

INTERNATIONAL HUMANITARIAN LAW

NATIONAL IMPLEMENTATION



NATIONAL CASE LAW

Croatia

Title: Proseutor v. M.H., Osijek District Court, 25 June 1997

Date: 25.06.1997

Source: Osijek District Court, 25 June 1997, K.64/97-53, unpublished.

Summary:

The Court sentenced a Serb from Croatia to 5 years of imprisonment. He was convicted of genocide under the Croatian Penal Code for acts committed during an "ethnic cleansing" campaign in the village of Branjina. He had previously been extradited from Germany.

Text:

REPUBLIC OF CROATIA
DISTRICT COURT IN OSIJEK

K -64/97-53

VERDICT

IN THE NAME OF THE REPUBLIC OF CROATIA

The District Court in Osijek, in the Council consisting of the judge of this Court Ruzica Samota President of the Council, judge Igor Gojtan member of the Council, lay judge Zvonko Morcen, Antun Celikovic and Zeljko Kuzen members of the Council and the recording secretary Zlata Poljak in the criminal procedure against the accused M. H., due to the criminal act pursuant to the Article 119 Basic Criminal Law of the Republic of Croatia (hereinafter BCLROC), regarding the charges brought against the defendant by the District Court in Osijek no. KT - 93/94 dated 23.11.1995 the final version on 17 03.1997 and the facts changed on 20.06.1997 after the verbal main hearing concluded on 25.06.1997 and in the presence of the deputy of the District Court in Osijek Mr Zeljko Krpan, and the accused and his lawyer Nedeljko Rešetar from Osijek

brought the following

v e r d i c t

The accused M.H., father's name R., mother's name J., maiden name H., address —, with the residence in — Germany, born — in —, county of Osijek, Serbian nationality, citizen of the Republic of Croatia, without any profession, employed in Germany with the monthly salary around 2.500 DEM, married to A., maiden name K., unemployed, father of two children, one child is 4 and the other 8 years old, with the accomplished five classes of the elementary school, owner of a house and a farm in —, obligatory military service duty accomplished from 1975 till 1977 in —, without rank, in the military register of the Office for Defence —, never before convicted, and against him there has been no criminal procedure under way, however he has been proclaimed

g u i l t y

for

The village Branjina, in the baranja region in 1991 had the prevailing number of farmers of Croat nationality. In the second half of August 1991 Branjina was occupied by the paramilitary forces of the so called Yugoslav National Army (JNA) backed up by the paramilitary forces from the Serbia proper, enforced by 24 more persons of the Serb nationality from Branjina. The defendant organised the so called headquarters of the territorial defence in the village and as one of the members took all the authority in his hands with the goal to drive out the Croats from the village and make Branjina the ethnically clean Serb village. Along with the other members of the headquarters the defendant took part in executing the agreed upon tasks as well as bringing decisions and carrying out the physical and psychological torturing of the entire Croat population in the village in the following way;

- introducing the Identity Cards and constricting the movement of the Croats in accordance with the imposed curfew from 17,00 p.m. till 07,00 a.m.;
- forcing the Croats to join the Serb paramilitary units, under the threat of expulsion from the village;
- restricting the Croats to a confinement during the curfew, the accused and others moved around the village and threatening the Croats by shooting directly against their houses and their farm houses, throwing hand grenades to their yards and shooting the trombone mines and in this way damaging their property;
- forcing the Croats to carry out the most difficult tasks in farming, digging trenches and perform other military assignments without any pay;
- detaining the male villagers of the Croat nationality in the "Youth Centre", the main headquarters of the (paramilitary) units where they were interviewed, mistreated, tortured in numerous ways physically and psychologically;
- detaining on several occasions the male villagers of the Croat nationality over 18 years of age during the military actions against the Croat Army and they were held as hostages under the threat of killing five of the Croats for each of the dead member of the Serb paramilitary forces ;
- openly threatening the Croats;
- setting fire to the houses and farm buildings of the Croats;
- arming the gypsies and encouraging them to shoot against the Croat houses, loot their property and set fire;
- looting more valuable property from the Croat houses;
- expelling the Croat families under the threat of killing them;

