

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

Case No. IT-05-88-T

IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge O-Gon Kwon
Judge Kimberly Prost
Judge Ole Bjørn Støle

Registrar: Mr John Hocking

Date Filed: 15 October 2009

**THE PROSECUTOR
v.
VUJADIN POPOVIC
LJUBISA BEARA
DRAGO NIKOLIC
LJUBOMIR BOROVCANIN
RADIVOJE MILETIC
MILAN GVERO
VINKO PANDUREVIC**

PUBLIC

**BOROVCANIN RESPONSE TO “SECOND CORRIGENDUM TO THE
PROSECUTION FINAL TRIAL BRIEF”**

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Mr Zoran Zivanovic and Ms Mira Tapuskovic for Vujadin Popovic
Mr John Ostojic and Mr Predrag Nikolic for Ljubisa Beara
Ms Jelena Nikolic and Mr Stéphane Bourgon for Drago Nikolic
Mr Aleksandar Lazarevic and Mr Christopher Gosnell for Ljubomir Borovcanin
Ms Natacha Fauveau-Ivanovic and Mr Nenad Petrusic for Radivoje Miletic
Mr Dragan Krgovic and Mr David Josse, Q.C. for Milan Gvero
Mr Peter Haynes, Q.C. and Mr Simon Davis for Vinko Pandurevic

**BOROVCANIN RESPONSE TO “SECOND CORRIGENDUM TO THE
PROSECUTION FINAL TRIAL BRIEF”**

1. The Prosecution, following closing arguments, filed a “second corrigendum” to its final trial brief.¹ This corrigendum purports to correct the erroneous assertion in its final brief that witness Milenko Pepic testified that he heard detonations during the initial outbreak of shooting at the Kravica Warehouse, now arguing this proposition should (or could) have been attributed to Predrag Celic. The Prosecution asserts, to be precise, that Celic’s testimony was that he “heard hand grenade detonations coming from the Kravica Warehouse in the afternoon of 13 July, *when shooting started there.*”²

2. This is a substantive submission that goes beyond what is normally found in corrigenda.³ More importantly, the substance is incorrect. The Defence is accordingly constrained to file the present submission and requests that the Chamber either: (i) disregard the Prosecution’s substantive submissions; or (ii) accept this Response as an appropriate response to the “corrigendum”.

3. The Prosecution asserts at paragraph 615 of its Brief that “Pepic testified that after he stopped the traffic upon Cuturic’s order, he heard ‘more intense’ firing from the direction of the Warehouse ... and that he also heard hand grenade detonations.” The implication is that Pepic heard detonations immediately after he had stopped traffic. If this were an accurate description of Pepic’s testimony, it could support the proposition that grenades were used during initial shooting incident at the Warehouse (said to have started around 5 p.m.), which, in turn, could be probative of the nature of the first shooting incident.

¹ Second Corrigendum to the Prosecution Final Trial Brief, 1 October 2009 (“Second Corrigendum”).

² Second Corrigendum, para. 1 (italics added).

³ See, e.g., *Lukic & Lukic* (IT-98-32/1-T), Corrigendum to Prosecution’s Final Trial Brief, 15 May 2009.

4. The Prosecution now admits, correctly, that Pepic makes no mention of any detonations at the Warehouse at any time, much less during the initial shooting incident. They now say that this proposition could be, or should have been, attributed to Predrag Celic.⁴
5. Celic's testimony does not support the claim that grenades were used during the initial shooting incident. Celic says only that he heard detonations from the direction of Kravica Warehouse at some point while shooting was ongoing.⁵ He emphasized that he could not accurately recall the duration or intervals of the shooting.⁶ Celic was never asked, and he never specified, that he heard detonations during the initial interval of shooting that he heard from the direction of the Warehouse.
6. The Prosecution acknowledged this during their rebuttal arguments, expressly acknowledging that Celic's testimony about the timing of the detonations was ambiguous: "*He doesn't give great timing on that, but it's clearly before dark, and it's a time he's hearing gun-fire.*"⁷ The statement made during rebuttal – not the assertion in the "corrigendum" -- is an accurate description of Celic's testimony.⁸

⁴ Incidentally, no footnote reference supports the sentence in which the claim is made that Pepic heard grenade detonations. The entire paragraph is about Pepic's testimony. This is not a case of a mismatched footnote, or an erroneous reference.

⁵ T. 13479:5-11.

⁶ T. 13478:23-25 ("The shooting from the direction of Kravica was quite louder, and lasted for longer intervals. I wouldn't be able to give you the interval times and durations.")

⁷ T. 34849:14-16. The claim that this must have been "clearly before dark" is vague. Celic confirmed that he left the area between 8 and 9 p.m. T. 13505:4-7. The detonations could, based on his testimony, have occurred anytime before his departure. The later end of this time-range would have been dusk, which would accord with PW-111's testimony, and the implication of Mevludin Oric's testimony.

⁸ The Defence makes no arguments here about the reliability of Celic's testimony as to the interval and timing of the *shooting*. The present submission is addressed purely to the accuracy of the Prosecution's submissions about what Celic says, not the reliability or accuracy that testimony. The latter, much broader issue, would require an analysis of other witnesses, including those who were actually at the Warehouse at the time. The final submissions address those issues.

7. The timing and sequence of events, as the Chamber knows, is critical to the proper assessment of this case. Different witnesses offered conflicting testimony on this issue. The relative perspective and reliability of those witnesses will need to be carefully weighed. A corrigendum filed after closing arguments is not a proper place to make supplemental claims, or to draw attention to particular evidence, especially when those claims are contentious or inaccurate.

Word count: 511.

Respectfully submitted.

The Hague, 15 October 2009

A handwritten signature in black ink, appearing to be a cursive script, likely representing the names of the signatories mentioned in the text below.

Aleksandar Lazarevic and Christopher Gosnell
Counsel for Mr Ljubomir Borovcanin