

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

“VIŠEGRAD” (IT-98-32)

MITAR VASILJEVIĆ

**MITAR VASILJEVIĆ***Convicted of aiding and abetting persecutions and murder*

From mid-April 1992, member of the "White Eagles", a Bosnian Serb paramilitary unit which operated together with the police and various military units stationed in Višegrad, eastern Bosnia and Herzegovina

- Sentenced to 15 years' imprisonment

Crimes convicted of:

Aiding and abetting persecutions on political, racial or religious grounds (crimes against humanity) and **murder** (violations of the laws or customs of war)

- Mitar Vasiljević participated in an incident which resulted in the death of five Muslim men: after holding them at the Vilina Vlas hotel in Višegrad, Mitar Vasiljević led seven Muslim men, at gun point, to the bank of the Drina river and ordered them to line up; all of the men were subsequently shot at and five were killed.

Born	25 August 1954, Durevići, Bosnia and Herzegovina
Indictment	Initial: 6 October 1998; amended: 20 July 2001
Arrested	25 January 2000, by the multinational Stabilisation Force (SFOR)
Transferred to ICTY	25 January 2000
Initial appearance	28 January 2000, pleaded not guilty to all charges
Trial Chamber judgement	29 November 2002, sentenced to 20 years' imprisonment
Appeals Chamber judgement	25 February 2004, sentenced to 15 years' imprisonment
Serving sentence	6 July 2004, transferred to Austria to serve the remainder of his sentence; credit was given for time served since 25 January 2000

STATISTICS

Trial days	54
Witnesses called by Prosecution	36
Witnesses called by Defence	28
Prosecution exhibits	133
Defence exhibits	40

TRIAL	
Commenced	10 September 2001
Closing arguments	6, 8 and 14 March 2002
Trial Chamber II	Judge David Anthony Hunt (presiding), Judge Ivana Janu, Judge Chikako Taya
Counsel for the Prosecution	Dermot Groome, Frédéric Ossogo, Sabine Bauer
Counsel for the Defence	Vladimir Domazet, Radomir Tanasković
Judgement	29 November 2002

APPEALS	
Appeals Chamber	Judge Theodor Meron (presiding), Judge Wolfgang Schomburg, Judge Mohamed Shahabuddeen, Judge Mehmet Güney, Judge Inés Mónica Weinberg de Roca
Counsel for the Prosecution	Helen Brady, Michelle Jarvis, Steffen Wirth
Counsel for the Defence	Vladimir Domazet, Gert-Jan Knoops
Judgement	25 February 2004

RELATED CASES	
<i>by geographical area</i>	
KARADŽIĆ & MLADIĆ (IT-95-5/ 18) "BOSNIA AND HERZEGOVINA" & "SREBRENICA"	
KRAJIŠNIK (IT-00-39 & 40) "BOSNIA AND HERZEGOVINA"	
LUKIĆ MILAN & LUKIĆ SREDOJE (IT-98-32/1) "VIŠEGRAD"	
MILOŠEVIĆ (IT-02-54) "KOSOVO, CROATIA & BOSNIA"	
PLAVŠIĆ (IT-00-39 & 40/1) "BOSNIA AND HERZEGOVINA"	
STANIŠIĆ, MIĆO (IT-04-79)	
VASILJEVIĆ (IT-98-32) "VIŠEGRAD"	

INDICTMENT AND CHARGES

The initial indictment against Mitar Vasiljević, Milan Lukić and Sredoje Lukić was confirmed on 26 October 1998 charging Mitar Vasiljević with fourteen counts of crimes against humanity and violations of the laws or customs of war. Mitar Vasiljević was arrested and transferred to the Tribunal on 25 January 2000. On 28 January 2000, he pleaded not guilty to all fourteen counts of the indictment.

An amended indictment against Mitar Vasiljević, Milan Lukić and Sredoje Lukić was orally confirmed on 20 July 2001 charging Mitar Vasiljević with ten counts of crimes against humanity and violations of the laws or customs of war. Although the amended indictment did not alter any factual allegations or legal theories found in the original indictment, in light of new evidence and further investigations, it did withdraw four counts against Mitar Vasiljević relating to the house burning in Bikavac.

On 24 July 2001, with the two co-accused still at large, the Trial Chamber ordered that Mitar Vasiljević be tried separately.

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

- Murder; extermination; persecutions on political, racial or religious grounds; inhumane acts (crimes against humanity, Article 5)
- Murder; violence to life and person (violations of the laws or customs of war, Article 3)

THE TRIAL

The trial of Mitar Vasiljević commenced on 10 September 2001 and took place before Trial Chamber II (Judge David Anthony Hunt (presiding), Judge Ivana Janu and Judge Chikako Taya). The closing arguments for the Prosecution and the Defence took place on 6, 8 and 14 March 2002.

