

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

“BOSANSKI ŠAMAC” (IT-95-9/2)

**MILAN
SIMIĆ****MILAN SIMIĆ***Convicted of torture*

Between May 1992 and June 1993, Simić was a member of the Bosnian Serb crisis staff and president of the municipal assembly of Bosanski Šamac, in north-eastern Bosnia and Herzegovina

- Sentenced to 5 years' imprisonment

*Crimes convicted of (examples):***Torture** (crimes against humanity)

- Together with several other men, Simić personally beat four detainees at the Bosanski Šamac primary school. He kicked the men in their genitals and fired gunshots over their heads.
- He and several other men beat a man who was known to have a heart condition. The victim was forced to pull down his pants and one of the men threatened to cut off the victim's penis. The barrel of a handgun was forced into his mouth and at one point Simić fired gunshots over the victim's head.

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| Born | 9 August 1960 in Sarajevo, Bosnia and Herzegovina |
| Indictment | Initial: 21 July 1995; first amended: 25 August 1998; second amended: 11 December 1998; third amended: 24 April 2001; fourth amended: 9 January 2002 |
| Surrendered | 14 February 1998 |
| Transferred to ICTY | 15 February 1998 |
| Initial and further appearances | 17 February 1998, pleaded not guilty to all charges; 3 September 1998, pleaded not guilty to all charges |
| Guilty plea | 15 May 2002, pleaded guilty to torture |
| Trial Chamber sentencing judgement | 17 October 2002, sentenced to 5 years' imprisonment |
| Sentence served | Credit of 835 days was given for time served; granted early release, 27 October 2003; effective 3 November 2003 |

STATISTICS

| TRIAL CHAMBER SENTENCING JUDGEMENT | |
|------------------------------------|---|
| 17 October 2002 | |
| Trial Chamber II | Judge Florence Mumba (presiding), Judge Sharon Williams, Judge Per-Johan Lindholm |
| Counsel for the Prosecution | Gramsci Di Fazio, Philip Weiner, Aisling Reidy |
| Counsel for the Defence | Slobodan Zečević, Catherine Baen |

| RELATED CASES <i>by geographical area</i> |
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| KARAĐIĆ (IT-95-5/ 18) "BOSNIA AND HERZEGOVINA" & "SREBRENICA" |
| MILOŠEVIĆ (IT-02-54) "KOSOVO, CROATIA & BOSNIA" |
| PLAVŠIĆ (IT-00-39 AND 40/1) "BOSNIA AND HERZEGOVINA" |
| ŠEŠELJ (IT-03-67) |
| SIMIĆ <i>et al.</i> (IT-95-9) "BOSANSKI ŠAMAC" |
| STANIŠIĆ & SIMATOVIĆ (IT-03-69) |
| STANIŠIĆ, MIĆO (IT-04-79) |
| TODOROVIĆ (IT-95-9/1) "BOSANSKI ŠAMAC" |

INDICTMENT AND CHARGES

Simić was initially indicted on 21 July 1995 together with five other accused - Blagoje Simić, Simo Zarić, Miroslav Tadić, Slobodan Miljković and Stevan Todorović. Following the death of Miljković on 7 August 1998, the indictment against him was withdrawn.

In the initial indictment, Simić was charged with three counts: grave breaches of the Geneva conventions of 1949; violations of the laws or customs of war; and crimes against humanity. He voluntarily surrendered on 14 February 1998, and at his initial appearance on 17 February 1998, he entered a plea of not guilty to all charges contained in the initial indictment.

The first amended indictment was issued on 25 August 1998 and it contained eight additional counts related to Simić: three grave breaches of the Geneva conventions of 1949, one count of violations of the laws or customs of war, and four counts of crimes against humanity. On 3 September 1998, Simić pleaded not guilty to all additional charges.

The second amended indictment against Blagoje Simić, Milan Simić, Tadić, Todorović and Zarić was confirmed on 11 December 1998. This indictment consolidated the initial indictment with the first amended indictment and expanded the time and geographical frame of the alleged crimes.

On 13 December 2000, Todorović pleaded guilty and proceedings against him were separated from those of the co-accused (see *Todorović* IT-95-9/1).

The third amended indictment against Milan Simić, Blagoje Simić, Tadić and Zarić was confirmed on 24 April 2001. In this indictment, Milan Simić was charged with seven counts: two violations of the laws or customs of war and five crimes against humanity. The four counts charged as grave breaches of the Geneva conventions of 1949 were struck out because it was concluded by the Office of the Prosecutor that these crimes were covered by other counts contained in the indictment.

On 9 January 2002, a fourth amended indictment was issued containing the same charges as the third amended indictment. The new indictment contained additional particulars under count one, persecutions, amendments concerning the forms of individual responsibility under article 7(1) and several minor editorial changes.

