

Case Analysis: "Drenica"

The "Drenica" case is one of the largest cases tried by the local judiciary concerning war crimes against the civilian population, with the accused being members of the Kosovo Liberation Army (KLA). Although most of the case has reached a final verdict, one count is still under judicial review.

This case was initially investigated and tried by the EULEX mission. Following the conclusion of EULEX's executive mandate in 2018, it was transferred to local judges and prosecutors.

Course of Criminal Proceedings

On November 6, 2013, after the completion of the investigation, the EULEX special prosecutor filed an indictment numbered PPS.nr.88/11 for war crimes against the civilian population against Agim Demaj, Bashkim Demaj, Driton Demaj, Selman Demaj, Fadil Demaku, Jahir Demaku, Nexhat Demaku, Zeqir Demaku, Sabit Geci, Ismet Haxha, Sahit Jashari, Sami Lushtaku, Sylejman Selimi, Isni Thaqi, and Avni Zabali.

According to the indictment, the criminal offenses were committed during the armed conflict in the Drenica region, at the KLA's detention center in Likoc/Likovac, where civilians, mainly Albanians suspected of collaborating with the Serbian authorities, as well as some Serbs, were held. After being deprived of their liberty, the detainees were subjected to beatings, other forms of violation of bodily integrity and health, killings, and other forms of inhumane treatment.

Following the confirmation of the indictment, by the ruling of April 14, 2014, of the presiding judge of the Basic Court in Mitrovicë/Mitrovica, the indictment numbered PPS.nr.88/11 was divided into two cases: Prosecutor vs. Sabit Geci and others (Drenica I)¹ and Prosecutor vs. Agim Demaj and others (Drenica II).²

The trials for these two cases began in 2014 before the Basic Court of Mitrovicë/Mitrovica, composed of international judges from the EULEX mission.

In total, around sixty-six (66) main trial sessions were held in the two separate judicial procedures. In the "Drenica I" case, sixteen (16) witnesses proposed by the prosecution were heard, three (3) witnesses proposed by the defense, and two (2) witnesses proposed ex officio by the trial panel. In the "Drenica II" case, seven (7) witnesses proposed by the prosecution and eight (8) witnesses proposed by the defense were heard.

¹ Co-defendants: Sahit Jashari, Jahir Demaku, Sylejman Selimi, Ismet Haxha, Sami Lushtaku, and Avni Zabali.

² Co-defendants: Bashkim Demaj, Driton Demaj, Selman Demaj, Fadil Demaku, Jahir Demaku, Nexhat Demaku, Zeqir Demaku, Sylejman Selimi, and Isni Thaqi.

Most of the witnesses proposed by the prosecution were granted anonymity by the court, and they testified under pseudonyms. What was unique in this procedure was that, for the first time in Kosovo's judicial practice, the court declared some of the witnesses as “hostile witness”, upon the prosecution's request, meaning that those witnesses testified contrary to their statements given during the investigative procedure in the prosecution. By declaring a “hostile witness”, the prosecution has the right to question its own witness beyond the limits of direct questions, allowing for cross-examination.

Considering that these two cases were tried separately and have reached a final verdict, Agim Demaj, Bashkim Demaj, Driton Demaj, Selman Demaj, Fadil Demaku, Jahir Demaku, Nexhat Demaku, Zeqir Demaku, Sylejman Selimi, and Isni Thaqi were found guilty of mistreatment of detainees as a war crime and were sentenced to between 3 and 8 years of imprisonment, while the others were acquitted of the charges. The defendants were found guilty because during the armed conflict in Kosovo on an unspecified date during the months of August and September 1998, as members of the KLA, in co-perpetration with each other and other unidentified members of the KLA, by intentionally using force force and applying cruel and inhumane treatment and torture against witnesses A and B (Albanian civilians from Kosovo), who were being detained in the premises of the detention center in Likoc/Likovac.

Partial Retrial of the "Drenica I" Case

Following the submission of a request for the protection of legality by the defense of Sylejman Selimi, the Supreme Court, in its ruling dated June 11, 2018, partially accepted his request, determining that the trial panel of the Basic Court in Mitrovicë/Mitrovica was not constituted legitimately. As a result, the case was returned to this court for retrial.

