

IN THE NAME OF THE PEOPLE

The District Court of Prizren, in the Trial Panel consisting of President of the Panel Daniel Gruia, International Judge, Judge Meriman Vehapi and International Judge Dr. Ingo Risch as members of the Trial Panel with the recording clerk Aferdita Buqaj in the criminal case against the accused Sava Matiq from Rahovec, accused for war crimes against the civilian population as per Article 142 of CCY applied in accordance with the UNMIK Regulation pursuant to the indictment of the Prizren District Public Prosecutor CC. No. 310/99 dated 11.09.2000 and after the main Public trial held on 22.01.2001, 23.01.2001, 24.01.2001, 25.01.2001 in the presence of the accused, of his defense attorneys Stoja Djuricic, Ljubomir Pantovic and Miro Delevic, in the presence of the Public Prosecutor Skender Morina and in the presence of the parties on 29.01.2001 reached and pronounced the following:

VERDICT

The accused Sava Matiq born on 25.01.1963 in Rahovec where he resides, fathers name [REDACTED] mother's name [REDACTED] maiden name [REDACTED] Serbian nationality, Yugoslav citizen, janitor, not married, completed elementary school, middle economic class, no prior conviction, not under any other criminal lawsuit, detained since 27.12.1999, is found:

GUILTY

Because on April 23, 1999 in the vineyard in the Region of Rahovec he committed the criminal act of light bodily injury as per Article 39 Paragraph 2 of the CCK applicable under UNMIK Regulation against the injured parties A [REDACTED] H [REDACTED] and H [REDACTED] A [REDACTED] H [REDACTED] while using his weapon. Therefore pursuant to Article 39 of CCK, applicable under UNMIK Regulation, the Trial Panel of this Court passed the following

SENTENCE

Of 2 (two) years imprisonment, and the time spent in detention since 27.12.99 will be deducted from the sentence imposed.

EXPLANATION

The Prizren District Public Prosecutor in the Bill of Indictment CC. No. 310/99 dated 11.09.2000 against the accused Sava Matiq from Rahovec charged him with the criminal act of war crimes against the civilian population as per Article 142 Paragraph 1 of the CCY, applicable under UNMIK Regulation.

In his Bill of Indictment the Prizren District Prosecutor explained that: during the armed conflict on July 1998 in Rahovec and during the war in Kosovo from 23.03.1999 until 12.06.1999 in the territories of the Rahovec Municipality and villages of Krusha e Madhe and Potoqani i Ulet the accused committed the following: executed orders for attacks against the unprotected civilian population, caused suffering, inhuman treatment, applied the measures of intimidation, torture, kidnappings, unlawful confinement and unlawful deportation of people to forced labor camps, extensive and unlawful destruction and appropriation of property, not justified by military necessity, burning of houses, plunder of movable property of the Albanian population and by doing so the accused violated the rules of the international law. Being a member of the paramilitary forces in Rahovec he executed orders issued by others to commit the above-mentioned crimes; wearing a camouflage police uniform, with an automatic gun he participated in the execution of 42 peasants from Krusha e Madhe village which happened on 26 March 1999, during this case 42 persons were executed; he participated in beating, maltreatment and looting in Potoqani i Ulet including peasants such as Xh [redacted] A [redacted], Q [redacted] S [redacted] H [redacted] H [redacted], H [redacted] A [redacted], I [redacted] Z [redacted] and S [redacted] Z [redacted] all from Potoqani i Ulet Municipality of Rahovec, and by doing so he has committed the criminal act of war crimes against the civilian population, as per Article 142 Paragraph 1 of the CCY applicable under UNMIK Regulation.

During the main trial the Prizren District Prosecutor persisted on his indictment and he proposed that the accused should be found guilty and punished in accordance with the law. On the basis of the evidence presented during the main trial as well as their evaluation and also the evaluation of the defense of the accused the Court established the following:

