



The Foča Trial

The Prosecutor versus Kunarac, Kovač and Vuković

**Sexualised Violence and Enslavement on Trial before the
International Criminal Court for the Former Yugoslavia**

A Summary

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Enslavement on Trial before the International
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Summary

On 22 February 2001 the International Tribunal for the Former Yugoslavia (ICTY)¹ found three Bosnian Serb military and paramilitary men guilty of multiple rape, torture and enslavement of Bosnian Muslim women. On 12 June 2002 the ICTY's Appeals Chamber confirmed the ruling in the case known as the Foča trial: Dragoljub Kunarac was sentenced to twenty-eight years, Radomir Kovac to twenty years, and Zoran Vukovic twelve years.

Though rape had been successfully charged at the ICTY before, the so-called Foča trial is the first trial in which an International Criminal Court deals exclusively and entirely with sexualized violence committed against women in war. It is not the first time that rape and other forms of sexualized violence had been tried before the ICTY. In the case against Dusko Tadic, however, the rape charges were dropped after the main witness withdrew her testimony because her identity had been leaked.² In the Celebici trial, rape was charged in only two counts out of forty-two.³ In the Furundzija trial only one accused was charged for the rape of one woman.⁴ Thus, the Foča Trial is the first one in which rape is not charged among several other charges but prominently and exclusively. It is also the first time that an International Court dealt with situations of enslavement for the purpose of rape.

The full documentation of the trial⁵ provides an exemplary insight into how the ICTY has dealt with sexualised violence. It sheds light on defence and prosecution strategies, as well as on the difficult process of questioning witnesses and what awaits potential witnesses. That is why the Foča trial documentation is a particularly useful source of information for anyone working with potential witnesses in any capacity.

Indictment and Allegations

The indictment was first issued on 26 June 1996. It covers multiple rape, gang rape, forced nudity, torture and ensla-

vement of Muslim women of the south-eastern Bosnian municipalities of Foča (pronounce: Fotsha), Kalinovik and Gacko. All those acts were committed between April 1992 and February 1993 by Bosnian Serb soldiers, policemen and members of paramilitary groups, including men from Serbia and Montenegro.

The indictment connects the individually charged cases of rape with the overall strategy of "ethnic cleansing". The attack on the Muslim population was "an organised and planned campaign and policy of the Bosnian Serb authorities to ethnically purge the Foča municipality of non-Serbs". The crimes of sexual assault and the enslavement of women and girls were "crimes of a policy of ethnic cleansing" and "committed during an armed conflict and (...) widespread and systematic", and they were committed against Muslim women and girls "purely because of their ethnicity or religion and because they were women."⁶

Originally eight men had been indicted but only three stood trial: Dragoljub Kunarac, an alleged commander of a group of mostly Montenegrin volunteer soldiers, Radomir Kovač and Zoran Vuković, both members of a military detachment based in Foča. Three other members of the same detachment had been indicted. The other two accused were killed during an attempt of arrest.

None of the three accused who stood trial belonged to the instigators of the policy of expulsion, as the Prosecutor said in his opening statement. But "there would have been no ethnic cleansing if there were not individuals willing to turn on their neighbours, to unleash terror and hatred, to turn multiethnic communities into homogeneous communities and to leave scarred victims."⁷

Kunarac' list of accusations was the longest. He was charged in a number of cases for torture, rape and enslavement as crimes against humanity, and for torture, rape and outrages upon personal dignity as violations of the laws and customs of war (war crimes).

1 Documents and transcripts of all trials can be found under www.un.org/icty

2 Tadic was found guilty though for male sexual assault.

3 On 16 November 1998 Hazim Delic, a guard and staff officer of a camp run by Bosnian Croats and Muslims near the village of Celebici, was sentenced to 15 years imprisonment for the multiple rape of two Serb female internees. In the same trial camp commander Zravko Mucic was found guilty to be responsible for these rapes as superior as well as for sexual attacks against men (forced fellatio). The judgement was confirmed by the Appeals Chamber on 20 February 2001.

4 On 10 December 1998 Anto Furundzija, a Bosnian Croat paramilitary leader, was found guilty as co-perpetrator for torture and rape of a Muslim woman. On 21 July 2000 the Appeals Chamber confirmed the judgement.

