

Croatia, Prosecutor v. Rajko Radulovic and Others

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: Split Country Court, Record, May 26, 1997, K-15/95; not the final version, unofficial translation.]

RECORD

[Arguments of the defence]

[O]n the continuation of the main hearing in the criminal procedure against the accused Rajko Radulovic and others, due to the criminal act pursuant the Article 121 and 122, Basic Criminal Law of the Republic of Croatia, held on 21.05.1997. [...]

The defence attorney of the accused Miroslav Vincic, [...] Ivan Matesic, in his final presentation pointed out that the court procedure had lasted six months and all the cases had been presented on the professional level. The goal of the whole procedure was to establish the truth. The statements of witnesses, accused, and all the other material evidence helped to make a case. However has the truth concerning the accused been established? All the accused were questioned initially at the police station and all the levels of the police investigation method had been used, later on[,] in the investigation procedure[,] the accused gave their statements complying to the methods of the main hearing. [...]

All the accused behaved during the whole procedure in the manner which had to be taken in consideration while bringing the final verdict. In his speech [...] Matesic said that all the accused were common people simply forced by the outside circumstances, out of their control, to participate in the war skirmishes, and than [*sic*] they had to face charges for the serious crimes against humanity and violation of the international law.

True, they had taken active part in the war but they had equally been the victims. [...]

All the witnesses had recalled the events, however[,] nobody had mentioned the names of the present accused persons. An enormous amount of witnesses had given all kinds of statements, however not enough to bring charges against the accused. The court expert had ruled out the possibility that the accused actually performed the demolition of the Peruca dam. [...]

According to him the international bodies showed particular interest in that and similar cases so due to the reports in the mass media the citizens considered the accused guilty even before the court actually had proclaimed them guilty. It was necessary to establish the personal guilt of each one of the accused. [...]

[...]

Not one of the witnesses mentioned Miroslav Vincic in connection with the action of expelling the civilians from the area of Dabar, Vucipolje, Zasiok and Donji Jukici. He took an active part in the military action in Gradina. He never participated in setting fire and demolishing the houses on the right bank of the Pruca lake, and never opened fire from Opsenjak to Dabar, Vucipolje and Zasiok. Numerous army units came to and went away from the post so it would really be difficult to make a list with names of those who opened fire on civilian settlements from that particular post.

Vincic never took part in the action of delivering the explosive to the Peruca dam on 27/28.01.1993. As established from the evidence he had been on the dam in December 1991 [...]. The police from Vrlika under all kind of threats forced him to fill the ranks on the Peruca dam, it was a kind of forced labour activity. He was unloading lorries and knew nothing of the content of the parcels [...]. As the member of the territorial defence he was not informed on the actual content of the parcels in the lorry. There could only be a presumption that the lorry was loaded with explosive for demolishing the dam. And anyway upon the arrival of the Kenya [sic] UN battalion all the explosive had been removed from the dam. There is no evidence whatsoever the explosive Vincic allegedly unloaded from the truck had been used for [the] actual demolishing of the dam. There is no evidence to accuse Vincic of anything.

The defence claims there is not enough evidence for bringing charges against the accused. Neither the hard evidence nor the statements of the witnesses has [sic] been relevant enough to accuse Vincic for any kind of criminal activity.

Miroslav Vincic gave himself voluntarily up to the Croat authority, without any fear, he voluntarily surrendered. It is expected from this Court to acquit the suspect. [...]

THE MAIN HEARING TERMINATED

The Council withdraws for counselling and voting.

The clients are informed on the date and time of proclaiming the verdict,
26.05.1997 at 09,00 a.m.
Terminated at 10,15 a.m.
President of the Council
Recording Secretary

The Council brought the following decision on 26.05.1997, at 09.00 a.m. and the President of the Council announces and explains in detail the following:

VERDICT

IN THE NAME OF THE REPUBLIC OF CROATIA

ACCUSED:

1. RAJKO RADULOVIC
[...]
2. MIROSLAV VINCIC
3. PETAR PEOVIC

Found guilty

The accused from the 3rd till 39th [...] acted as the members of the so-called border police Snits, members of the Republic Srpska Army from 30.05.1992, and in the armed clashes against the Croatian police units[,] performed violation of the Articles 3, 27, 32, 33, 39, 53 of the Geneva Convention on the Protection of Civilians in the war of 12.08.1949 and Articles 51, 52, 53, 56, 57 Additional Protocol – Protocol I and Articles 4, 13, 14, 15, 16, 17 and Additional Protocol – Protocol II of 1977 along with the Geneva Convention. [T]heir only goal was the ethnic cleansing, looting and demolishing, private property of civilians on the territory conquered by force [...] according to the [...] prepared plan. [...]

The 1st accused Rajko Radulovic and his deputy 2nd accused [...] opened fire from tanks [...] as well as co-ordinated gun and infantry fire on the populated area and on civilians, hitting houses, factories, churches, schools, Peruca dam, not one object was even close to resembling the army object and triggered the mass exodus of the population. [T]hey entered the [UN] [...]protected areas and confiscated and looted everything they could lay their hands on from the deserted homes. [T]hose who remained at home were mistreated and terrorised, and numerous explosive devices were set in the deserted houses and factories causing indescribable damage, all the private property on the conquered territory has either been demolished or looted, the remaining civilians were placed under house arrest, and numerous were killed.