- forcing the Croats to sign the papers on handing over their property out of their own free will to the (paramilitary) headquarters or to some other illegal bodies or persons;
- M. H. while carrying out the decisions of the headquarters personally executed the undermentioned crimes:
 - under the gun point forced the Croats to labour activities, specially I. B., M. C., M. K.; expelled Croats from their houses, confiscated their property and the cattle in the name of the headquarters;
 - when on duty as the member of the headquarters gave authorisation for leaving the village to D. S., M. H., and ordered G. M. to come to his house for questioning;
 - from the house of the expelled Croat I. B. the accused looted all his movable property;
 - he summoned the Croats to the headquarters in the "Youth Centre" and during questioning and mistreatment, he threatened to take them to Borovo selo and leave them behind so that they would never see their families again. S. L. on 20.09.1991 and G. M. on 21.09.1991 underwent that kind of torture .
 - he summoned M. C., Croat nationality and asked him to hand over the money he acquired from selling his father's pigs. The defendant explained that the money was needed for the activities of the headquarters, it was in October 1991;
 - on 12 and 13 October 1991 he confiscated the car "Wartburg" ownership of J. B. for the needs of the headquarters;
 - mistreatments and threats drove the Croat families away from the village and forced them to leave behind their farms and all their property and barehanded cross over to the free territory the Republic of Croatia.
 - with the goal of partly extinguishing the Croat national group he seriously damaged their physical and psychological health condition and forced them to resettlement,

the accused performed the criminal act against the humanity and international law - genocide as mentioned in Article 119 of the Basic Criminal Law of the Republic of Croatia,

so pursuant to Article 119 of the Basic Criminal Law of the Republic of Croatia has been

s e n t e n c e d

to five (5) years IMPRISONMENT.

Pursuant to Article 45 of the Basic Criminal Law of the Republic of Croatia the time spent in the pre trial detention from 16.10.1996 will be deducted from the original five year sentence.

Pursuant to Article 90, paragraph 1, Law on Criminal Procedure (hereinafter LCP), in connection with Article 87, paragraph 2, point 1 and 6, Law on Criminal Procedure, the accused is obliged to cover all the costs of the criminal procedure, all the costs of the court interpreter in the amount of 4.125,00 kunas and cover the lump sum in the amount of 500,00 kunas.

E x p o s i t i o n

The District Court in Osijek sentenced M. H. pursuant to the performed criminal act mentioned in the verdict.

The accused M. H. in his defence stated that he had been working in Germany from 1973 onward with only one break, from 1975 till 1977 and resumed his former occupation in Germany until his extradition, the end of 1996.

However he departed from Germany and came to Branjina — in Croatia on 21.08.1991 on vacation. On his way he first accommodated his wife and children in a summer cottage in Harkanj and then proceeded to Branjina from where they departed to Hungary on 22.08.1991, although he could not be precise about the date. On that occasion he met a friend, Croat nationality, who informed him on the latest events taking place in Branjina. He stayed a week in Harkanj and the remaining three weeks of his vacation spent in Branjina. — just opposite to the "Youth Centre" where were located the headquarters of the so called Territorial Defence. The defendant spent quite a lot of time inside and outside the headquarters' premises because all the pubs in the village had been closed down and he had nowhere to go to, the defendant explained to the Court. All the time he had been dressed in the civilian clothes and was not armed. He admitted that the other villagers probably had seen him coming in and out of the headquarters' premises and presumed wrongly that he had been one of the members of the so called territorial defence unit. He returned to Branjina for vacation in July or August 1992 and at that time the whole village was under the control of the Serb authorities, all the pubs were opened and he had no need to visit the headquarters any more.

Concerning his vacation in 1991 he never took part in any armed actions or any other kind of actions targeted against the Croat population for what he had been initially accused of. He neither volunteered nor was mobilised in any combat units and never took part in any actions against the Croat population simply because he had been working in Germany on the regular basis and had not been in Croatia at the time he had been accused of performing some criminal activity. The defendant rejects the verdict based on the accusation of his taking part in the activities of the Territorial Defence. He admits that his brother is H. D. and his relative H. I. He denies taking part in setting fire to the Croat houses and admits his membership in the Serb Democratic Party, moreover he has been one of the first members of the mentioned party. He admitted he knew U. J. however he was unaware of his taking part in the activities of the Headquarters but met him in August 1991 in Branjina. The accused spent hours and hours in the Youth Centre, the premises taken over by the Headquarters of Territorial Defence, and never ever saw anybody armed or in a uniform, he never witnessed any arrests of the innocent villagers or any other kind of mistreatment of people, never heard any howling or screaming of the victims tortured in the premises, according to the defendant the villagers used to gather around in the mentioned premises out of their own free will. Nevertheless during the night some unknown persons shot against the Croat houses, and some Croat houses were set on fire and burnt to the ground, nevertheless nobody talked about it so he had been unaware of the perpetrators. All the arsons were handled only by the professional firemen. His attitude toward Croats had always been friendly, even his wife and his brother in law were Croats.

