

United Nations
Nations UniesInternational Criminal Tribunal
for the former Yugoslavia
Tribunal Pénal International
pour l'ex-Yougoslavie

“FOČA” (IT-96-23/2)

DRAGAN ZELENOVIĆ



DRAGAN ZELENOVIĆ

Convicted of torture and rape


A former Bosnian Serb soldier and *de facto* military policeman in the town of Foča, located south-east of Sarajevo, Bosnia and Herzegovina, near the borders with Serbia and Montenegro

- Sentenced to **15 years'** imprisonment

Crimes convicted of (examples):

Torture and rape (crimes against humanity and violations of the laws or customs of war)

- Zelenović raped and tortured a number of women and girls, including a 15 year old, while they were being held in Buk Bijela.
- He raped, participated in the gang-rape of, and tortured a number of the Muslim women and girls held in classrooms at Foča High School which was used as a short term detention facility. Women who resisted sexual assaults were threatened with death or were beaten.
- He and three other men gang-raped one woman held at the Partizan Sports Hall, a detention facility in Foča. Living conditions at the Sports Hall were brutal and were characterised by inhumane treatment, unhygienic facilities, overcrowding, starvation, physical and psychological torture, and sexual assaults.
- On or about 30 October 1992, Zelenović and two other perpetrators raped four female detainees from the premises known as Karaman's house, a home located just outside Foča.

Born	12 February 1961 in Foča, Bosnia and Herzegovina
Indictment	Initial: 26 June 1996; amended: 7 October 1999; second amended: 20 April 2001; redacted indictment: 16 January 2007
Arrested	August 2005, by Russian authorities
Transferred to ICTY	10 June 2006
Initial and further appearances	13 June 2006, did not enter a plea; 13 July 2006, did not enter a plea; 14 July 2006, pleaded not guilty to all charges
Referral proceedings	Prosecution motion of 29 November 2004 requested referral to the State Court of Bosnia and Herzegovina; guilty plea was entered while request was still pending
Guilty plea	17 January 2007
Trial Chamber Sentencing Judgement	4 April 2007, sentenced to 15 years' imprisonment
Appeals Chamber judgement	31 October 2007, sentence affirmed
Sentence served	27 February 2008, transferred to Belgium to serve the remainder of his sentence; credit was given for time spent in detention since 22 August 2005; early release granted on 28 August 2015 (effective on 4 September 2015)

STATISTICS

As the plea agreement was reached before the beginning of trial, no trial was necessary.

TRIAL CHAMBER SENTENCING JUDGEMENT	
4 April 2007	
Trial Chamber I	Judges Alphons Orie (presiding), Christine Van den Wyngaert, Bakone Justice Moloto
Counsel for the Prosecution	Hildegard Uertz-Retzlaff, Vladimir Tochilovsky, Christina Moeller
Counsel for the Defence	Zoran Jovanović

APPEALS	
Appeals Chamber	Judge Mohamed Shahabuddeen (presiding), Judge Mehmet Güney, Judge Andréia Vaz, Judge Liu Daqun and Judge Wolfgang Schomburg
Counsel for the Prosecution	Christina Moeller, Vladimir Tochilovsky, Manoj Sachdeva
Counsel for the Defence	Zoran Jovanović
Judgement	31 October 2007

RELATED CASES	
<i>by geographical area</i>	
KARADŽIĆ (IT-95-5/18) "BOSNIA AND HERZEGOVINA" & "SREBRENICA"	
KRAJISNIK (IT-00-39 AND 40) "BOSNIA AND HERZEGOVINA"	
KRNOJELAC (IT-97-25) "FOČA"	
KUNARAC <i>et al.</i> (IT-96-23 & 23/1) "FOČA"	
MILOŠEVIĆ (IT-02-54) "KOSOVO, CROATIA & BOSNIA"	
MLADIĆ (IT-09-92) "BOSNIA AND HERZEGOVINA" & "SREBRENICA"	
PLAVŠIĆ (IT-00-39 AND 40/1) "BOSNIA AND HERZEGOVINA"	
TODOVIĆ & RAŠEVIĆ (IT-97-25/1) "FOČA"	

INDICTMENT AND CHARGES

The initial indictment, confirmed on 26 June 1996, included seven other accused - Dragan Gagović, Gojko Janković, Janko Janjić, Radomir Kovač, Zoran Vuković, Dragoljub Kunarac, and Radovan Stanković (IT-96-23).

