

**BOSNIA AND HERZEGOVINA**  
**PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA**  
**S A R A J E V O**  
**Number: KT-RZ-176/06**  
Sarajevo, 3 November 2009

**COURT OF BOSNIA AND HERZEGOVINA**  
**Preliminary Hearing Judge**

Pursuant to Article 35(2)(h) and Article 226(1) of the Criminal Procedure Code of Bosnia and Herzegovina, I hereby file the following

**I N D I C T M E N T**

**AGAINST:**

**DARKO DOLIĆ**, son of Jozo and Marta (mother's maiden name Drežnjak), born in Mostar on 11 April 1973, JMBG /Citizen Identification Number/ 1104973153556, residing in Prozor at Stjepana Radića Street bb /no number/, Croat, BiH citizen, married, no occupation, completed elementary school, completed the military service, was a member of the HVO /Croat Defense Council/ during the war, **currently in custody under the Decision of the Court of BiH no. X-KRN-09/783 dated 21 October 2009,**

**Because:**

During the war in Bosnia and Herzegovina, during the armed conflict between the Army of BiH and the HVO, in the territory of Prozor Municipality, as a member of the "Jastrebovi" sabotage-reconnaissance platoon of the Rama Brigade of the HVO, he acted in contravention of the rules of international humanitarian law and violated Article 3(1)(a) and (c) and Article 27(2) of the Geneva Convention relative to the Protection of Civilian Persons at Times of War of 12 August 1949, in as much as he:

1. In early August 1993, most likely in the late afternoon of 4 August 1993, in Družinovići, Prozor Municipality, together with late Zoran Čališ, he participated in the physical ill-treatment and plundering of Muslim civilians: he, dressed in a military uniform and armed with an automatic rifle, ordered all the Muslim civilians who were living in the referenced village to line up in front of Zlatif Kmetaš's house, and the following civilians were forced to comply: [REDACTED]

██████████; thereupon, he fired into the air and at the ground in front of ██████████ who refused to sing Ustasha songs, cursed balija's mother and kicked and hit the lined-up civilians with a rifle, particularly ██████████ (he vigorously kicked ██████████ in the chest and the latter fell in front of ██████████ and hurt her hip); thereupon, he ordered ██████████, whom he had previously hit in the neck and back with a rifle butt and put a hot rifle barrel into her mouth, to tie her husband ██████████ and her son ██████████ to a concrete post and then he hit the two tied men all over their bodies, holding a knife to ██████████'s throat and making bleeding cuts all over his body; thereupon, together with late Zoran Čališ,

2. With a view to taking money and gold, he ordered the referenced civilians to remove their shoes and other clothes so as to make sure that they were not concealing any valuables; he took ██████████'s gold ring off her hand and ██████████'s golden chain off her neck and a ring off her hand; thereupon, threatening ██████████ with a rifle, took her to her house looking for money; after he hit her with a rifle butt behind a door and threw her on the ground, put her head on the doorstep and threatened to slit her throat if she did not hand over money to him, she handed over 2,000 German marks to him;
3. Whereupon, in the same place, in the same house owned by ██████████ where ██████████ lived with her husband and children, the accused, together with late Zoran Čališ, raped ██████████: he singled her out of the group of lined-up civilians and took her to the floor of the house and, by using force, forced her to a sexual intercourse in one of the rooms; he had previously hit her all over her body and her legs, stripped her clothes and ordered her to put his penis into her mouth, threw her on a bed and raped her;
4. During the first half of August 1993, on a number of occasions, he raped the then underage protected witness S1 who was interned in Halima Majčić's house in the village of Lapsunj, Prozor Municipality, together with more than 30 Muslim women: he, the late Zoran Čališ and an unknown soldier in a uniform took protected witness S1, ██████████ and protected witness S2 (also interned in the mentioned house) out of the house late in the night, drove them to an abandoned house near the house where she was interned, and in one of the rooms forced her to a sexual intercourse by pointing a rifle at her body, ordering her to take off her clothes and telling her that he would kill her if she resisted, and then raped her;
5. In late July or early August 1993, in the village of Lapsunj, Prozor Municipality, he raped the protected witness S3: he, together with four soldiers wearing uniforms (one of whom was late Zoran Čališ), armed with a switchblade, entered the house of the protected witness S3 and ordered her to come out; after she came out, he vigorously pushed her against a wall, holding

her hands above her head with his hands and telling her to kiss him and relax; as she did not comply with his requests, he slapped her in the face and she fell onto a concrete floor; thereupon, he took her inside the house and threw her onto the bed in the room where her 15-month old child was asleep, holding a knife to the child's throat and threatening to kill the child if she failed to remove her clothes; she was forced to comply and then he raped her.

**Therefore**, during the war in BiH, during the armed conflict between the Army of the Republic of Bosnia and Herzegovina and the Croat Defense Council, in violation of rules of international law, he participated in the ill-treatment-deliberate infliction of physical and mental pain on the imprisoned civilians, plundering the imprisoned civilians and coercing another person to a sexual intercourse by making a threat to directly attack her body,

**Whereby** he committed the criminal offense prescribed by the provisions of the Criminal Code of Bosnia and Herzegovina – War Crimes against Civilians under Article 173, paragraph 1

- subparagraph (c) in relation to the acts described under Count 1 of the Indictment's operative part
- subparagraph (e) in relation to the acts described under Counts 3, 4 and 5 of the Indictment's operative part
- subparagraph (f) in relation to the acts described under Count 2 of the Indictment's operative part,

All in conjunction with Article 29 and Article 180(1) of the Criminal Code of Bosnia and Herzegovina.

