

IT-01-42/2-I 1290
D 1290 - D 1278 Pvk
05 SEPTEMBER 2007

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-01-42/2-I

IN THE REFERRAL BENCH

Before Judge Alphons Orie, Presiding
Judge O-Gon Kwon
Judge Kevin Parker

Registrar: Mr Hans Holthuis

Date Filed: 5 September 2007

THE PROSECUTOR

v.

VLADIMIR KOVAČEVIĆ

PUBLIC FILING

PROSECUTOR'S SECOND PROGRESS REPORT

The Office of the Prosecutor
Ms. Carla Del Ponte

THE INTERNATIONAL CRIMINAL TRIBUNAL
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PROSECUTOR'S SECOND PROGRESS REPORT

1. In accordance with the Referral Bench's Decision on Referral of Case Pursuant to Rule 11 *bis* of 17 November 2006¹ with Confidential and Partly Ex Parte Annexes ("Referral Decision") the Prosecutor hereby files her second progress report in this case.

2. The Referral Decision ordered:

"the Prosecution to file an initial report to the Referral Bench on the progress made by the Prosecutor of the Republic of Serbia in the prosecution of the Accused six weeks after transfer of the evidentiary material and, thereafter, every three months, including information on the course of the proceedings before the competent national court after commencement of trial, such reports to comprise or to include any reports received by the Prosecution from the international organisation monitoring or reporting on the proceedings; ..."²

3. The Prosecutor filed her Initial Progress Report on 5 June 2007.³

4. On 30 July 2007, the Office of the War Crimes Prosecutor of the Republic of Serbia ("WCPRS") filed an indictment against the Accused before the Belgrade District Court. The Accused is charged with committing war crimes against civilians pursuant to Article 142 of the FRY Criminal Code. The WCPRS requested the detention of the Accused pursuant to Article 142 Paragraph 2 Item 5 of the FRY

¹ *Prosecutor v. Vladimir Kovačević* ("Kovačević case"), Case No. IT-01-42/2-I, Referral Decision, 17 November 2006, p.25.

² Referral Decision, page 25.

³ Kovačević case, Case No. IT-01-42/2-I, Prosecutor's Initial Report, 5 June 2007

Criminal Procedure Code. The WCPRS also requested an additional expertise of the Accused's mental ability and capacity to stand the trial.

5. Within the prescribed deadline of eight days, the Accused filed a motion challenging the indictment. The session of the of the Belgrade District Court Chamber ("BDCC") which will discuss this motion will take place on 10 September 2007.

6. On 30 July 2007, the OTC rejected the WCPRS' request for detention as groundless, because, based on the medical findings of the Military Medical Academy, the accused is not capable of standing trial and therefore cannot be subjected to detention.

7. The WCPRS appealed this decision. However, on 7 August 2007, the BDCC dismissed the appeal as inadmissible, because the ruling is not challengeable according to Article 146 Paragraph 6 of the FRY Criminal Procedure Code.

8. The WCPRS appealed the BDCC's decision to the Supreme Court of Serbia, requesting the Supreme Court to either quash the ruling and remand the case for retrial, or to revise it and thereby order the detention.

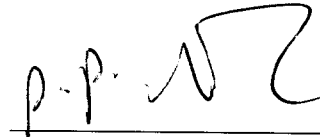
9. On 20 August 2007, the Supreme Court confirmed the decision of the BDCC, finding the appeal groundless according to the aforementioned Article 146 of the FRY Criminal Procedure Code.

10. Although the detention against the Accused was not ordered by the Belgrade District Court, all terms and conditions set out in the ICTY Trial Chamber's Decision on Kovačević's Provisional Release⁴, are in force and the Accused is currently on the premises of the Military Medical Academy in accordance with those conditions.

⁴ *Kovačević* case, Case No. IT-01-42/2-I, Decision on Provisional Release(re. Mr. Kovačević), 2 June 2004.

11. Attached to this report and marked as Annex A is a copy of the WCPRS' indictment.

Word count: 524

A handwritten signature in black ink, appearing to read 'p.p. WZ', written above a horizontal line.

