

FACTS ABOUT FOČA

On 22 February 2001, Dragoljub Kunarac, Radomir Kovač and Zoran Vuković were brought into Courtroom 1 at the ICTY to hear the pronouncement of the judgement in their case. All three stood accused, among other things, of torture and rape. The presiding judge read out a damning summary of the judgement, which included the following:

"...What the evidence shows, is that the rapes were used by members of the Bosnian Serb armed forces as an instrument of terror. An instrument they were given free rein to apply whenever and against whomsoever they wished.

What the evidence shows, is that it was possible for the Serb forces to set up and maintain a detention centre for scores of Muslim women such as Partizan Sports Hall, next to the municipal police building in Foča, from which women and young girls were taken away on a regular basis to other locations to be raped.

What the evidence shows, is that the authorities who were meant to protect the victims, such as the local police which had been taken over by the Serbs, turned a blind eye to their suffering. Instead, they helped guard the women, and even joined in their maltreatment when approached by them for help against their oppressors.

What the evidence shows, are Muslim women and girls, mothers and daughters together, robbed of the last vestiges of human dignity, women and girls treated like chattels, pieces of property at the arbitrary disposal of the Serb occupation forces..."¹

What exactly did the evidence show?

The evidence vividly depicted the terror inflicted upon the Muslim population of Foča, with a special focus on the women.

Some of these women were actually not even women yet - by any standards they would be referred to as girls or children. Consider the story of "AB", a 12 year old girl from Foča: on 3 September 1992, "AB", along with other girls, was singled out of a group of women who had been incarcerated in the Partizan sports hall. These women were on their way to Goražde for a prisoner exchange. During this journey, "AB" was taken off the bus, away from her mother who was also sitting in the bus and taken to a house where she was subjected to repeated rapes over a period of several months. The house, occupied by soldiers who were part of the Bosnian Serb Army (VRS), became one of the most notorious of the houses in Foča where girls and women were held and raped. They were also forced to do household chores - washing, laundering, cleaning, and cooking. Each of the soldiers who were there took a girl for himself and they remained their 'property' for the time that they were held there. The victims were repeatedly raped, sexually assaulted and often beaten during their stay. While held in this house, "AB" was taken to other locations, held against her will for periods of up to 10 days and raped by groups of Serb soldiers. Eventually the girls were taken to a house of an individual who went by the name of "Dragec" who rented them as prostitutes to soldiers and other people. In the end "AB" was sold to someone for 200 German Marks. She has never been seen since. Her story was told through the testimony of her fellow detainee, a woman who testified at the Tribunal during the trial of Kunarac, Kovač and Vuković.

Unfortunately, the story of "AB" is far from unique. In the words of a 1998 Human Rights Watch report, during 1992 and 1993, "many non-Serb women were held in rape camps throughout the municipality, where they were systematically sexually assaulted."²

Campaign of Widespread Terror

Foča is a small town located in south eastern Bosnia and the events that occurred there from early 1992 until mid-1993 can be linked with the wider picture of the events in Bosnia and Herzegovina and the overall goals of the Bosnian Serb leadership. Foča was of special strategic importance for the overall goal of uniting Serb lands because it borders Montenegro: it is on the crossroads that leads to Sarajevo, Pale and to the sea. According to the 1991 Census, Foča municipality had a pre-war population of about 40,513 inhabitants of whom 52% were Muslim. Only about 10 Muslims remained at the end of the conflict.³ The method used to achieve this goal was mostly expulsion through terror. Therefore, unsurprisingly, the Tribunal issued a number of indictments that dealt with the events in Foča. Two cases dealt specifically with the campaign of widespread persecution that took place in Foča: the first against Dragoljub Kunarac, who was a leader of a reconnaissance unit of the Bosnian Serb Army, and Radomir Kovač and Zoran Vuković both of whom were sub-commanders of the military police of the Bosnian Serb Army and members

of a paramilitary unit in the town of Foča; the second case was completed against Milorad Krnojelac who was the commander of “Kazneno-Popravni Dom” (KP Dom) a former prison facility in Foča. The events in this area also feature prominently in other indictments against Slobodan Milošević, Momčilo Krajišnik, Biljana Plavšić and Radovan Karadžić. The case against Radovan Stanković, which has recently been referred to the Special War Crimes Chamber in Sarajevo, also deals with specific charges of enslavement and rape of Muslim women. Finally, charges have also been brought against Gojko Janković, whose case is due to be transferred to Bosnia and Herzegovina and Dragan Zelenović who was arrested by authorities in the Russian Federation in September and is still awaiting transfer to The Hague.