5 Gabriela Mischkowski (2002): „Damit die Welt es erfährt“ - Sexualisierte Gewalt im Krieg vor Gericht. Der Foca Prozess vor dem Internationalen Kriegsverbrechertribunal zum ehemaligen Jugoslawien, hrsg. vom Bundesministerium für Familie, Senioren, Frauen und Jugend in Kooperation mit medica mondiale, to be ordered at: Bundesministerium für Familie, Senioren, Frauen und Jugend, Postfach 2015C, 53145 Bonn, www.bmfsfj.de or download from: www.medicamondiale.org

6 Prosecutor's Opening Statement, 20 March 2000, p 7-10

7 *ibid*, p 35f

Dragoljub Kunarac, nicknamed “Zaga” (saw) was born 1960 in Foča. Prior to the attack on Foča in April 1992, he lived in Tivat, Montenegro, with his wife and one child. When fighting in Foča started, he became the leader of a special reconnaissance unit of non-local irregular Serb soldiers mainly from Montenegro called the “Independent Zaga Detachment”. A house in Foča, the Prosecutor alleged, served Kunarac as his headquarters; this was where he met his men and where many of the women and girls who testified before court were taken to be abused and raped, both by Kunarac and by his men. As alleged commander of his group, the Prosecutor not only charged Kunarac for individual criminal responsibility but also for superior criminal responsibility. The Prosecutor further claimed that on a particular date, 2 August 1992, Kunarac took out several women and girls from two detention sites for rape. Some he handed over to other soldiers for the same purpose. All of these women and girls were thereupon kept for months in different places. Kunarac was charged as direct perpetrator in seven cases and with aiding and abetting rape in eleven cases. He was also charged with enslavement in two cases. According to the indictment, Kunarac had detained and enslaved two girls for months in a private residence.

Radomir Kovač, nicknamed “Klanfa”, was born 1961 in Foča. He was charged with individual criminal responsibility on two counts of rape and enslavement. According to the Prosecutor, he was a member of the Dragan Nikolić Detachment and as such was involved in the attack on Foča and the surrounding villages. From end of October 1992 onward he allegedly kept four young women and girls hostage, two of them until February 1993. He was alleged to have raped them repeatedly himself and to have handed them over for rape to other soldiers, and to have forced them to do housework. Kovač was also indicted for having sold three of these women and girls to other soldiers for 200 – 500 Deutschmark.

Zoran Vuković was born 1955 in a village near Foča. Before the war he worked as a waiter and driver. Like Kovač he was allegedly involved in the attacks on villages and the arrest of Muslim civilians. He was charged with individual criminal responsibility for rape and torture in several cases. The Prosecutor further claimed that he was among the soldiers who interrogated women after arresting them and who took out women from one detention site for rape.

Of the three accused, only Kunarac had surrendered voluntarily and was willing to testify before court. All three pleaded not guilty.

The indictment briefly sums up the background to the deeds with which the accused were charged. Before the war almost half the population in the Foča municipality was Muslim. In the first half of April 1992, Bosnian Serb army units occupied the city of Foča together with paramilitary units from Serbia and Montenegro. Immediately afterwards, “military police, accompanied by local and non-local soldiers started arresting Muslim and Croat inhabitants. Until mid-July 1992 they continued to round up and arrest Muslim villagers from the surrounding villages in the municipality. The Serb forces separated men and women and unlawfully confined thousands of Muslims and Croats in various short and long-term detention facilities or kept them essentially under house arrest. During the arrest many civilians were killed beaten or subjected to sexual assault.”⁸ Most of the men were taken to the prison in Foča. Women, children and a few older men were detained in private houses, schools, motels or similar facilities. “Many of the detained women were subjected to humiliating and degrading conditions of life, to brutal beatings and to sexual assaults, including rapes.”⁹

The Trial

The presiding judge in the Foča trial was Judge Florence Ndepele Mwachande Mumba from Zambia: The two other judges were Judge David Hunt from Australia and Judge Fausto Pocar from Italy. The Office of the Prosecutor was represented by Hildegard Uertz-Retzlaff from Germany, Peggy Kuo from the USA and Dirk Ryneveld from Canada. All the defence counsel came from Yugoslavia: Slavina Prodanovic and Maja Pilopovic for Kunarac, Goran Jovanović and Jelena Lopičić for Vuković, and Momir Kolesar for Kovač.