During NATO bombardment on April 23, 1999, around 14 hours, in the vineyard close to the town of Rahovec, where A [redacted] H [redacted] and his sons H [redacted] H [redacted] and Sh [redacted] H [redacted] have their property the accused Sava Matiq together with S [redacted] G [redacted] and two Roma people, all dressed in military uniforms and carrying weapons met the injured parties H [redacted] H [redacted] his father A [redacted] H [redacted] and his brother Sh [redacted] H [redacted] who were there to prune the vineyard. There was a hole in the vicinity and the accused and his group wanted to know who had dug that hole, the accused and his group were insisting that the hole was dug by the KLA, and for this reason Sava Matiq, S [redacted] G [redacted] and the two Roma people started maltreating all of the injured parties, tied the hands of the injured parties with wires in the columns of the vineyard and they were asking the same question to the injured parties who dug that hole. Because of the harsh beating, the

injured H [REDACTED] H [REDACTED] fainted and all of the other victims were beaten in the manner that they got bruises of blue color on their body. According to the statement of the witness H [REDACTED] H [REDACTED] the blue bruises disappeared and he recovered after two weeks without any other consequences to his health. The witness H [REDACTED] H [REDACTED] explained that Sava Matiq and the people of his group beat the injured parties with their guns, but they did not shoot at them.

The defense attorney of the accused stated in the final speech that it was S [REDACTED] G [REDACTED] who was more active during the incident.

The witness himself, H [REDACTED] H [REDACTED], declared that he did not go to see a doctor because he was afraid too much that the Serbian police and army would kill him and for this reason there is no medical report describing the level of the injuries of the injured parties in the documents of the file.

The Trial Panel of the Court while taking into consideration all of the above-mentioned evidence ascertained that on April 23, 1999, the accused and his group committed an assault against the above-mentioned members of the H [REDACTED] family and the health consequences of this assault were light bodily injury, that is an injury that was healed after two weeks without any medical treatment. The Trial Panel ascertained that this assault represents the criminal act of light bodily injury as per Article 39 Paragraph 2 of the CCK applied under UNMIK Regulation, because it is in question a light bodily injury. Because this injury was inflicted with a weapon that could cause grave bodily injury, the Trial Panel ascertained that the legal provision of the above-mentioned criminal act refers to Article 39 Paragraph 2 of CCK applicable under UNMIK Regulation.

The Court took into consideration firstly that the legal limit for the punishment of the above-mentioned criminal act as prescribed by the law is imprisonment to a period of 3 (three) years, secondly that this criminal act was perpetrated during a military conflict and that the accused was never convicted before. For the above-mentioned reasons the Court decided to sentence the accused Sava Matiq with two years of imprisonment. Taking into consideration the provision of the Article 351 Paragraph 1 Item 6 of the LCP, the period of time spent in detention by the accused should be deducted from the sentence imposed and the accused detained since December 27, 1999 should remain in detention, until the moment that this verdict enters into force.

Because of the fact that Sava Matiq during the incident in the vineyard used his weapon to hit the bodies of his victims the Trial Panel decided to confiscate the weapon sniper with the serial number E 12266 and 110 bullets as per Article 351 Paragraph 1 Item 5 of the LCP.

There is a traditional way here in Kosovo that people in the villages are called with different names, so that A [REDACTED] H [REDACTED] is the same person called also A [REDACTED] S [REDACTED] T [REDACTED] and H [REDACTED] A [REDACTED] H [REDACTED] is the same person called also as H [REDACTED] S [REDACTED] T [REDACTED]. Even in the Trial the witness S [REDACTED] Z [REDACTED] stated the same as in the above-mentioned with regard to

the names of the witnesses. During the Main Trial the witness replied to the question of the Public prosecutor that the person called A H [REDACTED] is also called A S [REDACTED] Th [REDACTED] and the other person called H [REDACTED] A [REDACTED] H [REDACTED] is also called H [REDACTED] S [REDACTED] Th [REDACTED]

The Prizren District Public Prosecutor in his Bill of Indictment charged the accused with war crimes against the civilian population pursuant to Article 142 Paragraph 1 of CCY applicable under UNMIK Regulation, during his final speech the Public Prosecutor asked the Trial Panel to sentence the accused because he executed orders for attacks against the unprotected civilian population, caused suffering, inhuman treatment, applied the measures of intimidation, torture, kidnappings, unlawful confinement and unlawful deportation of people to forced labor camps, extensive and unlawful destruction and appropriation of property, not justified by military necessity, burning of houses, plunder of movable property of the Albanian population and by doing so the accused violated the rules of the international law.

However during the main trial, the Public Prosecutor was not able to present sufficient evidence in order to prove the above-mentioned charges. In the documents of the file does not exist a single piece of evidence that would prove the above-mentioned charges of the Public Prosecutor, looting, kidnapping, burning etc. The Public Prosecutor did not present any evidence at all that the accused participated or perpetrated the above-mentioned criminal acts. The Bill of Indictment of the Public Prosecutor was compiled by using general terms and not specific evidence with regard to the criminal acts of the accused.

