

DISTRICT COURT OF GJILAN
P Nr 68/2000
06.03.2001

IN THE NAME OF THE PEOPLE

The **District Court of Gjilan**, as a court of first instance, composed of Patrice de Charette, presiding judge, Hasan Sadiku, judge, and Halit Gashi, Elfete Shala and Tefik Muji, lay judges, assisted with minute taker Igballe Azemi, in a penal case against the accused

Momcilo TRAJKOVIC, of father Lazar and mother Lubica born Zhivkovic, born on 03.05.1947 in the village of Carakove, permanent resident of Kamenica, M. Pijade street, Serb, married, father of three children, with a University degree, completed regular military service, of medium economic status, no criminal record, in custody since 07.09.1999

For criminal acts of:

- war crimes against civilian population from 24.03.1999 until the day of the entry of the International Forces in Kosovo, under Article 142 of Criminal Law of Yugoslavia, according to the indictment of the Public Prosecutor of Gjilan No 115/2000 of 21.09.2000
- attempted murder on 27 June 1999 in Kamenica, under Article 30 par. 1 in connection with Article 19 of Criminal Law of Yugoslavia and illegal possession of weapons and explosive material in Kamenica until 7 September 1999, under Article 199 par. 3 in relation with par. 1 of Criminal Law of Kosovo, according to the indictment of the Public Prosecutor of Gjilan No 84/2000 of 3 April 2000,

After the main hearing was held in public on 23, 24, 27, 30 November, 01, 04, 05, 06, 07, 08 December 2000, 09, 10, 15, 26 January, 08, 13, February and 01 March 2001 in the presence of the parties, the Deputy Public Prosecutor of Gjilan Vaxhid Idrizi, the accused and his attorneys Zhivojin Jokanovic and Stoja Gjurishic

And the aggrieved parties:

- Mehmet Ramnabaja, M. Nicolic street no 57, Kamenica
- Ibrahim Berisha, M. Nicolic street no 36, Kamenica
- Avdullah Berisha, Z. Hajdini no 40, Kamenica
- Hadjar Ramnabaja, Malesia str, Kamenica
- Xhemail Limani, A. Presheva str no 65, Kamenica
- Taibe Isufi, Kamenica
- Fatmire Kastrati, « 29 Nentori » str, Kamenica
- Rexhep Mehmeti, Blendit str no 33, Pristina
- Bahtije Sinani, Village Leshtar, Kamenica
- Avdyl Demolli, Village Krileve, Kamenica
- Eqir Demolli, Village Krileve, Kamenica
- Latif Latifi, Village Petrovc, Kamenica
- Arif Krasniqi, Malesia str no 74, Kamenica
- Fetije Thaqi, Village Karaqeve e Ullet, Kamenica

- Ferije Sabedinaj, Ulpiana P-4/1, Pristina
- Selatin Ismajli, Village Matiqan, Pristina
- Bejtije Kryeziu, Village Ragacice, Kamenica
- Musa Keka, Village Karaqeve Ulet, Kamenica
- Sabri Dermaku, Village Shipashnice e Eperme, Kamenica
- Harje Shurdani, Village Policke, Kamenica
- Shefki Berisha, Village Honodeve, Kamenica
- Halime Haxhiu, Village Koretin, Kamenica
- Sinan Selishta, 7 Korriku no 7, Kamenica
- Xhavit Ramadani, Village Koretin, Kamenica
- Raif Ramadani, Village Koretin, Kamenica
- Mevlud Fazliu, M Nikolic str no 49, Kamenica
- Gezim Limoni, A. Presheva str no 65, Kamenica

On the hearing held on 06 March 2001 publicly announced this

VERDICT

The accused Momcilo Trajkovic

I

IS GUILTY

Of **attempted murder** on 27 June 1999 in Kamenica, according to the indictment of 3 April 2000, under Article 30 par. 1 in connection with Article 19 of the Criminal Law of Yugoslavia

Reasons:

The facticity of the act is established on the basis of the injuries suffered by Mevlud Fazliu who received a treatment in the Medical Center in Gjilan and produced the medical certificate.