Specifically, the trial against Dragoljub Kunarac, Radomir Kovač, and Zoran Vuković established that one target of this campaign of terror, apart from Muslim armed forces, were Muslim civilians and, in this case, specifically Muslim women. In this trial the ICTY established that rape was used by members of the Bosnian Serb forces as an instrument of terror:

*"What the evidence shows are Muslims, women and girls, mothers and daughters together, robbed of their last vestiges of human dignity, women and girls treated like chattels, pieces of property at the arbitrary disposal of the Serb occupation forces, and more specifically, at the beck and call of the three accused."*⁴

The trial was not about who started the war or what happened in Foča before mid-April 1992. The Prosecution and Defence agreed on the fact that the Serb authorities were in control after 17 April 1992. What this trial established is that, after establishing control, the Serb forces conducted a campaign of persecution .

Initial Investigations

The events that occurred in Foča during the course of the conflict were investigated by a number of international observers even before the establishment of the ICTY. The “Commission of Experts”⁵ produced a final report in May 1994. In that report the commission provided some details of the events that occurred in Foča from April 1992, including the bombardment and ethnic cleansing of villages in the area, mistreatment and torture in detention facilities, executions, rape and the existence of a number of mass grave sites. The report identified as perpetrators of the crimes a number of Bosnian Serbs from the area. This material was provided to the Tribunal.

The ICTY was also provided with material from various international humanitarian and non-governmental organizations that had been working with refugees and people who had left Bosnia and Herzegovina. Some of this material included detailed information on victims, described events that had occurred including a variety of crimes, assaults, murders and rapes, and also identified a number of the perpetrators of these crimes.

During the course of the investigation, the Tribunal was also provided with extensive material from the authorities in Bosnia and Herzegovina containing details of crimes and potential witnesses.

Prior to 1996, the Office of the Prosecutor (OTP) had no access to the Foča area, therefore the initial investigation consisted primarily of a review of the information that was provided to the Tribunal and interviews of those witnesses who were available to the investigators. Efforts were also made to contact Serb witnesses to obtain details of crimes. However, there was no cooperation forthcoming.

In respect of the Foča region, some Bosniak and Croat citizens, who had been expelled or exchanged, had been interviewed by the Bosnian authorities and various non-governmental organisations and had given details of the events that occurred in Foča and the surrounding villages in the period from early 1992 through to 1993. The records of these interviews were also provided to the OTP.

In order to establish if this information was correct, the OTP formed a team consisting of lawyers, investigators, analysts and interpreters. The team’s responsibility was to determine which crimes had been committed in the Foča region and to identify the persons responsible for committing them. From the start the team concentrated on group rapes involving a number of victims and a number of perpetrators. As the investigations started some years after the crimes were committed it was clear that the investigations would rely on witness statements. Interviews were conducted with witnesses from Foča and neighbouring villages and municipalities, and it was from these initial interviews that the names of Dragoljub Kunarac, Radomir Kovač, and Zoran Vuković emerged.