Kunarac was severed from the original indictment in an amended indictment, which was confirmed on 19 August 1998. On 3 September 1999, a second amended indictment was confirmed which joined charges against Kunarac and Kovač (case number IT-96-23). On 1 December 1999, a third amended indictment against Kunarac and Kovač was confirmed.

On 30 July 1999, following his death earlier in the year, the indictment against Gagović was withdrawn.

The remaining five accused - Zelenović, Janković, Janjić, Vuković and Stanković were still in a "separate indictment" which was confirmed on 7 October 1999. The original indictment of 26 June 1999 had thus been split into the third amended indictment against Kunarac and Kovač, and the "separate indictment" against the remaining five accused. Both cases still held the case number IT-96-23.

Subsequently, on 15 February 2000, the Trial Chamber issued a Decision joining the trials of Kunarac, Kovač and Vuković. On 16 February 2000, the Trial Chamber severed Vuković from the "separate indictment"; and ordered the Prosecution to file an indictment against Vuković alone (with the information on the other four accused redacted) which was given case number IT-96-23/1. Kunarac, Kovač and Vuković stood trial jointly under case numbers IT-96-23 and 23/1. Their case concluded in 2001 and they were found guilty of committing a range of crimes which included torture, rape and enslavement and were sentenced to 28, 20 and 12 years' respectively. The Appeals Chamber affirmed the sentences on 12 June 2002.

In the same Decision of 16 February 2000, the indictment against the remaining four accused (Zelenović, Janković, Janjić, and Stanković) was given case number IT-96-23/2. (The indictment also still contained the name of Vuković at this point.)

Following the death of Janjić, another version of the indictment was filed on 20 April 2001, with the only change being that Janjić's and Vuković's names were removed. The indictment therefore named Zelenović, Janković, and Stanković, all three of whom were still at large at that time.

Stanković was arrested on 9 July 2002 and transferred to the Tribunal the next day. On 3 March 2003, the Prosecution filed a separate indictment against him (the second amended indictment, which was confirmed on 28 February 2003). The Prosecution later filed a third amended indictment against Stanković, which was confirmed on 24 February 2004. On 21 September 2004, the Prosecutor requested that the case against Stanković be referred to Bosnia and Herzegovina pursuant to Rule 11*bis*. A hearing was held on 4 March 2005, and on 17 May 2005 the Referral Bench rendered its decision that the case be referred. Both the Prosecution and the Defence appealed the decision. On 1 September 2005, the Appeals Chamber confirmed the decision to refer the case to Bosnia and Herzegovina. Stanković was transferred to Bosnia and Herzegovina on 29 September 2005.

On 29 November 2004, the Prosecution filed a motion to have the case against Janković and Zelenović transferred to the authorities of Bosnia and Herzegovina pursuant to Rule 11*bis*. Both accused were still at large at that time. On 14 March 2005, Janković was transferred to the ICTY. A motion hearing was held on 12 May 2005. On 22 July 2005, the Referral Bench rendered its decision to refer the case to the authorities of Bosnia and Herzegovina. Initially, both the Prosecution and the Defence appealed the decision. The Prosecution subsequently withdrew its appeal. On 15 November 2005, the Appeals Chamber confirmed the decision to refer the case to Bosnia and Herzegovina. Janković was transferred to Bosnia and Herzegovina on 8 December 2005.

On 10 June 2006, Zelenović was transferred to the ICTY. The operative indictment against him was confirmed 7 October 1999 and re-filed 20 April 2001. It still contained the names of Janković and Stanković, although these accused and their cases had been referred to Bosnia and Herzegovina.