The statement of the latter and of his friend Arif Pireva describe precisely what happened when they were shot by the accused from his apartment with an automatic rifle, after they hoisted an Albanian flag on the former building of Internal Affairs.

These statements were checked during the reconstruction on the spot which proved that it was possible to shoot from the window of the Trajkovic's apartment towards the victims located close to the fence of the yard, trying to flee after having heard the accused screaming.

They are confirmed by the witness Xhevdet Krasniqi, neighbour of the accused who stated that, standing on his balcony, on the floor under the apartment of the accused, he heard Momcilo Trajkovic shouting in a loud voice in Serbian language: "I can't imagine how it's possible that someone can put up an Albanian flag in the middle of the day", then heard him shooting several times.

In face of this evidence, the testimony produced by the defense about the presence of the accused in another place at the time of the incident cannot be considered as reliable.

Thus, Momcilo Trajkovic is declared guilty of this crime, with the correction that the shots came from the window above the street and not from the balcony.

II

IS GUILTY

Of **illegal possession of weapons and explosive material** in Kamenica until 7 September 1999, according to the indictment of 3 April 2000, under Article 199 par. 3 in relation with par. 1 of Criminal Law of Kosovo

Reasons:

One AK 47 rifle, 300 bullets and two hand grenades were discovered in the apartment of the accused by KFOR soldiers on 7 September 1999 during a search. The explanations of Momcilo Trajkovic, stating he found them just prior to that in another apartment that was broken into are illogical and not convincing, since it's clear that an unknown person having broken the door would have taken these weapons and ammunition.

Besides, according to the witness Bryan Hunlock, US-KFOR soldier, the accused gave a false statement before the search, telling that he didn't have any weapon in his flat, but at the beginning of the search, suddenly said that he had something to give to the soldiers.

Thus, there is enough evidence that the accused committed this offence.

III

IS ACQUITTED

According to Article 350 par. 3 of Criminal Procedure Law of Yugoslavia,

For the following crimes, qualified war crimes under Article 142 of Criminal Law of Yugoslavia according to the indictment of 21 September 2000

- on 1 April 1999, in Kamenica, injuries of Raif Ramabaja with firearms. Reason: Raif Ramabaja stated before the investigating judge and during the trial that he was not wounded
- on 3 April 1999, in Kamenica, injuries of Ibrahim Berisha and Abdullah Berisha, with a hand grenade thrown in their backyard. Reason: the victims didn't see the perpetrators of the crime. There is no proof it was an organized act
- on 17 April 1999, in Kamenica, injuries with firearms of Gezil Limani and Vlera Shabani. Reason: there is no proof they were wounded.
- on 1 May 1999 at the place named Qafa and Kopernices, murder of Emin Jerliu and Ramadan Sijarina. Reason: the exact circumstances of the death of Ramadan Sijarina, disappeared on the road are unknown and there were no witnesses. There are no information on the death of Emin Jerliu.

- on 11 May 1999 in the village Hodonovc, injuries of Shefki Berisha and Hajrije Shurdani while they were traveling in their vehicle. Reason: there is no proof it was an organized act.
- on 20 May in the village Koretin, injuries of Sinan Selishta, Halime Hazliu and Xhavit Ramadani. Reason: there is no proof it was an organized act.

And for these general reasons:

- Article 35 of the Law on Internal Affairs (Official Gazette of Kosovo 46/1987) foresees that the Head of Internal Affairs is in charge of administrative matters
- but:
 - = 1) the Federal Republic of Yugoslavia's Constitution (Article 78 par 3 and Art 99 par 1) and the Republic of Serbia's Constitution (Article 83 par 1) provide for the possibility of derogations of the ordinary provisions concerning the work and organization of State agencies and Ministries after the proclamation of state of war
 - = 2) the Law on Defense of the Federal Republic of Yugoslavia (Official Gazette 27 May 1994), Articles 15 and 17, allows the use of units and bodies of Ministry of Internal Affairs in combat tasks, fighting or conducting armed resistance particularly in case of declaration of state of war
 - = 3) the state of war was declared by the Yugoslavian government on 24 March 1999
 - = 4) a Decree on the powers of the Internal Affairs during the state of war (Official Gazette of Republic of Serbia, 7 April 1999), Article 8, allowed the Minister of Interior to relocate any employee if the interests of the service require
 - = 5) the ordinary Law on Internal Affairs, Article 38, foresees a specific Act on War Organization and Systematization of the Working Positions establishing that during the state of war, units and positions can merge and group together creating a new list of duties and allocation plan.

