



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations
of International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-95-13-R61

Date: 3 April 1996

Original: FRENCH &
ENGLISH

IN THE TRIAL CHAMBER

Before: Judge Claude Jorda, Presiding
Judge Elizabeth Odio Benito
Judge Fouad Riad

Registrar: Mr. Dominique Marro, Deputy-Registrar

Decision of: 3 April 1996

THE PROSECUTOR

v.

**MILE MSKSIĆ
MIROSLAV RADIĆ
VESELIN ŠLJIVANČANIN**

**REVIEW OF INDICTMENT PURSUANT TO RULE 61
OF THE RULES OF PROCEDURE AND EVIDENCE**

The Office of the Prosecutor:

**Mr. Grant Niemann
Mr. Clint Williamson**

I. RULE 61 PROCEEDINGS

1. In a decision dated 7 November 1995, Judge Fouad Riad confirmed the indictment issued by the Prosecutor against Mile MRKŠIĆ, Miroslav RADIĆ, and Veselin ŠLJIVANČANIN. On that same day, he issued a warrant of arrest against each of the accused. The warrants were sent to the Federal Republic of Yugoslavia (Serbia and Montenegro) but, to date, have not been executed. For this reason the confirming Judge, having considered in a decision dated 6 March 1996 that a reasonable period of time had elapsed since the warrants of arrest were issued, invited the Prosecutor to report on the measures he has taken to effect personal service of the indictment. Satisfied that the Prosecutor has acted with diligence, in that same decision and pursuant to Rule 61 of the Rules of Procedure and Evidence ("the Rules"), the Judge ordered the Prosecutor to submit the case for review to the full panel of Judges of the Trial Chamber.

2. During the review, the Trial Chamber must decide whether there are reasonable grounds for believing that the accused has committed all or any of the crimes charged in the indictment. In order that it might reach its decision, the evidence submitted to the confirming Judge was made available to the Trial Chamber. In addition, the Trial Chamber heard the witnesses called to testify by the Prosecutor during the hearings of 20, 26, 27 and 28 March 1996. The Trial Chamber must also ensure that its jurisdiction at this stage has been established.

3. The use of Rule 61 permits the Tribunal, which does not have its own police force, to react to the failure to execute the warrants of arrest issued against the accused. If the Trial Chamber to which it has been submitted for review reconfirms the indictment, it must issue an international warrant of arrest. The Trial Chamber may also note that the failure to execute the initial warrants of arrest is due to a failure or refusal of a State to which they were sent to cooperate and, through the President of the Tribunal, may inform the Security Council of that failure. Lastly, the Rule 61 proceedings permit public exposure of the evidence produced in support of the indictment. When the victims have been summoned to appear by the Prosecutor, the proceedings allow them to have their voices heard and to become part of history.

II. THE CHARGES AND THE ACCUSED

4. Starting on 25 August 1991, the city of Vukovar was subjected to a violent offensive led by the Yugoslav People's Army (JNA) which deployed a huge military arsenal against it. In the JNA's ranks were conscripts and Serbian nationalist volunteers. The JNA was apparently responsible for coordinating the activities of various paramilitary groups, such as Arkan's "Tigers", some of which were local and some of which had come from the Serbian Republic¹. To respond to the offensive, resistance was organised in the city². The resistance forces included a reduced number of combatants and had very limited weapons available. The expert witness considered that, compared to those the JNA deployed in Vukovar, the ratio of men was 1:15 in favour of the JNA. In respect of weapons, the ratio was 1:100³. Starting on 17 November 1991, as the resistance movement was beginning to crumble, a large number of civilians who had survived the offensive in the cellars of buildings fled in terror to the hospital after having heard that an evacuation would be organised there⁴. Some of the resistance fighters also surrendered at the hospital after laying down their weapons⁵. Vukovar Hospital had been the object of constant shelling and, at that moment, was overflowing with wounded⁶. On 19 November 1991, under the command of Major ŠLJIVANČANIN, the JNA surrounded the hospital and captured it.