He employed a Croat woman M. J. from Branjina to assist his wife with their first born child in 1990. At the beginning of 1991 he employed her sister A. to work for him and she stayed in Germany in their service until the end of 1991. His father and brother D. assisted A.'s parents in 1991 to depart from Branjina. He took in his car I. Š. and J. B. from Branjina and M. from Kneceva and drove them away to Markanj, it was in August 1991.

On the main hearing the defendant admitted that he had been acquainted with all the 24 other defendants, accused along with him, and also pointed out that at that time in Branjina lived 55% Croats and the rest were the persons of the Serb nationality. The defendant confessed that upon his arrival to Branjina some very unpleasant incidents started to take place but he never took part in any of it. He refused to admit that he had been one of the organisers of the Territorial Defence Headquarters and he declined any activity in organising the shipments of arms to Branjina. He claimed that he had always been unarmed, dressed in civilian clothes and never neither shot at the Croats in Branjina nor took part in shooting against the free territory of the Republic of Croatia, he also declined the accusations on his participation in military actions (he had been released from the army duty due to his permanent employment in Germany). His brother acquired for him the official certificate on the release from the army duties. He stated of being aware of the fact that his brother had been in a group of defendants accused of participating in the activities of the Headquarters but he pointed out that he had no awareness of his brother's duties in the mentioned body. The defendant also stated that he had been a very curious person by nature and wanted to know what had been going on in the "Youth Centre" and went there and spent hours and hours only out of curiosity. Anyway — just opposite the Centre. He came to Branjina in December for the Christmas holidays, again in July for Summer vacations. The defendant had his own pub in Germany from 1991 till 31.05.1992 when he let it out to somebody else however stayed employed there. He never shot at the Croat houses, never mistreated Croats, and at night never went out, but stayed at home. He never witnessed any misbehaviour of the staff toward the visitors of the Youth Centre. He used to visit his relatives in K. V., B. M. and a friend, owner of the local pub in Popovac. According to his words he needed no special documents to travel around. During his next visit to Branjina it struck him that numerous villagers were wearing uniforms and had been armed. A. J. worked for him till Easter 1992 and he never had any doubts about her honesty, he fully trusted her.

The defendant refuses the fact about the curfew in Branjina in 1991 and the existence of the special permissions for moving

in and out of the village. In his defence he stated that in 1991 when he came to Branjina from Germany via Hungary he had been thoroughly searched at the border by the Hungarian customs and no arms had been found neither in his car nor in his luggage. While in Branjina he never took part in bringing decision on the restriction of movement of the Croat population, never ever recruited any Croats to paramilitary forces, and never dismissed from work any person of the Croat nationality. Anyway according to what he heard Croats were dismissed from work in large numbers in 1992 and 1993. He admitted to having a phone at his home but he never used it for expressing threats to his Croat neighbours. He never ever forced them to depart from Branjina, and never made any lists of Croats who should be expelled from the village. He was always in good relations with the couple M., he denied any wrong doing to them, he did neither kill them nor any other villagers, he denied looting any property or taking hostages. When he arrived to Branjina in 1992 the curfew had already been introduced and the army had already been there. Nevertheless he knows nothing about the special permissions needed for the free movement of villagers. He departed from Branjina at the end of September 1991 to Germany and never returned.

The following witnesses appeared at the hearing of evidence: A. H., M. M., F. P., M. C., G. M., J. B., J. K., I. C., V. B., the letter forwarded by the County of Popovac, dated 11.06.1997 was read and the To Whom It May Concern from the commissioner of the Government for the County Beli Manastir dated 27.02.1993, letter from the Ministry of Foreign Affairs of the Republic of Croatia, dated 25.02.1997, letter of the Police Station Osijek-Baranja dated 05.03.1997, Legacy Agreement dated 15.12.1991, population census, households, flats, farms in Branjina on 31.03.1991, Impunity Certificate concerning the defendant, and upon the consent of the clients their statements were read aloud: D. Š., J. C., S. L., I. M., I. Š., B. K., M. R., F. C., E. B., A. J., M. F., and the minutes from the confrontation of witness M. H. and the defendant.