Therefore, it's obvious that the competences of Momcilo Trajkovic were not limited to administrative matters during the time of the war. The precise competences of the accused were perfectly known by the people of the Kamenica area. It's remarkable to notice that, when they wanted to get news of their relatives disappeared, they came directly to Momcilo Trajkovic, to his office and sometimes to his private house, and not to the Head of Police (in particular, Hazir Thaqi about the disappearance of Asslan Thaqi, Naime Keka and the brothers of Ramadan Kastrati about the disappearance of the latter, Zenan Jerliu about the disappearance of his brother Emin Jerliu, according to the testimony of Haqif Jerliu).

Besides, according to several testimonies, the accused acted personally in preparation or execution of some crimes.

Thus, Ramadan Morina, examined on 10.07.2000 by the investigating judge and on 08.12.2000 by the Court, stated that on 23 March 1999, several policemen from Kamenica came to his house to take his buses and his car "Mercedes", which was taken by Momcilo Trajkovic himself. He added that, on 27 April 1999 at the Police Station of Kamenica, he was interrogated and punched by the accused who told him in Serbian language: "Serbs will fight until the last Albanian will die".

The witness Taip Mala, heard by the Court on 09.01.2001, stated that he saw Momcilo Trajkovic on 09 May 1999 on the road close to Bujanovc, in a black car "Golf", talking in Serbian language with policemen Ahmet Ameti and Krana about preparation of a planned action. He added that, after 11 May, when several villages were surrounded, he found a list

with names of several persons to be killed. In this list were in particular the names of Ramadan Latifaj and Mehmet Sabedinaj, who had been killed on that day.

These different elements constitute the proof that Momcilo Trajkovic is personally responsible of the criminal acts committed in the Kamenica area against civilian population, but only for organized actions and not for isolated ones.

IV

IS GUILTY

Of the following crimes, qualified war crimes under Article 142 of Criminal Law of Yugoslavia according to the indictment of 21 September 2000:

- on 1 April 1999, in Kamenica, injuries with firearms of Mehmet Ramabaja. Reason: the victim identified the shooter, Dragan, who declared that he did it acting upon the order of Momcilo Trajkovic.
- on 11 April 1999 in Kamenica, arson of a house and a bus of Hajdar Ramabaja. Reason: few hours before, with other policemen, Momcilo Trajkovic came to the driving school of the later and threatened to put on fire the house and the bus if they didn't get the keys.
- on 17 April in Kamenica, injuries with firearms of Xhemail Limani. Reason: one of the shooter, named Streqka, from the police station of Kamenice, was recognized by the witnesses
- on 17 April 1999 in village Krileve, kidnapping and maltreatment of Haqif Demolli. Reason: the victim identified two policemen from Kamenica, Vlado Trajkovic and Nenad Trajkovic
- on 18 April 1999, creation of panic and terror and eviction of civilian population in villages of Strezovc, Leshtar, Rahovice, Krileve, and murder of Ahmet Mehmeti, Arsim Isufi, Shemsi Isufi and Ramadan Kastrati. Reason: it was a planned and organized action, committed by a number of forces, especially police forces.
- on 18 April 1999 in village Krileve, injuries with firearms of Zeqir Demolli, Avdyl Demolli and Bahtije Sinani. Reason: the action was undertaken on the same day, particularly by police forces.
- on 19 April 1999, in Petrovc, eviction by force of civilian population, arson of houses and disappearance (and not murder, as indicated in the indictment) of Murtez Sherifi and Fadil Sherifi. Reason: it was a planed action, undertaken by police forces.
- on 4May 1999 in Kamenice, injuries of Arif Kraniqi. Reason: this action was undertaken by policemen from Kamenica, especially by five identified by the victim.
- on 11 May 1999, surrounding of Hoghost, Kopernice, Shispanice, Kranidell, Upper Karaqeve, Lower Karaqeve, Rogocice, Hodonovc, Topanice and Koretin villages, with lists of names already compiled, murder of Ramadan Latifaj, Mehmet Sabedinaj, Ismail Ismajli, Nevzat Kryeziu, Asslan Thaqi. Reason: it was a planed and organized action, undertaken in particular by police forces, with lists of names prepared in advance.
- on 17 May 1999, in village Topanice and in Kamenice, kidnapping, maltreatments and torture of Rexhep Morina. Reason: these acts were committed by policemen from Kamenica, inside the police station.