TRIAL CHAMBER JUDGEMENT

The town of Višegrad is a small town in eastern Bosnia and Herzegovina. It lies on the east side of the Drina river, approximately 120 kilometres east of Sarajevo and 15 kilometres west of the Serbian border. According to the census taken before the conflict in 1991, the municipality of Višegrad had a population of 21,199 people, of which 62.8% were of Muslim ethnicity, 32.8% were of Serb ethnicity and 4.4% were classified as "other." The town itself had a number of strategically important features - it was the site of an important hydroelectric dam providing electricity and controlling the level of the Drina river in the areas downstream, and it was situated on the main road connecting Belgrade to Sarajevo which was a vital link for the Užice Corps of the Yugoslav People's Army (JNA) with its base camp in Uzamnica as well as other strategic locations implicated in the conflict. The municipality of Višegrad formed the main part of the investigation in relation to this trial.

Members of the Serb and Muslim ethnicities armed themselves, and early in 1992 violence between them began. JNA units began an artillery bombardment of the town on 6 April 1992. Muslim neighbourhoods and villages were predominantly affected. In retaliation, a small group of Bosnian Muslim men took several local Serbs hostage and seized control of the dam and threatened to blow it up. One of these men released water from the dam causing flooding to some houses and streets. Many residents, both Serb and Muslim, fled to the hills around the town to await the outcome of the crisis.

During the latter part of April and the first two weeks of May 1992, the climate in the town remained relatively calm and stable. This dramatically changed on 19 May 1992 when the JNA Užice Corps officially withdrew from the town. Upon their removal, local Serb leaders established the "Serbian Municipality of Višegrad" and took control of all municipal government offices. Soon thereafter, local Serbs, police and paramilitaries began one of the most notorious campaigns of ethnic cleansing in the conflict following a common plan designed to permanently rid the town of its Muslim population. During attacks, the Serb forces destroyed a number of Bosnian Muslim villages consequently killing a large number of unarmed Muslim civilians in the town of Višegrad. The Drina river was used to dump many of the bodies of the Muslim men, women and children who were killed around the town and on the historic Ottoman bridge crossing the Drina. Serb forces were implicated in the systematic looting and destruction of Muslim homes and in the complete destruction of both of the town's mosques. In the spring of 1992, a group of local men, including Milan Lukić, formed a paramilitary unit known as the "White Eagles" which worked with the

Serb police and military units to rid the area of all non-Serb residents. This unit is believed to have committed a wide range of crimes in Višegrad, from murders and torture, to looting and destruction of property.

The trial was concerned principally with two incidents which took place in Višegrad during the month of June 1992. The first incident has been referred to as the 'Drina river incident' and it took place on 7 June. Milan Lukić, and a number of other men, led seven Bosnian Muslim men to the bank of the Drina river, where they forced the Muslim men to line up on the bank of the river, and to face the river. Despite pleas by the Muslims for their lives, they were shot from behind. When it appeared that someone was still alive, the men lying in the water were shot at again, at close range. Five of the Muslim men were killed, but the other two men escaped by pretending to be dead as they lay in the water.

The Trial Chamber found that Mitar Vasiljević participated in this incident. The Chamber concluded that Mitar Vasiljević was personally involved in a joint criminal enterprise to kill the seven Bosnian Muslim men. It confirmed that whilst the men were being detained at the Vilina Vlas Hotel prior to being taken to the river, he held them at gun point thus preventing their escape. He then, together with the other accused, Milan Lukić and Sredoje Lukić, led them at gun point to the bank of the river and ordered them to line up. Although some of the Muslim men begged for their lives, their pleas were ignored. The Trial Chamber found that, following a brief discussion on the manner in which to shoot them, the armed men opened fire shooting at the seven Muslims. After the shooting, the three men returned to their vehicles and left. Five of the Muslim men were killed, two survived.

The Trial Chamber found that there was an understanding, amounting to an agreement between Milan Lukić, Mitar Vasiljević and the two unidentified men, to kill the seven Muslim men on the banks of the Drina and that, the only reasonable conclusion based on the evidence available, was that Mitar Vasiljević, by his actions, intended that the seven Muslim men be killed, whether or not he actually carried out any of those killings himself. The Trial Chamber found, however, that the Prosecution did not establish beyond reasonable doubt that Mitar Vasiljević fired his weapon at the same time as the other three, or that he personally killed any of the victims. The Trial Chamber also rejected the Defence suggestion that the accused was powerless to stop Milan Lukić from killing the Muslim men.

The second incident has been referred to as the Pionirska Street incident and took place on 14 June 1992. About 70 Bosnian Muslim women, children and elderly men were directed to enter a house in Pionirska Street, in the Mahala neighbourhood of the Višegrad municipality. Before the victims were locked in the house a flammable substance was spread around the area. The large group were then forced inside the house and it was set on fire. Approximately 60 individuals, including 46 members of the same family, died in the fire. Only a few escaped.