**I therefore**

## **PROPOSE**


**1. To summon:**

- Prosecutor of the Prosecutor's Office of BiH
- Suspect Darko Dolić and his defense counsel, attorney Zlatko Milović from Prozor

**2. To present the following evidence:**

**a) Examination of witnesses:**





**b) To review the following:**

- Decision declaring the imminent threat of war entered into force „forthwith“ at the moment of its adoption and was published in the *Official Gazette of the R BiH*, no. 1/92 dated 9 April 1992,
- Decision of the Presidency of the Republic of Bosnia and Herzegovina declaring a state of war, published in the *Official Gazette of the R BiH* no. 7/92 dated 20 June 1992,
- Decision of the Presidency of the Republic of Bosnia and Herzegovina ending the state of war, published in the *Official Gazette of the R BiH* no. 50/95,
- Decree-Law on the Armed Forces of the Republic of Bosnia and Herzegovina, published in the *Official Gazette of the R BiH* no. 4/92 dated 20 May 1992,
- Decision on the establishment of the Croat Defense Council no. 2/92 dated 8 April 1992, published in the *Narodni list HZ Herceg-Bosna* (Official Gazette of the Croat Community of Herceg-Bosna) no. 1/92,
- Peace Agreement and an Annex to the Peace Agreement in Zagreb between the HVO / Croat Defense Council/ and the Army of R BiH that entered into force on 25 February 1994 at 12.00 hrs (a certified photocopy is in the case file of the Court of BiH no. X-KR/05/42),

- Final judgment of the ICTY Trial Chamber (IT-96-21 dated 16 November 1998), *Zejnir Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo* – paras. 186, 187 and 192
- Final judgment of the ICTY Trial Chamber (IT-98-34-A dated 31 March 2003), *Mladen Naletilić and Vinko Martinović*, paragraph 15 (footnote 24), paras 17, 177 through 179,
- Final judgment of the ICTY Trial Chamber (IT-01-48-T dated 16 November 2005), *Sefer Halilović*, paras 162, 163 (footnotes 524, 525 and 526).
- Certificate for the wounded Darko Dolić issued by the Prozor – Rama Municipality Defense Section of the Mostar Defense Administration, no. 22-08-41-1-174/04-75 dated 2 November 2004,
- Decision issued by the Prozor – Rama Municipality Department for Public Services and Veterans Affairs (no. 03-43-1507/06 dated 31 January 2007), forwarded by the General Administration and Public Services Department under no. 02/2-43-1459/09 dated 15 June 2009,
- Certified photocopy of Vob-1 book, Vob-3 unit file and Vob-1 personal file in the name of Darko Dolić
- List of soldiers of the HVO „Rama“ Prozor from the „Jastrebovi“ DIJ /sabotage-reconnaissance unit/, certified by the ICTY (no. 00923139 through 00923140),
- List of soldiers in the „Ivan Peran Nino“ sabotage platoon, certified by the ICTY (no. 01242779),
- Letter of the Command of the 44<sup>th</sup> Mountain Brigade of the Army of the Republic of BiH dated 15 August 1993, certified by the ICTY (no. 04035183),
- HVO “Rama” Brigade “Jastrebovi” Sabotage Platoon report dated 18 October 1993, certified by the ICTY (no. 01527595),
- Prozor town dossier, certified by the ICTY (no. 02915257 through 02915266),
- Croat Defense Council “Rama” Brigade SIS /Security and Information Service/ unit assessment no. 03-03-519/93 dated 12 November 1993, certified by the ICTY (no. 01507642 through 01507645),
- HVO “Rama” Brigade Prozor SIS no. 03-02-79/93 dated 14 July 1993, certified by the ICTY (no. 0420-0097-0098),
- HVO „Rama“ Brigade Prozor area of responsibility, certified by the ICTY (no. 02146203 through 02146204),

- Situation in and assessment of the HR HB /Croat Community of Herceg-Bosna/ by Prof. Miroslav Tuđman no. 03/94-058 dated 28 March 1994, certified by the ICTY (no. 02131302 through 02131304),
- HZ HB Ministry of Defense SIS Rama Sub-center no. 02-4/2-7-102/94 dated 22 January 1994, certified by the ICTY (no. 01570224),
- SIS Rama Sub-center no. 02-4/2-7-103/94 dated 22 January 1994, certified by the ICTY (no. 01571017),
- HVO Rama-Prozor Military Police report for 16 July 1993, dated 17 July 1993, certified by the ICTY (no. 01548971),
- HVO Rama-Prozor Military Police report for 21 July 1993, dated 22 July 1993, certified by the ICTY (no. 01548967),
- HVO Rama Brigade "Rama" Prozor SIS report no. 03-02-83/93 dated 31 July 1993, certified by the ICTY (no. 01525297 through 01525298),
- HVO O.Z. S/Z /operations zone northwest/ Herzegovina SIS Class: 1-76/93 no. 443/93 dated 15 July 1993, certified by the ICTY (no. 01515379),
- HZ HB "Rama" Brigade Prozor SIS report no. 03-02-66/93 dated 27 June 1993, certified by the ICTY (no. 01514134),
- Report on the activities of EU observers in the area of Rama Municipality, no. 03-02-94/93 dated 21 August 1993, certified by the ICTY (no. 01514130 through 01514131),
- HVO Center SIS Rama information no. 02-4/2-7-61/93 dated 10 November 1993, certified by the ICTY (no. 01514074 through 10514075),
- HVO Sub-center SIS Rama no. 02-4/2-7/177/93 dated 12 December 1993, certified by the ICTY (no. 01511207 through 01511227),
- HVO Defense Department Security Sector official note no. 02-4-1-1109/93 dated 13 August 1993, certified by the ICTY (no. 01505907 through 01505908),
- HVO „Rama“ Brigade SIS report no. 03-02-29/93 dated 14 August 1993, certified by the ICTY (no. 01505692 through 01505693),
- Death certificate in the name of ██████████, no. 03/1-12-15-3-03/09 dated 9 January 2009,
- Death certificate in the name of Zoran Čališ, no. 1/09 dated 7 January 2009,