A. Beatings

5. Both the case-file and the testimony at the hearing show that, on the morning of 20 November 1991, the population of the hospital was brutally evacuated by the JNA⁷, while the medical personnel was kept away by Major ŠLJIVANČANIN⁸. A group of approximately 300 mainly non-Serbian male patients and other civilians⁹, of all ages -some very young-, was selected and assembled in the hospital's rear court. The men were then transported in buses to the JNA barracks at Sajmiste by JNA soldiers under orders from Major ŠLJIVANČANIN. When they arrived at the barracks, some of the people were forced to wait in the buses where

¹ Statement of Dr. James Gow, transcript of hearing of 20 March, am, p 36 (French text).

² Document D 59/1-9 bis (IT-95-13-I D59/8bis), p.3.

³ Statement of Dr. James GOW, transcript of hearing of 20 March, pm, p 2-3 (French text).

⁴ Documents D9/158bis-D1/158bis, p.3; D9/130bis-D1/130bis, p.4; D6/114bis-D1/114bis, p.2.

⁵ Document D9/93 bis-D1/93bis p.3.

⁶ Document D1/67bis-D8/67bis, p.2-3.

⁷ Statement of Dr. Schou, transcript of hearing of 28 March, p. 14 (French text) .

⁸ Document D1/67bis-D8/67bis, p.4.

⁹ Statement of Dr. Schou, transcript of hearing of 28 March (French text), p.14; document D6/114bis-D1/114bis, p.2.

they were threatened verbally by soldiers and members of paramilitary groups outside¹⁰. Others were selected by Captain RADIĆ and forced to change buses¹¹. As they got off the buses, some of them were struck and beaten with sticks and metal bars¹².

6. Several hours later, the great majority of men were transported to Ovčara, a former collective farm in the vicinity of Vukovar. According to many witnesses¹³, as they got off the buses, these people were made to pass between two rows of soldiers and members of paramilitary groups who beat them savagely with truncheons and all sorts of blunt instruments such as rifle butts and chains. People using crutches to walk were beaten with their own crutches¹⁴. They were searched and their property confiscated. The inhumane treatment in the hangar where they had all been confined continued until nightfall. A witness reported the following scene: "The Chetniks were divided into two groups. One was responsible for the beatings and the other merely watched what was happening. (A JNA officer) was inside with a whistle, and when he saw that one of the groups was tired, he would blow it as a signal for the other group to begin beating. We heard the prisoners screaming; it was horrible."¹⁵

B. Murders

7. At the Ovčara farm, heights of violence were reached characterised both by individual murders committed in the hangar of the farm and by mass murders committed nearby. The indictment submitted to the Trial Chamber contains a list of 261 men who have been missing since 20 November 1991 from which the Trial Chamber authorises the Prosecutor to withdraw a name. It seems that the list compiled by the Croatian Commission for Detained and Missing Persons identifies most of the men who were executed on 20 November 1991¹⁶.

¹⁰ Documents D12/167bis-D1/167bis, p.6; D9/86bis-D1/86bis, p.4; D75/1-9bis, p.5; D9/130bis-D1/130bis, p.5.

¹¹ Document D9/86bis-D1/86bis, p.4.

¹² Documents D9/93bis-D1/93bis, p.4; D9/86bis-D1/86bis, p. 5; D7/80bis-D1/80bis p.4; D75/1-9bis p.6.

¹³ Documents D9/158bis-D1/158 bis, p. 7; D9/93bis-D1/93bis, pp. 5-6; D12/167bis-D1/167bis, p. 6; D9/86bis-D1/86 bis, p.5; D9/130bis-D1/130bis, p.5.

¹⁴ Documents D12/167bis-D1/167bis, p.7; D9/86 bis-D1/86 bis, p.5.

¹⁵ Document D9/130 bis- D1/130 bis, p. 7.

¹⁶ Document D23.

1. Murders in the hangar of the farm

8. Two murders were committed at the Ovčara farm. Kemal Saiti died after uninterrupted beatings (violent blows with truncheons and kicks to the face and head) which caused him to bleed from his nose, ears and mouth. A man who escaped reported the following scene: "The moment came when the Chetniks asked whether there were any Albanians, and a man named Kemal Saiti said that he was Albanian. Someone began beating Kemal violently with a truncheon, and when he collapsed on his back, the man kicked him in the face and head and then trampled his body. After a while, Kemal appeared to be dead. He was bleeding from his nose, ears and mouth, but the man continued beating him for about half an hour."¹⁷

A man named Damjan Samardžić was to suffer comparable torture and a similar fate. Soldiers kicked him with their boots and baseball bats and jumped on his stomach and back causing him to bleed from his nose and mouth. At the same time, a member of the Serbian militia held his head down on the concrete floor until he died¹⁸.