Carla Del Ponte
Prosecutor

Dated this fifth day of September 2007
At The Hague
The Netherlands

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1286

THE INTERNATIONAL CRIMINAL TRIBUNAL
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ANNEX A
TO
PROSECUTOR'S SECOND PROGRESS REPORT



Republic of Serbia
WAR CRIMES PROSECUTOR'S
OFFICE
KTRZ No. 5/07
Belgrade
26 July 2007

**DISTRICT COURT IN BELGRADE
War Crimes Chamber**

Pursuant to my authority under Articles 46§2(3), 265§1 and 266 of the Act on Criminal Procedure, in re Article 14a of the Act on Alterations and Amendments to the Act on Organisation and Competence of State Authorities in War Crimes Proceedings, I herein raise the

INDICTMENT

Against VLADIMIR KOVAČEVIĆ aka »Rambo«, a retired army officer born on 15 January 1961 in Nikšić, Montenegro, citizen of Serbia, married, father of four, with residence in Belgrade, currently undergoing an inpatient treatment at the Military Medical Academy (MMA) in Belgrade, no criminal record.

GENERAL ALLEGATIONS:

Vladimir Kovačević, 1st Class Captain of the Yugoslav People's Army (JNA), had direct operational command of the 3rd Battalion, a component of the Trebinje-based 472nd Motorised Brigade. Kovačević was directly subordinated to the 9th Military Naval Sector (VPS) command, headed by Admiral Miodrag Jokić, whereas the VPS was part of the JNA's 2nd Operational Group under direct command of General Pavle Strugar. Both Jokić and Strugar stood trials before the International Criminal Tribunal for the Former Yugoslavia (ICTY).

At the time relevant to the indictment, the area of Dubrovnik, Croatia, part of the former Socialist Federal Republic of Yugoslavia (SFRY), was a site of armed conflict (which did not have a character of international armed conflict) between the JNA forces, which included units of the Territorial Defence (TO) from Montenegro and Bosnia and Herzegovina, Ministries of the Interior (MUP) of SFRJ and Montenegro, and volunteers on one side, and Croatian armed forces consisting of the National Guard (ZNG), MUP Croatia and volunteer units on the other.

CHARGES:

In the morning of 6 December 1991, at the time between 6.00 and 16.30, acting in his commander capacity, Kovačević ordered his forces, deployed on the elevations north and east of Dubrovnik, at Žarkovica plateau and other positions, to open random shell fire at the Old Town of Dubrovnik from artillery weapons and mortars, whereby they targeted civilian subjects, who were not directly involved in the hostilities and, as such, bound to receive humane treatment and protection from any violence, intimidation or danger arising from military operations wherein they were not actively participating. The attacks were also targeted against objects protected by international law – historical and architectural monuments officially included in the list of cultural heritage. Being part of the world cultural heritage, the whole area of the Old Town had been protected by UNESCO since 1979; accordingly, a number of buildings in the Old Town, as well as the turrets on its surrounding walls, were duly marked with distinctive symbols to deter potential attacks.

Acting upon Kovačević's orders, members of units under his command fired several hundred missiles at the Old Town of Dubrovnik, with the occasional personal involvement of Kovačević himself, who also fired a number of projectiles, the unlawful attacks resulting in heavy losses inside the Old Town, including the deaths of two civilians - Pavo Urban and Tonči Skočko, and the wounding of other three - Mato Valjalo, Ivo Vlašica and Nikola Jović. Material losses included the complete destruction and burning of six buildings (the Festival Palace located at 1, Od Sigurate Street; another palace located at no. 2 in the same street; Martinušić Palace at 1, Sv. Josipa Street; two palaces at 11 and 16, Od Puča Street; and Sorkočević Palace at 6, Miha Pracata Street), while further substantial damage was caused on 46 buildings and objects.

The accused, Kovačević, acted in contravention of international law, whereby he committed serious breaches of the following acts and provisions:

Geneva Convention IV on Protection of Civilians in Warfare of 12 August 1949 – Articles 35§1(1), 2(a) and 27§1 (*FPRY Official Gazette*, No. 24/50);

Annexed Protocol to the Geneva Conventions on Protection of Victims in Noninternational Armed Conflicts (Protocol II) of 12 August 1949 (*SFRY Official Gazette*, International Treaties No. 16/78) – Articles 45§1,2(a), 13 and 16;

Hague Convention on Protection of Cultural Assets in Armed Conflicts of 14 May 1954 (*SFRY Official Gazette* – International Treaties No. 4/56) – Articles 1§1(a), 4§1, 6 and 19.