- Mesud Hero's book, *Hronika zločina u Prozoru 1992. - 1995. godine* (Chronicle of crimes in Prozor between 1992 and 1995), certified by the ICTY (no. 04661485 through 04661806),
- Criminal record information/check for the suspect Darko Dolić, no. 02-02/5-2-12-504/09 dated 29 October 2009,
- Photographic documentation and crime scene presentation -----
- Medical documents pertaining to the aggrieved party [REDACTED],
- RMC /Regional Medical Center/ *dr. Safet Mujić* Mostar dated 12 May 2008,
- Medical findings by Alija Šuko, MD, specialist in gynecology, dated 25 June 2008,
- Medical documents pertaining to protected witness „S3“.

## INVESTIGATION RESULTS

The results of the investigation conducted by this Prosecutor's Office unequivocally confirms the validity of the present Indictment, that is, the allegations that the suspect Darko Dolić, in the manner, at the time and place and under the circumstances set out in the Indictment's operative part, perpetrated the criminal acts referred to in the Indictment, those acts satisfying all the essential elements of the offense charged.

The evidence obtained by the Prosecutor's Office during the investigation (documentary evidence and witness statements) determined as follows:

- That the suspect Darko Dolić committed the offense charged under the Indictment during the war in Bosnia and Herzegovina, during the armed conflict between the Army of R BiH and the HVO,
- That the criminal acts with which the suspect is charged under the Indictment's operative part constitute gross breaches of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949,
- That protected witness „S2“, [REDACTED], protected witness „S1“, [REDACTED], [REDACTED], protected witness „S3“ and [REDACTED] were all civilians and, throughout the time relevant to the Indictment,

persons protected by the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949,

- That the offense with which the suspect is charged was committed in the area of Prozor Municipality,
- That suspect Darko Dolić committed the offense charged under the Indictment as a member of the HVO „Rama“ Brigade, that is, as a member of a party to the conflict,
- That the criminal acts perpetrated by suspect Darko Dolić were not justified by military necessity,
- That it clearly ensues from the evidence collected in the course of the investigation that there is a nexus between the war (that is, the armed conflict) and the committed offense referred to in the Indictment's operative part, and that the accused took advantage of his „superior“ military position and the position of the aggrieved parties as „subordinate persons“ in order to carry out the acts charged.

### **The war in Bosnia and Herzegovina**

Pursuant to Article 8 of the Decree-Law on Defense (*Official Gazette of the R BiH* no. 4/92), at the proposal by the Main Staff of the Armed Forces of the Republic of Bosnia and Herzegovina, the Presidency of R BiH, at its session held on 20 June 1992, adopted a Decision declaring a state of war. By this decision, a state of war was declared for the territory of the Republic of Bosnia and Herzegovina. The decision was published in the *Official Gazette of the R BiH* no. 7/92 and entered into force on 20 June 1992.

The state of war in Bosnia and Herzegovina lasted until 20 June 1995, at which date the Presidency of BiH adopted a Decision ending the state of war.

It follows from the Indictment's operative part that Darko Dolić is charged with committing War Crimes against Civilians in August 1993, that is, during the war in Bosnia and Herzegovina.

It clearly ensues from the evidence collected in the course of the investigation (preceding the issuance of the Indictment) that there is a nexus between the war (that is, the armed conflict) and the committed offense referred to in the Indictment's operative part, and that the suspect took advantage of his „superior military position“ and the position of the aggrieved parties as „subordinate persons“ in order to coerce [REDACTED] and protected witnesses into sexual intercourse and carry out other criminal acts described in the Indictment's operative part.

### **Existence of an armed conflict between the Army of BiH and the HVO and the nature of the armed conflict**

It is evident that at the relevant time period there was an armed conflict between the HVO and the Army of BiH in Bosnia and Herzegovina, that is, in the area of Prozor Municipality.

It unequivocally follows from the documentary evidence collected by the Prosecutor's Office of Bosnia and Herzegovina during the investigation (plus the statements of witnesses interviewed on the premises of the Prosecutor's Office of BiH) that there was a conflict between the HVO and the BiH Army in Herzegovina (Prozor Municipality) in the second half of 1993.

