

THE FIRST INDICTMENTS IN ABSENTIA FOR WAR CRIMES IN KOSOVO

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The Humanitarian Law Center Kosovo (HLCK) has been monitoring war crime trials before the Kosovo courts since the end of the armed conflict in Kosovo. The HLCK has and will continue to publish relevant case analysis and newsletters, that will serve the general public to be informed related to these judicial proceedings.

This newsletter presents the general data on the first indictments in absentia for war crimes filed by the Special Prosecutor's Office of the Republic of Kosovo (SPRK).

A trial in absentia is a criminal proceeding in a court where the person being tried is not present at that trial.

ESTABLISHMENT OF LEGISLATION FOR COMMENCEMENT OF TRIALS IN ABSENTIA

1. The Law amending the Criminal Procedure Code of Kosovo (No. 06/L-091) was published in the "Official Gazette of the Republic of Kosovo" at the beginning of July 2019, which entered into force on July 19, 2019. This Law made it possible for the first time to hold trials in absentia for criminal offenses against international humanitarian law and international criminal law, committed during the period from January 1990 to June 1999.

2. The Law amending the Criminal Procedure Code of Kosovo (No. 08/L-002) was published in the "Official Gazette of the Republic of Kosovo" in June 2021, this law partially amended the first Law (06/L-091) on in absentia trials, which was published in July 2019.

The new Law (08/L-002), simplified the procedure for trials in absentia even more, especially the investigative procedure of persons suspected of war crimes. The new Law of 2021, removed the deadline for investigations of criminal offenses against International Humanitarian Law and Criminal Law, for the period January 1990 to June 1999. Likewise, the requirement for sending summons to the person under investigation at least five (5) times in the country where he/she is supposed to be, was removed, and now under the new reformulation it is sufficient that the "International police cooperation has been put into use, and such cooperation has not been successful".

3. On August 17, 2022, the new Criminal Procedure Code (08/L-032) was published in the "Official Gazette of the Republic of Kosovo", Article 303 of this Code also provides for the procedure for trials in absentia for all types of criminal offenses including war crimes.

Under the new Criminal Procedure Code (CPC), in order to file an indictment in absentia, the following actions must first be taken: summons, arrest warrant, search for the defendant's address and issuance of international arrest warrant.

After filing an indictment in absentia for war crimes, a trial in absentia may begin when the presiding judge is satisfied that reasonable efforts have been made to notify the accused about the judicial trial and to ensure his/her presence.

Reasonable efforts imply that in addition to the summons and arrest warrant, a complete informational campaign must be carried out, calling the accused to surrender to the jurisdiction of the court.

Under the CPC, the investigation of all criminal offenses must be completed within two (2) years, with the possibility of being extended for an additional (1) year in different circumstances as provided for in Article 157 paragraph 2.

A person tried in absentia is always represented by an ex officio defense counsel and has the right to an unconditional retrial whenever arrested.

INDICTMENTS FILED IN ABSENTIA

CASE: PROSECUTOR VERSUS D.R.

On May 2, 2023, the SPRK filed an indictment against the defendant D.R. on the suspicion that he committed the criminal offense of war crime against the civilian population.

According to the SPRK, there is a well-founded suspicion that on June 2, 1999 the defendant, dressed in a Serbian military uniform, armed with an automatic rifle and a knife, in a village at the Klinë/Klina municipality, committed sexual violence against a woman of Albanian nationality.

CASE: PROSECUTOR VERSUS Č.A.

On May 2, 2023, the SPRK filed an indictment against the defendant Č.A. on the suspicion that he committed the criminal offense of war crime against the civilian population.

According to the PSRK, there is a well-founded suspicion that the defendant during the time period January-May 1999 in the vicinity of the Shtime/Štimlje municipality, in collaboration with other members of the military and police forces, participated in deportation, causing great suffering or violation of the bodily integrity or health and killing of the Albanian civilian population.

CASE: PROSECUTOR VERSUS G.P.

On May 2, 2023, the SPRK filed an indictment against the defendant G.P. on the suspicion that he committed the criminal offense of war crime against the civilian population.

According to the PSRK, there is a well-founded suspicion that the defendant, as a member of the police forces of the reserve unit of the MIA of Serbia, in co-perpetration with other policemen, during the period July-August of 1998, in a village of Fushë Kosova/Kosovo Polje municipality, committed sexual violence against a male of Albanian nationality.

CASE: PROSECUTOR VERSUS I.B.

On July 10, 2023, the SPRK filed an indictment in absentia against the defendant I.B. on the suspicion that he committed the criminal offense of war crime against the civilian population.

According to the PSRK, there is a well-founded suspicion that the defendant, as a member of the Serbian military and police forces, in co-perpetration with other persons, during the war in Kosovo, in the village of Zajm/Zajmovo of Klinë/Klina Municipality and the surrounding villages, committed looting and deportation of the civilian population.

HLCK FINDINGS:

-Since the first indictment in absentia was filed for war crimes in Kosovo, there has been no campaign for complete information calling on the accused to surrender to the jurisdiction of the court. Also Until the date of issuance of the present Newsletter, the actions foreseen in the CPCRK according to which the summons, together with the indictment, will be published on the website of the State Prosecutor, the court conducting the proceedings and in the official gazette, calling on the accused to surrender, have not been undertaken. Such notifications are an appeal to any person who has relevant information about the whereabouts of the accused to communicate such information to the police.

-From May 2023 until today, four (4) indictments in absentia have been filed and the court has not yet scheduled any court session to ensure that reasonable efforts have been made to notify the accused of the judicial trial and ensure his/her presence.

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