By his acts and omissions set forth in this indictment, the accused, Kovačević, committed the criminal offence recognised by the Criminal Act of the Federal Republic of Yugoslavia (FRY) – Art.142§2, in re §1 (war crime against civilian population), in re Art. 22 of the same Act.

In view of the foregoing, I **PROPOSE**:

- A public trial to be scheduled and held before the War Crimes Chamber, with the following participants to be summoned:

- I War Crimes Prosecutor
- II The accused, Vladimir Kovačević, to be transferred from the Military Medical Academy in Belgrade;
- III Legal representatives
- IV Injured witnesses:
- V Witnesses:
- VI Protected witnesses »A« and »B«
- VI Expert witnesses:

- The following documents to be read out: Record on external examination of bodies, made by the District Court in Dubrovnik and dated 7 December 1991; Death lists for Pavo Urban and Tonči Skočko; medical report and medical findings related to the herein mentioned injured persons;

- Presentation of medical evidence containing records of the accused's mental health and his disease history, made by forensic experts – psychiatrists and neuropsychiatrists of ICTY and MMA Belgrade;

- The following documents related to the case of Pavle Strugar *et al.*, to be obtained from ICTY: UNESCO preliminary report on war destructions of Old Town Dubrovnik for December 1991; EC Monitoring Mission's log relating to the same period; Report on the examination of damaged buildings, issued in December 1991 by the Dubrovnik Institute for the Protection of Cultural Heritage; evidentiary objects: P-27 at 13:20 min. of audio-recording, P-52, P-60, P-61, Separator 30, P-66 at 31:20 min. of audio-recording; P-78 at 13:11 min. of audio-recording; P-86.2, P-174, P-211, Document C Nos. P-212 and D-96, p.67;

- Presentation of the ICTY judgment rendered in the case of Pavle Strugar *et al.*;

- Detention for the accused, pursuant to Art.142§2(5) of the Act on Criminal Procedure.

STATEMENT OF REASONS

The existence of the criminal offence recognised by Art.142§1 (war crime against civilian population) of the FRY Criminal Act, at the place and time relevant to the indictment, and in the manner described in the enacting terms thereof, as well as the existence of the criminal responsibility of the herein accused individual, arise from the results of the ICTY proceedings conducted at the Hague, against Vladimir Kovačević and his superiors, General Pavle Strugar and Admiral Miodrag Jokić.

Separated from the ICTY proceedings, the case against Vladimir Kovačević was referred to the Serbian judicial authorities pursuant to Rule 11bis of the ICTY Rules of Evidence and Procedure.

In the course of the ICTY proceedings, it was established that, in autumn 1991, the area of Dubrovnik was a site of armed conflict between the JNA forces, which included the TO units from Montenegro and Bosnia and Herzegovina, members of the Federal MUP and MUP Montenegro, and volunteer units on one side, and the Croatian armed forces, which included units of ZNG, MUP Croatia and volunteers on the other.

The conflict described in this indictment did not have a character of international conflict, given the fact that Croatia was internationally recognised by the European Community only on 15 January 1992, and gained a UN membership in April 1992.

Prior to the armed conflict, a so-called »incomplete« referendum (without the participation of ethnic Serbs) was held in Croatia, resulting in this republic's decision to secede from the SFRY. Subsequently, the Croatian leadership decided to declare independence, whereby the JNA was to be treated as an occupying force. These developments were accompanied with an accelerated pace of armament, the process resulting in occasional clashes with the JNA.

The Federal Government challenged the referendum and the Croatian decision on independence, whereby the armed conflict became inevitable. In summer 1991, the UN Security Council passed a resolution on an arms embargo for the whole of the SFRY territory, yet the document was largely disrespected.

In the broader area of Dubrovnik, specifically in the areas of Prevlaka and Konavli, throughout August and September 1991, the ZNG units attacked the JNA convoys moving from Boka Kotorska to Trebinje.

In the aftermath of these events, on 30 September 1991, pursuant to the SFRY General Staff directive, Lieutenant Colonel General Jevrem Cokić, the then 2nd Operational Group commander, ordered his subordinated units to carry out a land, sea and air blockade of Dubrovnik. Apart from the disarmament of the Croatian paramilitary units deployed in the Dubrovnik area, the blockade was intended to force non-resident troops and foreign mercenaries out of the town.