In his Bill of Indictment the Prosecutor alleged that the accused Sava Matiq participated in the massacre in Krusha e Madhe where 42 Albanians were executed. In his Bill of Indictment the Public Prosecutor did not explain where exactly the massacre of Krusha e Madhe happened, he did not give any list containing the names of the victims, he did not explain what happened to the bodies of the victims, he was unable to explain what was exactly the activity of the accused on the site of the incident. In his Bill of Indictment the Public Prosecutor proposed to the Trial Panel to interrogate only one witness regard to the massacre of Krusha e Madhe, because the testimonies given by the other witnesses did not contain any reference regarding that massacre. During the main trial, the witness A [REDACTED] Z [REDACTED] stated that he was absolutely sure that the accused was not just a simple participant in the massacre but the leader of the police group that perpetrated the massacre, whereas the Public prosecutor alleged that in the massacre were killed 42 persons but the witness declared that 22 or 23 persons were killed and three out of them survived. Furthermore the witness A [REDACTED] Z [REDACTED] stated in front of the Trial Panel that he was very sure that the accused was the commander on the spot, but at the same time the same witness was unable to explain why he did not recognize the accused on the photographs shown during the UNMIK police interrogation. While giving his testimony to the UNMIK police on 01.05.2000 the witness stated: "I am not sure that I can identify the responsible for the massacre. The killers had the coat pulled up and the face painted with colors; it was very difficult to distinguish their faces. I am sure that they were police officers, because they wore a blue camouflage uniform with a white ribbon tied on the epaulette. I never identified some of those officers. When Dutch KFOR showed me the

picture I told them that I had some suspicions regarding a man who might have been present at the scene. But I did not want to accuse anybody without certainty. I remember a police officer from Orahovac with the name D [REDACTED]".

The statement of the witness was a bit questionable because of the fact that he was not able to recognize the accused after a short period of time after the massacre had happened but during the main trial after approximately two years later he claimed that he could recognize the accused. Just during the trial the Public Prosecutor proposed to interrogate three other witnesses and afterwards he waived his right to hear one of them, despite the fact that the proposed witnesses had not been interrogated during the preliminary proceedings, during the compilation of the file.

The Trial Panel found the same unexplainable position in the statement of the witness J [REDACTED] D [REDACTED] who was interrogated by the UNMIK police on November 10, 1999 and May 08, 2000 he never mentioned the name of the accused Sava Matiq. The above-mentioned witness when he was interrogated by the UNMIK police stated that on the photos shown by the UNMIK police he could recognize one of the perpetrators who killed several people in his village, Krusha e Madhe and that later on he was informed by the UNMIK police that this suspect was A [REDACTED] K [REDACTED]. It is quite strange that after nearly two years he was able to recognize the accused in the Courtroom. The experience has shown that it would be highly unusual not to recognize the perpetrator shortly after such a significant event in one's life but to recognize him, two years later.

There are also numerous contradictions in the statements of the witnesses J [REDACTED] D [REDACTED], A [REDACTED] Z [REDACTED] and Selman Gashi, given by the above-mentioned witnesses before the Trial Panel. Some differences might be explained by the witnesses different perceptions. The witness A [REDACTED] Z [REDACTED] is the only person who claimed that he saw a sharp-shooter in front of the group of the Albanians and that this sharp-shooter was shooting from a distance of 100 meters at the group of the Albanians. On the other hand the witnesses J [REDACTED] D [REDACTED] and Selman Gashi did not give any information at all about the presence of the sharp-shooter who was shooting the group of the Albanians from the front.

The witness J [REDACTED] D [REDACTED] stated that he was completely sure that A [REDACTED] Z [REDACTED] was in the group, and that he was together with him both after the first and the second separation of the group. He also stated that A [REDACTED] Z [REDACTED] and him were so close to each other that they could touch each other and that in fact it was A [REDACTED] Z [REDACTED] who saved his life because when the Serbian policemen fired at their group he caught the arm of the witness and kept him on the ground and told him not to get up because he could be killed. On the other hand, according to the testimony of A [REDACTED] Z [REDACTED], the incident happened in the evening and he did not move away from the place until 1 a.m. He left the place of the event 7 hours after the incident. As he was moving very carefully he saw a friend S [REDACTED] G [REDACTED] who survived just like him and together they decided to leave the place. After a few meters, both of them, G [REDACTED] and Z [REDACTED] saw another friend of theirs named J [REDACTED] D [REDACTED] who was still alive. The Trial Panel did not find any reasonable explanation in the testimonies of the above-mentioned witnesses. It is also against any human experience that someone would stay 7 hours lying on the ground pretending to be dead, when he would have enough time to check who the person next him was.

