



Republic of Serbia
Office of the War Crimes Prosecutor

DISTRICT COURT IN BELGRADE
WAR CRIMES DEPARTMENT

11 December 2009

Pursuant to my authority under articles 46 (2.3), 265 (1) and 266 of the Criminal Procedure Act, and under articles 2 and 4 (2) Act on Organization and Competence of State Authorities in War Crimes Proceedings, I herein raise the

INDICTMENT

Against the accused:

Duško Kesar, residing in Novi Sad, born on November 10th 1963 in the village of Marina, Prijedor municipality, BH, a Serb, citizen of Republic of Serbia, with Trading High-school diploma, occupation tradesman, a family man, father of two underaged children, who served the army in 1981/1982 in the town of Vipava, Republic of Slovenia, and was earlier convicted to a probation sentence for minor bodily harm, defending himself from freedom.

ALLEGATIONS AND CHARGES:

The accused, Duško Kesar, was a member of reserve forces of Republika Srpska Ministry of Interior (MUP), together with Dragan Radaković, Draško Krndija and Radoslav Knežević, also members of the same armed group and against whom in the relations with the same event the proceeding was finally settled on the basis of the judgement rendered by the District Court in Banja Luka, number K-50/01 dated November 17th 2005, i.e. Supreme Court of Republika Srpska number 118-0-KŽ-06-000-018 dated April 18th 2006.

The accused was in breach of the International Law article 3 (1.1 a)) of the IV Geneva Convention on protection of civilian persons during the war from August 12th 1949 in relations to the articles 13 (1) and 4 (2.a)) of the Additional Protocol to the aforementioned Convention on protection of the rights of the victims of non-international armed conflicts (Protocol II).

The internal armed conflict was in progress in the territory of BH from 1992 to 1995, between organized armed forces of Republika Srpska on one side, and BH Army and Croatian Defense Chamber (HVO) on the other.

The accused committed a murder of three civilian persons of Bosniak nationality, who were not members of any military formation, nor participated in armed operations. It was done in the following manner: the accused and the aforementioned persons during the night of March 30/31st 1994 in Prijedor, Republika Srpska, according to the previous agreement "to go and kill the Mislms", approached the house in Petra Preradovića street, No. 29, in which Faruk Rizvić lived with his family. The accused and the aforementioned persons, were carrying firearms and explosive weapons and material, and firstly Duško Kesar and Draško Krndija threw a bomb each on the part of the external façade under the west-facing window. They were not satisfied with the effects of the bomb explosion, so Draško Krndija right away sets the plastic explosive on the aforementioned window. After withdrawing to the safe distance in the yard of the neighboring house, they activated the explosives which blew up the window in question. Soon after the powerful explosion police officers K.R. and G.R. came to intervene on the scene and they found frightened, but alive residents, as well as the accused outside – Duško Kesar, Draško Krndija and Drago Radaković. Leaving the scene, K. R. told them not to bother the residents until they have left (him and G. D.). After these two left all three accused entered the house, where they deprived Faruk Rizvić, Refika Rizvić and Fadila Mahmuljin of their lives in the living and adjoining room by hitting them heavily with blunt and hard objects on the head and chest. In this manner the accused inflicted to the victims multiple skull fractures, with destruction and contusions of the brain tissues, and consequently with damaging the life sustaining brain centers. In addition to that, more specifically: Faruk Rizvić – sustained a large incision wound in the neck area by a sharp blade, from which he bled out from the lacerated blood vessels in the front of the neck; Refika Rizvić – sustained a lacero-contusional wound to the right-hand side of the chest the size of a male fist; and Fadila Mahmuljin – sustained a minor lacero-contusional wound under the right-hand clavicle. These injuries collectively and in whole directly and immediately caused death in all three victims.

By this, the accused committed the criminal act of war crime against civilian residents under the article 142 (1) of the Criminal Code of the Federal Republic of Yugoslavia, in co-perpetration, in the relation to the article 22 of the Criminal Code of the Federal Republic of Yugoslavia.

Statement of reasons:

Findings of the fact described in the enacting terms of this indictment are established on the basis of the evidence and data acquired during the pre-trial and investigative proceedings.

Namely, in the connection with the same criminal event in this indictment, the criminal proceedings was led and finally settled against Drago Radaković, Draško Krndija and Radoslav Knežević by the adjudications of the District Court in Banja Luka K. No.50/01 dated November 17th 2005, i.e. by the Supreme Court of the Republika Srpska No. 118-0-KŽ-06-000-018 dated April 18th 2006. Two more criminal events were covered by the aforementioned adjudications, so all three of the accused were found guilty for kriminal act of war crime against civllian population from the article 142 (1) of the Criminal Code of the Federal Republic of Yugoslavia and sentenced to jail sentences in duration of: Drago Radaković and Draško Krndija 20 years each, and the tertiary accused Radoslav Knežević – 10 years.

The accused Duško Kesar was not covered by the aforementioned adjudications, because he was allegedly unavailable to the prosecuting authorities of Republika Srpska. However, in the enacting terms and in statements of reason of the adjudications here identified, the aforementioned courts had unambiguously established that Duško Kesar was also, as an initiator even, one of the co-perpetrators of the criminal act of war crime against civilian residents from the article 142 of the Criminal Code of the Federal Republic of Yugoslavia, which is the subject of this indictment. In the meantime, the accused Duško Kesar has been given the citizenship of the Republic of Serbia, where he is residing.

Hence, on the basis of the evidence acquired, it is undoubtedly established that there was a previous agreement between the accused Duško Kesar and other perpetrators; the role of each and every one of them in the joint commission; the actions taken which were necessary for the realization of the agreement and commission. It all points to indubitable conclusion that they all voluntarily participated in the crime, both as individuals and members of a group. Thereby all of them, including the accused Duško Kesar, acted with the direct premeditation. By that the existence of conscious and voluntary component of his /their/ psychical relationship towards the act in the whole, and following consequence is determined.

Essentially, the above described criminal event constitutes a classical multiple murder.

However, having in mind that the murder in question was perprtrated on civillian persons during the armed conflict by one of the sides in that armed conflict, it is unambiguous that in this specific case it is a war crime against civillian residents.

WAR CRIMES PROSECUTOR
Vladimir Vukčević