One of the attempts of the international community to resolve the conflict in Bosnia and Herzegovina resulted in the Vance-Owen plan that was made public on 2 January 1993. The plan proposed that Bosnia and Herzegovina be divided into separate regions marked with numbers, each region being governed by Croats, Serbs and Bosnian Muslims respectively. According to that plan, regions 3, 8 and 10 would be placed under Croat rule. The leadership of the Bosnian Croats accepted the Vance-Owen plan. The Bosnian Serb assembly rejected the Vance-Owen plan on 2 April 1993. Following that decision, leaders of the Bosnian Croat Community of Herceg-Bosna met in Mostar and prepared a "joint statement" urging that the HVO and the Muslims form a joint command and publishing an ultimatum that the HVO, in case of refusal of the President of Bosnia and Herzegovina to sign the „joint statement“ by no later than 15 April 1993, would unilaterally implement the stipulations from that statement in regions 3, 8 and 10. Conflicts between the Bosnian Croats and Bosnian Muslims broke out on 16 April 1993. The town of Prozor was in region no. 8 and under control of the HVO.

It ensues from the cited documentary evidence and witness statements that an armed conflict existed in the area of Prozor Municipality at the relevant time period.

The existence of an armed conflict between the Army of BiH and the Croat Defense Council was determined by the final ICTY judgment (IT-01-48-T dated 16 November 2005) in the *Prosecutor v. Sefer Halilović* case, paras. 162, 163 (footnotes 524, 525 and 526) elaborated in detail below.

The peace agreement and an Annex thereto were signed in Zagreb on 23 February 1994. The Agreement was signed by General Ante Roso and Rasim Delić on behalf of the HVO and the Army respectively.

Under this Agreement, both parties have agreed on the ceasefire that included an instant and full cessation of hostilities, cessation of offensive operations and attacks, cessation of all forms of propaganda of one side against the other and vice-versa.

The Agreement entered into force on 25 February 1994 at 12.00 hrs.

Notwithstanding the fact that the cited evidence proves the existence of an armed conflict, the Prosecutor's Office, with respect to the nature of the armed conflict, pursuant to Article 4 of the Law on Transfer of Cases from the ICTY, in conjunction with Article 261(1) and Article 15 of the Criminal Procedure Code of BiH, files the following

**M O T I O N**  
**TO ACCEPT AS PROVEN THE FACTS THAT ARE ESTABLISHED BY LEGALLY**  
**BINDING DECISIONS IN PROCEEDINGS BY THE ICTY AND**  
**DOCUMENTARY EVIDENCE FROM THE ICTY PROCEEDINGS RELATING**  
**TO MATTERS AT ISSUE IN THE CURRENT PROCEEDINGS**

**The Prosecutor's Office petitions that:**

**The Court of BiH accept as proven the facts that are established by legally binding decisions** in proceedings by the International Tribunal for war crimes committed in the former Yugoslavia (ICTY), the facts established by first-instance judgments not challenged on appeal in the following cases:

**1. Final judgment of the ICTY Trial Chamber (IT-96-21 dated 16 November 1998), *Zejnir Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo* - paragraphs 186 and 187:**

**Paragraph 186.** The preceding background section has discussed in some detail the military and political situations in the States of the former SFRY leading up to 1992. Particular attention was focused upon the State of Bosnia and Herzegovina and there is no need for repetition of the relevant facts. Suffice it to say that in Bosnia and Herzegovina as a whole there was continuing armed violence at least from the date of its declaration of independence - 6 March 1992 - until the signing of the Dayton Peace Agreement in November 1995. Certainly involved in this armed violence, and relevant to the present case, were the JNA, the Bosnian Army (consisting of the TO and MUP), the HVO and the VRS.

**Paragraph 187.** The JNA was the official army of the SFRY and was, after the creation of the FRY, under that State's authority until its division (the FRY claiming to be the sole legitimate successor State of the SFRY). However, the authorities of the so-called SRBH also announced the existence of their own army in May 1992 - the VSRBH (later the VRS) - which was comprised of former JNA units in Bosnia and Herzegovina. The remainder of the JNA became the VJ, the army of the FRY. The VRS was controlled from Pale by the leadership of the Bosnian Serb administration, headed by Radovan Karadzic, and throughout 1992, and thereafter, it occupied significant amounts of Bosnia and Herzegovina. The HVO was in a position similar to that of the VRS, in that it was established by the self-proclaimed para-State of the

Bosnian Croats as its army and operated from territory under its control. The remaining participants, the Bosnian TO and MUP, were clearly acting on behalf of the authorities of Bosnia and Herzegovina.

**2. Final judgment of the ICTY Trial Chamber (IT-98-34-T dated 31 March 2003), *Mladen Naletilić and Vinko Martinović*, paragraph 15 (footnote 24), paragraphs 17, 177 and 179:**

**Paragraph 15.** The BH Croats participated in the institutions of the newly independent Bosnia and Herzegovina in Sarajevo. Even before the referendum on independence, the “HZ H-B” was founded.<sup>1</sup> The HZ H-B started to play a more prominent role as the actual legislators and administrators of the areas of relevance to this Indictment. There were many differing expectations expressed on the reasons for the establishment of HZ H-B; some saw it as a temporary institution to fill a void after virtual disintegration of the government of Bosnia and Herzegovina. Others saw it as a step towards forming part of the Republic of Croatia or creating an independent state. Regardless of which, many BH Croats wanted to take the initiative and create a structure for defense against the Serbs.