The trial commenced on 20 March 2000 with an introductory statement by the prosecution, represented by Dirk Ryneveld. “This is a case”, he began, “about rape camps in eastern Bosnia, whose uncovering in 1992 so shocked the world. This is a case about the women and girls, some as young as 12 or 15 years old, who endured unimaginable horrors as their worlds collapsed around them. Before their very eyes their family members were killed and their homes destroyed. They were then brutalized, sexually assaulted and dehumanized by their captors, including the three accused who sit before you today. This is a case about justice and international laws that seek to proscribe the atrocities committed during the armed conflict. In this trial you will see the human face of the atrocities, both of the per-

⁸ Indictment “Gagovic et al”, 26.06.1996, para 1.2

⁹ *ibid.*, para 1.4

petrators and of the victims.”¹⁰ The Prosecution, to cite Ryneveld, would demonstrate that the actions the accused were charged with were not individual acts but part of an organised attack on the Muslim population in the region, which began in April 1992 and aimed to drive out all non-Serbs. After a detailed description of the alleged actions and the criminal responsibility of the accused, Ryneveld underscored that the three accused were not the ones that had conceived the ethnic cleansing policy. One thing however was sure, he said: “unlike those with political responsibility for planning the policy, the accused were the ones that had surrounded the innocent women and girls, subsequently raping or sexually attacking them, torturing them and enslaving them and then in some cases swapping or selling them or handing them over to other soldiers.”¹¹

Ryneveld emphasised that the evidence to be provided would rest almost exclusively on statements from witnesses, most from two different groups of women and girls taken captive in early July and interned until the end of August 1992. The first group of women and girls were detained in Foča after being taken prisoner, the second group were detained in Kalinovik. Several women and girls from both groups were later taken to a house in Miljevina. Some of the witnesses, Ryneveld continued, knew the accused before the war. Others were their victims for such a long time period that they were able to memorise their names and faces. Additional evidence to support identification of the accused as the perpetrator would be provided only in the cases in which the witnesses saw the accused only once. In addition, Ryneveld stressed, other women often saw or heard the rapes, so that most witnesses would be able to testify not just about their own rapes but also about the rapes of other witnesses.

The Prosecution Witnesses

The Prosecutor called 33 witnesses, among them 25 women. Most of them had been detained for several months, 16 of them had survived continuous rape and sexual attacks.

Some of them had been as young as fifteen at the time. For reasons of protection most witnesses testified under synonyms and with their faces and voices distorted for the public. Four testified in closed session. The witnesses came from eleven different localities in the region. In court they gave detailed testimony on their experiences of the outbreak of war and the initial occupation period. These descriptions served as evidence that there was indeed a wide spread and systematic attack on the non-Serb civilian population in the region and within the period in question –

the central legal requirement for qualifying a certain criminal conduct as a crime against humanity.

According to statements by some witnesses, ethnic tensions were exacerbated when nationalist parties were set up in spring 1990 and led to a split in the population, with political rallies, in particular in firms, inciting conflicts. The three most important parties formed prior to the first multi-party elections in Bosnia-Herzegovina, viewed themselves primarily as representatives of the three main nationalities in Bosnia: the Party of Democratic Action (SDA) led by Alija Izetbegović, was established in May 1990, the Serbian Democratic Party (SDS) led by Radovan Karadžić was founded in August 1990. The Croatian Democratic Party (HDZ) was founded as a branch of Tudjman’s governing party in Croatia. In November 1990 the SDA won 33.8% of the votes, the SDS 29.6% and the HDZ 18.3%. All three parties formed a coalition government. The HDZ did not play a role in the Foča region. In elections there the SDA won 44.5 % of the votes, the SDS 42.4 % and other parties 13.1%. Whilst the SDA increasingly advocated independence for Bosnia-Herzegovina, the SDS insisted that Yugoslavia should be preserved as the overarching federal structure. In May 1991 the SDS began to establish what were known as “Autonomous Serbian Regions” in Bosnia-Herzegovina. From November 1991 these also included the districts of Foča, Gacko und Kalinovik. According to statements by a number of witnesses, the situation grew more acute after the referendum on independence for Bosnia-Herzegovina on 29 February and 1 March 1992.

On 8 April 1992 the actual fighting in Foča town started. Within one week Foča was governed by Serb authorities while the fighting in the wider area continued. Both sides in the trial agreed on this general background. However, while the Prosecutor intended to prove that the crimes in question were closely linked with a general attack by Serb military and paramilitary forces on the Muslim population of the region, the Defence argued that Serb people only defended themselves successfully against an attack from Muslim armed forces.

During the course of the trial, several background witnesses from Foča clearly described the fighting as an attack by Serb forces launched on Foča with heavy weaponry from the surrounding mountains. Mainly Muslim quarters of the town were shelled. According to these witnesses, the resistance was ill equipped and lasted only several days. The witnesses described vividly how the persecution of the Muslim population in Foča started immediately: Muslim houses were searched and looted, Muslim people were dismissed

10 P 293f

11 P 332f

from work, denied medical treatment. Muslim men were detained in the KP Dom, a former penitentiary of the region.¹² Muslim women were held under house arrest or detained in separate facilities. Evidence of the Prosecution showed that in the following weeks and months all signs of Muslim life in the town of Foča were erased. The houses were burned, all mosques were destroyed or heavily damaged and the town was renamed “Srbinje”, indicating it belonged to Serbs only.