On 14 December 2006, the the Prosecution and the Defence in the Zelenović case jointly filed a Plea agreement and the Trial Chamber requested that a redacted indictment be filed. The Prosecution filed the redacted indictment on 16 January 2007.

The indictment alleged that, following the take-over of Foča in April 1992 by Serb forces, military police accompanied by local and non-local soldiers started arresting Muslim and Croat inhabitants. During the arrests many civilians were killed, beaten or subjected to sexual assault. Muslim women, children and the elderly were detained in houses, apartments and motels in the town of Foča or in surrounding villages, or at short and long-term detention centres such as Buk Bijela, Foča High School and Partizan Sports Hall.

According to the indictment, Zelenović was a soldier and a *de facto* military policeman in Foča.

The town and municipality of Foča are located south-east of Sarajevo, near the borders with Serbia and Montenegro. The indictment alleged that the political and military takeover of the municipality of Foča started on 7 April 1992 as Serb forces, supported by artillery and heavy weapons, proceeded to take over Foča section by section. The take over of the town was completed, the indictment alleged, by 16 or 17 April 1992 although some of the surrounding villages remained under siege until mid-July 1992.

The indictment alleged that, immediately after Serb forces took control of sections of the town, military police, accompanied by local and non-local soldiers, started arresting Muslim and Croat inhabitants. The Serb forces allegedly separated the men from the women and unlawfully kept thousands of Muslims and Croats in various short and long term detention facilities. During the arrests many civilians were killed, beaten or subjected to sexual assault.

One of the largest prison facilities in the former Yugoslavia was the Foča Kazneno-propradni ("KP Dom"), and the indictment alleged that this was the primary detention facility for the men. According to the indictment, Muslim women, children, and elderly men were detained in houses, apartments and motels in the town of Foča or in surrounding villages, or at short and long-term detention centres such as Buk Bijela, Foča High School and Partizan Sports Hall. Many of the detained women were subjected to humiliating and degrading conditions, brutal beatings, and sexual assaults, including rapes. Additionally, several woman were detained in houses and apartments used as brothels, which were operated by groups of soldiers.

The indictment further stated that on 3 July 1992 Zelenović, along with other soldiers under the command of Janković, arrested a group of at least 60 Muslim women, children, and elderly men and detained them at Buk Bijela (a former hydro-electric dam construction site on the road from Brod to Miljevina). The soldiers approached each detained civilian, and took him or her for questioning by Zelenović, Janković, and others. The interrogations focused on the hiding-places of the male villagers and weapons. The accused threatened the women with murder and sexual assault if they lied. During or immediately after the interrogations, Zelenović and other soldiers gang-raped several women they suspected of lying.

The indictment alleged that one of the victims, a 15 year old girl, was interrogated by Zelenović and three unidentified soldiers in a room at Buk Bijela. During the interrogation, they accused her of not telling the truth and each of the interrogators raped her.

The indictment further alleged that, between 3 July and about 13 July 1992, at least 72 Muslim inhabitants of the municipality of Foča were detained in two classrooms in the Foča High School, including the women, children and elderly men who had earlier been held at Buk Bijela. Many of the female detainees were subjected to sexual abuse during their detention at the Foča High School. From the second day of their detention, every evening groups of Serb soldiers committed sexual assaults, including gang-rape, against some of the younger women and girls in classrooms or apartments in neighbouring buildings. Zelenović was among those groups of soldiers. The soldiers threatened to kill the women or the women's children if they refused to submit to sexual assaults. Women who dared to resist the sexual assaults were beaten.

The indictment alleged that the Partizan Sports Hall functioned as a detention centre for women, children and elderly men from at least on or about 13 July 1992 until at least 13 August 1992. Immediately after the transfer of women to the Partizan Sports Hall, a pattern of sexual assaults commenced. Armed soldiers, mostly in groups of three to five, entered the Hall, usually in the evenings, and removed women. When the women resisted or hid, the soldiers beat or threatened the women to force them to obey. The soldiers took the women from Partizan Sports Hall to houses, apartments or hotels for the purpose of sexual assault and rape.