Establishing the Perpetrators

Establishing who was responsible for these crimes was a difficult task. For some women, it was relatively easy to identify the perpetrators - some of the offenders were from the local area and the victims had known them before the war. For a number of the women and girls, however, the task was much more difficult - the offenders were previously unknown to them and their first contact was during the course of the assaults. Some of the victims overheard the offenders being referred to only by nicknames or were not referred to by any name whatsoever. In such instances, the offenders were identified by the place where the crime occurred, their physical description, or by who else may have been present at the time the rapes and assaults took place. In court, each witness was asked to point out the perpetrator to the Judges as shown in the following exchange between the Prosecutor and witness "87":

Q. Would you be able to recognise Žaga Kunarac today?

A. Perhaps.

Q. Could you please look around the courtroom and tell us if you see him?

A. Yes.

Q. Could you please describe where he's seated and what he's wearing?

A. He's sitting on the left-hand side, and the second man there. I think he's got a dark blue blazer on, a white shirt. He's got a tie with a pattern on it, something reddish, something like that.

A. Let the record reflect that the witness has identified the accused Dragoljub Kunarac.⁶

Despite the fact that the Kunarac himself claimed in testimony provided in court, that not only did he not rape witness "87" but that he wanted to help her,⁷ the Trial Chamber found that Kunarac had been credibly identified and did not accept that his evidence could reasonably have been true.⁸

Among the evidence that was used to establish the veracity of the witnesses stories was the use of photographs of key locations where crimes had occurred. Each time a witness was called to testify they were asked to confirm the premises they were talking about. In some instances witnesses identified specific rooms in a building where rapes took place thereby reaffirming their testimony. Of course, all witness testimony provided in court has the opportunity to be cross-examined by the other party and although many of the witnesses in this case were offered protection measures all of the participants in court, judges, prosecution, defence counsel and the accused, were fully aware of the witnesses true identity.

Attack against the Civilian Population

The Trial Chamber was satisfied beyond reasonable doubt that there was an extensive attack by the Serb forces targeting the Muslim civilian population in the area of Foča, Gacko and Kalinovik. Once towns and villages were securely in their hands, the Serb forces - the military, the police, the paramilitaries and, sometimes, even Serb villagers - applied the same pattern: Muslim houses and apartments were systematically ransacked or burnt down, Muslim villagers were rounded up or captured, and sometimes beaten or killed in the process. Men and women were separated, with many of the men detained in the former KP Dom prison.⁹

The Krnojelac trial dealt specifically with KP Dom and whilst held in this facility the men had to suffer long periods of detention, detention that was without justification. Some were severely mistreated when they were captured. Some were killed on the spot, often in the presence or within earshot of their families. Among the detained, there were young and elderly, ill, wounded, physically incapacitated and mentally disturbed persons.¹⁰

On the morning of 3 July 1992, the settlements of Trošanjanj and Mješaja were attacked by Serbs wearing camouflage clothing and a number of men and women were killed by gunfire whilst trying to flee. The remaining women and children were captured and taken by foot to Buk Bijela, a former hydro-electric plant construction site, which served as a detention centre. From there, they were transferred by bus to Foča High School, where they were detained. Some of them were later taken to other places in and around Foča, such as Partizan Sports Hall, which was about a stone's throw away from the police station, and to private houses in Miljevina and Trnovače. There they would meet women and girls from the other two municipalities. In all these locations, the terror took on another, very personal dimension.¹¹ Whilst being held at these premises under the pretext of being questioned, a number of the women and girls were sexually assaulted or raped in huts by the Serb soldiers. During her testimony regarding another incident, Witness "50" claimed that Zoran Vuković raped her whilst she was held in Buk Bijela. During her later detention in the Partizan sports hall the Trial Chamber found that sometime in mid-July 1992, Zoran Vuković and another soldier came there looking for her. She was taken to an apartment by Vuković where

he forced her to have sexual intercourse with full knowledge that she did not consent.¹² The Trial Chamber also noted that this incident was the second time that Zoran Vuković raped witness “50” within a fortnight. They determined that he knew of her situation as a Muslim refugee since he had seen her at Buk Bijela, and he knew that she was about 16 years old at the time, as he told her that she was about the same age as his daughter.¹³

