

Sud BiH / Суд БИХ
Kriminalno odjeljenje / Апелационо одјеление /
Kriminalno odjeljenje и Апелационо одјеление
Odsjek I и Odsjek II / Odsjek I и Odsjek II
Odsjek I и Odsjek II / Odsjek I и Odsjek II
X KRO107/480

KREVDO DOK. 45

Bosna i Hercegovina



Босна и Херцеговина

Tužilaštvo-Tužiteljstvo Bosne i Hercegovine
Тужилаштво Босне и Херцеговине

Special Department for War Crimes
Number: KT-RZ - 165/07
Sarajevo, 14 January 2008

**THE COURT
OF BOSNIA AND HERZEGOVINA**
- Preliminary Hearing Judge -

Pursuant to Article 35(2)(h) and Article 226(1) of the Criminal Procedure Code of BiH, I hereby file the

INDICTMENT

AGAINST: MARKO ŠKROBIĆ, son of Drago and Ora, nee Manović, born on 20 July 1971 in Duratovci, Municipality of Kotor Varoš, ID Number 2007971102758, residing in Vitez, 48 Stjepana Radića St, citizen of BiH and the Republic of Croatia, bricklayer by profession, literate, finished Civil-Engineering Secondary School, married, served army in 1990 in Subotica, no rank, no decorations, of medium income, no other criminal proceedings pending against him, placed in pre-trial custody under the Decision of the Court of BiH No. X-KRN-07-480 of 19 December 2007 which is to last until 17 January 2008 or pending a new Court decision.

On the following grounds:

In the second half of 1992, during the war in Bosnia and Herzegovina, at the time of the armed conflict, he acted in contravention of international humanitarian law violating Article 3 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War and Article 51 (1) (2) and (3) of the Protocol Additional I to the Geneva Convention relative to the Protection of Civilian Persons in Time of War dated 12 August 1949, by doing the following:

On 31 July 1992, in the early morning hours, in the place of Novo Selo, municipality of Kotor Varoš, as a member of the Kotor Varoš HVO unit, along with four other armed persons, the accused went in front of the family house of [REDACTED] and after he banged on the door he entered the house and ordered [REDACTED] his wife [REDACTED] his underage daughters [REDACTED] to leave the house immediately; he forced them out, and then, from another house which was located in the same yard, he took out [REDACTED] father [REDACTED] and then he, along with other soldiers, took them in the direction of the village of Ravne where two soldiers separated [REDACTED] and took him in a nearby forest threatening him that they would

slaughter him unless he turns in the weapons to them; they ordered him to turn around and shot a round in the air; after that, several yards from there on a meadow, suspect Marko Škrobić, taking other members of family, grabbed [REDACTED] by his chest knowing that he was a civilian and intending to deprive him of his life, fired a bullet from his pistol, that he had with him, in [REDACTED] chest which resulted in an instant death of [REDACTED]

Therefore,

During the state of war in BiH, in violation of international humanitarian law, he deprived the life of a civilian.

By doing so he,

committed the criminal offence of War Crimes against Civilians in violation of Article 173 (1) c), in conjunction with Article 180 (1) of the Criminal Code of Bosnia and Herzegovina.

On the grounds of the foregoing, I hereby file the

PROPOSAL
of evidence to be presented

I The following witnesses to be examined:

[REDACTED]

II The following evidence to be reviewed:

1. Decision of the Presidency on the proclamation of the state of war dated 20 June 1992 (Official Gazette of RBiH, No. 7/92)
2. Document of the PH Travnik, Certificate of previous convictions re: Marko Škrobić No. 02/7-5-04-2-3894/07 of 12 June 2007
3. Document of the Banja Luka Public Security Centre, PS Kotor Varoš, No. 10-9/02-234-1180/07 of 2 July 2007
4. Certificate of Citizenship re: Marko Škrobić, No. 204-343/07 of 22 June 2007
5. Document of the Tax Office Novi Travnik No. 10-06-04-49-3988/07-Ž.S. of 5 November 2007
6. Document of the Federation Ministry for Issues of Veterans and Disabled Veterans No. 07/1-03-127-1/07 of 22 October 2007
7. SIPA document No. 17-12/3-04-2-101-2/07
8. Death Certificate re: [REDACTED]
9. Photocopy of the ID card re: Marko Škrobić
10. Photocopy of the ID card re: [REDACTED]
11. Verifications of the excerpts from the CIPS database re: Marko Škrobić