Upon the evidence this Court found the defendant guilty for the performed criminal act.

That is to say that the overwhelming number of witnesses as well as the numerous incidents occurred in August 1991 confirm that the Yugoslav Army along with paramilitary units occupied Baranja, territory of the Republic of Croatia and the village Branjina in the Baranja region.

The Serb population and the occupying forces refused to recognise the authority of the lawfully elected authorities of the Republic of Croatia and organised the illegal bodies along with paramilitary units in the occupied region. In Slavonia and Baranja they organised the so called "Serb Authority of Slavonia, Baranja and Western Sirmium" with the goal of annexing the occupied parts of the Republic of Croatia to the Serbia proper. The main perpetrator was Yugoslav Army so called JNA, they armed and trained farmers in the villages and took the active part on the occupied territory of the Republic of Croatia, supported by the paramilitary units from Serbia proper. Heavily armed forces were present on the occupied territory of the Republic of Croatia and illegally elected authorities were placed in power even in the regions with the overwhelming Croat population.

The census from 31.03.1991 clearly points out the overwhelming number of the Croats in Branjina. Nobody disputed the authenticity of the census and according to it 289 persons in Branjina were Croats, 219 Serbs, and others were of the Check, Hungarian, German, Gypsy and Yugoslav nationality however in such a small number not relevant for this court procedure. As aforementioned, Branjina, the village in the region of Baranja, belonged to the villages with the overwhelming Croat population. So called Headquarters of the Territorial Defence were organised as the illegal authority immediately upon the occupation of the village. In all their statements, the witnesses, all from the village Branjina, described the character of the illegal authority and the way it influenced their lives. All their statements were logical, objective, convincing and in the most important part coherent. It concerns the statements of the following witnesses: M. M., F. P., M. C., G. M., J. B., J. K., I. C., D. Š., J. C., I. B., M. N., M. H., N. C., S. L., I. M., I. Š., B. K., M. R., F. C., and E. B., so this Court took their statements as reliable.

Upon the statements of the witnesses all the authority in Branjina was in the hands of the Headquarters of the Territorial Defence, and the statements of M. C. and M. H. confirm the defendant's taking part in all the deeds of the headquarters. The statements of other witnesses most reliable for this Court, and specially the statements of the witnesses interrogated during the investigation about the activity of 24 other members of the Headquarters, those under the criminal procedure pursuant to the criminal act of genocide, however still at large testify the defendants active presence in the headquarters. Upon the statements of the witnesses this Court came to the conclusion that the absolute authority in the village was in the hands of the Territorial Defence Headquarters and nothing had been undertaken without either their consent or their exact order. In other words everything carried out at that time in the village was upon the order, consent or approval of the Headquarters, and the defendant as the active member of the mentioned body took part in its activities and in caring out its decisions. This Court refused to accept the defence of the accused since all the witnesses were objective and convincing in their statements. The statement of the defendant lacks any logic and is unacceptable in the part when the defendant had been trying to convince the Court that he had gone to the Headquarters only out of curiosity. It is unconvincing and illogical

that he went to the Headquarters only because all the pubs in the village had been closed down. The defendant admitted spending quite an amount of time in the premises of the Headquarters, he also admitted his free movement in all the parts of the Headquarters but persisted in his statement that he had not been the member of the Territorial Defence.

Upon the statements of the witnesses this Court established that the living conditions of the farmers in Branjina became unbearable and many of them departed or were expelled from their homes and crossed over to the free territory of the Republic of Croatia. Most of them left behind all their material belongings, they departed from their homes barehanded. They left behind in Branjina their family houses, cattle, complete households all the material belonging acquired working their entire life. All those who departed were Croats, in total 215 Croats left the village, one person of the Serb nationality and 2 persons of the German nationality. The Court established the aforementioned facts upon the letter from the Popovaca county dated 11.06.1997 and there were no remarks made to its content. Upon the statements of the aforementioned witnesses this Court came across the fact that the curfew had been proclaimed upon the decision of the Territorial Defence Headquarters and imposed on the Croats, who at that time represented the majority of the population in the village. The Croats had the free movement in the village only from 07,00 a.m. till 17,00 p.m. and for any departure from the village they needed the special permits. Witnesses I. M., I. B. and others described in details the time in Branjina when the curfew had been enforced.