2. Mass Murders

9. After that torture, serial executions are alleged to have been perpetrated later during the evening of 20 November 1991. At about 6.00 p.m., JNA soldiers separated the prisoners into groups of 20. Every fifteen to twenty minutes a truck took away one group and returned empty. Another group then took its place in the truck. According to the witness statements, including Witness B who succeeded in escaping during one of the transports, the truck left the building and turned onto a paved road leading to Grabovo, a village about 3 kilometres south-east of Ovčara. A few minutes later, the truck turned left onto a dirt road which went through a field of sunflowers to the left and a wooded area to the right.

10. In light of the estimates of the time and the distance between the farm and the site, as well as the description of the roads taken, only one place matches the descriptions: the location where Dr. Clyde Snow, an anthropologist and forensics doctor acting as an expert for the Mazowiecki Commission, would, by virtue of the directions given by Witness B, discover a mass grave in October 1992.

¹⁷ Document s D12/167-D1/167bis, p. 6; D130-D123, p.6; D/7-80-D1/80 bis, p.6.

¹⁸ Document D130-D123, p. 6.

After the preliminary excavations at that site in December 1992, an international forensics team organised by Physicians for Human Rights confirmed the existence of the mass grave in an isolated region south-east of the farming village of Ovčara near Vukovar. In its conclusions, confirmed at the hearing by Dr. Snow, who had directed the work, the team reported that a mass execution had occurred at the site. A bulldozer had been used to clear the undergrowth and to dig a pit in an existing dump. "The grave seems to coincide perfectly with the statements of the witnesses indicating that the site was the place patients and medical personnel missing since the evacuation of Vukovar Hospital on 20 November 1991 were executed and buried (...) The fact that two bodies had chains with Catholic crosses, one of which had a little plate bearing the inscription "BOG I HRVATI,"(God and the Croats) would indicate that the mass grave probably contained the mortal remains of Croats."¹⁹

11. The international forensics team presented two types of evidence discovered during their investigation showing that an execution had occurred at the site. First, a large concentration of 7.62 mm cartridge shells of the type used for Kalachnikov automatic pistols was discovered in the bushes north-east of the mass grave. The second piece of evidence, which related to the first, was the traces of bullets on the trees south-east of the site²⁰.

12. When questioned by the Prosecutor about the contents of the mass grave, Dr. Snow stated that on the basis of a test-sample of the trench, skeletons discovered and other recognised scientific indicators (specifically, the size of the mass grave and volume of the human body), the pit could have held about three hundred and fifty bodies²¹.

13. Information supplied by former JNA soldiers who participated or assisted in all or some of the acts for which charges have been brought support the allegations of mass murders. On 20 November 1991, soldiers in the unit under the command of Miroslav RADIĆ said in his presence that "all those who had been taken prisoner there had been killed. They were laughing about it and celebrating what had happened"²². In the presence of Major Veselin ŠLJIVANČANIN and on his orders, "the men were killed, thrown into pits, and covered with a type of powder used to hasten decomposition after which logs were placed over each layer"²³.

¹⁹ Document D52-D24.

²⁰ Ibid.

²¹ Statement of Dr. Snow, transcript of hearing of 28 March 1996, p. 38.

²² Document D13/179Bis-D1/179bis, p. 10.

²³ Document D13/179Bis-D1/179bis, p. 10.

14. The executions seem, in fact, to have been premeditated and planned, and the place where they are said to have occurred was arranged for the occasion. Several days before the fall of Vukovar, a JNA engineering unit equipped with bulldozers and other machines was at work at the Ovčara site²⁴. Noises from the same machines would be heard again from the hangar of the farm on 20 November 1991. According to a Serbian soldier present at the site as reported by one of the witnesses²⁵, the bulldozers were preparing mass graves in which victims would later be buried.

C. The position of, and type of responsibility attributable to, the accused

15. The indictment and the exhibits in the file on which it is based highlight the fact that the responsibility of the accused for the acts for which they have been charged could be established not only because of their position of authority but also because of their direct participation in the commission of those acts.