In the fourth and final indictment, Simić was charged with seven counts: persecutions, a crime against humanity, and the beatings and torture of six named victims, charged as two counts of torture as crimes against humanity, two counts of inhumane acts as crimes against humanity, and two counts of cruel treatment, as violations of the laws or customs of war. All of the offences charged in the indictment against Simić were alleged to have been committed from September 1991 to February 1993.

Simić was charged on the basis of individual criminal responsibility (Article 7(1) of the Statute of the Tribunal) with:

- Persecutions on political, racial and religious grounds; torture; inhumane acts (crimes against humanity, Article 5),
- Cruel treatment (violations of the laws or customs of war, Article 3).

THE TRIAL

The trial of Simić and his co-accused, Blagoje Simić, Tadić and Zarić, commenced on 10 September 2001. On 15 May 2002, Milan Simić pleaded guilty to two counts of torture as crimes against humanity contained in the fourth amended indictment. The Trial Chamber severed the case of Milan Simić from the case of Simić *et al.* on 28 May 2002 (see Simić *et al.* IT-95-9).

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 13 May 2002 a confidential "Joint motion for consideration of plea agreement between Simić and the Office of the Prosecutor" was filed. At the request of the parties, the Trial Chamber ordered that the proceedings be conducted in closed session pursuant to Rule 62 *ter* (C).

At a hearing pursuant to Rule 62 *bis* held on 15 May 2002, Simić entered a plea of guilty to two counts of torture as crimes against humanity. Upon the Trial Chamber's acceptance of the plea, the Prosecution withdrew the remaining counts against Simić on 28 May 2002.

Simić and the Prosecution agreed that certain specific facts and allegations, with respect to the two counts of torture set out in the indictment, would be proven beyond reasonable doubt were the Prosecution to proceed with further evidence. Simić agreed that the crimes were committed for the purpose of punishing, intimidating or humiliating the victims with discriminatory intent.

At the sentencing hearing held on 22 July 2002, the Trial Chamber lifted the confidentiality of the transcript of the plea hearing as well as all filings related to the hearing except the plea agreement. Simić made a statement at the start of the Defence submissions, in which he expressed his "*sincere regret and remorse*" for what he had done to his "*fellow citizens and friends at the elementary school*".

The Prosecution requested that the Trial Chamber impose a sentence of 5 years, while the Defence requested that the Trial Chamber impose a sentence of 3 years.

STATEMENT OF MILAN SIMIĆ

"First of all, I would like to express my sincere regret and remorse for what I have done to my fellow citizens and friends at the elementary school. I'm aware of the fact that the fact that my best friend was killed and the fact that I was drunk can in no way serve as a justification for what I have done there. I am convinced that even my late friend, Dušan Mijanić, with whom I have spent unforgettable days as a student, would not find words to justify my conduct. Unfortunately, I became aware of all this only afterwards, and although it was immediately clear to me that it was impossible to make up for what I have done, my conscience led me to at least extend my apologies to the people whom I had hurt.

I have done that, but in addition to my sincere regret and remorse and personal apology that I extended to them, I was still haunted by guilt and it continues so until this day.

As regards the interview I gave to the Prosecutor, one should bear in mind that I gave that interview immediately after being the first to come voluntarily to The Hague at the time when The Hague Tribunal was a taboo topic in Bosnia and Herzegovina and that for me, the mere fact of voluntary surrender was too great a burden so that I did not have enough strength or courage to do an additional step and immediately admit my guilt.

This is why I value even more the fact that you allowed me to once again publicly extend apology to all of them. Thank you." (Milan Simić, sentencing hearing, 22 July 2002)

TRIAL CHAMBER SENTENCING JUDGEMENT

The municipality of Bosanski Šamac is located in north-eastern Bosnia and Herzegovina, next to the border with Croatia. The municipality is located in an area referred to as the "Posavina Corridor" which links western Bosnia and Herzegovina with Serbia to the east. Due to its location on the northern edge of the "Posavina Corridor," control over the municipality of Bosanski Šamac was vital to Bosnian Serb efforts to create a Serb-controlled land bridge between Serbia in the east and the Krajina Serbs in Croatia and parts of western Bosnia and Herzegovina.

On 17 April 1992, Serb military forces from Bosnia and elsewhere in the former Yugoslavia seized control of the town of Bosanski Šamac by force and, within a few days, controlled the entire municipality of Bosanski Šamac. The Serbs then announced that the government of the municipality had been replaced by the "Serbian municipality of Bosanski Šamac".

On or about 13 July 1992, the first Krajina corps of the Bosnian Serb Army seized control of the neighbouring municipality of Odžak. Prior to July 1992, approximately 22,500 Bosnian Croat and Bosnian Muslim residents, out of a total population of 30,000, lived in the Odžak municipality. In November 1995, at the time of the signing of the Dayton Peace Agreement, virtually all of the 22,500 Bosnian Croat and Bosnian Muslim residents had fled or been forced to leave. Those non-Serbs who had not fled before the takeover fled, were killed, or were forced to leave.