**Paragraph 177.** According to the jurisprudence of the Tribunal, an armed conflict exists:

Whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State (...) whether or not actual combat takes place there.<sup>2</sup>

Once it is established that an armed conflict occurred in a territory, the norms of international humanitarian law apply.<sup>3</sup> It is not necessary to further establish that actual combat activities occurred in a particular part of the territory. <sup>4</sup> The existence of an armed conflict nexus is established if the alleged crimes “were closely related to the hostilities. <sup>5</sup>

**Paragraph 179.** The Chamber is satisfied that an armed conflict existed during the time relevant to the Indictment, *i.e.* at least between 17 April 1993 and the end of February 1994.

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<sup>1</sup> Exhibit PP 104, Decision on the establishment of the HZ HB which states in Article 2 that HZ HB is composed of the following municipalities: Jajce, Kreševo, Busovača, Vitez, Novi Travnik, Travnik, Kiseljak, Fojnica, Skender Vakuf (Dobratići), Kakanj, Vareš, Kotor Varoš, Tomislavgrad, Livno, Kupres, Bugojno, Gornji Vakuf, **Prozor**, Konjic, Jablanica, Posušje, Mostar, Široki Brijeg, Grude, Ljubuški, Čitluk, Čapljina, Neum, Stolac, Trebinje (Ravno).

<sup>2</sup> Tadić Jurisdiction Decision, para 70.

<sup>3</sup> Tadić Jurisdiction Decision, para 70.

<sup>4</sup> Tadić Jurisdiction Decision, para 70.

<sup>5</sup> Tadić Jurisdiction Decision, para 70.

### **3. Final judgment of the ICTY Trial Chamber (IT-01-48-T dated 16 November 2005), *Sefer Halilović*, paras. 162 and 163 (footnotes 524, 525 and 526):**

**Paragraph 162.** Prozor town lies on one of the main supply routes from the Adriatic coast to the Lašva Valley, Zenica and Tuzla.<sup>6</sup> According to Witness G, on 22 October 1992, “HVO or HV units” in the area around Prozor encircled Prozor town.<sup>7</sup> By 12:00 the following day, these troops had entered the town.<sup>8</sup> The ABiH lost control of Prozor.<sup>9</sup>

**Paragraph 163.** In August and September 1993, the OG West was predominantly engaged in combat with the HVO, north of the Prozor Independent Battalion’s area of responsibility.<sup>10</sup> Part of the ABiH 6<sup>th</sup> Corps was engaged in the Fojnica area and was facing great difficulty there. The HVO forces were attempting to cut the only line of communication with Zenica and the ABiH 3rd Corps.<sup>11</sup> By September 1993, the HVO had occupied 85 to 90 percent of the territory in the municipality of Prozor.<sup>12</sup>

### **4. Final judgment of the Appeals Chamber, *Čelebići*, February 2001 (IT-96-21-A), paragraph 33**

**Paragraph 33.** The Trial Chamber’s finding as to the nature of the conflict prior to 19 May 1992 is based on a finding of a direct participation of one State on the territory of another State. This constitutes a plain application of the holding of the Appeals Chamber in *Tadić* that it “is indisputable that an armed conflict is international if it takes place between two or more States”, which reflects the traditional position of international law. The Appeals Chamber is in no doubt that there is sufficient evidence to justify the Trial Chamber’s finding of fact that the conflict was international prior to 19 May 1992.

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<sup>6</sup> Kate Adie, 18 April 2005, T.64.

<sup>7</sup> Witness G, 7 April 2005, T.12.

<sup>8</sup> Witness G, 7 April 2005, T.14. The troops included an armored vehicle unit with 13 to 14 tanks, *ibid.*

<sup>9</sup> Witness G, 7 April 2005., T.14; Mehmed Behlo, 27 June 2005, T.66. Witness G stated that the Territorial Defense of Bosnia and Herzegovina lost control of Prozor. In light of the evidence presented, the Trial Chamber notes that in October 1992, the TO had already become the ABiH, see *infra* Section IV.A, para 101.

<sup>10</sup> Selmo Cikotić, 23 February 2005, T.5-6.

<sup>11</sup> Dževad Tirak, 31 March 2005, T.5-6.

<sup>12</sup> Out of 7,400 Bosnian Muslims living in the municipality in 1991, 128 Bosnian Muslims remained in the area of Prozor, Witness, G, 7 April 2005, T 14. During this time there was a list of 181 people who had gone missing and 968 able-bodied men were in camps, Witness G, 7 April 2005, T.15.

## **5. Final judgment of the Appeals Chamber, *Tadić*, July 1999 (IT-94-AR72) paragraph 162**

**Paragraph 162.** The Appeals Chamber therefore concludes that, for the period material to this case (1992), the armed forces of the Republika Srpska were to be regarded as acting under the overall control of and on behalf of the FRY. Hence, even after 19 May 1992 the armed conflict in Bosnia and Herzegovina between the Bosnian Serbs and the central authorities of Bosnia and Herzegovina must be classified as an international armed conflict.

## **6. Judgment of the Appeals Chamber, *Tuta - Štela* (IT-98-34-T), paragraph 196**

**Paragraph 196.** The Chamber thus finds that the conflict between the HVO and the ABiH in Bosnia and Herzegovina was internationalized by the intervention of the troops of the Republic of Croatia in the conflict.