The retrial was limited to the charges against the defendants Sylejman Selimi and Jahir Demaku, specifically concerning the violation of the bodily integrity and health of an unidentified person from the neighborhood of Shipol/Šipolje in the Municipality of Mitrovicë/Mitrovica, who was detained at the detention center in Likoc/Likovac and subjected to repeated beatings. For all other defendants involved in the indictment PPS.nr.88/11, the judgments have become final, and those cases have been closed.

The Basic Court in Mitrovicë/Mitrovica scheduled three (3) sessions for the retrial of the case, but none of them were held due to various reasons.

Since taking over executive powers from the EULEX mission in June 2018, the Basic Court in Mitrovicë/Mitrovica has failed to ensure a regular judicial process for this case, as well as for other war crimes cases that were supposed to be handled by this court.

At the 319th meeting of the Judicial Council of Kosovo, (KJC) held on January 25, 2024, which was also broadcast directly on the social network Facebook of the official website of the Judicial Council, the president of the Basic Court of Prishtina/Priština approved the transfer of thirteen (13)

cases from the Basic Court of Mitrovicë/Mitrovica to the Basic Court of Prishtina/Priština, and among these cases are the ones for war crimes against the civilian population.

The Special Department of the Basic Court in Prishtinë/Priština, after receiving the case against Selimi and Demaku, proceeded with a main trial immediately on April 12, 2024.

In the retrial, the case was handled by local prosecutors³ and judges⁴, as the authority to handle these cases has been under the jurisdiction of the local judiciary since June 2018.

Two (2) main trial sessions were held during the retrial. On April 12, 2024, the indictment related to the charge that was returned for retrial was read. The defendants pleaded not guilty.

After the opening statements were presented by the parties, the procedure continued with the administration of evidence.

Sylejman Selimi's defense attorney, Artan Qerkini, proposed that the statements of witness "A" be read in this judicial review. The prosecution and Demaku's defense agreed with this proposal.

Following this proposal, the trial panel decided that the statements of witness "A" given to the prosecution on December 13, 2011, and those provided during the main trial sessions held on June 25, 2014, July 17, 2014, and July 18, 2014, were accepted as read.

The prosecution declared that it had no other evidence to support the indictment, except for the exhibits related to witness "A's" application for recognition of the status of veteran, member, and detainee of the KLA, which was accepted as read during the main trial.

Since the parties had no further proposals for hearing additional witnesses or submitting additional evidence, the evidence procedure was closed. The defendants maintained their statements from the previous trial and exercised their right to remain silent in their defense.

On April 22, 2024, the parties in the procedure presented their closing arguments.

On April 25, 2024, the trial panel of the Special Department of the Basic Court in Prishtinë/Priština delivered an acquittal for both defendants regarding the charge that was returned for retrial.

The reason the court did not trust the statements of witness "A" was that his testimony contained numerous contradictions and was not corroborated by any other evidence that could rehabilitate these inconsistencies.

³ The case in retrial at the Basic Court in Prishtina/Priština was represented by Special Prosecutor Florije Salihu Shamolli.

⁴ The trial panel consisted of Ngadhujim Arni as the presiding judge, with Mentor Bajraktari and Lutfi Shala as members of the panel.

Findings of the HLCK:

-The Basic Court in Mitrovicë/Mitrovica has failed to address the war crimes cases inherited from the EULEX mission after the end of its executive mandate in June 2018.

-The Kosovo Judicial Council made a correct, albeit delayed, decision to transfer the war crimes cases, which had been pending for more than five (5) years, to the Special Department of the Basic Court in Prishtinë/Priština.

-The Special Department of the Basic Court in Prishtinë/Priština has been notably expedient in handling the case of Prosecutor vs. Sylejman Selimi and Jahir Demaku.

-The ruling of the trial panel to accept as read the statements of witness "A" given during the main trial at the Basic Court in Mitrovicë/Mitrovica is highly questionable. This decision raises concerns about the legality of these statements, considering that they were provided before a trial panel that, according to the Supreme Court's ruling, was unlawfully constituted, leading to the case's retrial. Despite this, the trial panel found that the statements of witness "A" contained numerous contradictions, and therefore, in this main trial, the witness should have been confronted with all these contradictions. This was particularly important given that earlier the Court of Appeal, based on these statements, had previously issued a guilty verdict.

-Additional findings related to the "Drenica I" and "Drenica II" cases can be found in the HLCK's annual reports published during the years 2013-2018, available on the HLCK's official website: www.hlc-kosovo.org.

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