For his alleged crimes, Zelenović was charged on the basis of individual criminal responsibility with:

- Torture and rape (violations of the laws or customs of war, Article 3, and crimes against humanity, Article 5)

REFERRAL IN ACCORDANCE WITH RULE 11*bis*

For a case to be referred pursuant to Rule 11*bis* of the Tribunal's Rules of Procedure and Evidence, the Referral Bench, comprised of three judges, has to order a referral of its own accord or following a request

from the Prosecutor. A decision to refer a case is rendered only if the Bench is fully satisfied that the accused would be tried in accordance with international standards and that neither the level of responsibility of the accused nor the gravity of the crimes alleged in the indictment were factors that would make a referral to the national authorities inappropriate.

The Prosecution filed a motion for referral of the case against Zelenović to the authorities of Bosnia and Herzegovina on 29 November 2004, while the accused was still at large. Zelenović was transferred into the Tribunal's custody on 10 June 2006.

In light of Zelenović's guilty plea of 17 January 2007, while the request for referral was still pending before the Referral Bench, the sentencing took place at the Tribunal.

PLEA AGREEMENT/GUILTY PLEA

The Tribunal's Rules of Procedure and Evidence provide for a plea agreement procedure (Rule 62 *ter*). The Prosecutor and the Defence may agree that, upon the accused entering a plea of guilty to the indictment or to one or more counts of the indictment, the Prosecutor can apply to the Trial Chamber to amend the indictment accordingly and ask for a sentence within a specific range or agree to the sentencing range suggested by the Defence. The Trial Chamber is not bound by any such agreement.

On 16 and 17 January 2007, Trial Chamber I held a hearing to consider a plea agreement between Zelenović and the Office of the Prosecutor. On 17 January 2007, Zelenović pleaded guilty to seven counts of rape and torture. The Trial Chamber stated it was satisfied that the plea agreement met the requirements of the Rules of Procedure and Evidence. Accordingly, the Trial Chamber found the accused guilty on the seven counts of crimes against humanity contained in the plea agreement and granted the Prosecution's motion to withdraw the remaining seven counts of torture and rape, charged as violations of laws and customs of war.

As part of the plea agreement, Zelenović agreed to provide truthful and complete information and to testify at any proceedings before the ICTY as requested by the Office of the Prosecutor.

STATEMENT OF DRAGAN ZELENVIĆ

"Your Honours, I have expressed my position and remorse in the statement presented by the Defence. Also now, before all, I wish to repeat this and say I thank you for giving me this opportunity to address you first and foremost with a few words and then all those who advocate truth and justice. I hope that the victims of this senseless war will hear my words too. This is a war that didn't make anybody happy. Guided by Biblical teachings that the truth is not to be feared because that is the only thing that will help all, I have confessed as to my guilt, and I am prepared to bear all the consequences of that. I know that not a single form of punishment can erase the suffering sustained by my victims. However, faith teaches us that admission of having committed injustice to someone is the best way of helping them. And also in order to protect the victims from being reminded yet again of their suffering, I admitted my guilt. I feel sorry for all the victims who were victimised by anything that I did, and that is why I express from this forum my deepest remorse and regret. I am a human being with virtues and vices, and I didn't know how to deal with these vices when I should have. Your Honours, it is for you to give your say now. I will courageously take any sentence meted out, and I hope that God will give me strength to go through all of this and that I go back to my family." (Zelenović, sentencing hearing, 23 February 2007)

TRIAL CHAMBER SENTENCING JUDGEMENT

During the indictment period, Zelenović was a soldier and *de facto* military policeman in the Bosnian-Serb Territorial Defence, and from the summer 1992 onwards in the Bosnian-Serb army.

Zelenović was involved in the attack on Foča town and its surrounding villages and the subsequent arrest of civilians, between mid-April and mid-July 1992. The parties agreed that an armed conflict existed in Bosnia-Herzegovina at all times relevant to the Indictment. Furthermore, the parties agreed that Zelenović's criminal acts and omissions were part of a widespread or systematic attack against the civilian

population, especially the Muslim population of Foča municipality. Finally, the parties agreed that Zelenović was aware of the existence of the armed conflict and of the widespread and systematic attack on the non-Serb, primarily Muslim, civilian population, and of the fact that his conduct occurred within and contributed to that attack.