## **7. Final judgment of the Appeals Chamber, *Blaškić-Kordić* (IT-95-14/2-A dated 17 December 2004), paragraph 321**

**Paragraph 321.** This reasoning is supported by the purpose of the Geneva Conventions. Once an armed conflict has become international, the Geneva Conventions apply throughout the respective territories of the warring parties. Accordingly, the Trial Chamber did not err by taking into account the situation in other areas within Bosnia and Herzegovina linked to the armed conflict in Central Bosnia when examining the international character of the armed conflict.

### **Capacity of the suspect**

It ensues from the documentary evidence that Darko Dolić was a member of the „Jastrebovi“ sabotage-reconnaissance unit of the HVO „Rama“ Brigade between 3 April 1992 and 22 April 1996, which can be seen from the submitted certificate, the decision on disability and the list of soldiers of the „Jastrebovi“ DIJ /sabotage-reconnaissance unit/ of the HVO „Rama“ Brigade. It indisputably follows from those pieces of evidence that Darko Dolić was a member of the HVO „Rama“ Brigade at the material time, that is, he was a member of a party to the conflict. The witnesses who were interviewed have also confirmed this.

### **Mens rea**

The element of knowledge, as an element of responsibility of a suspect, suggests that the suspect Darko Dolić was aware that he, as an armed soldier of the HVO carrying a rifle in his hand, was entering a defenseless Muslim village in which

all the people were civilians without any weapons, with no resistance being put up, aware that the very appearance of an armed soldier wearing a uniform may represent a form of fear to the Muslim population (Družinovići and Lapsunj were villages in which the remaining Muslim population gathered following several months of combat activities between the HVO and BiH Army in the area of Prozor Municipality).

The evidence suggests that the suspect came to that village together with late Zoran Čališ and, with an intent to taking money and gold, ordered all the civilians who were at that place at the material time to line up in front of Zlatif Kmetaš's house to more easily control them in order to take their valuables, money and gold; thereupon, he used force and threat to rape [REDACTED] on whom he had previously inflicted injuries in the head and a leg. After he perpetrated the offense, he went to the village of Lapsunj and repeatedly raped protected witness „S1“ and protected witness „S3“.

Active knowledge has been defined as “the awareness that a crime was committed or is about to be committed” (Kordić & Čerkez IT-95-14/2, Chamber (2001) para 427) and it is proved by the statements of the following witnesses: protected witness „S2“, [REDACTED], protected witness „S1“, [REDACTED], [REDACTED], protected witness „S3“ and [REDACTED].

The alleged witnesses prove that the accused carried out the criminal acts charged.

Aggrieved party/witness [REDACTED] explained the manner in which the suspect raped her after he had taken money and gold from the Muslims lined up in front of the house of her father-in-law Zlatif Kmetaš, tortured the tied-up [REDACTED], kicked and hit residents of the village of Družinovići with a rifle and ordered all of them to line up in front of [REDACTED]'s house and seized their valuables (money and gold).

Aggrieved party/protected witness „S1“ – who sought during her interview to be examined as a protected witness in light of the circumstances surrounding the perpetration of the offense, her current place of residence, the seriousness and sensitivity of the offense and possible consequences to ensue as a result of her testimony – has also confirmed that the suspect used force and threat to attack her life and limb and raped her.

Aggrieved party/protected witness „S3“ – who sought during her interview to be examined as a protected witness in light of the circumstances surrounding the perpetration of the offense, her current place of residence, the seriousness and sensitivity of the offense and possible consequences to ensue as a result of her testimony – has also confirmed that the suspect used force and threat to attack her life and limb and raped her.

Other witnesses ( [REDACTED] ) have confirmed the manner in which Darko Dolić committed the offense charged.

All these witnesses, through their perception of the experienced acts that are inconsistent with the provisions of international law and the Criminal Code, have described the perpetration of the offense in the manner described in the Indictment's operative part.

### **Capacity of the victims**

Aggrieved parties/witnesses are Muslims who lived in the area of Prozor Municipality, and after the conflict between the HVO and the Army of BiH they were expelled from their homes, they hid in the woods while the remaining Muslim population that did not leave Prozor Municipality resided in Družinovići and Lapsunj. They were all civilians, unarmed, did not participate in any combat operations; the raped persons were women who were especially protected by the Geneva Convention, they were not in a position to fight and put up resistance to the suspect; the suspect Darko Dolić, by carrying out the incriminated acts against the civilians who were not of the same ethnicity as the people who controlled the area of Prozor Municipality at the time, committed a breach of international law.

### **Rape under international humanitarian law**

It is beyond any doubt that rape and other forms of sexual violence are explicitly prohibited under international humanitarian law. The provisions of Article 27 of the IV Geneva Convention specifically prohibit rape, any form of indecent assault and forced prostitution of women. The prohibition of rape is set forth in Article 76 of the Additional Protocol I to the Geneva Convention in relation to international conflict. This protocol, too, prohibits rape.

Bearing in mind the description of the capacity of the victims, the role of the suspect, the existence of an armed conflict and the provisions of the Geneva Convention, we submit that by the acts set out in the Indictment's operative part the accused committed the offense and acted in violation of the cited Geneva Convention.