16. It has been established that the acts charged were carried out by the Guards Brigade under the command or control of the accused acting in various capacities and in concert. Colonel Mile MRKŠIĆ was the commander of the Guard Brigade whose territorial jurisdiction extended to the first military district which answered to Belgrade and covered the entire Vukovar zone²⁶. Although the general offensive against Vukovar was not his responsibility alone, his position at the head of the Guard Brigade permits one to ascribe a major responsibility to him.

Captain Miroslav RADIĆ was head of a special infantry unit of the Guard Brigade. Briefing his troops about their mission in mid-November 1991, he made clear that they were to take control of the area extending from Petrova Gora (a suburb of Vukovar) to the Vuka River²⁷.

Under Colonel Mile MRKŠIĆ's authority was Major Veselin ŠLJIVANČANIN who was put in charge of the direct operational command of the JNA forces in the immediate vicinity of the city of Vukovar. Responsible for the security of the Guard Brigade, Major

²⁴ Document D13/179Bis-D1/179bis, p. 11.

²⁵ Document D9/93-D1/93 bis, p. 6.

²⁶ Statement of Dr. James Gow, transcript of the hearing of 20 March 1996, a.m, p32-33 (French text).

²⁷ Document D13/179bis-D1/179bis, p. 6.

ŠLJIVANČANIN was also the commander of a military police battalion that was part of the brigade.

Throughout the conduct of the operations, the accused worked and operated in close collaboration. During the day, Captain RADIC and Major ŠLJIVANČANIN were together most of the time; during the evening, Major ŠLJIVANČANIN would return to Colonel MRKSIĆ's headquarters in Negoslavci where both of them would spend the night²⁸.

17. That Captain RADIC and Major ŠLJIVANČANIN were present at the Vukovar Hospital on 20 November 1991 is abundantly attested to both by the statements of the witnesses and the video images submitted to the Trial Chamber²⁹. On 19 November 1991, at the hospital, together with Captain RADIC and Major ŠLJIVANČANIN, Colonel MRKSIĆ allegedly met with the ICRC representative about the evacuation of the hospital³⁰. In particular, under the general supervision of Major ŠLJIVANČANIN, people at the hospital were selected in accordance with various criteria and then transferred by bus to Ovčara. One witness declared: "When I arrived at the hospital, I realised that there were three groups: a groups of Serbs, a group of non-Serbian women and children, and a third group comprised exclusively of men"³¹. ŠLJIVANČANIN gave all the instructions as to the number of lines that were to be formed, the categories of people supposed to join the lines and the moment people were to get onto the bus³². All the testimonies match in their assertion that : "Major ŠLJIVANANIN was responsible for everything that happened at the Vukovar Hospital. (...) he behaved like a commander and took the decisions"³³.

Furthermore, as regards the executions near Ovčara, according to the statements of soldiers who took part in the massacres reported by Witness A : "Major ŠLJIVANČANIN was present when the murders were committed and he was the one who gave the orders"³⁴.

²⁸ Documents D7/99-D1/99bis, pp. 2 and 4; D151-D139, p. 10.

²⁹ Almost all the statements and exhibit no. 23; documents D130-D123, p.3; D59/1-9bis, pp. 4 and 6.

³⁰ Document D6/114-D1/114bis, p. 2.

³¹ Documents D6/114-D1/114bis, p. 2; D9/158bis-D1/158bis, pp. 4 and 5; D9/138bis-D1/138bis, pp. 4 and 6; D109-D100, p.5.

³² Documents D9/158bis-D1/158bis, pp. 4 and 5; D7/80-D1/80bis, p. 4.

³³ Documents D9/158bis-D1/158bis, pp. 6 and 7; D10/122-D1/122bis, p. 6; D109-D100, pp. 5, 6,8,9,10; D7/80-D1/80bis, pp. 3,4; D1/67-D8/67bis, pp. 4,6.

³⁴ Document D13/179bis-D1/179bis, p. 10.

Already by the morning of 20 November 1991 at the hospital, Major ŠLJIVANČANIN clearly referred to the fate awaiting those who had been transferred. In answer to the question of one of the witnesses on the bus about where they were going, he asserted: "Those people over there will be swallowed up by the darkness in broad daylight", an expression which means that nobody will ever see them again, that all will disappear³⁵.

