

Bosna i Hercegovina

25-12-2007

Босна и Херцеговина



Sud BiH, Суди БиХ
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Одјел I / Одјел II / Одјел I = Одјел II
Одјел за судску управу / Одјел за судску управу

IX. 12/07/326

Tužilaštvo-Tužiteljstvo Bosne i Hercegovine
Тужилаштво Босне и Херцеговине

Special Department for War Crimes
Number: KT-RZ-155/06
Sarajevo, 6 December 2007

**COURT OF BOSNIA AND HERZEGOVINA
SARAJEVO**

Pursuant to Article 35 (2) (h) and Article 226 (1) of the Criminal Procedure Code of Bosnia and Herzegovina (hereinafter: CPC B-H), I hereby file the following

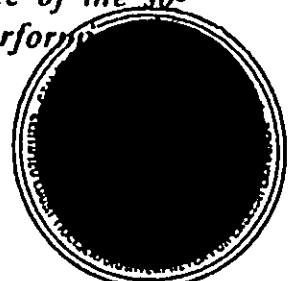
INDICTMENT

Against:

MLADEN MILANOVIĆ, father's name *Neđo* and mother's name *Mara née Petrović*, born on 22 May 1958 in Sarajevo, formerly residing in Semizovac, Vogošća Municipality, 30 Stara željeznička cesta Street, of Serb ethnicity, renounced the citizenship of Bosnia and Herzegovina, citizen of Austria, currently residing in Austria. Graz, 9 Konsumweg Street, mechanical engineering technician by profession, literate, secondary school education, married with two children one of whom is a minor, average financial standing, no previous convictions, in custody since 27 July 2007 pursuant to the Decisions of the Court of B-H No. X-KRN/07/326.

Because:

During the armed conflict between the Armed Force of the Republic of Bosnia and Herzegovina and the Armed Force of the so-called Serb Republic of Bosnia and Herzegovina in the City of Sarajevo, that is, in Vogošća Municipality, as a member of the military force of the so-called Serb Republic of Bosnia and Herzegovina, while performing



duty of a guard in the "Bunker" camp in Semizovac, Vogošća Municipality, in which Bosniak civilians were unlawfully detained, he acted contrary to the rules of international humanitarian law by violating the provisions of Article 3 (1) (a) and (c) of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 and Article 75 (2) (a) and (b) of Protocol I Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts, in as much as he:

- 1. On an undetermined day in the period between May and August 1992, while on duty, he took the injured party ██████████ a camp prisoner, out of the facility, assaulted and beat him by kicking and punching him in the head and other parts of the body threatening him that he could disappear at any moment as he was just a tiny hair. The abuse lasted several minutes after which the Accused returned him inside the facility.*
- 2. During the period between May and August 1992, although members of other military and paramilitary formations were prohibited from entering the camp facility, he, nevertheless, allowed them to enter while he was on duty by unlocking the facility door and allowing them to enter the facility, whereupon they physically and mentally abused the prisoners in different ways, especially the injured party ██████████ whom they beat, forced to jump from the 3-meter-high upper floor to the ground floor, and forced to stand motionless for prolonged periods, as well as the injured parties ██████████ whom they once took out of the facility and forced them to undress naked and to jump on trimmed bushes due to which they sustained many injuries, whereupon they forced them to sexual intercourse with each other, while the Accused was standing still and watching everything throughout the entire incident, after which mistreatment they were returned inside the facility.*

Therefore,

during the armed conflict, as a member of the military force of the so-called Serb Republic of Bosnia and Herzegovina, he acted contrary to the rules of the international humanitarian law by violating the provisions of Article 3 (1) (a) and (c) of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 and Article 75 (2) (a) and (b) of Proto

Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts,

By doing so he,

- *By his actions stated in Count 1 of the Indictment, committed the criminal offense of War Crimes against Civilians in violation of Article 173 (1) (a) and (c) of the Criminal Code of Bosnia and Herzegovina in conjunction with Article 180 (1) of the Criminal Code of Bosnia and Herzegovina.*