### **Materials corroborating the allegations made in the Indictment**

[REDACTED]



**And the following documentary evidence:**

- Decision declaring the imminent threat of war entered into force „forthwith“ at the moment of its adoption and was published in the *Official Gazette of the R BiH*, no. 1/92 dated 9 April 1992,
- Decision of the Presidency of the Republic of Bosnia and Herzegovina declaring a state of war, published in the *Official Gazette of the R BiH* no. 7/92 dated 20 June 1992,
- Decision of the Presidency of the Republic of Bosnia and Herzegovina ending the state of war, published in the *Official Gazette of the R BiH* no. 50/95,
- Decree-Law on the Armed Forces of the Republic of Bosnia and Herzegovina, published in the *Official Gazette of the R BiH* no. 4/92 dated 20 May 1992,
- Decision on the establishment of the Croat Defense Council no. 2/92 dated 8 April 1992, published in the *Official Gazette of the Croat Community of Herceg-Bosna* no. 1/92,
- Peace Agreement and an Annex to the Peace Agreement in Zagreb between the HVO and the Army of R BiH that entered into force on 25 February 1994 at 12.00 hrs (a certified photocopy is in the case file of the Court of BiH no. X-KR/05/42),
- Final judgment of the ICTY Trial Chamber (IT-96-21 dated 16 November 1998), *Zejnir Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo* – paras. 186, 187 and 192
- Final judgment of the ICTY Trial Chamber (IT-98-34-A dated 31 March 2003), *Mladen Naletilić and Vinko Martinović*, paragraph 15 (footnote 24), paras 17, 177 through 179,
- Final judgment of the ICTY Trial Chamber (IT-01-48-T dated 16 November 2005), *Sefer Halilović*, paras 162, 163 (footnotes 524, 525 and 526).

- Certificate for the wounded Darko Dolić issued by the Prozor – Rama Municipality Defense Section of the Mostar Defense Administration- no. 22-08-41-1-174/04-75 dated 2 November 2004,
- Decision issued by the Prozor – Rama Municipality Department for Public Services and Veterans Affairs (no. 03-43-1507/06 dated 31 January 2007), forwarded by the General Administration and Public Services Department under no. 02/2-43-1459/09 dated 15 June 2009,
- State Investigation and Protection Agency-Mostar Regional Office report no. 17-13/3-2-04-02-KU-1/09 dated 14 January 2009,
- List of soldiers of the HVO „Rama“ Prozor from the „Jastrebovi“ DIJ /sabotage-reconnaissance unit/, certified by the ICTY (no. 00923139 through 00923140),
- List of soldiers in the „Ivan Peran Nino“ sabotage platoon, certified by the ICTY (no. 01242779),
- Letter of the Command of the 44<sup>th</sup> Mountain Brigade of the Army of the Republic of BiH dated 15 August 1993, certified by the ICTY (no. 04035183),
- HVO “Rama” Brigade “Jastrebovi” Sabotage Platoon report dated 18 October 1993, certified by the ICTY (no. 01527595),
- Interim report of the 4th Corps of the Army of R BiH Command of the SB “Prozor”-ObO interim report no. 03-097/94 dated 25 October 1994, certified by the ICTY (no. 02064571),
- Prozor town dossier, certified by the ICTY (no. 02915257 through 02915266),
- Croat Defense Council “Rama” Brigade SIS unit assessment no. 03-03-519/93 dated 12 November 1993, certified by the ICTY (no. 01507642 through 01507645),
- HVO “Rama” Brigade Prozor SIS no. 03-02-79/93 dated 14 July 1993, certified by the ICTY (no. 0420-0097-0098),
- Summary of war crimes in the HVO Prozor camps and the camps in Herzegovina, certified by the ICTY (no. 02915266 through 02915294),
- HVO „Rama“ Brigade Prozor area of responsibility, certified by the ICTY (no. 02146203 through 02146204),
- Situation in and assessment of the HR HB /Croat Community of Herceg-Bosna/ by Prof. Miroslav Tuđman no. 03/94-058 dated 28 March 1994, certified by the ICTY (no. 02131302 through 02131304),
- HZ HB Ministry of Defense SIS „Rama“ Sub-center no. 02-4/2-7-102/94 dated 22 January 1994, certified by the ICTY (no. 01570224),
- SIS „Rama“ Sub-center no. 02-4/2-7-103/94 dated 22 January 1994, certified by the ICTY (no. 01571017),
- HVO Rama-Prozor Military Police report for 16 July 1993, dated 17 July 1993, certified by the ICTY (no. 01548971),
- HVO Rama-Prozor Military Police report for 21 July 1993, dated 22 July 1993, certified by the ICTY (no. 01548967),
- HVO Rama Brigade “Rama” Prozor SIS report no. 03-02-83/93 dated 31 July 1993, certified by the ICTY (no. 01525297 through 01525298),
- HVO O.Z. S/Z Herzegovina SIS Class: 1-76/93 no. 443/93 dated 15 July 1993, certified by the ICTY (no. 01515379),

