



DISTRICT COURT IN BELGRADE

War Crimes Chamber

3 June 2009

Pursuant to my authority under article 265 (1) re art. 46 (2.3) of the Act of Criminal Procedure, I hereby bring this INDICTMENT against:

Milan ŠPANOVIĆ, born on 8 October 1960 in Novska; citizen of Serbia with residence in Čelarevo; merchant; no criminal record.

BACKGROUND AND CHARGES:

This indictment refers to the events which took place in the period between early October 1991 and late January 1992, on the premises of a prison in Stara Gradiška, Republic of Croatia, which at the time relevant to the indictment was a constituent part of the then Socialist Federal Republic of Yugoslavia (SFRY).

At the time and place relevant to this indictment, an armed conflict not of an international character existed between the Yugoslav People's Army (JNA) - which included the Serbian Autonomous Area of Krajina's Territorial Defence force (TO SAO Krajina) and volunteer units on one side, and Croat military formations - which included units of Croatia's Ministry of the Interior (MUP), National Guard's Assembly (ZNG) and volunteers on the other.

At all times relevant to this indictment, the accused, Milan ŠPANOVIĆ, was a member of the Territorial Defence force (TO) operating under the authority of the Serbian Autonomous Area of Krajina (TO SAO Krajina). In that capacity he engaged in the cruel treatment and physical torturing of captured civilians, whereby he committed grave breaches of international law, specifically of the following acts and provisions:

- Article 3 (1.1) and (2.a); art. 4 (1); and art. 27 (1) of the Fourth Geneva Convention on Protection of Civilian Persons in Time of War of 12 August 1949 (FNRY Official Gazette No. 24/50); and
- Article 13 (2) of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (SFRY Official Gazette, International Treaties No. 16/78).

Pursuant to the foregoing documents, civilian persons who do not take part in hostilities, who are unlawfully detained and deprived of their liberty for reasons related to the armed conflict, and held in the power of a party to the conflict, shall in all circumstances be treated humanely, without any adverse distinction founded on ethnic origin, and shall as such be protected from any form of violence or intimidation.

By engaging in the cruel treatment, torture and physical mutilation of the victims, the accused, Milan ŠPANOVIĆ, acted in violation of the foregoing documents, and specifically:

- On an unidentified day in January 1992, Milan ŠPANOVIĆ ordered Đuro BOGUNOVIĆ to take off his shoes, stand on his toes and turn towards a wall, whereupon this accused started rubbing the victim's forehead against the wall by drawing his head up and down; in subsequence, he thrust his hand into the victim's mouth and, as he grabbed the man by the teeth and gums, broke several teeth in the latter's lower jaw, whereafter he went on to kick the victim all over the body.

- On 18 October 1991, aided and abetted by an unidentified male individual, Milan ŠPANOVIĆ ordered another victim, Luka FILIPOVIĆ, to put his arms on the back and face a wall with his legs stretched apart, whereupon this accused started beating the victim all over the body with a chain, and the FNU LNU did the same with a truncheon; in subsequence, ŠPANOVIĆ gave the victim a slap across his cheek, whereupon both perpetrators grabbed the victim by the hair and repeatedly hit his head against the wall.

- On two separate occasions during the above specified period, the accused and the said FNU LNU individual ordered another victim, Josip KVOČIĆ, to put his arms on the back, stretch his legs apart and lean his head on a wall, whereupon they started kicking the victim from alternative sides with their shod feet until he could stand. As the victim fell on the ground, the two went on to stamp their feet all over him; at one point they ordered the victim to get on his feet and regain his previous position, whereupon they continued to beat him in the same manner as a while before, thus sending the victim twice on the ground and getting him to rise again. On one of the following days, they applied the same manner to brutalize the victim once again.

By engaging in the above described acts, the accused, ŠPANOVIĆ, inflicted great suffering on the victim, and caused him serious injuries to body and health, whereby he committed the criminal offence recognized by art. 142 (1) (war crime against civilian population) of the Federal Republic of Yugoslavia's Criminal Act.