By 25 October 1991, the JNA had taken control over the majority of strategic positions around Dubrovnik. Negotiations on the city demilitarisation were started

with the Croatian side, the process resulting in a series of armistices and ceasefires which were frequently broken.

On 5 December 1991, the 9th Military Naval Sector held a meeting in Kupari, where it was decided that the 472nd Motorised Brigade should attack the fortress at mount Srđ the following morning. This was the only remaining position above Dubrovnik still controlled by the Croatian armed forces. The operation was due to have been completed by noon, which was the ceasefire time earlier agreed upon. The aim of the attack was the establishment of full control over the town.

The attack started at 5:00, with around 40 infantry soldiers divided into two groups and advancing from two positions, one group commanded by Lieutenant Lemal and the other by Lieutenant Pešić. The attack was preceded by an artillery preparation, which was carried out all the way until the infantry troops approached the fortress. Having identified the attackers, the Croatian artillery troops positioned in Dubrovnik (outside the Old Town) opened fire at the enemy, with occasional sniper fire coming from infantry positions. The JNA responded by artillery fire.

In his capacity of the 472nd Motorised Brigade commander, the herein accused individual requested that 130-mm howitzers deployed at Čilipi airport open fire and thereby neutralise the Croatian artillery, yet his request was denied. At around 6:00, in the aftermath of the tough Croatian resistance and the consequent human losses among the JNA troops, the accused, Kovačević, decided to direct the artillery and mortar fire towards the Old Town of Dubrovnik, in the belief that the Srđ defenders, discouraged by the fire, would surrender sooner. Acting upon Kovačević's orders, the units under his command launched several hundred shells and missiles at the Old Town, while the accused himself joined the operation by firing around ten »Maljutka« rockets.

At around 14:00, in the course of the Srđ attack, after Lieutenant Pešić had been wounded and a number of other JNA soldiers killed in the man-to-man fights inside the underground passages of the fortress, the accused, Kovačević, ordered his troops to withdraw, while the shelling of the Old Town continued until 16:30.

The shelling of the Old Town resulted in the deaths of two persons – Pavo Urban and Tonči Skočko, and the wounding of three – Mato Valjalo, Ivo Vlašica and Nikola Jović. In addition to the human losses, six buildings were destroyed, whereas damage was caused on 46 different objects.

Throughout the Hague proceedings, the accused, Kovačević, was not able to present his defence or enter pleas due to his impaired health status. A mental disorder, diagnosed in Kovačević as paranoid psychosis, renders him incapable of participating in a trial. Accommodated at the Military Medical Academy, where he is kept in isolation, Kovačević is a dangerous patient, primarily for himself, but also for his surroundings. His health status has been monitored by a psychiatrist, with an uncertain prognosis as to the further course of his disease.

The foregoing facts have been established on the basis of the testimonies provided by the following persons: protected witnesses »A« and »B«; proposed witnesses; injured persons; and legal representatives of the aforementioned victims' families.

The allegations contained in the enacting terms of this indictment are further corroborated by the following written documents enclosed with the case files: crime inspection report; postmortem records; death lists; reports for December 1991, specifying damages caused on objects inside the Old Town: institutions of religion, charity and education, those dedicated to arts and science, historical monuments, and works of art and science; and expert witness statements.

The role of the accused in the commission of the criminal offence is particularly highlighted in the testimony provided by a JNA Captain, who states that, in the morning of the critical day, he arrived at Žarkovica, approached the accused at his position and passed him Admiral Jokić's order not to attack the Old Town. The accused nodded, thereby indicating that he had understood the order, yet the shelling of the Old Town continued.

Protected witness »B«, who was heard at the Hague, testifies that, as a JNA soldier, he was carrying »Maljutka« missiles from the truck to the warehouse at Žarkovica and to the firing positions. According to this witness's observation, the artillery attack from Žarkovica was initially directed towards Srđ; later on, as the infantry advanced and the Croatian forces returned artillery fire, the attack was redirected towards Dubrovnik, whereby both the Old Town and the New Town were targeted. From his observation post, the witness observed shells falling inside the Old Town. Random fire was opened at various parts of Dubrovnik, including the Old Town. Visibly angry and shouting, the accused, Kovačević, personally fired around ten »Maljutkas« onto the Old Town. At a point between 10:00 and 11:00, as he was issuing orders, Kovačević said: «Everything should be razed to the ground.» He previously stated that, should it not surrender by a specified time, Dubrovnik would be attacked.