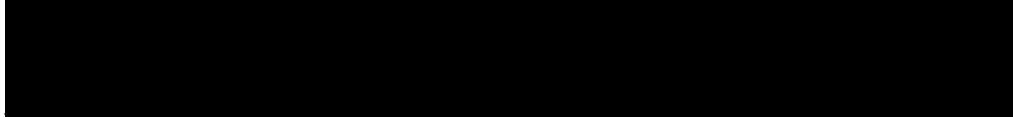
- *By his actions stated in Count 2 of the Indictment, committed the criminal offense of War Crimes against Civilians in violation of Article 173 (1) (a) and (c) of the Criminal Code of Bosnia and Herzegovina in conjunction with Article 31 (1) of the Criminal Code of Bosnia and Herzegovina, all in conjunction with Article 180 (1) of the Criminal Code of Bosnia and Herzegovina.*

Therefore, I hereby file the following:

PROPOSAL
of evidence to be presented

1

To hear the following persons as witnesses:

1. 
2. 
3. 
4. 
5. 
6. 
7. 

8. [REDACTED]

II

To inspect the following:

1. *ICTY Judgment in the case against Stanislav Galić No. IT-98-29-T of 5 December 2003,*
2. *ICTY Judgment in the case against Stanislav Galić No. IT-98-29-A of 30 November 2006,*
3. *Certificate of the Federation Commission for Missing Persons to the name of [REDACTED] No. 01-41-137-0/2007, of 11 September 2007,*
4. *Certificate of the Federation Commission for Missing Persons to the name of [REDACTED] No. 01-41-195-0/2007, of 11 September 2007,*
5. *Certificate of the Federation Commission for Missing Persons to the name of [REDACTED] No. 01-41-138-0/2007, of 11 September 2007,*
6. *Certificate of the Federation Commission for Missing Persons to the name of [REDACTED] No. 01-41-139-0/2007, of 11 September 2007,*
7. *Certificate of the Federation Commission for Missing Persons to the name of [REDACTED] No. 01-41-136-0/2007, of 11 September 2007,*
8. *Certificate of the Federation Commission for Missing Persons to the name of [REDACTED] No. 01-41-135-0/2007, of 11 September 2007,*
9. *Discharge letter to the name of [REDACTED] issued by the Clinical Center of the University in Sarajevo, Neurology Clinic, discharge date being 17 January 2000,*

10. Report by a specialist in internal medicine, Vrazova Health Center in Sarajevo, for [REDACTED] dated 1 October 2006,

11. Outpatient check-up of [REDACTED] at the Psychiatry Clinic of the Clinical Center of the University in Sarajevo on 20 December 2006.

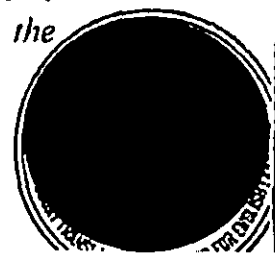
Results of the investigation:

The results of the investigation conducted by this Prosecutor's Office undoubtedly confirm that the suspect Mladen Milanović committed the criminal offenses he is charged with as described in Counts 1 and 2 of the operative part of the Indictment.

The grounded suspicion that the Suspect committed the criminal offenses he is charged with follows primarily from the statements of witnesses given before the Prosecutor's Office of B-H and statements of authorized official persons of the Federation Police Administration Sarajevo and from certain documents.

On the basis of the witnesses' statements and the ICTY Judgment in the case against Stanislav Galić No. IT-98-29-T of 5 December 2003, the Prosecutor's Office concludes that from 6 April 1992 and during the period relevant to the Indictment there was an ongoing armed conflict between the Armed Force of the Republic of Bosnia and Herzegovina and the Armed Force of the so-called Serb Republic of Bosnia and Herzegovina in the City of Sarajevo and its Municipalities, that is, in the territory of Vogošća Municipality.