Other information submitted to the Trial Chamber cites the presence of Colonel Mile MRKSIĆ in the hangar of the farm at Ovčara. He allegedly organised the torture inflicted on the prisoners by the Serbian paramilitary militia members who were present³⁶.

III. COMPETENCE OF THE TRIBUNAL PURSUANT TO ARTICLES 2, 3 AND 5 OF THE STATUTE.

18. During the review of the indictment as part of the Rule 61 public hearings, the Trial Chamber must verify that its competence has been established at this stage. The Prosecutor asserts that the acts charged fall within the jurisdiction of the Tribunal pursuant to Articles 2, 3 and 5 of the Statute.

A. Articles 2 and 3

19. Article 3 of the Statute non-exhaustively enumerates violations of the laws or customs of war which the Tribunal has the power to prosecute. In its decision on jurisdiction of 2 October 1995, the Appeals Chamber stipulated that Article 3 refers to a broad category of offences and laid down four conditions which must be satisfied for a violation to fall within the purview of Article 3. The violation must constitute an infringement of a rule of international humanitarian law; the rule must be customary in nature or, if it is part of treaty law, certain required conditions must be met; furthermore, the violation must be "serious", that is, it must contravene a rule protecting important values and must involve grave consequences for the

³⁵ Document D10/122-D1/122bis, p.7.

³⁶ Document D130-D123, p. 7.

victim. Lastly, the violation of the rule must entail the individual criminal responsibility of the person breaching the rule.

20. In the indictment submitted to the Trial Chamber, the Prosecutor characterised the beatings inflicted as constituting cruel treatment. Furthermore, the Prosecutor characterised the alleged execution of the 260 men as murder. The acts so characterised constitute violations of Article 3 Common to the Geneva Conventions, which are themselves violations of the laws or customs of war covered by Article 3 of the Statute (paragraph 89 of the above cited decision of the Appeals Chamber).

21. Article 3 of the Statute may be taken to cover all violations of international humanitarian law other than the “grave breaches” of the Geneva Conventions falling under Article 2 of the Statute. Article 3 applies whether the conflict is international or internal.

22. Article 2 of the Statute states that the Tribunal “shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949”. The acts enumerated in these provisions are committed against persons or property protected under the provisions of the relevant Convention. The above cited decision of the Appeals Chamber also specifies that, “the offences under Article 2 can only be prosecuted when perpetrated against persons or property regarded as “protected” by the Geneva Conventions under the strict conditions set out by the Conventions themselves” and concludes that Article 2 of the Statute “only applies to offences committed within the context of international armed conflicts” (paragraphs 81 and 84 of the decision of the Appeals Chamber). In this article, the reference to the notion of “persons or property protected” covers the persons and objects mentioned in Articles 13, 19, 24-26, 33-35 of Geneva Convention I; Articles 13, 22, 24, 25, 27, 36, 37 of Geneva Convention II; Article 4 of Geneva Convention III and Articles 4, 18-22, 33, 53, 57 of Geneva Convention IV.

23. The Prosecutor considers in the indictment that the beatings inflicted on the 260 men after they had been transported from Vukovar Hospital constitute the grave breach defined as wilfully causing great suffering (Article 2(c) of the Statute). The Prosecutor considers that the alleged execution of the 260 men at a site between Ovčara and Grabovo and the murders committed in the hangar at Ovčara constitute the grave breach of wilful killing (Article 2(a) of the Statute).

24. In respect of the general conditions for application of Article 3 of the Statute, all the testimonies indicated that, at the times indicated in the indictment, the Vukovar region was the theatre of an armed conflict. During the same period, the alleged victims of the beatings and executions were individuals who had not actively participated in the hostilities, such as wounded or uninjured civilians and wounded, as well as wounded or uninjured members of the Croatian defence forces who had laid down their arms.

25. The general conditions for application of Article 2 of the Statute are the existence of an international armed conflict and the classification of victims as protected persons as defined by the relevant Geneva Convention. The acts charged in the indictment occurred after the declaration of independence of Croatia took effect on 8 October 1991 while the city of Vukovar was being subjected to an attack by the JNA. According to statement of expert witness Dr. Gow at the hearing, by the end of August 1991, the JNA had begun acting in the interests of the Serbian Republic³⁷. In addition, the Trial Chamber noted that, according to Dr. Gow, the "Yugoslav Federation ceased to exist [...] on 15 May 1991 which is the date that the system of appointing a chief of the collective presidency of the Federative Socialist Republic of Yugoslavia came apart"³⁸. The men taken from the Vukovar hospital were therefore either civilians or medical personnel, wounded persons and other persons falling within the categories of protected persons as defined in the four Geneva Conventions of 1949.