Illegal authority in Branjina implemented some measures of forcing the farmers to join the paramilitary forces: about that particular issue the witness I. Š. gave a convincing statement, he was threatened with expulsion from the village in case he refused to become a member of the paramilitary. G. M. also the witness stated that all the farmers in Branjina were called to take arms and the witness M. H. was forced to join the paramilitary at the gun point. Almost all the witnesses confirmed shooting during the night against the Croat houses. M. C., the witness on whose house was shot at from the machine gun described the incident. D. Š., I. M., F. P., J. B. and some others described intimidation of the Croat families by throwing grenades against their houses. All these unpleasant events took place during the curfew, when the Croats were forbidden to come out of their houses. The witness M. C. gave a statement about the machine gun burst targeted through the window of his house so that his TV set exploded and the chandelier fell to the ground and three bullets hit the wall of his bedroom just above the bed of his 18 months old son. In the same way were attacked the houses of D. Š., I. M., S. L., M. and F. P.. The witnesses also reviled that the farmers of the Croat nationality had to go on the forced labour in the fields and dig trenches and blockhouses. They were monitored by the guards and never paid for the performed work. F. P., M. C., J. B., M. N. the witnesses who performed the aforementioned work themselves.

Some Croats were, according to the witnesses, brought to the Youth Centre - Territorial Defence Headquarters, for questioning. Some were after questioning detained and mistreated and physically and psychologically tortured. J. K., one of the witnesses was questioned under the charges that his father had been the member of the HDZ party, and during questioning he was heavily beaten up. Upon the statement of the witnesses, particularly F. P., M. N., N. C., S. L., I. S. and J. B., this court established that upon the order of the headquarters on several occasions, men over 18 of the Croat nationality were locked up in the building, future post office while the Serb paramilitary forces executed some actions against the Croat army units on the front line. All the aforementioned persons were taken hostages and they were threatened that for each of the killed member of the Serb paramilitary forces five Croats would be executed. Upon the statements of the witnesses P., K. and B. this Court came to the conclusion that the houses, ownership of the following Croats had been burnt to the ground: I. B., D. B. and S. K.. Witnesses D. Š. and I. B. described looting of the houses of those Croats who either departed or were forced in some other way to leave the village but left behind all their material belongings. Upon the statements of the witnesses who were expelled from the village this Court learned about the practice of forcing them before their departure to sign the document on handing over all their belongings either to the authorities of Krajina, to the Territorial Defence Headquarters or to some person of the Serb nationality from the village. F. P., M. C., J. C., M. N. were forced to sign the aforementioned document. J.C. was forced to sign the "Inheritance Agreement" dated 15.12.1991, on handing over all of his material belonging consisting of a house with two yards, a vineyard and some land, as stated in the agreement, at the disposal of M. L., and in case the owner's daughter appeared it should be transferred by the Court decision to her name.

J. C. appeared at a witness stand of this Court and stated that he was forced by the commander of the Territorial Defence Headquarters, B. P., to sign the agreement on handing over of his entire property. There was no doubt about P.'s rank since it had been clearly stated in the Agreement.

As aforementioned this Court takes all the tellings of the witnesses as reliable and upon their statements on signing the agreements on handing over of their material belonging freely to some other person or some authority, concludes that they had been forced to sign it. The witnesses P., K., D. Š., S. L. and some others talked about the massive dismissals from the working place of the employees of the Croat nationality.

Mr. L. at the witness stand stated that he was employed with the firm TOS in Knezevo when 186 Croat employees had been dismissed. He was no. 86 on the list of the dismissed workers and the secretary of the firm explained to him that it had to be carried out upon the order of the Headquarters. The witnesses S. L., I. Š., F. P. and some others stated that the gypsies in the villages had been armed by the Territorial Defence Headquarters and they shot against the Croat houses, looted and burnt it to the ground.

From the statements of all the aforementioned witnesses it was concluded that the defendant M. H. had performed criminal deeds as described in the verdict.

The witnesses I. B. and M. C., both stated that the defendant in a group of two more persons ordered them and M. K. to collect the cattle and pigs from the empty Croat houses in the village and while doing it they were guarded and monitored by the defendant and other two persons. The incriminating activity lasted from 8,00 a.m. till 13,30 p.m. and the defendant was on that occasion armed. According to the witness B. all the cattle had been transported to Sombor, and the witness C. stated that it had been sold away in the Serbia proper. The money was used for financing the territorial defence members and activities. The sold pigs and cattle were the ownership of D. B. and I. B. (Croats who departed from the village). The witness I. B. pointed out that the pigs were collected from some other five to six empty Croat houses too (the pigs from the house of A. M. nick name — had also been taken away). This Court took the statements of the witnesses as objective, true and reliable.