The crimes to which Zelenović pleaded guilty took place in several different detention centres in Foča municipality where Muslim women and girls were held.

On 3 July 1992, Zelenović, along with other men, arrested a group of about 60 Muslim women, children and elderly men from a village in Foča municipality and took them to a temporary detention facility called Buk Bijela. At the detention centre, Zelenović and other men separated the women from the children. They started to interrogate the women and in the course of these interrogations the women were threatened with sexual assault and murder.

On or about 3 July, Zelenović and another man interrogated Witness 75 about her village and whether the villagers had weapons. Witness 75 was warned by the other man that she would be raped by soldiers, and killed afterwards, if she did not answer truthfully. In the course of her interrogation she was taken by a soldier to another room where ten soldiers raped her in turn. Zelenović knew that his action in respect of the interrogation and his failure to act with regard to the threats of rape and death, and the eventual transfer of Witness 75 to the room where she was raped, substantially assisted in the commission of the crime.

Also on or about 3 July, Zelenović and three unidentified soldiers interrogated Witness 87, a 15-year-old Muslim girl, in a room at Buk Bijela. During the interrogation, Zelenović and the three soldiers accused the girl of not telling the truth and raped her. During the rape one of the soldiers threatened the victim by putting a gun to her head.

Within ten days of being detained at Buk Bijela, the group of women, children and elderly men were transferred and detained together with other persons in two classrooms at Foča high school. On one occasion, Zelenović, together with other men, selected four women and girls from the classrooms, among them Witness 75 and Witness 87. Zelenović led them to another classroom where soldiers were waiting. He then decided which woman should go with which soldier. Zelenović raped Witness 75, while the other soldiers raped the other women and girls.

Between 8 and 13 July 1992, Witness 75 and Witness 87 were taken from Foča high school to various locations on three separate occasions. On the first, the women were taken to an apartment owned by Zelenović. There, he and three other men raped Witness 75. Zelenović also raped Witness 87 on that occasion. On the second occasion, the women were taken to another apartment, where Zelenović again raped them. On the third occasion, Zelenović took the women to an abandoned house in Gornje Polje where he raped Witness 87.

On 13 July 1992, the detainees at Foča high school were transferred to Partizan Sports Hall where they were detained for one month, after which most detainees were deported to Montenegro. The detainees were all Muslim civilians from villages in Foča municipality. Living conditions at Partizan Sports Hall were brutal and the detention was characterized by inhumane treatment, starvation, and physical and psychological torture, including sexual assaults.

On one occasion in July 1992, Zelenović and other men took Witness 87 away from Partizan Sports Hall and raped her. On another occasion, in August, Witness 87 and Witness 75 were taken from Partizan Sports Hall and detained in a house known as Karaman's house. From there, at the end of October the same year, Zelenović and two co-perpetrators took Witness 87, Witness 75 and two other women to an apartment in Foča. There, Zelenović raped Witness 87 while the co-perpetrators raped the other women.

The Prosecution recommended that Zelenović be sentenced to imprisonment within the range of 10 to 15 years while the Defence recommended a term within the range of 7 to 10 years.

In determining the appropriate sentence, the Chamber assessed the gravity of Zelenović's crimes, including the nature of the crimes of torture and rape as crimes against humanity, the particular circumstances of the case, and the form and degree of his participation. The crimes to which Zelenović pleaded guilty were part of a pattern of sexual assaults that took place over a period of several months, and in many different locations, and involved multiple victims. Zelenović took direct part in the sexual

abuse of victims in a number of detention facilities, including multiple rapes of Witness 75 and Witness 87.

Zelenović was found guilty of personally committing nine rapes, eight of which were qualified as both torture and rape. He was also found guilty of two instances of rape through co-perpetratorship, one of which was qualified as both torture and rape, and one instance of torture and rape through aiding and abetting. Four of the rapes he took part in were gang rapes, together with three or more other perpetrators. In one of those instances he participated as aider and abettor in the gang rape of Witness 75 by at least ten soldiers, which was so violent that the victim lost consciousness. He participated as co-perpetrator in an incident during which the victim was threatened with a gun to her head while being sexually abused. The Trial Chamber found that the scale of the crimes committed was large and that Zelenović's participation in the crimes was substantial.