It follows from the statements of the examined witnesses that during the armed conflict, the military, paramilitary and police forces of the so-called Serb Republic of Bosnia and Herzegovina carried out an attack against the Bosniak civilians in the territory of Vogošća Municipality. As witnesses [REDACTED] stated, following the occupation of the settlement of Svrake by the Serb military, all inhabitants were taken to the barracks in Semizovac. Witness [REDACTED] also stated that he was taken from his house and that he had surrendered his weapon earlier to [REDACTED] at his request. Witness [REDACTED] stated that the Serb soldiers captured all the men they found in the settlement of Nahorevo on 19 June 1992 and took them to the Jagomir hospital whereupon they transferred a number of them to the Bunker camp. It follows beyond doubt from the aforesaid that the injured parties, that is, the



persons who were prisoners in the Bunker camp against whom the unlawful acts of the suspect Mladen Milanović were directed, were civilians at the time of the capture. That is to say, they were under the protection of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, which is considered to be a part of international customary law, as the Convention gives the following definition of civilians: "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." The Prosecutor's Office also collected proofs in the course of the investigation, that is, certificates issued by the Federation Commission for Missing Persons confirming that the Prosecution witnesses were registered as prisoners in the Bunker camp in different periods that make up the time frame relevant to the Indictment.

It also follows from the witnesses' statements that the suspect Mladen Milanović was a member of the Serb force of the so-called Serb Republic at the time of the acts he is charged with in the Indictment, that is, that he was a guard in the Bunker camp at that time. That is to say, the investigation has showed that the suspect Mladen Milanović was directly associated with the capture and unlawful detention of non-Serb civilians in the Bunker camp in Vogošća, who were detained because of their ethnicity and without any legal ground. The investigation has also showed that the suspect Mladen Milanović was aware that abuse of prisoners, by him or by other persons, constituted a criminal offense.

It follows from the aforesaid that the Suspect, during the armed conflict in Sarajevo and its Municipalities, that is, in the territory of Vogošća Municipality, as a member of the Serb military force acted contrary to the provision of Article 3 of the Geneva Convention IV relative to the Protection of Civilian Persons in Time of War of 12 August 1949, because he participated in the commission of and aiding and abetting in the willful infliction of severe physical pain and suffering on the civilians detained in the Bunker camp in Vogošća and in offences against their personal dignity.

With respect to Count 1 of the Indictment, the investigation has showed that the Suspect personally beat the injured party ██████████ ██████████ in the manner described in detail in the operative part of the Indictment, as the injured party testified himself and subsequently the other Prosecution witnesses as well. During the investigation the Prosecutor's Office also obtained the injured party ██████████ ██████████

medical documentation showing that his health was seriously harmed, which can be considered a consequence of the severe physical and mental abuse of the injured party by the suspect Mladen Milanović and other persons whom the Suspect allowed to enter the camp.

The Prosecutor's Office also obtained the evidence corroborating Count 2 of the Indictment, that is, that the suspect Mladen Milanović, when on duty as a guard in the Bunker camp, allowed members of military and paramilitary formations to enter the premises of the Bunker and physically and mentally abuse the prisoners, especially prisoners [REDACTED] whom they abused cruelly, both physically and mentally, in the manner described in the operative part of the Indictment. The evidence collected in the investigation, primarily the statements of the injured parties, shows that the suspect Mladen Milanović knowingly and willfully helped the perpetrators of the unlawful act as demonstrated in a form of psychological support to the commission of the unlawful act and in the physical presence of the Suspect at the scene of the commission. In other words, his participation directly and significantly influenced the commission of that criminal offense through support to the actual perpetration, particularly if taken into account that, as a guard in the Bunker camp, he guarded the prisoners and that, in the specific case, he made it possible for the perpetrators of the criminal offense to enter the premises where the prisoners were detained. An analysis of the aforesaid shows beyond dispute that aiding and abetting in the commission of the criminal offense placed the Suspect's individual responsibility for the commission thereof in this context. The investigation has showed that the Accused's presence was not a result of ignorance or unwillingness, but of a fully knowing conduct, and that it had a significant effect on the commission of the unlawful act and it is, therefore, sufficient to draw the conclusion on his participation on that basis and attribute the corresponding criminal responsibility to him.