The Trial Panel doubts that the Serbian police started shooting at the group of the above-mentioned witnesses when the group of the women and children was at a distance of 500-600 meters from the place of the event because this distance would have been too small to avoid that the noise of the shooting being heard by the group of women and children. According to the statement of the witness J█████ D█████ the incident happened at the sunset but there was enough light to see, therefore they (the group of the Albanians) were able to see the group of women and children at the distance of 500-600 m, the position of the women and children was below them. Taking this into consideration, the group of women and children would have been able to see the male group of Albanian victims and Serbian policemen with the consequence that the group of women and children normally would normally try to immediately find help for their male family members. But none of the witnesses reported that the female group attempted to find any assistance for the attacked family members. It is quite impossible to see your family being shot and not react at all. The Public Prosecutor was unable to give any explanation to the Panel regarding this essential contradiction given by the three principal witnesses out of whom two were proposed the very last minute, thus representing key witnesses on whose testimonies the Public Prosecutor chiefly based his charges. In his Bill of Indictment, the Public Prosecutor spoke about 42 victims in the massacre of Krusha e Madhe, but even his witnesses in the trial mentioned that the maximum number of the victims could be 22 or 23 persons, therefore, the Public Prosecutor did not present to the Trial Panel any evidence regarding what happened with the other persons in the other group, furthermore the Public Prosecutor did not offer to the Trial Panel any evidence about the involvement of the accused in any actions against the second group. There is an unsolved question for the Trial Panel, i.e., whether the members of the second group had been either executed or released. There is no list containing the names of the victims and there is no explanation regarding the corpses. Even the place of the incident remained undetermined.

The only evidence presented by the Public Prosecutor with regard to the psychological pressure committed by the accused against the Albanian population is the incident that was reported by the witness Xh█████ A█████ but this statement also is very inconsistent because the witness explained that after the incident that had happened in the street the accused came to the house of the witness to invite him to drink something together. The Trial Panel could not exclude the possibility that the witness and the accused were acting as friends and that it was just a joke between them, and not a real threat.

Finally, the doubts regarding the guilt of the accused are based on the following consideration: Sava Matiq remained free in his town until December 1999 living in his neighborhood without any problem and there were no pending charges against the accused. The level of education of the accused and his occupation as a janitor who finished the elementary school only contradicts the allegations against him that he was a police commander of the group of Serbian policemen. There is also no evidence that he has changed from the position in the military to the position in the police. Because of all of the above-mentioned elements the Trial Panel is of the opinion that in this case there is a lack of evidence against the accused which should convince the Trial Panel that the accused committed the criminal act of war crimes against the civilian population pursuant

to Article 142 Paragraph 1 of CCY applicable under UNMIK Regulation. The Trial Panel took into consideration the principle "in dubio pro reo", therefore the Trial Panel did not vote in favor of finding the accused guilty of the criminal act of war crimes against the civilian population.

ON DETENTION

The Trial Panel adopted the decision on extension of the detention against the accused until the date of this verdict entering into force as per Article 353 Paragraph 2 and Article 191 Paragraph 2, Item 1 of the LCP, because there is a possibility that the accused might escape. The period of time spent in detention since 27 December 1999 will be deducted from the sentence imposed.

ON SECURITY MEASURES

Pursuant to Article 351 Paragraph 1 Item 5 of the LCP the Trial Panel decided to confiscate the weapon sniper with the serial number E 12266 and 110 bullets.

ON THE COST OF THE PROCEEDINGS

The Trial Panel adopted the decision that the accused should pay all the expenses of the proceedings and the lump sum of 100 DM, within 1 (one) month after this verdict enters into force.

By majority of votes the Trial Panel decided that the indictment against the accused did not contain sufficient evidence to find the accused guilty of the criminal act of war crimes against the civilian population as per Article 142 Paragraph 1 of the CCY, applicable under UNMIK Regulation.

PRIZREN DISTRICT COURT, C. No. 48/2000
On January 29, 2001

Recording Clerk

President of the Trial Panel

Aferdita Buqaj

Daniel GRUIA

LEGAL REMEDY: An appeal against this verdict could be filed through this Court to the Supreme Court of Kosovo in Pristina within 15 days of the receipt of this verdict.