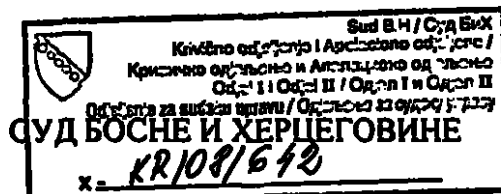


SUD BOSNE I HERCEGOVINE



Number: X-KR-08/642
Sarajevo, 22 April 2009

PREKOD DOK. 121

The Court of Bosnia and Herzegovina, Section I for War Crimes, in the Appellate Division Panel presided by Judge Azra Miletić, panel members, judges John Fields and Dragomir Vukoje, with legal associate Nevena Aličehajić participating as the record-taker, in the criminal case against the Accused Tomo Jurinović, for the criminal offence of War Crimes against Civilians in violation of Article 173(1) a) and e) of the Criminal Code of Bosnia and Herzegovina (hereinafter: the BiH CC), as read with Article 180(1) of the same law, deciding on the Appeals of the Prosecutor’s Office of Bosnia and Herzegovina and the Accused Tomo Jurinović filed by Attorney Vlado Slišković, his Defence Counsel, from the Decision of this Court Number X-KR-08/642 of 24 March 2009, in the session of the Panel held on 22 April 2009, pursuant to Article 321(1) and (3) of the Criminal Procedure Code of Bosnia and Herzegovina (hereinafter: the BiH CPC), rendered the following:

DECISION

to grant the Appeals of the Prosecutor’s Office of Bosnia and Herzegovina and Attorney Vlado Slišković, Defence Counsel for the Accused Tomo Jurinović, so that the Decision of the Court of Bosnia and Herzegovina Number X-KR-08/642 of 24 March 2009 is revised so as to grant the Motion of the Prosecutor’s Office of BiH submitted to the Court of BiH together with the Indictment, Number KT-RZ-80/08 of 16 April 2007, which was confirmed on 12 September 2009 *in toto*, and the conduct of the proceedings in the criminal case against the Accused Tomo Jurinović is transferred to the District Court Banja Luka, in Banja Luka, as the Court with territorial jurisdiction.

Reasoning

The Decision of the Court of Bosnia and Herzegovina (hereinafter: the Court of BiH) Number X-KR-08/642 of 24 March 2009 dismissed as unfounded the Motion of the Prosecutor’s Office of BiH contained in the Indictment Number KT-RZ-80/08 of 10 February 2009, for the transfer of the the proceedings against the Accused Tomo Jurinović to the Court with territorial jurisdiction.

The Prosecutor’s Office of Bosnia and Herzegovina (hereinafter: the Prosecutor’s Office of BiH) filed the Appeal from the referenced Decision in a timely manner, moving that the Appellate Panel of the Court of BiH uphold the Appeal and reverse the first-instance Decision to dismiss the Motion for the transfer of the proceedings to the Court with territorial jurisdiction or to grant the Appeal and revise the first-instance Decision, and refer the Case to the Court with territorial jurisdiction. The Prosecutor’s Office notes that the Panel of the Court of BiH, deciding on the Motion for the transfer of the proceedings to the Court with territorial jurisdiction, incorrectly established the state of facts relevant for rendering of the referenced Decision. In particular, although the Court has discretion, it has not the obligation, to decide on the transfer of proceedings to a lower court when it is important

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reasons“ are satisfied, the decision of the first-instance Panel of the Court of BiH is not correct in the present case, because it was not adequately reasoned. The Appeal reiterates all those reasons for which it was originally proposed that the conduct of these proceedings be transferred to the Court with territorial jurisdiction, and particularly that, while rendering the contested Decision, the Court did not take into account the reasons referring to the complexity of the Case, noting that the Accused is charged with the criminal offence which, with regard to its gravity and consequences, is less serious than criminal offences whose perpetrators are mainly tried before this Court. Also, the Prosecutor's Office notes that the complexity of the case is the basic criterion for the Court to decide on taking over of a case in its jurisdiction pursuant to Article 449 of the BiH CPC , so that by analogy any decision on transfer of cases should be guided by the same criterion .The Prosecutor's Office disagrees with the finding of the Trial Panel that the transfer of the Case to a lower court would cause further adjournment of the main trial, and also notes that there does not exist any legal grounds to take into consideration those assumed averments at all while rendering a decision on the transfer of the proceedings to the lower court.

The Defence Counsel for the Accused also filed the Appeal from the referenced Decision stating therein that he entirely upheld the complaints and proposals from the Appeal of the Prosecutor's Office of BiH. The Defence Counsel refers to the one of the fundamental rights of the Accused pursuant to Article II/3 (e) of the Constitution of BiH and Article 6, Paragraph 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the right to trial without delay. The Defence Counsel specifically notes that in these proceedings the Defence has intention to hear a large number of witnesses from the area of Banja Luka and Kotor Varoš, and also to present a large number of documentary pieces of evidence which need to be obtained in that area, and thereby the proceedings before the Court of BiH could not be completed within a short period of time, as the Court concluded in its Decision; just the opposite, the transfer of the proceedings to the District Court in Banja Luka as the Court with territorial jurisdiction would contribute to the more efficient and cost-effective conduct thereof.

It is further stated in the Appeal that, although the proceedings were conducted against Marko Škrobić before the Court of BiH, it cannot be the reason for the decision on jurisdiction of the Court of BiH in this Case, and also that the proceedings against Tomo Jurinović pertain to separate and unconnected events, and a non-final decision of the Court of BiH in the proceedings against Marko Škrobić could affect the objective and impartial trial in this Case.

