

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

“FOČA” (IT-97-25)

# MIHORAD KRNOJELAC



## MIHORAD KRNOJELAC

*Convicted of torture, murder and persecutions and as a co-perpetrator of persecutions and cruel treatment*



From April 1992 to August 1993, commander of the Serb run “Kazнено-Popravni Dom” (KP Dom) detention camp in Foča, located south-east of Sarajevo, Bosnia and Herzegovina, near the border with Serbia and Montenegro

- Sentenced to **15 years’ imprisonment**

### *Crimes convicted of (examples):*

#### **Torture; murder** (crimes against humanity, violations of the laws or customs of law)

- Milorad Krnojelac knew or had reason to know that his subordinates were torturing detainees and failed to take any action to prevent this.
- He had sufficient information to put him on notice that his subordinates were involved in the murder of detainees. Being aware of beatings and suspicious disappearances, and having seen bullet holes in the walls, he was in a position to ascertain that the perpetrators of these beatings were likely to have committed murders. He failed to carry out an investigation.

#### **Persecutions** (crimes against humanity)

- Milorad Krnojelac knew that the detention of non-Serbs was unlawful, and he also knew that his acts or omissions were contributing to the maintenance of unlawful detention.
- He was aware of the decision to use unlawfully detained non-Serbs as forced labour. He had regular meetings with the heads of the furniture factory, metal workshop and farm where the detainees worked, and he exercised final control over the work of detainees.
- He authorised his personnel to hand over non-Serb detainees to be deported and encouraged such departures by allowing them to continue. Many of the detainees were never seen alive again after leaving the KP Dom.

#### **Cruel treatment** (violations of the laws or customs of war)

- Milorad Krnojelac had knowledge that the conditions in the KP Dom were brutal. It was overcrowded; some could not find room to sleep lying down. The detainees were fed starvation rations. They had no change of clothes, and during the winter they had no heating. Detainees could hear the sounds of people being beaten in other buildings. As a result of the living conditions, the physical and psychological health of many detainees was destroyed. As commander, Krnojelac was aware that his failure to take any action contributed in a substantial way to the continuance of these conditions by giving encouragement to the principal offenders to maintain the conditions.

<b>Born</b>	25 July 1940, Birotici, Bosnia and Herzegovina
<b>Indictment</b>	Initial: 17 June 1997; first amended: 21 July 1999; second amended: 2 March 2000; third amended: 25 June 2001
<b>Arrested</b>	15 June 1998, by the multinational Stabilisation Force (SFOR)
<b>Transferred to ICTY</b>	15 June 1998
<b>Initial and further appearances</b>	18 June 1998, pleaded not guilty to all charges 14 September 1999, pleaded not guilty to all charges
<b>Trial Chamber judgement</b>	15 March 2002, sentenced to 7 ½ years' imprisonment
<b>Appeals Chamber judgement</b>	17 September 2003, sentenced to 15 years' imprisonment
<b>Sentence served</b>	11 April 2006, transferred to Italy to serve the remainder of his sentence; credit was given for time served since 15 June 1998; early release granted on 9 July 2009

## STATISTICS

<b>Trial days</b>	<b>76</b>
<b>Witnesses called by Prosecution</b>	<b>45</b>
<b>Witnesses called by Defence</b>	<b>30</b>
<b>Witnesses called by Chambers</b>	<b>0</b>
<b>Prosecution exhibits</b>	<b>283</b>
<b>Defence exhibits</b>	<b>279</b>
<b>Chamber exhibits</b>	<b>0</b>

TRIAL	
<b>Commenced</b>	30 October 2000
<b>Closing arguments</b>	19 and 20 July 2001
<b>Trial Chamber II</b>	Judge David Hunt (presiding), Judge Florence Mumba, Judge Liu Daqun
<b>Counsel for the Prosecution</b>	Hildegard Uertz-Retzlaff, Peggy Kuo, William Smith
<b>Counsel for the Defence</b>	Mihajlo Bakrač, Miroslav Vasić
<b>Judgement</b>	15 March 2002

APPEALS	
<b>Appeals Chamber</b>	Judge Claude Jorda (presiding), Judge Wolfgang Schomburg, Judge Mohamed Shahabuddeen, Judge Mehmet Güney, Judge Carmel Agius
<b>Counsel for the Prosecution</b>	Christopher Staker, Helen Brady, Anthony Carmona, Norul Rashid
<b>Counsel for the Defence</b>	Mihajlo Bakrač, Miroslav Vasić
<b>Judgement</b>	17 September 2003