Most witnesses came from different villages in the communities of Foča, Gacko and Kalinovik. The Gacko district had a pre-war population of 10,788. In the 1991 census, 6,661 people gave their ethnicity as Serb, 3,858 as Muslim and 269 as “other”. In mid-April 1992, as became apparent from witness testimony, Serb forces controlled the city, arrested non-Serb men, burnt down Muslim houses and attacked villages. The town of Kalinovik is approximately 34 kilometres west of Foča. Before the war, the district had a population of only 4,657. According to witness testimony, the town was under Serb control until mid-May. They explained that all Muslim women and children from Jelasca and Kalinovik were driven out of their homes. Many were taken to the school in Kalinovik, where they encountered women from Gacko. Miljevina is a small mining town with a population of 1,763. It lies on the strategically important main road to Sarajevo, roughly 13 kilometres west of Foča. In the 1991 census, 943 of the town’s inhabitants registered as Serb, 730 as Muslim, 44 as Yugoslave, whilst 38 ticked “other” or “not known”. As the witnesses explained, Miljevina was already under Serb control before 8 April. Muslim men were arrested and transported to the KP Dom in Foča or vanished without a trace. Several witnesses described how Serb soldiers and paramilitaries repeatedly took young Muslim women and girls out of the houses and took them away with them. Many did not manage to hide and were taken to what was known as the Karaman’s House.

Witnesses from Mjesaja and Trošanj described how they watched from the distance many villages, predominately inhabited by Muslims, burning. According to their testimony, they slept in the woods at night for fear of an attack and would only go to their houses to tend the livestock or change clothes. A larger group of witnesses from these two close-by villages near Foča described unanimously the day when their own villages were eventually attacked: shooting started early morning on 4 July 1992 and the Muslim villagers who had slept in the woods panicked and started running in all directions. Many of the men who did not manage to flee were killed on the spot. Before this, some were beaten by soldiers and forced to kiss a cross and to make the

sign of the cross. Several witnesses mentioned the names of some of the soldiers that they knew. The witnesses had heard the shots of the executions, and later on the dead bodies were found. Mainly women and children and some elderly men were captured and brought to detention centres.

All the prosecution witnesses were detained by summer 1992. The women and girls from Mjesaja and Trošanj were first taken to, Buk Bijela, a settlement situated on a hydroelectric dam construction near Foča now used as soldiers’s barracks. Here they were kept a couple of hours for interrogation. While being questioned about hideouts for weapons and male family members, some women were raped here for the first time. From here they were taken to Foča High School where to the estimation of several witnesses about 70 women and children were kept until 13 July. All of them were then transferred to Partizan Sports Hall. In mid-August most of them were brought to Montenegro, where they were exchanged with Serb soldiers.¹³

Another group of witnesses came from villages in the municipalities of Gacko and Kalinovik and belonged to about 70 women and children detained in the Kalinovik Primary School till mid-August 1992.

Some of the young women and girls from both groups were not released in August like the others but kept prisoners in various sites like private flats and houses until spring 1993. One of these houses was Karaman’s House in Miljevina, named after his former Muslim owner. Women and girls were raped in many places. However, the main crime sites the trial focused on were Karaman’s house, the Foča High School, the Partizan Sports hall, Kalinovik Primary School, Kunarac’ headquarter, a house in Trnevace, close to Foča, and one apartment in the so-called Brena buildings.

All women testified that in the three major detention sites - Foča High School, Partizan Sports Hall and Kalinovik Primary School - sexual assaults, rapes, gang rapes and other humiliations were a daily occurrence from the outset of their detention. According to their testimony mostly young women and girls were taken out day and night and raped. The soldiers would either pick out the women and girls by saying: you, you and you, or call out their names. One witness described how on one occasion she was forced at gunpoint to give away the hiding place of her 15-year-old daughter. Sometimes the men would rape them in adjoining rooms, most the time they would bring them to different houses or flats.

12 Another trial dealt separately with the detainment, torture and killing of Muslim men in the KP Dom. Prosecutor v. Milorad Krnojelac, IT-97-25-T, Judgement 15 March 2002

13 A former police officer from Foča, testified that there was at least one other group of around 30 women detained later in September 1992 in the Partizan Sports Hall.

The witnesses identified many of the men by either name or nickname. Some had been neighbours, some they had known by sight, others were strangers. Some spoke, as many witnesses remembered, with a Montenegrin accent. Some witnesses also mentioned two Serb women by name acting in complicity with the perpetrators. Among the rapists many witnesses identified the accused Kunarac, Kovač and Vuković.