In the process of collecting evidence, that is, the investigation, witnesses were examined and it follows from their statements that the identity of the suspect Mladen Milanović has been established beyond doubt. The injured party [REDACTED] stated that Mladen Milanović had been his neighbor and that the Suspect had grown up together with his children. [REDACTED] also stated that he had known Mladen Milanović from his civilian life and that he had worked at Unis and lived in Semizovac. Witness [REDACTED] also stated that he had known the Suspect from before. Witness [REDACTED] had been close with



his family before the armed conflict began and they had been visiting each other and had attended the elementary school together. All the aforementioned witnesses remembered that Mladen Milanović was one of the guards in the Bunker camp and that he stood out by cruelty toward the prisoners.

Based on the foregoing, it could be clearly concluded that there exists the grounded suspicion that the Suspect committed the criminal offense as charged in the Indictment.

Therefore, the Prosecutor's Office of B-H considers this Indictment to be fully justified and moves the Preliminary Hearing Judge of the Court of B-H to confirm it in its entirety.

Materials supporting the arguments in the Indictment:

1. Record on questioning the suspect Mladen Milanović, Prosecutor's Office of B-H, No. KT-155/06, of 1 August 2007,
2. Record on examination of witness [REDACTED] No. 13/5-4-114, of 15 August 2006, Federation Police Administration, Sarajevo,
3. Record on examination of witness [REDACTED] No. 13/5-4-115, of 15 August 2006, Federation Police Administration, Sarajevo,
4. Record on examination of witness [REDACTED] No. 13/5-4-116, of 15 August 2006, Federation Police Administration, Sarajevo,
5. Record on examination of witness [REDACTED] No. 13/5-4-117, of 15 August 2006, Federation Police Administration, Sarajevo,
6. Record on examination of witness [REDACTED] No. 13/5-4-121, of 25 August 2006, Federation Police Administration, Sarajevo,
7. Record on examination of witness [REDACTED] No. 13/5-4-122, of 25 August 2006, Federation Police Administration, Sarajevo,
8. Record on examination of witness [REDACTED] No. KT-RZ-155/06, of 30 October 2007, Prosecutor's Office of B-H,
9. Record on examination of witness [REDACTED] No. KT-RZ-155/06, of 30 October 2007, Prosecutor's Office of B-H,
10. Record on examination of witness [REDACTED] No. KT-RZ-155/06, of 30 October 2007, Prosecutor's Office of B-H,
11. Record on examination of witness [REDACTED] No. KT-RZ-155/06, of 31 October 2007, Prosecutor's Office of B-H,

12. Record on examination of witness [REDACTED] No. KT-RZ-155/06, of 31 October 2007, Prosecutor's Office of B-H,
13. Record on examination of witness [REDACTED] No. KT-RZ-155/06, of 31 October 2007, Prosecutor's Office of B-H,
14. Record on examination of witness [REDACTED] No. KT-RZ-155/06, of 3 October 2007, Prosecutor's Office of B-H,
15. Record on examination of witness [REDACTED] No. KT-RZ-155/06, of 3 October 2007, Prosecutor's Office of B-H,
16. Certificate of the Federation Commission for Missing Persons to the name of [REDACTED] No. 01-41-136-0/2007, of 11 September 2007,
17. Certificate of the Federation Commission for Missing Persons to the name of [REDACTED] No. 01-41-135-0/2007, of 11 September 2007,
18. Certificate of the Federation Commission for Missing Persons to the name of [REDACTED] No. 01-41-139-0/2007, of 11 September 2007,
19. Certificate of the Federation Commission for Missing Persons to the name of [REDACTED] No. 01-41-138-0/2007, of 11 September 2007,
20. Certificate of the Federation Commission for Missing Persons to the name of [REDACTED] No. 01-41-137-0/2007, of 11 September 2007,
21. Certificate of the Federation Commission for Missing Persons to the name of [REDACTED] No. 01-41-195-0/2007, of 11 September 2007,
22. Discharge letter to the name of [REDACTED] issued by the Clinical Center of the University in Sarajevo, Neurology Clinic, discharge date being 17 January 2000,
23. Report by a specialist in internal medicine, Vrazova Health Center in Sarajevo, for [REDACTED] dated 1 October 2006,
24. Outpatient check-up of [REDACTED] at the Psychiatry Clinic of the Clinical Center of the University in Sarajevo on 20 December 2006.