RELATED CASES <i>by geographical area</i>	
JANKOVIĆ <i>et al.</i> (IT-97-23/2) "FOČA"	
KARADŽIĆ & MLADIĆ (IT-95-5/18) "BOSNIA AND HERZEGOVINA" & "SREBRENICA"	
KRAJISNIK (IT-00-39 AND 40) "BOSNIA AND HERZEGOVINA"	
KUNARAC <i>et al.</i> (IT-96-23 AND 23/1) "FOČA"	
MILOŠEVIĆ (IT-02-54) "KOSOVO, CROATIA & BOSNIA"	
PLAVŠIĆ (IT-00-39 AND 40/1) "BOSNIA AND HERZEGOVINA"	
TODOVIĆ & RAŠEVIĆ (IT-97-25/1) "FOČA"	

## INDICTMENT AND CHARGES

The initial indictment against Milorad Krnojelac, Savo Todović and Mitar Rašević was confirmed on 17 June 1997 and charged Milorad Krnojelac with crimes against humanity, grave breaches of the Geneva conventions and violations of the laws or customs of war, based on his alleged role in the events that took place between April 1992 and August 1993 at the KP Dom camp. The case against Savo Todović and Mitar Rašević was separated on 15 August 2003 and given a new case number (IT-97-25/1). At his initial appearance on 18 June 1998, Milorad Krnojelac pleaded not guilty to all counts of the indictment.

A first amended indictment, containing more specific details and additional supporting material in relation to allegations against Milorad Krnojelac, was confirmed on 21 July 1999. At his further initial appearance on 14 September 1999, he pleaded not guilty to all counts contained in the amended indictment.

A second amended indictment was issued on 2 March 2000 further clarifying the charges, especially concerning Milorad Krnojelac's level of responsibility in the camp.

Shortly before the beginning of the trial of Milorad Krnojelac, the Prosecution requested the withdrawal of counts which were charged as grave breaches of the Geneva conventions of 1949 (torture, wilfully causing serious injury to body or health, wilful killing, unlawful confinement of civilians, wilfully causing great suffering and inhuman treatment). When the trial began on 30 October 2000, the Trial Chamber issued an oral decision to withdraw these counts in order to shorten the length of proceedings.

During pre-trial, the Prosecution conceded that it was unable to establish that the accused had personally participated in the events which were alleged to have occurred inside the KP Dom. Instead the Prosecution pleaded that the accused was part of a joint criminal enterprise (JCE) to commit the offences charged. It had already pleaded that the accused had aided and abetted those who had personally participated in the commission of those offences, and was criminally responsible as a superior for the acts of his subordinates.

A third amended indictment was issued on 25 June 2001, which included additional facts. Milorad Krnojelac entered a plea of not guilty to all counts in the amended indictment on 27 June 2001.

The operative indictment charged Milorad Krnojelac, on the basis of individual criminal responsibility (Article 7(1) of the Statute of the Tribunal) and superior criminal responsibility (Article 7(3)) with:

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

## THE TRIAL

The trial of Milorad Krnojelac commenced on 30 October 2000 before Trial Chamber II (Judge David Hunt, presiding, Judge Florence Mumba and Judge Liu Daqun). The closing arguments took place on 19 and 20 July 2001.

## TRIAL CHAMBER JUDGEMENT

Foča town and municipality are located in Bosnia and Herzegovina, south-east of Sarajevo, near the borders with Montenegro and Serbia. According to the 1991 census, the population of Foča, which consisted of 40,513 persons, was 51.6 per cent Muslim, 45.3 per cent Serbian and 3.1 per cent others. On 7 April 1992, Serb military forces, which included Bosnian Serbs and citizens of Serbian descent from other parts of the former Yugoslavia, began the occupation of Foča town. The occupation was completed on 16 or 17 April 1992. Surrounding villages remained under siege until mid-July 1992.

As soon as the Serb forces controlled parts of Foča town, military police, accompanied by local and non-local soldiers, started arresting Muslim and other non-Serb inhabitants. Until mid-July 1992, the Serb authorities continued to round up and arrest Muslim villagers throughout the municipality. The Serb

authorities separated the men from the women and unlawfully confined thousands of Muslims and other non-Serbs. The KP Dom, one of the largest prisons in the former Yugoslavia, became the primary detention facility for men. Beginning on or around 14 April 1992, the Serb civilian and military authorities began to use the prison to detain Muslims and other non-Serbs, mostly males, and a few Serbs who had tried to avoid military service. The Serb detainees were separated from the non-Serb detainees. Due to continuing arrests, the prison was overcrowded during the first few months, with the number of detainees reaching a peak of more than 760. During the remainder of 1992, the prison population averaged about 600 detainees. The majority of detainees were exchanged or released during 1992 and 1993, but the KP Dom functioned as a detention facility until 5 October 1994.