The victims in this case were in a particularly vulnerable situation at the time of the commission of the crime. They were unarmed and defenceless, and detained under brutal conditions for long periods of time. In addition, Witness 87, who was raped by Zelenović on numerous occasions, was about 15 years old at the time of the commission of the crimes.

The Trial Chamber further considered Zelenović's admission of guilt and decision to face the consequences of his actions. The Trial Chamber also considered the effect a guilty plea could have on establishing the truth and contributing to reconciliation in the region and the fact that a guilty plea relieved the victims of horrible crimes from reliving their trauma by being forced to give evidence in court. Finally, the Trial Chamber considered the time and effort saved through avoidance of a lengthy trial, although it gave this aspect limited weight.

The Trial Chamber also gave weight to Zelenović's commitment to cooperate with the Office of the Prosecutor, including giving evidence in court, and the cooperation he had given up to that point. The Trial Chamber also considered the remorse expressed by Zelenović for the crimes he had committed as a mitigating factor. Finally, the Trial Chamber gave limited weight to the following individual circumstances: Zelenović's family and health situations, his lack of prior convictions, and his good conduct during detention.

The Trial Chamber, in determining the sentence, also considered the general practice regarding prison sentences in the courts of the former Yugoslavia, as well as the case law of the Tribunal.

On 4 April 2007, the Trial Chamber rendered its judgement, convicting Zelenović, on the basis of individual criminal responsibility (Article 7(1) of the Statute) with:

- Torture and Rape (crimes against humanity, Article 5)

Sentence: 15 years' imprisonment.

Credit was given for time served since his arrest on 22 August 2005.

APPEALS CHAMBER JUDGEMENT

On 27 April 2007, the Defence submitted a notice of appeal against the sentencing judgement, after which they filed their appeal brief on 25 May 2007.

The appeal hearing was held on 15 October 2007.

Zelenović's appeal consisted of two grounds.

In his first ground of appeal, Zelenović argued that the Trial Chamber erred by not adequately assessing the mitigating circumstances in the sentencing judgement by giving insufficient weight to, firstly, his admission of guilt and the subsequent psychological benefit for the victims who would not be required to give evidence; and, secondly, to his cooperation with the Office of the Prosecutor in general. The Appeals Chamber found that Zelenović failed to show that the Trial Chamber gave insufficient weight to his guilty plea in mitigation of his sentence. Zelenović further argued that the Trial Chamber erred in its assessment of his cooperation with the Prosecution, stating that his cooperation with the Prosecution went beyond

the scope of the obligations established in the plea agreement, and that the Trial Chamber erred when it considered his cooperation as "initial" rather than "substantial". The Appeals Chamber found, however, that the scope of the plea agreement was not restricted in the manner Zelenović suggested and that he had not shown that his cooperation went beyond the scope of his obligations.

In his second ground of appeal, Zelenović argued that the Trial Chamber should have taken into account the appeal judgement in the case of the *Prosecutor versus Radovan Stanković* before the State Court of Bosnia and Herzegovina. The Appeals Chamber noted that the *Stanković* appeal judgment was only made public on 17 April 2007, while the sentencing judgement in Zelenović's case was issued on 4 April 2007. The Appeals Chamber found that Zelenović therefore failed to substantiate his allegation that the Trial Chamber could have learned about the *Stanković* appeal judgement prior to rendering the sentencing judgement.

The Appeals Chamber therefore dismissed both grounds of appeal.

On 31 October 2007, the Appeals Chamber rendered its judgement, affirming the Trial Chamber's sentence of 15 years.

On 27 February 2008, Zelenović was transferred to Belgium to serve his sentence. Credit was given for time spent in detention since 22 August 2005. He was granted early release on 28 August 2015 (effective on 4 September 2015).