And for the general reasons mentioned above.

These crimes will be qualified *crimes against humanity*.

Reasons:

War crimes against civilian population:

This crime, envisaged in Article 142 of the Criminal Law of Yugoslavia, concerns attacks against civilian populations during the war or armed conflict resulting in death, grievous bodily harms or inhuman treatment or displacement of populations.

This qualification doesn't include an essential element, characteristic of the treatment inflicted to Kosovo: the existence of widespread or systematic attack against civilian population. This circumstance is one of the components of the crime against humanity defined by international laws.

Then, it is necessary to seek if Article 142 allows to retain against the accused the elements of this crime.

Crime against humanity:

The crimes against humanity are explicitly mentioned in Article 37 dealing with crimes punishable by death. Article 37 par. 4 quotes among these crimes the "criminal acts against humanity and international law".

On the other hand, Article 142 is located in a Chapter 16, named "Criminal acts against humanity and international law".

Besides, Article 142 refers expressly to "violation of the rules of the international law". The international law doesn't include only international texts in the applicable codes or international treaties regularly signed by the State concerned. It must also be taken firstly as *general principles of international law* recognized by all the nations.

This principle was expressed in the "Martens clause" stated in the Preamble to Convention II of the Hague of 1899: "Until a more complete code of the laws of the war is issued, the High Contracting Parties think that it is right to declare that, in case not included in the Regulations adopted by them, populations and the belligerents remain under the protection and the empire of the principles of international law, such as they result from the usages established between civilized nations, from the laws of humanity and the requirements of the public conscience".

Each of the 1949 Geneva Conventions on protection of civilians during the war draws upon the text of the Martens Clause: I (article 63), II (article 62), III (article 142), IV (article 158). This reference appears also in article 1 of the additional Protocol I of 1977 and in the preamble to the additional Protocol II.

The international law includes as well the *Customary International Law*. Article 38 of the Statute of the International Court of Justice, established in the Hague for the settlement of litigations involving States, defines these rules as follows: "International custom as evidence of a general practices accepted as law". According to the Customary International Law, it is

possible to refer in particular to the rules included in the *statute* of the International Courts, as well as with the *jurisprudence* of these courts.

The London Agreement of 8 August 1945 (article 6 c) foresees the existence of crime against humanity, as well as article 10 of the Control Council Law and the statute the International Military Tribunal of Nuremberg. The statute of the Tokyo International Tribunal (article 5 c) also envisages the existence of this crime.

Article 5 of the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) includes a precise definition of the crime against humanity, taken up in article 7 of the Statute of the future International Criminal Court created by the Treaty of Rome on 17 July 1998: constitutes a crime against humanity one of the acts taken again essentially by article 142 of Criminal Law of Yugoslavia, when it is committed within a "widespread or systematic attack against any civilian population, with knowledge of the attack".

In the Tadic decision, ICTY worked out the conditions required for the existence of the crime against humanity by analyzing in a precise way particularly the concepts of war or armed conflict and civilian population, by deciding that a discriminatory intent was required only for racial persecution crimes and by estimating that, insofar as the other conditions were in addition met, an act carried out for purely personal motives could constitute a crime against humanity (ICTY Appeal Chamber, Tadic, 15 July 1999, IT-94-1-T).

According to Article 16 of the Federal Republic of Yugoslavia Constitution, these "generally accepted rules of international law shall be a constituent part of the internal legal order"

As a result of the whole of these elements, it is appropriate to decide that the reference in article 142 of the Criminal Law of Yugoslavia to the violation of the rules of the international law makes it possible to charge the author of the acts aimed by this text with crimes against humanity, when these acts were committed within a widespread or systematic plan of attack against the civilian population.