12. Verifications of the excerpts from the CIPS database re: [REDACTED]

RESULTS OF THE INVESTIGATION

The Prosecutor's Office opened an investigation of the suspect Marko Škrobić, due to the suspicion that he had committed the criminal offence of War Crimes against Civilians in violation of Article 173 of the CC BiH, having accepting the investigative actions conducted by the District Prosecutor's Office Banja Luka.

Having conducted the investigation of the suspect Marko Škrobić due to the perpetration of the criminal actions as described in the operative part of the Indictment, the Prosecutor's Office found that there existed sufficient evidence to suggest that the suspect Marko Škrobić had committed the criminal offence he has been charged with and that the Indictment has been filed against him for the commission of the criminal offence of War Crimes against Civilians in violation of Article 173(1)(c) of the Criminal Code of Bosnia and Herzegovina, which is in contravention of international humanitarian law, thus violating Article 3 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War and Article 51 (1) (2) and (3) of the Protocol I Additional to the Geneva Convention relative to the Protection of Civilian Persons in Time of War dated 12 August 1949.

It stems from the Decision of the Presidency of RBiH on the proclamation of an imminent war threat dated 9 April 1992 (Official Gazette of RBiH, 1/92) and the Decision on the proclamation of the state of war by the Presidency of RBiH of 20 June 1992 (Official Gazette of RBiH No. 7/92) and the statements of the witnesses examined that there existed an armed conflict in the territory of BiH at the time relevant to the crime.

The document obtained from the Federation Ministry for Issues of Veterans and Disabled Veterans No. 07/1-03-127-1/07 of 22 October 2007 suggests that the Suspect was a member of the HVO Kotor Varoš at the time as charged.

The Suspect Marko Škrobić defended himself by remaining silent.

Those witnessing the event, namely: [REDACTED]
[REDACTED] have clearly, unequivocally and consistently described before the District Prosecutor in Banja Luka and before the Prosecutor with the Prosecutor's Office of BiH the circumstances under which [REDACTED] was killed.

It undoubtedly stems from the testimonies of the examined witnesses that the persons deprived of liberty were not active participants in the hostilities at the relevant time, but they were captured at their homes as civilians wearing civilian clothing and with no weapons whatsoever. Therefore, the Prosecutor's Office of Bosnia and Herzegovina maintains that the killed person had the status of a civilian who enjoyed the rights to protection under the rules of international humanitarian law.

Blanket Regulations

Article 3 of the IV Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, foresees that:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;...

(c) Outrages upon personal dignity, in particular humiliating and degrading treatment...

All objective evidence and the testimonies of the examined witnesses which are stated in this Indictment suggest that there exists grounded suspicion that Marko Škrobić committed the criminal offence of War Crimes against Civilians as referred to in Article 173(1)(c), in conjunction with Article 180(1) of the same law, at the time and place and in the manner as described in the operative part of the Indictment. When committing this criminal offence, the Suspect acted intentionally as he was aware of his actions and he wanted to commit it.

The only possible conclusion resulting from the complex evaluation of the factual substratum included in the operative part of the Indictment and corroborated by the evidence, both physical and subjective, is that the actions of the Suspect include all essential elements of the criminal offence of War Crimes against Civilians, which is the criminal offence that is the subject of this Indictment, and we therefore move the Preliminary Hearing Judge to confirm this Indictment in its entirety.