26. With regard to the charge of ill-treatment stated in Articles 2 and 3, the majority of the witnesses cite beatings inflicted on them while they were passing through a double line of Serbs or members of Serbian paramilitary groups as they entered the hangar at Ovčara. The arrested people were also beaten inside the hangar. Basing itself on all the testimonies presented to it as described in paragraph 6 of this decision, the Trial Chamber considers that the approximately 260 persons transferred from Vukovar hospital were intentionally subjected to great suffering.

27. With regard to the charge of murder under Articles 2 and 3, the evidence submitted to this Trial Chamber and, in particular, the statements of the witnesses during the investigation and the hearing which have been analysed in paragraphs 8-14 above, indicate that two persons

³⁷ Transcript of hearing of 20 March 1996, a.m., p 33, 37, 40; p.m. p 6 and 7 (French text).

³⁸ Transcript of hearing of 20 March 1996, a.m., p 30 (French text).

were killed in the hangar and that the vast majority of the individuals detained at Ovčara were transported in groups to a nearby site where they were apparently executed.

B. Article 5

28. As the basis for the competence of the Tribunal, the Prosecutor cites Article 5, Crimes against Humanity. Pursuant to this Article:

“The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation;
- (e) imprisonment;
- (f) torture;
- (g) rape;
- (h) persecutions on political, racial and religious grounds;
- (i) other inhumane acts.

In its decision of 20 October 1995 (IT-94-2-R61, *Nikolić* case, paragraph 26) this Trial Chamber specified the context in which the criminal acts listed in Article 5 must fall in order for them to be characterised as crimes against humanity.

29. Criminal acts must therefore have as their object any civilian population. In the Report which proposed the drafting of Statute of the Tribunal and which was approved by Security Council resolution 827, the Secretary-General stated: “Crimes against humanity refer to inhumane acts of a very serious nature, such as wilful killing, torture or rape, committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds” (doc S/25704, para. 48). Although according to the terms of Article 5 of the Statute of this Tribunal, the combatants in the traditional sense of the term cannot be victims of a crime against humanity, this does not apply to individuals who, at one

particular point in time, carried out acts of resistance. As the Commission of Experts, established pursuant to Security Council resolution 780, noted, "it seems obvious that Article 5 applies first and foremost to civilians, meaning people who are not combatants. This, however, should not lead to any quick conclusions concerning people who at one particular point in time did bear arms. (...) Information of the overall circumstances is relevant for the interpretation of the provision in a spirit consistent with its purpose." (doc S/1994/674, para. 78). This conclusion is supported by certain case law, particularly the Barbie case. In that case, the French *Cour de Cassation* said that "inhumane acts and persecution which, in the name of a State practising a policy of ideological hegemony, were committed systematically or collectively not only against individuals because of their membership in a racial or religious group but also against the adversaries of that policy whatever the form of the opposition" could be considered a crime against humanity (Cass. Crim. 20 December 1985).

30. Crimes against humanity are to be distinguished from war crimes against individuals. In particular, they must be widespread or demonstrate a systematic character. However, as long as there is a link with the widespread or systematic attack against a civilian population, a single act could qualify as a crime against humanity. As such, an individual committing a crime against a single victim or a limited number of victims might be recognised as guilty of a crime against humanity if his acts were part of the specific context identified above.

31. The Trial Chamber considers that the indictment submitted to it shows first and foremost that a crime against humanity was committed. The beatings and executions ascribed to the three accused indeed seem to have been perpetrated under circumstances which are characteristic of crimes against humanity.

32. The victims of these acts were mainly non-Serbian men, patients at the hospital, civilians or resistance fighters who had laid down their arms. These events seem to be part of a widespread and systematic attack against the civilian population of the city of Vukovar.