In view of the foregoing, I PROPOSE that a public trial be scheduled and held before this Court, whereto the following parties and participants should be summoned:

I - War Crimes Prosecutor

II - The accused, Milan ŠPANOVIĆ

III - Defence counsel for the accused

IV - Legal representative of the late Luka FILIPOVIĆ

V - Witnesses/victims:

VI - Witnesses:

STATEMENT OF REASONS

The existence of the criminal offence recognized by article 142 (1) (war crime against civilian population) of the FRY Criminal Act in terms of the time, place and manner described in the enacting terms hereof, as well as the accused's criminal responsibility for the commission of the criminal offence as charged, have been established on the grounds of the findings obtained in the course of investigation conducted into this case.

The investigation findings provide grounds for the conclusion that in autumn 1991, an armed conflict existed in that part of Croatia, which was at the time part of the Socialist Federal Republic of Yugoslavia. Parties to the conflict were the JNA forces - which included units of TO SAO Krajina and volunteers - on one side, and the Croatian armed formations - which included units of the Croatian Interior Ministry (MUP), National Guard's Assembly and volunteers - on the other.

The said conflict was not of an international character since it was only in 1992 that the Republic of Croatia was recognized by the international community as an independent state.

The fact arising from the case files is that the accused, being a TO SAO Krajina member, constituted one of the parties to the particular conflict.

During late September and early October 1991, in relation to the described armed conflict, all of the victims, who were inhabitants of village Borovac in Novska municipality, were forced out of their homes and taken to Stara Gradiška prison, where they remained until the end of January 1992, when some of them were exchanged, whereas others were released. Throughout all that time, the imprisoned civilians were under the full control of the TO SAO Krajina members, among whom was also this accused, and who were therefore at all times required to treat the prisoners in compliance with international laws governing the conduct of war.

Namely, the Plenipotentiaries of the Governments represented at the Diplomatic Conference held in Geneva from 21 April to 12 August 1949 for the purpose of establishing a Convention for the Protection of Civilian Persons in Time of War, agreed and pledged to respect the Convention on all occasions. Articles 3, 4 and 27 of the Convention specify that, in the case of an armed conflict not of international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to treat persons not taking active part in the hostilities humanely in all circumstances and without any adverse distinction. To that end, it is prohibited to inflict injuries to bodily integrity and health, torture, violence or intimidation upon such persons who find themselves in the hands of a party to the conflict.

The above-mentioned Protocol, specifically its articles 4 and 13, provides that civilian populations enjoy special protection in terms of international humanitarian law, and that it is therefore prohibited to inflict on them any form of violence whatsoever, and in particular that to life, health and physical well-being, as well as any form of corporal punishment.

The accused, however, failed to respect such rights of the victims and, acting in breach of the aforementioned Convention and the Additional Protocol thereto, he subjected them to cruel treatment and torture in the described manner, thus causing them great suffering, alongside physical and mental pains.

In the light of the fact that the acts recognized by the said Convention and the Additional Protocol thereto are, upon being ratified, also criminalized by national legislation, the above-described acts of the accused, Milan ŠPANOVIĆ, constitute the criminal offence recognized by article 142 (1) (war crime against civilian population) of the FRY Criminal Act, which constitutes a crime against humanity and international law.

At all material times, mental stability of the accused, Milan ŠPANOVIĆ, was unquestionable.

The accused, Milan ŠPANOVIĆ, committed his offence with direct premeditation, since he was aware of his act, wilfully engaged in its commission and was fully aware against whom the criminal offence was aimed.

In consideration of all that has been alleged above, I hold that the evidence pertaining to the criminal offence charged, and the accused, Milan ŠPANOVIĆ, as a perpetrator thereof, provide sufficient grounds for the issuance of this indictment.

*WAR CRIMES PROSECUTOR
Vladimir Vukčević*