Documents corroborating the arguments of the Indictment

1. Record on Questioning of the Suspect Marko Škrobić No. KT-RZ-165/07 of 17 December 2007
2. Record on Examination of the Witness [REDACTED] No. KT-RZ-165/07 of 18 June 2007
3. Record on Examination of the Witness [REDACTED] No. KT-RZ-165/07 of 18 June 2007
4. Record on Examination of the Witness [REDACTED] No. KT-RZ-165/07 of 14 June 2007
5. Record on Examination of the Witness [REDACTED] No. KT-RZ-165/07 of 14 June 2007
6. Record on Examination of the Witness [REDACTED] No. KT-RZ-165/07 of 6 November 2007
7. Decision of the Presidency on the proclamation of the state of war dated 20 June 1992 (Official Gazette of RBiH, No. 7/92)

8. Document of the PH Travnik, Certificate of previous convictions re: Marko Škrobić No. 02/7-5-04-2-3894/07 of 12 June 2007
9. Document of the PS Kotor Varoš, No. 10-9/02-234-1180/07 of 2 July 2007
10. Certificate of Citizenship re: Marko Škrobić, No. 204-343/07 of 22 June 2007
11. Document of the Tax Office Novi Travnik No. 10-06-04-49-3988/07-Ž.S. of 5 November 2007
12. Document of the Federation Ministry for Issues of Veterans and Disabled Veterans No. 07/1-03-127-1/07 of 22 October 2007
13. SIPA document No. 17-12/3-04-2-101-2/07
14. Death Certificate re: [REDACTED]
15. Photocopy of the ID card re: Marko Škrobić
16. Photocopy of the ID card re: [REDACTED]
17. Verifications of the excerpts from the CIPS database re: Marko Škrobić
18. Verifications of the excerpts from the CIPS database re: [REDACTED]

MOTION TO EXTEND PRE-TRIAL CUSTODY UPON CONFIRMATION OF THE INDICTMENT

Pursuant to Article 227(1) of the CPC BiH, in conjunction with Article 137 of the CPC BiH, the Prosecutor's Office of BiH hereby moves the Preliminary Hearing Judge to, after the confirmation of the existence of grounded suspicion that the Suspect had committed the criminal offence with which he has been charged, and after the confirmation of the Indictment, to extend pre-trial custody of the Suspect Marko Škrobić pending the termination of the main trial pursuant to Article 132(1)(a) and (b) of the CPC BiH.

The BiH Prosecutor's Office believes that, apart from the grounded suspicion which has been established by the earlier Decisions ordering pre-trial custody by the Court of BiH, there also exist the grounds for pre-trial custody as referred to in Article 132(1)(a) and (b).

As to the grounds for custody set forth in Article 132 (1) a) of the CPC BiH, the Prosecutor's Office of BiH notes that there is a real possibility suggesting that there is a risk of flight by the suspect, in case he were released.

Once the Indictment is confirmed and, together with all evidence received by the Suspect, the Suspect will become aware of the graveness of the criminal action with which he has been charged and the evidence against him, which will motivate him to flee and avoid prosecution and criminal responsibility. When the foregoing is added to the fact that the Suspect Marko Škrobić, in addition to the BiH citizenship, also holds the citizenship of the Republic of Croatia, a clear conclusion may be drawn that all these facts constitute the very expressive circumstances that suggest that there is a possibility of flight by the Suspect, should he not be ordered into pre-trial custody on the grounds as foreseen by Article 132(1)(a) of the CPC BiH.

Apart from the foregoing, the Prosecutor's Office of BiH notes that the neighbouring countries, including the Republic of Croatia, are very reluctant when it comes to the extradition of their nationals and those suspected of war crimes in particular.

This is also supported by the provisions of the European Convention on Extradition that grants the right to the Contracting Parties, including the Republic of Croatia, to refuse extradition of its nationals which is a reservation by the Republic of Croatia that has already been applied.

Based on the foregoing, the Prosecutor's Office believes that the conditions have been met for the Preliminary Hearing Judge of the Court of BiH to order the Suspect Marko Škrobić into pre-trial custody on the grounds as foreseen by Article 132 (1)(a) of the CPC BiH.

The Prosecutor's Office believes that there still exist the grounds for pre-trial custody as referred to in Article 132 (1)(b) of the CPC BiH, that is, should pre-trial

custody not be extended, the Suspect would influence witnesses and accomplices in the referenced criminal offence.

The witnesses examined by the Prosecutor's Office are eye-witnesses and some of them are victims of the criminal offence with which the Suspect has been charged. The Prosecutor's Office notes that there still exists the realistic possibility that the Suspect may exert his influence on witnesses and accomplices in this criminal case, given that these are persons of whose identity the Suspect is very much aware as they were pre-war neighbours and therefore there is a legitimate fear that, if released and for the purpose of his own defence, the Suspect could influence the witnesses and accomplices thus attempting to avoid criminal responsibility.