33. The evidence presented at the hearings brought out the fact that, starting in the summer of 1991, the city of Vukovar had been subjected to a massive land, naval and air offensive by the forces of the JNA³⁹. Starting with the end of August 1991, the city was intensely shelled for

³⁹ Statement of Dr. Gow, transcript of hearing of 20 March, am., pp. 40-41 (French text).

almost three months. After the attack which killed many civilians and resistance fighters and during which the civilian population had sought shelter in the cellars of the buildings, the women and children were deported en masse whereas the men were arrested⁴⁰. More than a thousand of them are still missing⁴¹.

34. According to the expert witness Dr. Gow, the JNA attack on Vukovar was intended "to occupy Vukovar" and to "expel the non-Serbian and disloyal populations from the city". The attack was an example of "what is called ethnic cleansing, that is, the expulsion of the civilian populations carried out as a way of seizing the region and establishing the borders of the territories which were to be part of the Serbian Republic ..."⁴² The attack on Vukovar was part of a campaign carried out at several places on Croatian territory⁴³.

35. The Trial Chamber notes the words of the Prosecutor who said that "from the very onset, the events in Vukovar can, without a doubt, be classified as planned ethnic cleansing which sowed the seeds of the genocide in the conflict in the former Yugoslavia"⁴⁴. In that respect, the Trial Chamber also notes that the acts charged in the indictment submitted to it constitute only one aspect of a broader operation including *inter alia* the shelling, siege and capture of Vukovar, as well as the deaths, disappearances of individuals and massive expulsions of the civilian population which followed. The evidence produced during the hearings, particularly the televised images which were shown, could establish that the military and political responsibility for the operation lies with the highest level authorities. The Secretary of Defence of the Serbian authorities and chief of the JNA, General Kadijević personally congratulated the main participants of the operations at Vukovar, among whom was Colonel MRKŠIĆ⁴⁵. According to the expert witness, the attitude of the army can only be explained by the existence of some sort of political command⁴⁶.

⁴⁰ Statement of Mr. Milner transcript of hearing of 20 March, pm., p. 30 (French text).

⁴¹ Statement of Dr. Bosanac, transcript of hearing of 26 March, pm, p.47 (French text).

⁴² Statement of Dr. Gow, transcript of hearing of 20 March, pm, p. 6 (French text).

⁴³ Statement of Dr. Gow, transcript of hearing of 20 March, am, p. 37 (French text), exhibit no. 14.

⁴⁴ Transcript of hearing of 20 March am, p. 8 (French text). Exhibit 23, transcript of hearing of 20 March, pm, p. 26 (French text); statement of Dr. Gow, same transcript, p 5-6

⁴⁵ Exhibit 23, transcript of hearing of 20 March, pm, p. 26 (French text); statement of Dr. Gow, same transcript, p 5-6

⁴⁶ Statement of Dr. Gow, transcript of hearing of 20 March, p.m., p 6 (French text)

36. The Trial Chamber also noted the fact that the Prosecutor asserted during the hearing that he was continuing his investigations into the entire transaction carried out in the Vukovar region starting in the summer of 1991⁴⁷.

37. In light of all the above, the Trial Chamber considers that there are reasonable grounds for believing that Mile MRKŠIĆ, Miroslav RADIĆ, and Veselin ŠLJIVANČANIN have committed the crimes charged in the indictment, crimes which, pursuant to Articles 2, 3, and 5 of its Statute, fall within the jurisdiction of the Tribunal. In accordance with the provisions of Rule 61 of the Rules, there are grounds for reconfirming all the counts in the indictment against them and for issuing international warrant of arrest which will be sent to all the States. In addition, the Trial Chamber deems it necessary to transmit the warrant of arrest to the Multi-national Military Implementation Force (IFOR) deployed on the territory of Bosnia and Herzegovina pursuant to the Dayton Agreements signed in Paris on 14 December 1995.

IV. CERTIFICATION OF THE FAILURE OF THE FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA AND MONTENEGRO) TO HONOUR ITS DUTY TO COOPERATE WITH THE TRIBUNAL

38. After the initial confirmation of the indictment submitted to this Trial Chamber, Judge Riad issued, on 7 November 1995, three warrants of arrest for Mile MRKŠIĆ, Miroslav RADIĆ, and Veselin ŠLJIVANČANIN which were sent to the Government of the Federal Republic of Yugoslavia (FRY). The warrants were transmitted by the Registrar of the Tribunal to diplomatic representatives of that State in the Netherlands on 8 November 1995. Furthermore, at the request of the Prosecutor, on 23 January 1996, the Registrar asked those representatives to ensure that, in accordance with the provisions of Rule 60 of the Rules, the indictment was published in newspapers having wide circulation in that country.