According to the facts pointed out previously, there are sufficient evidences that Momcilo Trajković committed the acts that he is charged with, in time of war (characterized by going in the conflict of the international NATO armed forces), against the civilian population and within a concerted plan aiming systematic atrocities of which he had a complete knowledge.

As a result, it is necessary to declare the accused **guilty of crimes against humanity**, on the grounds of Article 142 of Criminal Law of Yugoslavia.

V

SENTENCE

Determination of the sentence for crimes against humanity

It is necessary to apply the 1990 amended article 142.

Indeed, the Regulation 1999/24 states that the applicable laws in Kosovo are those in force on 22 March 1999, but adds that post 1989 laws apply if they address a subject matter that is not already covered (Section 1.2) or if they contain provisions more favorable to a criminal defendant (Section 1.4).

The 1990 amended article foresees 20 years imprisonment as a maximum sentence. It is thus more favorable to the defendant than the previous version of the same text, which contained the death penalty.

Anyway, after the abolition of the death penalty by the Regulation 1999/24, the maximum penalty applicable in Kosovo to authors of crimes previously punished by death is now twenty years of prison.

Indeed, when a supreme penalty is abolished without being replaced, it's necessary to refer to the penalty immediately underneath when it was applicable. In this regard, Article 38 par. 2 of Criminal Law of Yugoslavia stipulated that the court might impose a punishment for 20 years or imprisonment for a criminal act eligible for the death penalty.

This Article was not expressly repealed by the Regulation 1999/24 and cannot be considered as included in the general abolition of death penalty by this Regulation.

Indeed, Article 38 par. 3, which is without connection with death penalty, is still in force. As an exception to Article 38 par. 1, which foresees a general maximum of fifteen years of prison, this text allows to impose a punishment of twenty years of imprisonment for the offences punished with a term of fifteen years, if they were committed with intent and particular aggravating circumstances or caused grave consequences, when it is provided by the Law.

Then, such a twenty years penalty can be imposed for grave case of plunder (Art. 141.2 KCL), special grave acts against general security (Art. 164-3 KCL), counterfeiting money or falsifying representative of values with consequent upset in the national economy (Art. 168-3 and 169-2 YCL), grave case of robbery in office (Art. 177-2 YCL), grave case of hijack of aircraft (Art. 240 YCL) or jeopardizing the safety of an aircraft's flight (Art. 241-2 YCC).

Therefore, the thesis of the abrogation of Art. 38-2 would create a paradoxical situation of an inversion of the hierarchy of penalties, since a less severe maximum punishment (15 years) could be imposed for the most serious offences.

Then, it is established that 20 years of prison are now the penalty incurred by the authors of crimes previously punishable by death.

It follows that the sentence incurred by the accused is 20 years imprisonment. The extreme gravity of the committed acts, in the circumstances detailed previously, justifies to sentence Momcilo Trajkovic to the maximum of this penalty.

Determination of the sentence for the other offences

For the other offences, the Court defines:

- for illegal possession of weapons and explosive materials, 4 months of prison
- for attempted murder, 3 years of prison

Global sentence

According to Article 42 of Criminal Law of Yugoslavia, when a sentence of 20 years of prison is defined for one type of crimes, only this sentence is pronounced.

Thus the Court sentences Momcilo Trajkovic to **20 years of imprisonment.**

This time includes the pre trial detention, from 7 September 1999.

The detention of the accused shall continue until the omnipotence of this decision, according to a separate decision based on article 353 par. 1 and 6 of Criminal Procedure Law of Yugoslavia.

The Court decides on the confiscation of the AK 47 rifle, the 300 bullets and the two hand grenades, according to article 69 of Criminal Law of Yugoslavia.

The costs of the criminal proceedings will be paid by the accused.

The injured parties can present their compensatory claim in a new trial before the competent civil Court.

From what was said above, it was decided as in the enacting clause of this decision act.

DISTRICT COURT OF GJILAN
ON 06.03.2001

Minute taker

Presiding Judge

Judicial information: You have the right to appeal against this decision in Supreme Court of Kosovo, in Pristina, no later than 15 days after receiving this decision. You have to make two copies of this appeal, which will be sent by the intermediate of this Court.