- HZ HB "Rama" Brigade Prozor SIS report no. 03-02-66/93 dated 27 June 1993, certified by the ICTY (no. 01514134),
- Report on the activities of EU observers in the area of Rama Municipality, no. 03-02-94/93 dated 21 August 1993, certified by the ICTY (no. 01514130 through 01514131),
- HVO Center SIS „Rama“ information no. 02-4/2-7-61/93 dated 10 November 1993, certified by the ICTY (no. 01514074 through 10514075),
- HVO Sub-center SIS „Rama“ no. 02-4/2-7/177/93 dated 12 December 1993, certified by the ICTY (no. 01511207 through 01511227),
- HVO Defense Department Security Sector official note no. 02-4-1-1109/93 dated 13 August 1993, certified by the ICTY (no. 01505907 through 01505908),
- HVO "Rama" Brigade SIS report no. 03-02-29/93 dated 14 August 1993, certified by the ICTY (no. 01505692 through 01505693),
- Death certificate in the name of [REDACTED], no. 03/1-12-15-3-03/09 dated 9 January 2009,
- Death certificate in the name of Zoran Čališ, no. 1/09 dated 7 January 2009,
- Mesud Hero's book, *Chronicle of crimes in Prozor between 1992 and 1995*, certified by the ICTY (no. 04661485 through 04661806),
- Criminal record information/check for the suspect Darko Dolić, no. 02-02/5-2-12-504/09 dated 29 October 2009,
- Photographic documentation and crime scene presentation -----
- Medical documents pertaining to the aggrieved party [REDACTED],
- RMC *dr. Safet Mujić* Mostar dated 12 May 2008,
- Medical findings by Alija Šuko, MD, specialist in gynecology, dated 25 June 2008,
- Medical documents pertaining to protected witness „S3“ ,

Having analyzed the evidence collected during the investigation (witness statements and documentary evidence), individually and as a whole, the Prosecutor's Office of BiH submits that there is sufficient evidence that the suspect Darko Dolić committed the offense charged under the Indictment and therefore considers that the present Indictment is well-founded in its entirety and petitions the preliminary hearing judge to confirm the Indictment.

### **Motion to extend custody following the confirmation of the Indictment**

Pursuant to Article 227(3) and Article 137(1) of the Criminal Procedure Code of Bosnia and Herzegovina, the Prosecutor's Office of Bosnia and Herzegovina petitions that custody of the suspect be extended pursuant to Article 132(1)(b) of the Criminal Procedure Code of Bosnia and Herzegovina following the confirmation of the Indictment, because there are particular circumstances indicating that the suspect will hinder the criminal proceedings by influencing the witnesses.

## **Particular circumstances indicating that the suspect will hinder the criminal proceedings by influencing the witnesses**

Following the confirmation of the Indictment, the identity of the protected witness and other evidence wherefrom the existence of grounded suspicion that the suspect committed the offense ensues shall be disclosed to the suspect. In such circumstances, when the suspect is faced with very serious charges and when he is familiar with the identity of the witnesses and the other evidence, there is a high risk and strong motive on the part of the suspect, if at liberty, to hinder the criminal proceedings by influencing the witnesses into changing their investigative statements when testifying before the Court of Bosnia and Herzegovina.

The suspect is charged with War Crimes against Civilians and this crime was perpetrated through the rapes of protected witnesses „S3“ and „S1“ (the latter was raped repeatedly), and the consequences of that offense are very serious and are reflected in the substantial damage to the mental health of the aggrieved parties. It is evident that the present criminal case is specific because of the sensitivity of the criminal act with which the suspect is charged. In the proceedings before the Court of Bosnia and Herzegovina, following the confirmation of the Indictment, the aggrieved parties/protected witnesses „S1“ and „S3“ and other witnesses should give their testimonies without pressure or fear of possible repercussions that may arise out of the testimonies.

All these circumstances constitute particular circumstances indicating a realistic possibility that the suspect, if released, could influence the witnesses in order to avoid criminal responsibility and those circumstances constitute a ground to extend custody pursuant to Article 132(1)(b) of the Criminal Procedure Code of Bosnia and Herzegovina.

The Prosecutor's Office of Bosnia and Herzegovina petitions the Court of Bosnia and Herzegovina, in the event of confirmation of this Indictment, to consider the possibility of ordering custody on the grounds under Article 132(1)(a) of the CPC BiH as well, because there are circumstances suggesting a possibility of flight.

### **Circumstances suggesting a possibility of flight**

Darko Dolić, as he himself said, holds the citizenship of Bosnia and Herzegovina and of the Republic of Croatia. It is a fact, and the suspect is very well aware of that, that according to Article 9 of its Constitution the Republic of Croatia does not extradite its citizens.

Darko Dolić holds permanent residence in Prozor.

Darko Dolić has been in custody for almost one month and he knows what it means to be deprived of liberty and stay in a correctional institution.

Darko Dolić is charged with an offense punishable by a sentence of imprisonment for a term of 10 years or a long-term imprisonment. The prescribed criminal sanction constitutes a very strong motive to flee to the Republic of Croatia.

These circumstances constitute a ground for ordering custody under Article 132(1)(a) of the CPC BiH.

Based on the foregoing, and taking into consideration the evidence obtained during the investigation, the Prosecutor's Office of Bosnia and Herzegovina submits that there is sufficient evidence proving the existence of grounded suspicion that suspect Darko Dolić committed the criminal offense of War Crimes against Civilians under Article 173(1)(e) of the Criminal Code of Bosnia and Herzegovina, in conjunction with Article 180(1) thereof, and therefore petitions the preliminary hearing judge of the Court of Bosnia and Herzegovina to confirm the present Indictment.

Sanja Jukić  
Prosecutor  
Prosecutor's Office of BiH

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I hereby confirm that this document is a true translation of the original written in Bosnian/Serbian/Croatian language. Sarajevo, 18 November 2009.

  
Certified Court Interpreter for the English Language