Unlawful Detention Centres

Partizan Sports Hall was where a number of women and girls were detained during the latter part of 1992. The conditions were deplorable, food was meager and irregular, the sanitary conditions were poor and unhygienic and there was no medical care. While the women were interned there, the area was patrolled by armed guards subordinated to the then head of the SUP (Secretariat of Internal Affairs), Dragan Gagović. Partizan was close to the SUP and the municipal building and the events that were happening in the Partizan Sports Hall could easily be seen by people working in the SUP. What the evidence demonstrated was that the authorities who were meant to protect the victims, such as the local police, which had been taken over by the Serbs, turned a blind eye to their suffering. Instead they helped guard the women and even joined in their maltreatment when approached by them for help.¹⁴

Enslavement

One of the most important aspects of the Kunarac *et al.* trial was that, for the first time at an international court, sexual enslavement was punished as a crime against humanity. Certainly the judgement recognised that detaining someone in captivity would not normally constitute enslavement¹⁵ however they determined that in the case of the women held in and around Foča the element of enslavement existed, namely, “control of someone’s movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour.”¹⁶

For example, immediately after their arrival at the sports hall, armed soldiers often in groups of three or four came and forcibly took the women and girls to houses, apartments and the Zelengora Hotel for the purposes of sexual assaults and rape. The pattern here was prolonged and consistent, with the victims being subjected to sexual assaults both night and day in what was a continual process. The horror of this continual abuse can be best described by one of the victims in her testimony to the Tribunal on 4 April 2000,

Q. What did the soldiers do when they came to this house?

A. Usually they would select one of the girls and take her off to the second floor.

Q. How long were you kept at Karaman’s house?

A. I can’t remember that exactly. A month and a half, two months perhaps, although I’m not quite sure.

Q. During that time, what happened to you there?

A. I, like all the other girls in Karaman’s house, was raped by the Serb soldiers. I think that after a certain amount of time, that two other girls were brought in, or three, but at any rate, all of them were raped either every night or every other night often.

Q. Are you able to count how many times you were raped in Karaman’s house?

A. I don’t think that is possible.¹⁷

During the case the Defence submitted that enslavement cannot have taken place as the victims testified that they had freedom of movement both within and outside the apartment and therefore could have escaped or attempted to change their situation.¹⁸ Indeed the accused Kovač claimed that witness “87” was actually in a love relationship with him. The Trial Chamber rejected this defence. It classified the relationship between Witness 87 and Kovač as follows, “The relationship between FWS-87 and Kovač was not of love as the Defence suggested but rather one of cruel opportunism on Kovač’s part, of constant abuses and domination over a girl who, at the relevant time, was only about 15 years old.”¹⁹

Rape as an Instrument of Terror

When rendering their decision, the Trial Chamber firstly considered the broader context of what was going on in Foča, before shifting its focus to the acts and omissions of the accused, in order to determine their individual, direct or superior responsibility. The Kunarac *et al.* trial has sometimes been called the “rape camp case.”, as the trial was the first conviction by the Tribunal of rape as a crime against humanity. It is cited as an example of the systematic rape of women of another ethnicity, where rape was used as a “weapon of war.” When reading the summary of the judgement, Judge Mumba made the following

statement: "It is to some extent misleading to say that systematic rape was employed as a "weapon of war." This could be understood to mean that an order was given to the Bosnian Serb armed forces to rape Muslim women as part of their combat activities in the wider meaning. There is not sufficient evidence for such a finding before the Trial Chamber. What the evidence shows, is that the rapes were used by members of the Bosnian Serb armed forces as an instrument of terror. An instrument they were given free rein to apply whenever and against whomsoever they wished."²⁰

Additionally, what the evidence showed was that it was possible for the Serb forces to set up and maintain a detention centre for scores of Muslim women, a centre from where women and young girls were taken away from on a regular basis to other locations to be raped. Given what had happened in their villages where their husbands and brothers and uncles were killed, their houses were burned, and their belongings taken away, there was every reason for the witnesses and the victims to believe that resistance was useless. As the prosecution stated in their closing statement,

You'll recall the reaction of Witness 95 when asked even by the Prosecution if the sexual contact was against her will. She answered with appropriate outrage: "Please, madam, if over a period of 40 days you have sex ... with several individuals, do you really think that that is with your own will?"²¹

Continuing Denial in Foča

Despite the fact that the Kunarac *et al.* case proved beyond reasonable doubt that rape was used as an instrument of terror by members of the Bosnian Serb armed forces and that the accused, Dragoljub Kunarac, Radomir Kovač, and Zoran Vuković took an active role in this campaign some still deny those who suffered a suitable memorial. In October 2004 members of the Women's Victims of War Association attempted to lay a plaque in front of the Partizan sports hall to commemorate the terrible crimes that occurred there. Hundreds of Bosnian Serb protestors prevented them from doing so.