At the time of the forcible takeover of Bosanski Šamac, Simić was a member of the fourth detachment territorial defence unit organised by the Yugoslav People's Army (JNA). On 30 May 1992, he was appointed president of the executive board of the Bosanski Šamac assembly and became a member of the Serb crisis staff. As president of the executive board, he was responsible for the governmental affairs of the municipality, which included implementing the social plan, annual budget and financial reports, overseeing municipal housing and city planning needs, in addition to implementing the policies, decisions and other regulations of the Serb crisis staff and war presidency. He was released from this position on or about 24 June 1993, after being shot and seriously wounded in an assassination attempt.

Simić admitted that, on various occasions during the summer months of 1992, he went to the primary school in Bosanski Šamac, which was then serving as a prison camp. On one occasion, between 10 June and 3 July 1992, he and several other men, brutally kicked and beat four non-Serb prisoners at the primary school. Simić kicked the victims in their genitals and fired gunshots over their heads. He also admitted that in an incident in June 1992, he and several other men severely beat a man. It had been common knowledge in Bosanski Šamac that this man had a heart condition. The victim was forced to pull down his pants and one of the men accompanying Simić threatened to cut off his penis whilst brandishing a knife. The other assailants were challenging and exhorting the man wielding the knife to cut off his penis. At one point the barrel of a handgun was pushed into the man's mouth and during the course of the beating Simić fired gun shots over the victim's head.

In deciding on an appropriate sentence the Trial Chamber took into consideration the gravity of the offence, including any aggravating factors, the mitigating circumstances, and the general practice regarding prison sentences in the courts of the former Yugoslavia.

With regard to the gravity of the offence, the Trial Chamber found that the acts of torture committed by Simić were barbaric and shocking. The Chamber considered that the sexual, violent and humiliating nature of the acts was an aggravating factor in determining sentence, as these features would have increased the mental suffering and feeling of degradation experienced by the victims.

The Trial Chamber found that Simić's position of authority was also relevant as an aggravating factor, as he clearly went to the primary school in his official capacity. The Trial Chamber found that since he was the president of the executive board of the Bosanski Šamac assembly, Simić's participation in the torture of the detainees must have left the impression on those present in the primary school that this type of conduct was permissible or even encouraged.

The Chamber considered the discriminatory intent of Simić to be an aggravating circumstance in determining his sentence. Simić admitted that he committed the offences with a discriminatory intent in

so far as he intentionally chose to beat the victims because they were either Muslims or Croats. The Trial Chamber also found that the crimes were premeditated as Simić had no other reason for being at the primary school other than to beat people.

As a mitigating factor, the Trial Chamber accepted Simić's expression of remorse and took note of the fact that he had returned to the primary school at the time of the events and apologised to two of his victims.

In relation to Simić's medical condition, the Trial Chamber took into consideration his condition as a paraplegic. The Trial Chamber found that such a condition did not qualify as a factor in mitigation of his sentence but that his physical circumstances could not be ignored. For reasons of humanity, it was accepted that Simić's medical condition ought to be a consideration in sentencing as a special circumstance. Accordingly a lesser sentence than he would otherwise have received was imposed.

The Trial Chamber sentenced Simić to 5 years' imprisonment for count 4, and 5 years' imprisonment for count 7, and ordered the sentences to be served concurrently.

On 17 October 2002, the Trial Chamber rendered its judgement, convicting Simić, on the basis of individual criminal responsibility (Article 7(1) of the Statute of the Tribunal) with:

- Torture (crimes against humanity, Article 5).

Sentence: 5 years' imprisonment.

On 27 October 2003, Simić was granted early release, effective 3 November 2003.

CONTEMPT OF COURT PROCEEDINGS

The Tribunal's Rules of Procedure and Evidence provide for contempt proceedings (Rule 77). These proceedings are initiated when there is reason to believe that a person has knowingly and wilfully interfered with the administration of justice by intimidating or otherwise tampering with witnesses, refusing to answer questions in court, refusing to comply with an order to attend a hearing or produce documents, disclosing confidential court documents, or breaching protective measures. The maximum penalty in such cases is 7 years' imprisonment or a fine of 100,000 Euros, or both.

On 25 May 1999, the Prosecution filed an *ex parte* confidential request for a hearing on contempt allegations against Simić, his Defence counsel, Branislav Avramović, and Igor Pantelić, counsel for another accused. The Trial Chamber issued an order on 7 July 1999 finding that it did not have good reason to believe that Pantelić may be in contempt of the Tribunal, but finding that it did have good reason to suspect Simić and Avramović. It was alleged that, from July 1998 to May 1999, Simić and Avramović conducted a programme of harassment and intimidation, supported by bribery, in an effort to persuade a potential Defence witness, known as "Witness Agnes" to testify on behalf of Simić. The contempt hearings began on 29 September 1999 and closed on 2 December 1999.

On 29 March 2000, Trial Chamber III handed down a unanimous oral judgement finding that the allegations against Simić and Avramović had not been "*established beyond reasonable doubt*" and that neither was found to be in contempt of the Tribunal.