In relation to the charges of Mitar Vasiljević's involvement in this incident, the Trial Chamber had serious doubts as to the reliability of the evidence of the witnesses who claimed to have seen or identified the accused during the looting, transfer and the fire. Based on medical records presented by the defence which established that he had been admitted to Užice Hospital on 14 June 1992 at 9.35 p.m., the Trial Chamber determined that Mitar Vasiljević would not have been in Pionirska Street from approximately 8.00 p.m. on 14 June 1992. This conclusion was based on the fact, accepted by the Chamber, that it takes at least one hour to drive the 70 km from Višegrad, where Mitar Vasiljević suffered his injury, to Užice, a town in Serbia and Montenegro. Moreover, the Trial Chamber determined that the transfer of the group of victims to the crime scene did not take place before 9.30 p.m. Since the Trial Chamber was not convinced beyond a reasonable doubt that the accused was present when the house was set on fire, Mitar Vasiljević was cleared of these crimes.

In terms of Mitar Vasiljević's involvement with the "White Eagles", the Trial Chamber was not satisfied that the accused was a member of the "White Eagles" or that his association with this group was such that it was possible to draw an inference that Mitar Vasiljević shared its general homicidal intentions. It found, however, that he did have some association with that group in that he willingly acted as an informant to that group and that this willingness arose from his close relationship with Milan Lukić.

On 29 November 2002, the Trial Chamber rendered its judgement, convicting Mitar Vasiljević, on the basis of individual criminal responsibility (Article 7(1) of the Statute of the Tribunal) with:

- Persecutions on political, racial or religious grounds (crimes against humanity, Article 5),
- Murder (violations of the laws or customs of war, Article 3).

Sentence: 20 years' imprisonment.

APPEALS CHAMBER JUDGEMENT

On 30 December 2002, Mitar Vasiljević appealed both his conviction and sentence, raising eight grounds of appeal. The Prosecution did not appeal the Trial Chamber judgement.

The Appeals Chamber allowed Mitar Vasiljević's appeal of his convictions as a co-perpetrator of persecutions, a crime against humanity (murder and inhumane acts) under count 3 of the indictment, and of murder, a violation of the laws or customs of war under count 5 of the indictment. It set aside these convictions and found Mitar Vasiljević guilty of counts 3 and 5 of the indictment as an aider and abettor to persecutions, a crime against humanity (murder and inhumane acts), and as an aider and abettor to murder, a violation of the laws or customs of war. The Appeals Chamber dismissed Mitar Vasiljević's appeal against convictions in all other respects and dismissed his appeal against sentence. It imposed a new sentence, taking into account his responsibility established on the basis of the convictions entered on appeal.

The Appeals Chamber concluded that the Trial Chamber erred in finding that Mitar Vasiljević pointed his gun at the seven men while at the Vilina Vlas Hotel. Moreover, the Appeals Chamber concluded that the Trial Chamber erred in finding that Mitar Vasiljević at that time had knowledge that the seven Muslim men were to be killed and not exchanged. Since he lacked, at that time, the knowledge that the seven Muslim men were to be killed, the fact that he prevented the Muslim men from fleeing at the hotel was not decisive as to whether or not he shared the intent to kill them.

The Appeals Chamber concluded that there was no evidence that Mitar Vasiljević had the intent to kill the seven Muslim men. The Trial Chamber found that he assisted Milan Lukić and his men by preventing the seven Muslim men from fleeing. It did not find, however, that he shot at the Muslim men himself, nor did it find that he exercised control over the firing. Compared to the involvement of Milan Lukić and, potentially, one or both of the other men, the participation of the Mitar Vasiljević in the overall course of the killings did not reach the same level. The acts of Mitar Vasiljević were ambiguous as to whether or not he intended that the seven Muslim men be killed. The Appeals Chamber concluded that the Trial Chamber erred by finding that the only reasonable inference from the evidence was that Mitar Vasiljević shared the intent to kill the seven Muslim men. The Appeals Chamber concluded that this error led to a miscarriage of justice because without the proof of the Mitar Vasiljević's intent to kill, he could not be found responsible as a co-perpetrator.

Further, the Appeals Chamber found that the intent to kill the seven Muslim men, including the two survivors, constituted the basis for the Trial Chamber's finding that Mitar Vasiljević was a co-perpetrator to a joint criminal enterprise. In the absence of this intent, he could not be held responsible for committing the crime of persecutions by murders and inhumane acts as a co-perpetrator to the joint criminal enterprise.

In conclusion, the Appeals Chamber was of the view that aiding and abetting is a form of responsibility which generally warrants a lower sentence than was appropriate to responsibility as a co-perpetrator. The Chamber was of the view that Mitar Vasiljević committed very serious crimes and therefore, taking into account the particular circumstances of this case as well as the form and degree of the participation of him in the crimes, the Appeals Chamber found that a sentence of 15 years was more appropriate to match the crimes committed and his level of involvement.

All other grounds of appeal were rejected.

The Appeals Chamber rendered its judgement on 25 February 2004. The judgement altered the sentences handed down by Trial Chamber II on 29 November 2002, sentencing Mitar Vasiljević to 15 years' imprisonment.

On 6 July 2004, Mitar Vasiljević was transferred to Austria to serve his sentence. Credit was given for time served since 25 January 2000.