This is highly disturbing. The Tribunal Judges determined beyond a reasonable doubt that the purpose of the Serb campaign in Foča was, among others, "to cleanse the Foča area of Muslims". The Chamber gravely concluded that "to that end the campaign was successful. Even the town's name was cleansed. Foča was renamed Srbijne and now lies in the territory of the Republika Srpska. There are hardly any Muslims left in Srbijne today. One target of that campaign, apart from the Muslim armed forces, were Muslim civilians. In the present case, especially Muslim women. The method employed was mostly expulsion through terror." The Tribunal has thus far convicted four individuals for direct participation in these events. In accordance with its mandate, the Tribunal can only deal with a relatively small percentage of crimes that were committed in the territory of the former Yugoslavia. However, many more people were involved in the campaigns of terror such as that conducted in Foča.

They should all be brought before the local courts to answer for their crimes. Only then will the victims be able to have a proper memorial. Only then can the law abiding citizens of Foča, Serbs and others, finally live in peace.

¹ Summary of Judgement, *Prosecutor v. Kunarac et al.* Case No. : IT-96-23/1, 22 February 2001

² Human Rights Watch Report 1998 Vol. 10, No. 6 (D) Bosnia and Herzegovina "A Closed, Dark Place": Past and Present Human Rights Abuses in Foča

³ Judgement, *Prosecutor v. Kunarac et al.* Case No.: IT-96-23/1, 22 February 2001, (hereinafter "Kunarac et al. Judgement"), para. 47.

⁴ Summary of Judgement, *Prosecutor v. Kunarac et al.* Case No. : IT-96-23/1, 22 February 2001

⁵ Commission of Experts Report Final Report of the United Nations Commission of Experts, S/1994/674

⁶ *Prosecutor v. Kunarac et al.* Case No. : IT-96-23/1, Testimony of the protected witness "87" on 4 April 2000.

⁷ *Prosecutor v. Kunarac et al.* Case No. : IT-96-23/1, Testimony of Dragoljub Kunarac on 11 July 2000.

⁸ *Kunarac et al.* Judgement, para 658 and 661.

⁹ *Kunarac et al.* Judgement, para 570 and 574.

¹⁰ Summary of Judgement, *Prosecutor v. Krnojelac* Case No.: IT-97-25, 15 March 2002

¹¹ Summary of Judgement, *Prosecutor v. Kunarac et al.* Case No. : IT-96-23/1, 22 February 2001

¹² *Kunarac et al.* Judgement, para 817

¹³ *Kunarac et al.* Judgement, para 815

¹⁴ Summary of Judgement, *Prosecutor v. Kunarac et al.* Case No. : IT-96-23/1, 22 February 2001

¹⁵ *Kunarac et al.* Judgement, para 542

¹⁶ *Kunarac et al.* Judgement, para 543

¹⁷ *Prosecutor v. Kunarac et al.* Case No. : IT-96-23/1, Testimony of the protected witness "87" on 4 April 2000.

¹⁸ Appeals Chamber Judgement, *Prosecutor v. Kunarac et al.* Case No.: IT-96-23/1, 12 June 2002 para 108

¹⁹ *Kunarac et al.* Judgement, para 762

²⁰ Summary of Judgement, *Prosecutor v. Kunarac et al.* Case No. : IT-96-23/1, 22 February 2001

²¹ *Prosecutor v. Kunarac et al.* Case No. : IT-96-23/1, Prosecution Closing Argument, 20 November 2000.