The witnesses also described the general living conditions as in every respect poor. The food was bad and hardly sufficient, they had to sleep on the floor on thin and rotten mattresses with no blankets. There was only cold water to wash, no soap, no shampoo, no detergent, and no sanitary towels. The women described how they lived in constant fear and were not allowed to leave without permission from the guards. In general, only women who had small children were allowed to go out for food while their children were kept hostage. Some children fell ill. Some of the police guards were extremely cruel, only a few tried to help or ease the situation for the women at least a little bit. Otherwise there was no support. When some women from Partizan Sports Hall plucked up their courage and complained about their treatment to the Chief of police, who resided right next door, the situation became worse. Some testimonies even referred to regular rape permissions for the soldiers issued by the chief of police Gagovic himself.¹⁴

In addition to this pattern of rape linked to the detention sites, another pattern existed at least since the beginning of August 1992. Young women and girls from detention sites and private houses were kept for months in private brothel-like houses. Many witnesses testified that on 2 August 1992 a group of girls from Partizan Sports Hall and Kalinovik Primary School was taken out, but this time only one was later returned.

Seven of these women testified in The Hague. Six of them identified the accused Kunarac as being among the men who took them out. Some testified that Kunarac first took them to the house that the Prosecutor described as his headquarters, where they were raped. Then they were handed over like commodities to other soldiers in different houses. Two witnesses described how they were forced to remain in a house in Trnovace for six months. Here, one of them was, as she testified, frequently raped by Kunarac, and the other woman by Gojko Jankovic.¹⁵ Both women told the court that they were kept like private property. Three other women testified that Kunarac handed them over to another paramilitary leader in Miljevena. He was in charge

of Karaman's House were many young women and girls were kept. The witnesses identified by name, i.e. by synonym, at least nine women and girls who were detained there from 2 August till 30 October 1992. Different soldiers raped them here uncounted times. One witness described how she was brought there directly from her parent's home. Sometimes girls would be taken away and other girls or women were brought to replace them. Among them were at least two 12-year-old girls, as several witnesses confirmed. The witnesses described how they had to obey to all orders and how they were forced to cook and wash for the soldiers.

Four girls from Karaman's House were eventually handed over to the accused Kovač who took them to a private apartment where he and another man lived. Three of these women testified in court. Two of them were kept here till 25 February 1993. They said it was clear to them who "belonged" to whom. They also testified that on one or several occasions Kovač forced them to dance nude in front of him and other soldiers. They were treated cruelly, often threatened to get their throats cut if they didn't obey. They, too, had to cook, wash and clean for the soldiers. They were locked in and often left without food for days when Kovač and the other man were out fighting. The soldiers treated the imprisoned girls like private property. There were repeated arguments between the Serb soldiers over particular girls, and when this happened the girls were intimidated and threatened even more. According to the statement of one witness, Kovač sold the fourth girl, who was 12 years old at that time, to an unknown soldier for 200 Deutschmark. She remains missing till today. The other two witnesses described how Kovač sold them in February 1993 to Montenegrin soldiers for 500 Deutschmark each. In Montenegro they were raped again and had to work as waitresses. In April 1993 they managed to flee.

The testimonies of the witnesses revealed a scenario of extreme cruelty without any mercy. Many witnesses testified that verbal humiliations, threats, and additional physical violence often accompanied the rapes. Often the men would take turns or gang rape, and the attacks could last for hours. And those who tried to resist were beaten. All rapes that the witnesses described were brutal, some, especially the gang rapes, surpass all imagination. Some rapes were revealed only in court. The witnesses had not talked about them before, partly because the memory of these specific rapes was especially painful. Like in the case of one witness who said that the first rape had been particularly shameful for her. As these rapes were not indicted

¹⁴ Gagovic was also indicted killed by an attempt of arrest.

¹⁵ Jankovic was later tried 2007 the War Crimes Chamber in Sarajewo and sentenced for rape, sexual slavery, murder and torture to 34 years.

they could not be taken into consideration for sentencing. Even when there were chances to flee from a house or an apartment, the women did not dare to leave as they told the court. All Muslims from Foča municipality were detained, expelled or killed. There was no place to go, some of the witnesses said. They lived in a constant state of fear and had to worry also for their children, their mothers, other relatives or friends. Small children became sick because of fear or because of the poor hygiene and food situation in the detention sites. Mothers had to leave their children behind crying when they were taken out for rape, and some of the children were old enough to understand what was going on. Often soldiers would use the children as hostages, threatening to kill them when the women refused to submit to sexual assaults. Other mothers had to watch helplessly how their young daughters were taken away and brought back in devastating conditions. Some of the witnesses, both daughters and mothers, said that they did not yet find a way to talk with each other about the ordeal they had shared.