Most, if not all, detainees were civilians, who had not been charged with any crime. Most of them were Muslim men from 16 to 80 years of age, including mentally handicapped, physically disabled and seriously ill persons.

The prison complex was surrounded by a three-metre high wall with barbed wire on top and watchtowers with machine guns. The inner periphery was mined. Soldiers and prison guards watched the detainees from the towers and regularly patrolled the complex. The detainees were housed in a four-story building, which consisted of common prison cells and solitary confinement cells, three by three metres in size. The prison complex also included administration buildings, workshops and a furniture factory.

During the time of the occupation, Milorad Krnojelac, also known as "Mićo", resided in the town of Foča. Before the war, he was a primary school mathematics teacher. In the Yugoslav National Army (JNA) he had the rank of a Captain First Class. From April 1992 until at least August 1993, he was the commander of the KP Dom. The assignment was a wartime assignment by the Ministry of Justice. During this time everyone received such assignments, from cooks to drivers to nurses and teachers. The Trial Chamber established that he was in a position of superior authority to everyone at the camp, and that he ordered and supervised the prison staff on a daily basis. He was present when detainees arrived, appeared during beatings, and had personal contact with some detainees.

The conditions under which Muslim and other non-Serbs were detained were harrowing. Some were severely mistreated. Some were killed on the spot, often in the presence or within earshot of their families. They were given insufficient food and as a result many of them suffered substantial weight loss. They were kept in various rooms, including solitary confinement cells. Some were housed in such cramped conditions that it was impossible for them to move freely or, in some instances, even to sleep lying down. The rooms were not heated and were extremely cold during the harsh winter of 1992. Clothes which the detainees had made from spare blankets to keep warm were confiscated by guards.

Hygienic conditions were deplorable and washing facilities minimal, while medical care was inadequate and medicine in very short supply. A basic medical service was provided but those in need of urgent medical attention were left unattended or given insufficient treatment. At least one detainee died as a result of the lack of or late medical care.

Non-Serb detainees were locked up in their rooms for most of the day, being allowed out only to go to the canteen and back. Some, however, were taken out to work knowing that they would receive additional and much needed food if they went.

Many of the detainees were subjected to beatings and other forms of mistreatment, sometimes randomly, sometimes as a punishment for minor breaches of the prison regulations or in order to obtain information or a confession from them. The screams and moans of those being beaten and tortured could be heard by other detainees. They became nervous and fearful as a result of these sounds and could not sleep at night. They could not identify the criteria for selection for the beatings and they constantly feared that they would be the next to be selected. Some wrote farewell letters to their families fearing they would not survive. Some witnessed family members being taken out and heard them being subjected to beatings. Some of those beaten were unable to walk or talk for days.

Many non-Serb detainees were taken out of the KP Dom, allegedly to be exchanged or in order to carry out certain tasks such as picking plums. Many of them did not come back and were never seen again. In late August 1992, 35 elderly or ill detainees were deported by bus from the KP Dom to Montenegro. On that same day, Muslim detainees, previously selected with the 35 detainees to be deported to Montenegro, were taken for an alleged exchange. These detainees were never seen alive again. From June 1992 until March 1993, at least 266 Muslims and other non-Serbs detainees were deported and transferred

to unknown places. They have also never been seen alive again. The majority of these disappearances occurred from August 1992 to October 1992 when Milorad Krnojelac was commander.

In summary, the Trial Chamber found Milorad Krnojelac guilty of four counts, including: persecutions - for the imprisonment, living conditions, and beatings of detainees - based on his individual and superior responsibility; cruel treatment - for the living conditions imposed on detainees - on the basis of his individual responsibility; inhumane acts - for beatings - as a superior; and cruel treatment - for beatings - as a superior.

The evidence showed that Milorad Krnojelac worked in concert with guards under his control and with soldiers who visited the KP Dom, to persecute Muslim and other non-Serb civilian detainees on political, racial or religious grounds. As part of the persecutions, he aided and abetted the execution of a common plan involving the prolonged and routine imprisonment of non-Serb inhabitants of Foča municipality and its environs, the establishment and perpetuation of inhumane conditions within the KP Dom, and the repeated beatings of detainees.