The defendant admitted being close to the house of B. D. and some other Croat houses from where the pigs had been collected but out of pure curiosity.

The statement of the defendant had not been taken into consideration by this Court, while the contrary would mean that the accused had been really only by chance at the indicated time on the incriminated places, totally unacceptable suggestion for this Court.

The statements of the witnesses had been taken as reliable and besides the defendant had been armed during the entire incriminating activity and in the company of two other persons presumably acting as guards.

M. C. and M. N. the witnesses described the incident about acquiring the permit when they wanted to go fishing somewhere close to Drazin in autumn 1991, along with M. M. and N. M.. Both witnesses claim that M. C. went to the headquarters and the defendant who was on that occasion armed gave him the permission.

The accused recalled the incident and stated that it all had been done as a joke.

Taking into consideration the statement of the aforementioned witness along with the statements of other witnesses this Court came to the conclusion that the Croats were not allowed to depart from the village, they had to ask for permission otherwise were persecuted.

The defendant gave the permission to the witnesses in the premises of the headquarters, what indicates that he had been on duty as the official body of the headquarters. The defendant's complaint that there was no written evidence on it had been irrelevant for this Court.

D. Š. and M. H. confirmed the presence of the defendant in the "Youth Centre" while they were questioned by the members of the Headquarters. The witness G. M. stated that the defendant ordered him to come to his house for questioning.

The witness D. Š. confirmed that he was questioned by the defendant in the presence of B. P.. According to the statement of M. H. the defendant was present at his questioning in the premises of the headquarters dressed in the army uniform and armed. On some other occasion the defendant entered the house of M. H.'s father in law in Podolje, dressed in the army uniform and armed and ordered him to report to the Headquarters of the Territorial Defence in Branjina. When the witness and the defendant were confronted the defendant denied being armed but admitted being dressed in the army trousers, but the one he bought in Germany for at that time the army trousers were in fashion.

The witness G. M. stated that during questioning the defendant told him to report to his house the next day what he had obeyed and was asked by the defendant to provide him with the list of persons from the village in the possession of arms. M. gave the negative answer and the defendant permitted him to return to his home.

Considering the fact that the witnesses and the defendant are neither in any kind of family relations nor in any kind of disagreement and have no reason whatsoever to give false statements, their interpretations have been taken as logical, objective and reliable.

Since all the witnesses and the defendant were in the same premises while questioned in the Headquarters of the local authority, it is highly unlikely that the defendant had been there only by chance, this Court concluded that he had been there as the representative of the local authorities.

The witness M. H. described the incident when the defendant looted all the property from the house of Mr I. B., a Croat expelled from the village. The incident took place in August and September 1991. The witness came by the house of I. B. sometime around 20,00 p.m. and met the defendant and his brother D. beside the car with the open trunk where they had placed the things taken out of the house. In the face to face encounter with the defendant, the witness confirmed the aforementioned statement. M. H. has been in good relations with the defendant and gave the impression of the relevant witness.

The witness S. L. stated that he had been questioned and heavily mistreated by D. H. and when the questioning ended he had been taken to the "Youth Centre" and described in detail the room he had been brought in where he faced the defendant who had been on that occasion armed. The incident took place on 20.09.1991, sometime between 16,00 and 16,30 p.m. The defendant questioned the witness about the Croatian Democratic Party (HDZ) it's armament and threatened of driving him away in his car via Ilok to Borovo Selo. The accused said that the defendant's brother D. had threatened the witness but the witness was firm in his statement accusing the defendant for making threats.

Since the witness and the defendant went to school together and knew each other well from the time before the war there could not be any doubt in the statement of the witness (he could not have confused the defendant for his brother). The witness S. L. claimed that he and the defendant had always been in good relations, the Court took his statement as reliable.

G. M., one of the witnesses described his imprisonment and the way he had been mistreated by P., V., A. H. and J. M. forcing him to reveal the names of the members of the HDZ party and those who had been armed. Questioning started on 21.09.1991 at 19,30 p.m. and sometime around 23,00 p.m. the defendant arrived to the Youth Centre and the witness M. stated that the defendant asked from him to reveal the names of the HDZ party members and of those in possession of arms. The defendant threatened him that he would personally drive him off to Borovo selo. The statement of the witness was convincing and coherent and this Court accepted that the defendant threatened G. M. on 21.09.1991 and that the other persons, members of the Headquarters of the Territorial Defence, mentioned by the witness, arrested and mistreated him. Taking into consideration the witness's statement it is obvious that he had been in the premises on duty and not only by chance, out of curiosity.