All of them, women and children, endured many physical and psychological trauma symptoms, many of them until today. Some of the witnesses described that they had to take sedatives and painkillers for years and feared to suffer permanently physically and mentally from the attacks. Some of the women became suicidal. Others became indifferent as to what would happen to them and suffered from depression. As one witness put it: "I think I have decided to try and leave many of those things behind me. Although there are and will always be traces within me. I think all my life I will have thoughts and feel the pain. That will never go away."

None of the witnesses expressed feelings of hate. Some even emphasised that there were also "others", Serbs that helped, like one guard of Partizan Sports Hall who tried to prevent soldiers from entering the hall. In spite of the painful reliving of the nightmare, these women came to testify knowing well how hard it would be. They came – as some said – "to let the world know", "to be brave", "to tell the truth", "to feel better".

The Case of the Defence

The Defence called 29 witnesses, all of them were of Serb ethnicity. Apart from the expert witnesses most of them testified under pseudonym.

Kunarac's defence largely focused on his alibi. He was the only one of the accused who was willing to testify. He did so for nearly two and a half days. Guided by the questions of his counsel he went into each and every detail of his doings

during the time in question. His eyes focused on the judges, he would never answer a question directly but seemed to be eager to explain all circumstances of a situation, and he always went a long way back. His whole attitude from the pre-trial stage through the trial and till his last statement at the end of the trial signalled: I am deeply hurt by the accusations, and I am here to tell the truth because I believe in the Court.

Thus, apart from his alibi defence, which did not cover the whole time of the indictment, he claimed mistaken identity. In fact, he wanted the court to believe that he was a slandered hero. Being in the field reconnoitring and mine clearing he knew nothing of any rapes or even special detention camps for women. On 1 August 1992, however, he allegedly learned that some women had accused him of rape. He admitted that he did then take out two of these women from Partizan but only to find out what was going on and who was acting in his name. He also admitted that he took them to a house where other soldiers stayed but denied that it was his headquarters. He even admitted to having had sexual intercourse with one of the young women then who was sixteen at the time. But he claimed that this "happened against my will". He said she had seduced him without leaving him "any manoeuvring space". Afterwards he felt bad about it, and because he had felt morally guilty for it he had surrendered voluntarily to the court. He denied all other accusations of rape and blamed them on another man who had acted in his name. He admitted he left three of the witnesses with a paramilitary leader but only because he was in a hurry to get back to battle and trusted they would be safe. He admitted that he did go to other houses where Muslim women were staying but only because he wished to help them escape.

As for the witnesses who identified him clearly in court as their torturer and rapist, he alleged they did so because their testimony was either influenced from the outside or because they hoped by their testimony to gain the right to remain in a third country.

Several defence witnesses confirmed Kunarac' alibi till 3 August. But all of his other allegations remained unconfirmed. Kunarac also denied any kind of responsibility for the acts of other soldiers in his group. He admitted he was a leader but not a commander in any military sense with full responsibility. The composition of his ad hoc groups would change from task to task.

In contrast, during his initial interrogation in The Hague, Kunarac had admitted directly himself that he commanded a unit. "I was the commander of a unit for special tasks" or "I was the leader of the unit"¹⁶. Kunarac, according to the Pro-

secution, had admitted when being questioned that he had received his orders directly from the Supreme Commander of the Foča Brigade and then transmitted these orders to the soldiers he had selected to carry out the tasks.¹⁷ In the Prosecution's view this indicated the important role he had played within the military hierarchy in Foča despite having a low-ranking military position in formal terms.

Radomir Kovač' defence went into another direction. Since he did not testify himself, his defence only became apparent through the testimony of several witnesses who were his friends or relatives. They all described him as a particularly charming man, "always ready to crack a joke". The Defence did not deny that at least two of the witnesses who had testified against Kovač did indeed stay in his apartment for several months. One of them, however, a 15-year old girl, was allegedly his girlfriend. All defence witnesses described several occasions when they had seen them together "obviously in love with each other", as one witness said. The Defence denied that Kovač had sold the girls, but claimed that he had instead paid some soldiers to escort the girls to Montenegro for safety reasons. Some witnesses talked about a love letter written by the "girlfriend" from Montenegro, a letter, however, they had not seen themselves and which could not be produced as evidence.

Zoran **Vuković**, too, did not testify in court. His defence counsel claimed that at the time in question he could not have raped anybody since he was sexually disabled due to an accident in the field when he had injured his testicles. His chief witness was a nurse who produced a medical record book which did list an injury, not however the nature of the injury. One of the reasons why the trial lasted longer than foreseen was a lengthy procedure of different medical examinations of Vuković resulting in two different expert opinions as to whether or not he had been impotent at a particular time eight years ago.