39. To date, these warrants of arrest have not been executed by the FRY. That State has not informed the Registrar of the Tribunal of the reasons for which it failed to execute the warrants

⁴⁷ Transcript of hearing of 20 March, p.m., p 33 (French text)

of arrest; therefore it has not honoured its obligation to cooperate as required in Rule 59 (A) of the Rules of the Tribunal.

40. Moreover, as already indicated in paragraph 35 above, after the events at Vukovar, Colonel MRKŠIĆ was congratulated by General Kadijević, Secretary of Defence and chief of the JNA. The Prosecutor asserted that Colonel MRKŠIĆ received a promotion in the army and became military commander of the army of the Republic of Serbian Krajina. He is alleged now to be in Belgrade⁴⁸. Major ŠLJIVANČANIN allegedly was also promoted and is currently said to be in Belgrade at the Belgrade Military Academy⁴⁹. Captain RADIĆ is allegedly still serving in the army of the Federal Republic of Yugoslavia and living in Belgrade⁵⁰. During the hearing, the Prosecutor asserted that the accused "hide behind the shelter of the Government of the Federal Republic of Yugoslavia that sent them there [to Vukovar], and it still seeks to protect them"⁵¹. In his words, "when a Government gives refuge and support to criminals, in the eyes of the world, that Government then too becomes a criminal, and that is exactly what the Belgrade Government has done in this case"⁵².

41. In light of all the above, the Trial Chamber considers that the failure to execute the warrants of arrest issued against Mile MRKŠIĆ, Miroslav RADIĆ and Veselin ŠLJIVANČANIN can be ascribed to the refusal of the Federal Republic of Yugoslavia to cooperate with the Tribunal. It so certifies, for the purpose of notifying the Security Council.

⁴⁸ Statement of Inspector Milner, transcript of hearing of 20 March, pm, p. 28 (French text).

⁴⁹ Transcript of hearing, 28 March, p. 46 (French text).

⁵⁰ Transcript of Inspector Milner, transcript of hearing of 20 March, pm, p. 28 (French text).

⁵¹ Transcript of hearing of 28 March, p. 46, (English text). Transcript of hearing of 28 March, p. 47, (English text).

⁵² Transcript of hearing of 28 March, p. 47, (English text).

V. DISPOSITION

HAVING REGARD to Rules 59 *bis* and Rule 61 of the Rules of Procedure and Evidence;

HAVING REGARD to the confirmation of the indictment by Judge Riad on 7 November 1995 and the warrants of arrest issued on that same date;

HAVING REGARD to the decision of 6 March 1996 in which Judge Riad ordered the Prosecutor to refer the case to the Trial Chamber;

HAVING HEARD the Prosecutor's observations and the statements of the witnesses during the hearings held on 20, 26, 27, and 28 March 1996 at the seat of the Tribunal;

THE TRIAL CHAMBER,

RULING unanimously,

EXPUNGES the name of Goran Edelinski from the list of the alleged victims contained in the indictment,

STATES that there are sufficient grounds for believing that Mile MRŠIĆ, Miroslav RADIĆ and Veselin ŠLJIVANČANIN committed the offences for which they have been accused in the indictment of 26 October 1995,

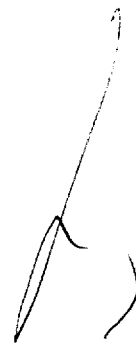
CONFIRMS all six counts of the indictment,

ISSUES an international warrant of arrest for Mile MRŠIĆ, Miroslav RADIĆ and Veselin ŠLJIVANČANIN,

STATES that the warrant shall be transmitted to all States and, if necessary, to the Implementation Force (IFOR),

NOTES and CERTIFIES that the failure to effect service of the indictment was due to the refusal of the Federal Republic of Yugoslavia (Serbia and Montenegro) to co-operate with the Tribunal, and therefore entrusts the President of the Tribunal with notifying the Security Council thereof, in accordance with the procedure of Rule 61 (E).

Done in French and English, the French version being authoritative.



Claude Jorda, Presiding Judge, Trial Chamber I.

This third of April 1996
The Hague,
The Netherlands

[Seal of the Tribunal]