Witness testimonies further disclose that, on 6 December 1991, in the course of an intercepted conversation between two JNA members - a soldier and a captain, the captain said that everything inside the Old Town was a target.

Testimonies provided by protected witness »B«, other witnesses, UNESCO representatives and others, disclose that the Old Town of Dubrovnik, which is clearly distinguishable from the New Town by its architecture, surrounding walls and turrets, and which is also physically separated thereof, was duly and visibly marked with a number of UNESCO flags – signs of a protected status of objects that were part of the world cultural heritage, and as such were not to be attacked. As it has been said earlier, in the aftermath of the unlawful shelling of the Old Town, two persons were killed and three were wounded; moreover, six objects in the Old Town were completely destroyed, whereas forty six were damaged.

By acting in the described manner, by ordering the shelling of the Old Town and immediately engaging therein, the accused, Kovačević, is responsible for grave breaches of international legal regulations governing the conduct of war. As a high-ranking JNA officer, namely the 1st Class Captain, Kovačević was familiar with the provisions of the Geneva Conventions regulating the protection of civilians in warfare, and of objects under international legal protection. However, Kovačević acted in the above described impermissible manner, whereby he violated the stated provisions of the Geneva Convention on protection of civilian persons in warfare, of its Annexed Protocol on protection of victims in noninternational armed conflicts, and of the Hague Convention on protection of cultural heritage in armed conflicts.

Specifically, the stated provisions ban military activities in inhabited areas, unselective attacks on civilian persons who are not directly involved in the hostilities and as such ought to enjoy humane treatment and protection from any violence, intimidation or danger arising from military operations at all times. Consequently, such civilians have the status of protected persons in the sense anticipated by the stated conventions and protocols.

Part of the world cultural heritage, the whole of the Old Town of Dubrovnik has been protected by the UNESCO since 1979, therefore enjoying international legal protection, which implies a general obligation of respect and restraint from any act of hostility as anticipated by the specified conventions and protocols.

Since the ratification of the aforementioned conventions and protocols, the therein described activities have also been incriminated by our national legislation. In view of this fact, by acting in the manner described in this indictment, the accused, Kovačević, committed the criminal offence recognised by Art.142§2 in re §1 (war crime against civilian population) of the FRY Criminal Act, which is qualified as a criminal offence against humanity and international law.

At the time when the criminal offence was committed, the self-possession of the herein accused individual was indisputable. The deterioration of his health condition occurred much later. Psychological problems first experienced by Kovačević occurred in 1995 and 1996; he did not start hospital treatment before 1998, when he was diagnosed with posttraumatic stress. Being found incapable of military service, he got retired in 1999. Diagnosed paranoid psychosis in 2003, Kovačević has been accommodated at the Military Medical Academy and receiving an inpatient treatment ever since.

By committing the criminal offence described in this indictment, the accused, Kovačević, acted with direct premeditation, since he was aware of his act and willfully engaged in its commission; likewise, he was aware of the fact that the

stated criminal offence was aimed against persons and objects protected by international legal acts governing the conduct of war. By participating in the commission of this criminal offence and in the accomplishment of an unlawful common goal, in concert with the individuals named in the enacting terms of this indictment and tried before the ICTY, Kovačević acted in the sense recognised by Art.22 of the FRY Criminal Act, and is therefore to be treated as a copetrator of the stated criminal offence.

In consideration of the foregoing, I hold that this indictment has sufficient grounds in the collected data pertinent to the criminal offence at issue, and to Kovačević as the perpetrator thereof.

In the view of this Prosecutor, the fact that the accused is charged with a criminal offence punishable by imprisonment for a term longer than 10 years, the manner of the offence commission, as well as the consequences arising thereof, provide comprehensive grounds for a detention measure to be administered to the accused pursuant to Art.142§2(5) of the Act on Criminal Procedure.

Vladimir Vukčević
War Crimes Prosecutor