Apart from the individual defences, the joint defence of all three accused was based on several other factual and legal aspects. As for the factual background, the Defence agreed to the fact of an armed conflict but denied the existence of any kind of attack on the Muslim population by Serb forces. In the Defence's presentation of facts, the Serbs in the area were defending themselves against attacks from the Muslim side. Any killings described by the prosecution witnesses were, if they had occurred at all, normal casualties of war. The Defence also denied the existence of detention camps for Muslim women and described the sites in question as normal refugee facilities. However, neither of the defence counsels brought in evidence or witnesses to prove either of these claims.

The main arguments of the Defence concerned the legal requirements of the criminal acts of torture, rape and enslavement as well as the provisions under which they were charged. Basically the Defence claimed that the Prosecutor had failed to meet or prove these requirements.

The Defence claimed that the crimes were, if at all crimes, normal crimes, i.e. neither war crimes nor crimes against humanity. Thus the ICTY would have no jurisdiction over them. They argued that the Prosecutor had neither proven the nexus between the alleged crimes and an armed conflict, as required for the definition of war crimes and crimes against humanity, nor a "widespread or systematic attack against a civilian population", as required for crimes against humanity.

The Defence dealt with the required elements of torture, rape and enslavement in a similar manner. For enslavement they claimed that the period of detainment would have to be a longer one than alleged in the cases charged. As for torture they saw neither the element of "intent" nor the element of "infliction of severe pain and suffering" proven. The appearance of the witnesses, the Defence argued, had shown that they were all in good health and suffered no long lasting traumatisations. To substantiate this claim, the Defence moved for a medical and psychological examination of the chief witnesses. The Trial Chamber granted that all statements of these five witnesses could be disclosed to the medical experts of the Defence but rejected the examination of the witnesses. As for the crime of rape, the Defence denied that any required element was proven: neither sufficient "coercive circumstances", which would require "constantly present force and threat", nor lack of "consent", which would require a "real, permanent and clearly expressed opposition".

To substantiate the claim of "lack of traumatisations", the Defence called in three medical experts who worked with traumatised persons, including raped victims. They demonstrated with impressive words the long lasting bodily and mental effects of torture and rape. However, they also claimed that a lack of visual trauma symptoms would also prove that no traumatisations had taken place at all.

In the Foča trial the defence also tried to make use of the option of holding closed sessions in court. According to the Rules of Procedures in exceptional cases the public can be excluded from testimonies or part of testimonies.¹⁸ Normally the defence attorneys or prosecutors ask for such protective measures only for their own witnesses. In this case the defence asked to exclude the public during the testimony of most prosecution witnesses. It is safe to assume

¹⁷ P 4649, 4659f

¹⁸ Rule 79 states that the Chamber may order closed sessions for reasons of (i) public order or morality; (ii) safety, security or non-disclosure of the identity of a victim or witness, or (iii) the protection of the interests of justice.

that this was neither done for reasons of morality nor to protect the women. Obviously, as the Prosecutor stated, the Defence wished to protect their clients and to prevent the evidence against them being made public.

The Judgement

The Trial Chamber rendered its judgement on 22 February 2001 and found all three accused guilty. In its general findings the Trial Chamber was satisfied that the links between the charged criminal conduct of the accused and the armed conflict had been proven beyond reasonable doubt as well as the existence of an extensive attack by the Serb forces targeting the Muslim civilian population in the area. The Court found that members of the Bosnian-Serb forces had used rapes as an “instrument of terror” and that they had an entirely free rein in doing so. Neither the police nor anyone else had attempted to prevent this. On the contrary, to cite Judge Mumba, the police even worked as guards in the detention camps where the women were held. The Chamber also found that the Muslim women and girls were entirely in the power of the Serb forces and were treated “like chattles”, as private property. In peace time, the judge continued, some of the deeds would be classified as organised crime. The Trial Chamber also found “that the three accused knew that an attack against the Muslim civilian population was taking place and that they knew that their criminal acts fitted in with or were part of this attack”¹⁹.

Dragoljub **Kunarac** was found guilty on the basis of individual criminal responsibility for torture, rape and enslavement in several cases as crimes against humanity and as violations of the laws and customs of war. The Trial Chamber dismissed Kunarac’s alibi defence and agreed with the Prosecutor that he had had the time and the possibility to commit the crimes. However, the Chamber was not satisfied that Kunarac was responsible as a superior commander. Thus he was acquitted of this count as well as of some of the rape charges which the Prosecutor in the eyes of the court did not prove beyond reasonable doubt.