MOTION TO EXTEND CUSTODY

Pursuant to Article 227 (3) and Article 137 (1) of the CPC B-H, the Prosecutor's Office of B-H moves the Court to order the suspect Mladen Milanović into extended custody after the confirmation of the Indictment on the grounds set forth in Article 132 (1) (a) and (b).

It can be concluded from the results of the investigation, that is, the collected evidence, that there exists the grounded suspicion that the suspect Mladen Milanović committed the offense of War Crimes against Civilians in violation of Article 173 (1) in the manner, at the time and place and under the circumstances indicated in the relevant criminal offense contained in the operative part of the Indictment. Thereby the basic condition for ordering custody, the existence of the grounded suspicion that the accused committed the criminal offense he is charged with, has been met, which is also set forth in Article 5 of the European Convention on Human Rights, that is, the existence of legal grounds on which lawful custody can be based.

In addition to the general condition for ordering custody, the Prosecutor's Office of B-H also submits that the special conditions set forth in Items (a) and (b) of Article 132 (1) of the CPC B-H, have been met.

In other words, as has been stated in the previous Motions for ordering/extending custody of the suspect Mladen Milanović filed by the Prosecutor's Office of B-H, it was established on the basis of the Decision of the Ministry of Civil Affairs of B-H, Sector for Citizenship and Personal Documents, No. 03-204-111999-MN/03 of 27 October 2003, in which the Suspect renounced the B-H citizenship, that the Republic of Austria granted him the citizenship of Austria.

After the Court ordered the Suspect into custody pursuant to the Decision No. X-KRN-07/326 of 24 January 2007, the Suspect was deprived of liberty following an international warrant and the Court rendered the Decision No. X-KRN-077326 of 27 July 2007 declaring the previous Decision ineffective and ordering custody again.

Based on the foregoing, the Prosecutor's Office of B-H moves the Preliminary Hearing Judge of the Court of B-H to order the suspect Mladen Milanović into extended custody on the grounds set forth in Article 132 (1) (a) and (b) of the CPC B-H, as it considers that there still exist the facts and circumstances indicated in the previous Decisions of the Court that justify the Suspect's stay in custody.

With respect to the grounds for custody set forth in Article 132 (1) (a) of the CPC B-H, the Prosecutor's Office stresses that the Suspect was deprived of liberty pursuant to an international warrant, that he does not have either a permanent or a temporary residence in Bosnia and Herzegovina, that he renounced the citizenship of Bosnia and

Herzegovina and that he holds the citizenship of the Republic of Austria only, which indicates that it is justified to fear that, if released, the Suspect might leave the territory of Bosnia and Herzegovina, due to which extension of custody on this legal ground is necessary.

It is also necessary to take into account the fact, noted in the Decision of the Court of B-H No. X-KRN-07/326 of 9 November 2007, that the Republic of Austria is a signatory to the European Convention on Extradition, which provides that a contracting state may reject extradition of its citizens, and that Bosnia and Herzegovina took over the bilateral Treaty on Extradition between the SFRY and Austria whose Article 3 strictly prohibits extradition of these countries' respective citizens. The aforesaid indicates a realistic risk that the Suspect, if released, might flee the territory of Bosnia and Herzegovina, thus hinder the further proceedings in this case.