The evidence showed that Milorad Krnojelac and other high-level prison staff established a pattern of beatings, whereby guards took the detainees out of their cells and brought them to the interrogation rooms. He provided the office in which these day-time interrogations and beatings took place. With political leaders or military commanders and other high-level prison staff, he prepared lists of detainees to be further beaten during night-time interrogations and established a routine for these beatings. Milorad Krnojelac ordered the guards to beat detainees and in conjunction with his subordinates he subjected the other detainees to collective punishment. He allowed Serb military personnel to enter the prison and assault the detainees whenever they wanted, and instructed his guards to lead the soldiers to the cells and select detainees for beatings. Evidence of more than 50 incidents of beating was of sufficient severity as to hold Milorad Krnojelac responsible for inhumane acts and cruel treatment as a superior.

When deciding on the sentence, the Trial Chamber took into account the particular vulnerability of the victims, the length of time over which the crimes continued during his tenure as commander, and the extent of the long term physical, psychological and emotional suffering of the victims. The Trial Chamber found that he expressed no regret for the part he played in the commission of the crimes, and only insubstantial regret that the offences had taken place.

On the other hand, the Trial Chamber also took into account the fact that he had been employed as a mathematics teacher for most of his working life prior to his appointment at the KP Dom. The Chamber found that he was not well experienced, and perhaps not well suited, for the task which he undertook. Moreover, unlike other persons who filled similar positions, and whose cases had been dealt with by the Tribunal, his participation in these crimes was limited to his aiding and abetting the criminality of others. Even then, the Chamber found that his encouragement to those who did participate in these crimes was largely by reason of his inaction, that is, his failure to exercise his powers as commander despite his knowledge that the crimes were being committed.

On 15 March 2002, the Trial Chamber rendered its judgement, convicting Milorad Krnojelac, on the basis of both individual criminal responsibility (Article 7(1) of the Statute) and superior criminal responsibility (Article 7(3)), of:

- Persecutions on political, racial and religious grounds (crimes against humanity, Article 5).

on the basis of individual criminal responsibility (Article 7(1)) of:

- Cruel treatment (violations of the laws or customs of war, Article 3).

on the basis of superior criminal responsibility (Article 7(3)) of:

- Inhumane acts (crimes against humanity, Article 5),
- Cruel treatment (violations of the laws or customs of war, Article 3).

Sentence: 7 ½ years' imprisonment.

## APPEALS CHAMBER JUDGEMENT

The Defence and the Prosecution filed notices of appeal against the Trial Chamber judgement and sentence on 12 April 2002 and 15 April 2002 respectively. The Defence filed six grounds of appeal and the Prosecution filed seven.

On 14 and 15 May 2003, the appeals hearing took place. The Prosecution and the Defence presented their arguments and Milorad Krnojelac addressed the court as well.

The Appeals Chamber dismissed all grounds of appeal raised by the Defence and granted six of the seven grounds submitted by the Prosecution.

Milorad Krnojelac was found guilty as a co-perpetrator, and no longer as only an accomplice, for the imprisonment of Muslim and non-Serb civilians at the KP Dom, for the inhumane acts committed against them, and for the detention conditions imposed on the prisoners. His criminal responsibility was also expanded in relation to forced labour, deportations and expulsions, for which he was found guilty as a co-perpetrator. He was also found guilty of four counts of torture and murder; charges that he was originally acquitted of by the Trial Chamber.

In relation to the torture charges, the evidence showed that Milorad Krnojelac knew or had reason to know that his subordinates were torturing detainees, and he was therefore held responsible as a superior. He was not implicated in the crimes of his subordinates but for a failure to carry out his duty as superior, that is, to exercise control. The Appeals Chamber also concluded that Milorad Krnojelac had sufficient information to put him on notice that his subordinates were involved in the murder of detainees. Milorad Krnojelac would have been aware of the beatings and the suspicious disappearances of detainees and, having seen bullet holes in the walls, was in a position to ascertain that the perpetrators of beatings may have committed murders. Consequently, the Appeals Chamber found him guilty of murder as a superior.

On 17 September 2003, the Appeals Chamber, with Judge Claude Jorda presiding, convicted Milorad Krnojelac, as a co-perpetrator pursuant to Article 7(1) of the Statute of:

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

and with superior criminal responsibility pursuant to Article 7(3) of:

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

Sentence: 15 years' imprisonment.

On 11 April 2006, Milorad Krnojelac was transferred to Italy to serve his sentence. Credit was given for time served since 15 June 1998.

On 9 July 2009, Milorad Krnojelac was granted early release.