In response to the Appeal of the Prosecutor's Office of BiH, the Accused Tomo Jurinović stated that he fully supports all of the appellate arguments of the Prosecutor.

In response to the Appeal of the Defence, the Prosecutor's Office notes that it disagrees with the finding of the Defence Counsel for the Accused that the proceedings against Marko Škrobić pertain to separate and unconnected, but at the same time it argues that unfounded are the averments that a non-final decision in that case could affect the objective and impartial trial. In the remaining part the Prosecutor's Office agrees with the appellate arguments of the Defence.

After the Appellate Panel had examined the contested Decision in connection with the appellate arguments, it rendered the decision as stated in the operative part for the hereunder reasons:

The Appeal of the Prosecutor's Office of BiH, whose appellate arguments are accepted by the Defence, reasonably points that, while rendering the contested Decision, the first-instance Panel incorrectly applied the law when on the grounds of established and almost incontestable facts it drew the incorrect conclusion that the legal requirements for the transfer of jurisdiction from the Court of BiH to the court with territorial jurisdiction were not satisfied.

More specifically, given Article 27(1) of the BiH CPC which describes the transfer of the proceedings to jurisdiction to the court with territorial jurisdiction, and which prescribes three requirements to be cumulatively satisfied in order that this transfer could be carried out, the first-instance Panel correctly established that the offence with which Tomo Jurinović is charged is not the criminal offence against the integrity of BiH, and that, since the main trial has not been scheduled, two out of three requirements for the transfer of jurisdiction to the lower court were satisfied. However, as regards the third requirement, the first-instance Panel did not find the presence of the "important reasons" which must be satisfied in order that the transfer could be carried out to the lower court.

It is noted in the contested Decision that the averments contained in the Motion of the Prosecutor's Office, more precisely less complex and less sensitive case as compared to other cases that are tried before the Court of BiH, excessive caseload of both the Court and the Prosecutor's Office, cannot be regarded as "important reasons" referred to in Article 27 of the BiH CPC. While rendering the contested Decision, the Panel was particularly guided by the fact that the proceedings against Marko Škrobić, accused of participating in the same incident charged against Tomo Jurinović, were conducted and was completed before the Court of BiH by a non-final decision. The Panel notes that it assessed the complexity of the case while rendering the decision, but it concluded that the proceedings before the Court of BiH can be completed swiftly and efficiently, and that the referral of the case to the lower court would cause unnecessary delay of the beginning of the main trial.

It is incontestable that the present case falls under jurisdiction of the Court of Bosnia and Herzegovina, given that the Accused is charged with the commission of the criminal offence of War Crimes against Civilians, which is, as such, prescribed by the Criminal Code of Bosnia and Herzegovina. However, Article 27 of the BiH CPC prescribes the possibility of the transfer of proceedings for the criminal offence falling within the jurisdiction of the Court of BiH to the court with territorial jurisdiction, exactly because of the existence of such criminal offences which can be successfully tried before lower courts. In that process, the three above stated requirements need to be cumulatively satisfied.

As assessed by the Appellate Panel of the Court of BiH, incorrect is the conclusion of the first-instance Panel that the fact that this is a less complex and less sensitive case as compared to the others pending before the Court of BiH, as well as the very excessive and complex caseload of both the Court of BiH and the Prosecutor's Office of BiH with, constitute an insufficient reason for the transfer of jurisdiction to the court with territorial jurisdiction.



With reference to the existence of the "important reasons", this Panel primarily takes into account that this Accused is not charged with any command role. Also, without disregarding the importance of each individual victim, this Panel cannot but notice that, the present case there involves only one person who was killed, and that the referenced person was killed in the manner that the Accused Tomo Jurinović was not a direct perpetrator of the criminal offence of murder. This Panel finds as correct the averments of the Prosecutor's Office and the Defence that the present case is not a complex case, as indicated by the Indictment as such which has only one Count, and the consequences of the conduct with which the Accused is charged are less severe than consequences of the majority of criminal offences of War Crimes which are tried before this Court. Also, no interests of victims and witnesses are involved in terms of the need for providing them with protective measures because of which the conduct of the proceedings before the Court of BiH would be justified.

Last but not least, the Appellate Panel of this Court also assessed the reasons of cost efficiency of the proceedings. In particular, although it is noted in the Decision of the first-instance Court that judicial economy and efficiency cannot be the only "important reasons" because of which the Court should act pursuant to Article 27(1) of the BiH CPC, the Appellate Panel considers that, with all the aforementioned reasons which should be considered as "important reasons" and which justify the transfer of the proceedings to the court with territorial jurisdiction, the need to ensure the conduct of the proceedings as cost-effective as possible constitutes an additional argument for rendering the decision as stated in the operative part hereof. The Appellate Panel upholds the averments contained in the Appeal of the Defence Counsel, noting that the permanent residence of the majority of witnesses who need to be heard during the main trial is in the area of Banja Luka, Kotor Varoš and the Republic of Croatia, and also that it is necessary to obtain a large number of material pieces of evidence in that area, and that the presentation of those pieces of evidence would be considerably facilitated by the transfer of the conduct of the proceedings to the District Court in Banja Luka, and thereby the proceedings themselves would be conducted in a more cost-effective manner.

On account of all the aforementioned reasons, and in conjunction with Article 321(1) and (3), it was decided as stated in the operative part.

Azra Miletić
JUDGE
PRESIDENT OF THE PANEL

LEGAL REMEDY: This Decision may not be appealed.

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

Sarajevo, 27 April 2009

Šefika Krilić