Kunarac was sentenced to 28 years of imprisonment.

Radomir **Kovač** was found guilty of enslavement and rape as crimes against humanity and of rape and outrages upon personal dignity as violations of the laws and customs of war. The Trial Chamber found that all but one of the counts held against Kovač were proven without reasonable doubt. The Chamber found in particular that the relationship between Kovač and one of the witnesses was not one of love,

“but rather one of cruel opportunism on Kovač’s part, of constant abuses and domination over a girl who, at the relevant time, was only about 15 years old.”²⁰

Kovač was sentenced to 20 years imprisonment.

Zoran **Vuković** was acquitted of all charges but one, the rape of one 15-year-old girl. Already before its final judgement, the Trial Chamber had held, upon a motion of the Defence for acquittal, that Zoran Vuković had no case to answer in relation to the allegations made by one of the witnesses. This particular witness could not identify Vuković in court and the Chamber had found that there was no other corroborating evidence to prove that the rape in this case was committed by the accused. The Trial Chamber also found that several other rapes charged were not proven beyond doubt. Nevertheless Vuković was found guilty in one case of torture and rape as a crime against humanity and as a violation of the laws and customs of war.

Vuković was sentenced to 12 years imprisonment.

Both, judgement and sentencing were fully confirmed by the Appeals Chamber on 12 June 2002.

Extract from the Proclamation of Judgement

Before reading out the sentences for each of the accused, Presiding Judge Florence Mumba summarised the factual findings with the following words:

What the evidence shows, is that the rapes were used by members of the Bosnian Serb armed forces as an instrument of terror. An instrument they were given free rein to apply whenever and against whomsoever they wished.

What the evidence shows, is that it was possible for the Serb forces to set up and maintain a detention centre for scores of Muslim women such as Partizan Sports Hall, next to the municipal police building in Foča, from which women and young girls were taken away on a regular basis to other locations to be raped.

What the evidence shows, is that the authorities who were meant to protect the victims, such as the local police which had been taken over by the Serbs, turned a blind eye to their suffering. Instead, they helped guard the women, and even joined in their maltreatment when approached by them for help against their oppressors.

¹⁹ The Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković, IT-96-23-T & IT-96-23/I-T, Judgement, para 581

²⁰ 10 *ibid*, p 245, para 762

What the evidence shows, are Muslim women and girls, mothers and daughters together, robbed of the last vestiges of human dignity, women and girls treated like chattels, pieces of property at the arbitrary disposal of the Serb occupation forces, and more specifically, at the beck and call of the three accused.

What the sum of the evidence manifestly demonstrates, is the effect a criminal personality will have in times of war on helpless members of the civilian population:

- The actions of the three accused were part of a systematic attack against Muslim civilians. Some of their acts, in peacetime, could doubtlessly be characterised as organised crime.
- They knew of the military conflict in the Foča region, because they participated in it as soldiers in different units.
- They knew that one of the main purposes of that campaign was to drive the Muslims out of the region.
- They knew that one way to achieve this was to terrorise the Muslim civilian population in a manner that would make it impossible for them ever to return.
- They also knew of the general pattern of crimes, especially of detaining women and girls in different locations where they would be raped. The actions of all three accused, as will be described below, show beyond any doubt their knowledge of the detention centres, and of the practice of systematically transferring the women and girls to locations where they would be abused by Serb men.
- The three accused were not just following orders, if there were such orders, to rape Muslim women. The evidence shows free will on their part. Of the women and girls so detained, one was a child of only 12 years at the time. She has not been heard of since she was sold by one of the accused. The women and girls were either lent or "rented out" to other soldiers for the sole purpose of being ravaged and abused. Some of the women and girls were kept in servitude for months on end.

The three accused are not ordinary soldiers, whose morals were merely loosened by the hardships of war. These are men with no known criminal past. However, they thrived in the dark atmosphere of the dehumanisation of those believed to be enemies, when one would not even ask, in the words of Eleanor Roosevelt, "Where, after all, do universal human rights begin? In small places, close to home..."

The three accused are certainly not in the category of the political or military masterminds behind the conflicts and atrocities. However, the Trial Chamber wishes to make it

perfectly clear that, although in these cases before this Tribunal it is generally desirable to prosecute and try those in the higher echelons of power, the Trial Chamber will not accept low rank or a subordinate function as an escape from criminal prosecution.

Political leaders and war generals are powerless if the ordinary people refuse to carry out criminal activities in the course of war. Lawless opportunists should expect no mercy, no matter how low their position in the chain of command may be.

Indeed, it is opportune to state that, in time of peace as much as in time of war, men of substance do not abuse women.

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