in public and they were required to wear white arm bands to identify themselves as non-Serbs. Bank accounts of many Bosnian Croats and Muslims were confiscated and funds were blocked. The men were mobilised into the Bosnian Serb army and sent to the front lines. Due to the atmosphere of fear and oppression that was created, most of the non-Serb population fled the area.

What the evidence against Stevan Todorović showed was that, in his role as chief of police and through his membership of the Serb crisis staff, he participated in the forcible take-over of Bosanski Šamac. In the plea agreement, the Prosecution and the Defence agreed on certain facts as being true and constituting the factual basis for the guilty plea. Stevan Todorović admitted to participating in the unlawful arrest and detention of non-Serb civilians in the Bosanski Šamac region. He admitted to participating in the cruel and inhumane treatment of non-Serb civilians in Bosanski Šamac through forced labour assignments, including digging trenches and constructing bunkers. He confirmed that he interrogated certain detained persons and forced them to sign false and coerced statements.

He ordered and participated in deportation and forcible transfers, and issued orders and directives that violated the right of non-Serb civilians to equal treatment under the law and infringed their basic rights. He was responsible for implementing a decision of the crisis staff of the Serbian municipality of Bosanski Šamac dated 15 May 1992 requiring all people of Croatian nationality in the area to be, "*isolated and taken to vital facilities in the town and in villages*".

An order signed by him, dated 4 August 1992, prohibited three or more Muslims or Croats from gathering in a public place. The municipal crisis staff issued an order, dated 21 May 1992, prohibiting the free movement of individuals in the area and requiring those who wished to leave the territory of the Serbian municipality of Bosanski Šamac to acquire a special permit. Official checkpoints were established in Bosanski Šamac to prevent the free passage of individuals from the town.

Stevan Todorović also admitted to his participation in the plunder and looting that occurred in Bosanski Šamac. An order dated 24 April 1992 and signed by the municipal crisis staff states that goods and equipment from the zone of combat must be handed over to the local crisis committees and that "*appropriate measures*" shall be taken against anyone failing to comply with the order.

He admitted that on 29 July 1992 he, along with several other men, repeatedly beat and kicked one man in the hallway of the police station in Bosanski Šamac, and that the victim died as a result of this mistreatment. The beating lasted for approximately one hour and Stevan Todorović was seen to kick the victim repeatedly and to hit him on the head.

He also admitted to various other beatings. He beat one man in the gymnasium of the Bosanski Šamac primary school on about 15 July 1992 and four other men on about 29 July 1992. He admitted to beating seven men on several occasions between 17 April and 21 November 1992 in the primary school, the secondary school and the Territorial Defence (TO) building. He further admitted to ordering three men to beat a man on about 19 June 1992 at the primary school.

In relation to the allegations of sexual assault during May and June 1992, the Trial Chamber found that Stevan Todorović ordered six men to perform fellatio on each other at the police station in Bosanski Šamac on three different occasions in May and June 1992. He accepted the following accounts by witnesses of his conduct:

A witness described how he was taken to the police station where Stevan Todorović began to beat him and kick him in the genital area. The victim was then taken over to another man and ordered by Stevan Todorović to "bite into his penis". After that he was beaten again and endured further mistreatment.

Another witness stated that Stevan Todorović telephoned him and required him to come to the police station. There, the witness was beaten for about half an hour. After that, another man was brought to the office and he continued beating both of them. The beating lasted for another hour. He then ordered the men to perform oral sex on each other.

Another witness described how he was arrested on 9 or 10 May 1992 and taken to the police station. There he was beaten by Stevan Todorović, among others, for several hours. The witness and another man were ordered to perform fellatio upon one another and Stevan Todorović laughed whilst watching.

When deciding on the sentence, the Trial Chamber took into account as aggravating factors, Stevan Todorović's position of superior authority as chief of police and the cruel manner in which he perpetrated several of the criminal acts underlying his conviction.

The Chamber examined mitigating factors and found that there were three to be considered in this case: his guilty plea; his substantial cooperation with the Prosecution; and his expressed remorse for his crimes. The Trial Chamber did not accept his alleged diminished mental capacity as a mitigating factor.

He was only the third accused before the Tribunal to have been convicted on the basis of a guilty plea and the Chamber considered that a guilty plea should, in principle, give rise to a reduction in the sentence that the accused would otherwise have received. The Chamber observed that Stevan Todorović's trial had not yet commenced when he decided to plead guilty. It recognised the considerable contribution of his guilty plea to the efficiency of the work of the Tribunal and treated this as a mitigating factor in determining his sentence.

The Trial Chamber next took note of the plea agreement, pursuant to which Stevan Todorović agreed to cooperate with the Prosecution by testifying in the case against his former co-accused, and, as requested by the Prosecution, in any other proceedings. The Chamber concluded that his cooperation with the Prosecution had been substantial and that such cooperation ought to be considered as a mitigating circumstance in this case.

In regards to remorse, the Chamber recalled the statement made by Stevan Todorović during the sentencing hearing, in which he expressed repentance and remorse for his crimes and a willingness and desire to contribute to the process of reconciliation in Bosnia and Herzegovina. The Chamber treated his remorse as a mitigating factor in determining sentence.

Finally, the Prosecution and the Defence agreed that the Prosecution would recommend to the Trial Chamber a sentence of no less than 5 years' and no more than 12 years' imprisonment, and that neither party would appeal any sentence imposed by the Trial Chamber within that range.

During its presentation the Prosecution requested the Trial Chamber to impose a sentence of 12 years, the upper limit of the range agreed in the plea agreement. The Defence asked the Trial Chamber to discount the sentence to reflect both the saving of resources and the substantial cooperation of Stevan Todorović and requested that the Chamber impose a sentence of 5 years' imprisonment.

The Trial Chamber decided to sentence him to 10 years' imprisonment and when pronouncing his sentence made clear that if it had not been for his plea of guilt and his substantial cooperation with the Prosecution he would have received a much higher sentence.

On 31 July 2001, the Trial Chamber rendered its judgement, convicting Stevan Todorović on the basis of individual criminal responsibility (Article 7(1) of the Statute of the Tribunal) and superior criminal responsibility (Article 7(3)) with:

- Persecutions on political, racial and religious grounds (crimes against humanity, Article 5).

Sentence: 10 years' imprisonment.

Stevan Todorović was transferred to Spain to serve his sentence. On 22 June 2005, he was granted early release. Stevan Todorović died on 3 September 2006.