M. C., the witness, when summoned to the Headquarters of the Territorial Defence was asked to hand over to their administration the money acquired from selling his father's pigs, with the explanation given by the defendant that the money had been needed for the soldiers. The witness explained to the defendant that he had already forwarded the money to his father via Hungary, and explained that the defendant's brother had given him the authorisation for travelling. The comment of the defendant was that the headquarters had made in that case a serious mistake. The witness remembered clearly during the investigation the defendant had been armed. The incident took place in October 1991. This Court took the statement of the witness as reliable since he described the incident in detail and particularly mentioned that he used to be a true friend with the defendant and his brother and his sincerity while giving the statement, by this Court's opinion, had been genuine.

So, at the aforementioned time the defendant officially summoned the witness not on a friendly chat but for questioning, and the defendant at that time had been on official duty as the member of the local authority.

J. B., the witness described the incident when the defendant along with J. S. and J. M. had come to his place and confiscated his car "Wartburg" for the Territorial Defence activities. The witness claimed that the car had been taken away from him by force and neither compensation nor any written document had been given to him in return. The car had never

been returned to the original owner. Since the defendant confiscated the car in the name of the Headquarters he had obviously been the member of the Territorial Defence. The defendant gave no comment to the J. B.'s statement and since the witness presented it objectively and reliably this Court accepted the statement as genuine and reliable. This Court holds responsible the defendant for confiscating the car and brings charges against him for being the member of the Headquarters of the Territorial Defence.

The described activity is possible to analyse only within the framework of the situation that reigned in Branjina at that particular time as well as within the framework of the activities of the persons with whom the defendant had identified with. The persons he associated with are 24 defendants the criminal charges had been brought against by this Court however all of them still at large and the authorities of the Republic of Croatia have still been unable to bring them to the Court.

The defendant, equally with other members of the Headquarters, was responsible for the aforementioned wrongdoing described by the witnesses which resulted with the expulsion of 222 persons from the village Branjina, 215 persons were Croats. Taking into consideration that the whole population of Branjina consisted of 289 villagers it is obvious that nearly the entire Croat community departed in the destination of the free territory of the Republic of Croatia, leaving their farms and households behind. This Court took into consideration the fact that the defendant was one of 24 persons who brought and carried out the decisions of the Headquarters, moreover he identified with the aggressor's and the idea of the rebelled Serb population against the authority of the Republic of Croatia contemplating the idea of the great Serbia.

The defendant used arms and made the Croats participate in the forced labour activities, limited their freedom of movement, participated in interrogating the Croats, threatened them during questioning. The defendant's threats were without any doubt warning if not obeyed the physical liquidation would follow, the defendant looted the property of the Croats and he personally participated in some wrongdoings toward M. C., M. N., D. Š., G. M., J. B. and others.

For bringing charges against the defendant for genocide would be enough to mention only one action against only one person, in case his intention was to partly or entirely annihilate some of the groups as mentioned in the Article 119 Basic Criminal Law of the Republic of Croatia. The existence of the Croats in the village was in danger and due to the previously described mistreatment they were forced to depart from Branjina. The defendant carrying out the criminal intimidation along with other members of the Serb extreme group in Branjina actually assisted in the realisation of the plans on creating the Great Serbia, for the start the village Branjina turned into the ethnically clean Serb village. From all the aforementioned can be concluded that the defendant's behaviour toward his neighbours was violent only due to their Croat nationality. Since he had never been in any harmful relations with any of the witnesses and had no reason whatsoever to treat them with violence. The defendant intimidated them, looted their property, restricted their right to the freedom of movement with only one goal to annihilate the Croat national group from the village of Branjina. The defendant was fully aware of his acts and the wrongdoing of the other members of the Headquarters, so this Court found his defence false and premeditated only to diminish his responsibility for the performed criminal acts.

This Court proclaims the defendant guilty for the criminal act of genocide, as mentioned in the Article 119 of the Basic Criminal Law of the Republic of Croatia.