With respect to the custody ground referred to in Item (b) of Article 132 (1) of the CPC B-H, the Prosecutor's Office considers that there exist specific elements in favor of the decision to extend custody on this ground, as the relevant charge is a grave one and of such nature that, knowing that the Suspect is at liberty, the witnesses might hinder the further investigation into the criminal offense in this case, due to fear and psychological traumas. The Prosecutor's Office also stresses that, whilst there has been no information so far that the Suspect tried to influence the witnesses, that is, attempted to hinder the proceedings, there is, nevertheless, a realistic risk that he might do so, given the fact that some of the witnesses are next-door neighbors in the Suspect's former place of residence where his mother, whom he had visited prior to his arrest, still lives, which, again, makes a possibility of wielding influence easier. The Prosecutor's Office further stresses that the measure of custody against the Suspect is also justified because confirmation of the Indictment would launch the second stage of the proceedings, that is, the main trial at which the witnesses would be examined by the parties and the Defense Counsel and that, thereby, it is necessary to prevent potential influence on the witnesses at that stage of the proceedings, too.

Based on the foregoing, I consider the Motion to order the suspect into extended custody to be well-founded and, hence, propose that it be granted.

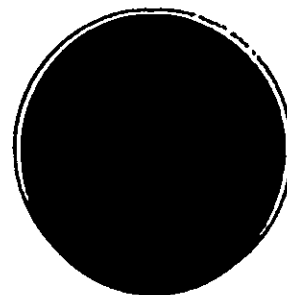
**MOTION TO TRANSFER CONDUCT OF THE PROCEEDINGS TO
THE COURT IN WHOSE TERRITORY THE CRIMINAL OFFENSE
WAS COMMITTED, PURSUANT TO ARTICLE 27 OF CPC B-H**

The Prosecutor's Office of B-H submits that in the current case there exist reasons justifying the proposal that the conduct of these proceedings is transferred to the court having territorial jurisdiction, that is, the court in whose territory the criminal offense was committed.

In other words, it is a fact that the resources and the personnel of the Prosecutor's Office of B-H and the Court of B-H respectively are insufficient at this moment for a fast and efficient processing of war crimes cases, especially given the enormous number of cases in the investigation stage that require the Prosecutors' full attention, on the one hand, and the Court's obligation to form a trial panel composed of one national and two international judges for each war crime trial and to secure continuous trial dates, on the other. However, the fact that the courtrooms are occupied can lead to a delay in the proceedings, thus to violation of the accused's right to a fair trial. In addition to this, all the Prosecutors of the Special Department for War Crimes of the Prosecutor's Office of B-H work intensely on completing a large number of investigations and, consequently, filing a large number of new indictments can realistically be expected, which implies an additional workload for the Court.

Contrary to this, the courts in the Federation of Bosnia and Herzegovina and Republika Srpska are not burdened with such a huge number of war crimes cases as is the Court of B-H, and they have resources for trying these cases.

The case against the suspect Mladen Milanović is not a complex one, as he is charged with one criminal act only and the acts of aiding and abetting whose consequences are more lenient than in the majority of the cases tried before the Court of B-H. We therefore submit that in the case concerned the court with territorial jurisdiction could conduct high-quality and efficient criminal proceedings, especially in view of the fact that all the proposed witnesses live in the area of the territorial jurisdiction of the court in whose territory the offense was committed.



Based on the foregoing, we hereby move the Court of B-H to render a decision, pursuant to Article 27 of the CPC B-H, transferring the conduct of these proceedings to the court having territorial jurisdiction, that is, the court in whose territory the criminal offense that the Suspect is charged with was committed.

**PROSECUTOR
PROSECUTOR'S OFFICE OF B-H**

*Behaija Krnjić
[signature affixed]
[seal of the Prosecutor's Office of B-H affixed]*

I hereby confirm that this document is a true translation of the original written in Bosnian/Serbian/Croatian.

Sarajevo, 17 December 2007

*[redacted]
Certified Court Interpreter for English*