The Prosecutor's Office of BiH believes that the pre-trial custody of the Suspect is justified for the reason that, if the Indictment is confirmed, there will be a second phase of the proceedings, as witnesses should make their statements under no pressure in terms of being afraid for their security or the security of their families due to the possible consequences of their testimonies. The statements of witnesses made during the investigation have no value if the witnesses do not repeat their statements at the main trial under no pressure and without any fear, which justifies the ordering of pre-trial custody on the grounds as foreseen by Article 132 (1)(b) of the CPC BiH.

Furthermore, the Prosecutor's Office particularly notes that the Suspect Marko Škrobić could very much influence the witnesses and accomplices in this criminal case, because it clearly stems from the letter of the State Investigations and Protection Agency of 29 October 2007 that some accomplices reside in the Republic of Croatia, that is, outside the competence of the BiH prosecution authorities. In addition, to what has been previously stated, the Suspect holds the citizenship of the Republic of Croatia, which suggests that there exists the legitimate fear that the Suspect could very easily connect himself with those persons, should pre-trial custody not be extended pursuant to Article 132(1)(b) of the CPC BiH.

Considering the foregoing, we believe that the motion for extension of pre-trial custody of the Suspect is entirely grounded and we therefore move the Court to grant it.

Taking into account the above mentioned, the Prosecutor's Office of BiH moves the Preliminary Hearing Judge of the Court of BiH to, after confirming the Indictment of the Prosecutor's Office of BiH and establishing the existence of the grounded suspicion, render a decision to order pre-trial custody of the Suspect Marko Škrobić on the grounds as foreseen by Article 132(1)(a) of the CPC BiH and to extend pre-trial custody on the grounds as foreseen by Article 132(1)(b) of CPC BiH.

M O T I O N
TO TRANSFER THE CONDUCT OF THE PROCEEDINGS TO THE COURT
WITH TERRITORIAL JURISDICTION PURSUANT TO ARTICLE 27 OF THE
CPC BiH

The Prosecutor's Office of BiH files this motion for the following important reasons:

The Court is aware that, in accordance with the internal criteria, the Prosecutor's Office of BiH, that is, the Special Department for War Crimes of the Prosecutor's Office of BiH, prosecutes the criminal cases of war crimes which are deemed to be the most complex, that is, most sensitive. The Prosecutor's Office of BiH estimates that this case does not meet the complexity criteria, as the action with which the Suspect has been charged is only one *actus reus* whereas its consequences are more lenient than in most cases being tried before the Court of BiH. The transfer of this case would also enable other complex cases, particularly in terms of factual and legal complexity, to be conducted at the Court of BiH in an undisturbed and quality manner, which could be diminished if most cases of a less complex factual and legal nature were tried before this Court. Furthermore, the Prosecutor's Office of BiH finds that it is imperative that the Court of BiH keep up the appearance of the institution respecting the highest standards of professionalism and the public's trust in the judicial institutions of BiH, which will be best secured if the Court of BiH conducts the proceedings of the most complex factual and legal war crimes cases.

The Prosecutor's Office also notes that other conditions providing the grounds for the transfer of this case to the court with territorial jurisdiction have been met cumulatively, that is, the main trial in this case has not commenced yet and the criminal offence with which the Suspect has been charged does not fall within the group of criminal offences directed against the BiH integrity.

Apart from that, the Prosecutors with the Special Department for War Crimes of the Prosecutor's Office of BiH have been working intensively to complete a number of war crimes investigations, and therefore the Court may expect new indictments to be filed, which would result in the Court being considerably encumbered.

We believe that the lower level courts are not that burdened with such a large number of war crimes cases, as is the case with the Court of BiH, and we therefore believe that the courts competent in terms of territorial jurisdiction could also conduct quality and efficient criminal proceedings in this particular case.

DEPUTY CHIEF PROSECUTOR
PROSECUTOR'S OFFICE OF BiH
Milorad Barašin

*I hereby confirm that this document is a true translation of the original written in Bosnian/Croat/Serb.
Sarajevo, 18 January 2008*

Certified Court Interpreter for English Language