In the Court procedure the witness A. H., the wife of the defendant, explained that she and her husband (the defendant) were in Harkanj, Hungary, in August 1991 for holidays and later on departed to Branjina where they stayed only for three weeks. According to her statement her husband was not in the uniform and never took part in exercising the authority in the village. She also claimed that her husband had been at home always during the curfew. A. J., originally from Branjina came to Germany in September 1991 to take care of their child, stated the same. They returned to Germany after their holidays expired and came back to the village in September 1992. According to Mrs H. her husband never intimidated or mistreated any person of the Croat nationality in Branjina.

The witness A. J., explained to this Court that she had departed with the defendant and his wife to Germany on 28.09.1991 and stayed in their service until 03.11.1992. She pointed out that the defendant had always been correct in his behaviour toward her in spite of her being Croat. While in Branjina she had never heard about the defendant's menacing the farmers of the Croat nationality.

The witness M. F., among other things described the defendant's behaviour during the Christmas and Eastern festivities and his behaviour on the village party in August. The witness clearly stated that the defendant had not been the member of the Territorial Defence Headquarters and never possessed arms, his behaviour toward the Croats in the village had always been normal, he had never threatened or in any other way intimidated them.

This Court contemplated on the statements of the aforementioned witnesses but had taken it as irrelevant. The witnesses, A. H., the defendant's wife and A. J., former employee of the defendant, had been considered by this Court as being partial.

Statements of the aforementioned witnesses in a certain sense present the defendant's alibi however this Court dismissed it and placed its trust in the statements of M. C. and M. N., both claimed that the defendant had been in Branjina in autumn 1991 and in October 1991. Besides, the statements of the aforementioned witnesses were credible, precise concerning the circumstances.

V. B. at the witness stand revealed some of her information unfortunately not related to the decisive facts and her statement had been found irrelevant by this Court.

The report of the government commissioner was also irrelevant since this Court could not have extracted from it any decisive fact in relation to the H. case.

From the letter of the Ministry of Exterior of the Republic of Croatia this Court learned that the defendant had been in the pre-trial detention since 16.10.1996 and according to the letter forwarded to this Court by the Police Station of the Osijek Baranja District the defendant was extradited from Germany to the Republic of Croatia on 05.03.1997. According to the letter from the police record the defendant has never been charged with any criminal activity.

Nevertheless from the presented evidence the Court had learned about the defendant's taking part in the activities of the Territorial Defence Headquarters where he mistreated the Croat villagers of Branjina (even though at that time the Croats represented the majority of the village population) and in that way forced them on the exodus. He has been charged for the genocide on the Croat population in the Branjina village, criminal act pursuant to Article 119, Basic Criminal Law of the Republic of Croatia.

While deciding on the criminal and punitive sanctions this Court took into consideration the following facts: the defendant had never before been persecuted, he has a wife and two underage children to support, the statements of the witnesses claiming that the defendant had never taken any extreme measures against his victims.

This Court sentenced the defendant to five (5) years imprisonment pursuant to the performed criminal acts and the degree of the defendant's criminal and juridical responsibility, pursuant to Articles 5 and 33, Basic Criminal Law of the Republic of Croatia.

The defendant has been in pre trial detention since 16.10.1996 and pursuant to Article 45, Basic Criminal Law of the Republic of Croatia, this period will be deducted from the original sentence.

The decision on the expenses of the criminal procedure pursuant to Article 90, paragraph 1, Law on Criminal Procedure, the defendant is obliged to cover all the costs mentioned in the exposition of this Verdict and according to the Court the expenses of the Court procedure are relevant to the duration and complexity of the procedure. The defendant's financial circumstances permit him to pay the requested sum, and his existence will not be placed in any peril, since the defendant is the only breadwinner in his family.

It has been decided as stated.

In Osijek 25.06.1997

Recording Secretary: President of the Council:

Zlata Poljak Ruzica Šamota

Lodging the Complaint:

Against this Decision the clients are free to lodge a complaint within 15 days upon the receipt of it. The Complaint has to be submitted in three identical copies to this Court and upon it will be decided by the Supreme Court of the Republic of Croatia in Zagreb.

Copy to:

1. District State Attorney Osijek, no. KT-93/94
2. Accused M. H. in pre trial detention - here
3. Defence attorney Nedeljko Rešetar, lawyer from Osijek

For the correctness of the dispatched copy:


Mirjana Delalic

Stamp: District Court Osijek, Republic of Croatia

References: National Laws and Regulations

(Former) Penal Code: Art. 119.

References: International Treaties and Documents

UN Convention on Genocide 1948: Art. 2  and 3 .