- [T]he accused from 3 to 5 [...] decided to expel by forced [*sic*] the civilians and [...] loot[ed] and destroy[ed] their material property. [...] They beforehand made a plan of terrorising and mistreating the civilians and planned in advance some terrorist actions. [...]
- [F]rom 16.09.1991 till the end of May 1992 the accused from 1 till 5, [...] were introduced to all the plans

in relation to the conquest of the territory[:] [...] expelling [...] civilians along with demolishing [...] their property in the settlements on the right and left bank of the Peruca lake[.] [...]

[...]

[The] 14th accused Stevan Cetnik opened fire and other accused opened fire from machine guns and [the] so-called Cetina territorial defence unit was under the command of the 14th accused and the [the] territorial defence Otisic was under the command of the 3rd accused soldiers [...] opened fire at random against the civilian population and villages [...] [A]t the same time on the left bank of the Peruca lake the accused from 27 till 39 under the command of the 1st accused and under the direct orders of the direction commander [...] opened machine gun fire at random also in the direction of the aforementioned villages and Potravlje and Satric. The civilians from the mentioned places were forced to exodus. The aforementioned armed units entered defenceless villages on the left and right bank of the Peruca lake and continued targeting houses and farms, planting explosives and setting fires. [...]

Small number of those [the remaining civilians] who did not depart at the beginning, [were] unprotected and totally helpless, [and were] undefended against the aggression, looting [...] and unable to defend their material property [...] [O]n the other side those in command were obliged to [...] behave differently and comply to the Geneva Convention rules, but instead organised so-called "cleansing of the area", with the only goal to mistreat and expel those who stayed behind in the area[.] [...]. [The] 35th accused and 36th accused personally looted and did nothing to prevent the other groups from the territorial defence, JNA and Martić militia from looting the property from the deserted houses and farms, and in an organised way confiscated the property from the deserted houses and farms and planted mines in the empty houses[.] [...]

[The] 1st accused ordered the civilian Mile Buljan to enter the combat carrier [with] [...] his son Ivica Buljan and drove them along the demolished and burnt villages firing from the machine gun, ordering the house arrests, and after throwing them out from the combat carrier ordered to his soldiers to beat them up. Ivica Buljan after [...] a violent biting [*sic*] died the next day.

[The] 9th accused, 11th accused, 14th accused, 17th accused, 18th accused, 21st accused and 23rd accused[.] apart from firing on several occasions [...] seriously damaged [...] churches and on several occasions planted [...] enormous quantities of explosive devices [...]. [T]he 7th accused personally demolished the interior of the church and the fortress Prozor in Vrljika, the accused rang the church bells, wore the priests clothes and forbid the church goers [*sic*] to attend the mass, with about 10 members of the so-called SAO Krajina Marić militia mistreated civilians. [...]

[The] 1st accused searched the homes of civilian population looking for money and valuable things, so in the home of Ivan Vucemilović-Vranić they found the Croatian flag, went to the town found the owner of the flag on the street and mistreated him violently with the wooden part stander [*sic*] of the flag beat him up head to

toe, forced him to swallow the flag along with some beans, consequently he choked [...] to death. [...]

- [The] 3rd accused [...] and 11th accused in the police station premises [...] finished with questioning Bozo Coric – [a] civilian and accus[ed] him for the alleged cooperation with Ustashas [and] threatened him with firing squad and forced him to give information on the movements of the Croat police and army forces. [The 3rd accused] gave order to Krunic to put the accused Coric in the firing squad and faked [an] execution. [T]he accused was taken away to the place called Busic and threatened to be shot dead in five minutes, demanding from him information on the names of his collaborators [...]. He was ordered to stand by one stone and the accused prepared everything for his execution, the armed men prepared their guns and again he was ordered to shout at the top of his voice “I’m a Serb”.
- On 20.09.1991 until 28.01.1993 [the] 3rd accused [and the accused] from 5 till 26 carried the orders of their commanders with the goal to terrorise and threaten[ed] [to] demolish [...] the Peruca dam and drowning of 30.000 people and their material belonging downstream. [...]

Under the command of [the] 6th accused, 7th accused, 16th accused, 17th accused and with their cooperation and supervision [during the] [...] cease fire[,] brought extensive quantity of explosives [...]. [T]he 5th accused, 11th accused, 18th accused, 22nd accused, 26th accused and some other members of the so-called Republik Srpska Krajina militia unit, us[ed] [...] fire arms on the left and right bank of the Peruca dam on the UNPROFOR check points [and] attacked and disarmed the members of the UNPROFOR battalion from Kenya [and] expelled them [...], [The] Kenyan battalion was stationed along the Peruca dam as a security measure. The aforementioned accused persons captured the UNPROFOR soldiers and posted themselves instead in [sic] [of] the former Kenya [sic] battalion positions and in this way [brought] in the explosives to [...] demolish [...] the dam [...]. All those who participated in planting the explosive retreated [...] and an unidentified person switched on the device on 28.01.1993 at 10.00 a.m. and activated the detonating cord. [T]he dam collapsed and the so-called “gallery”, tower of the bridge and the unit for water level regulation had been heavily damaged, the water entered the administration building, covered water turbines, and the dam completely collapsed[.] [T]he high tide water wave had been created and the innocent civilians and their material belonging downstream [...] had been placed in danger. However the employees of the “Croatian Electric Power Industry”, sealed off the openings and opened the dam and in that way [...] slowed down the outpour of the water from the storage lake.

By violating the International Law during the armed conflict and occupation the aforementioned persons ordered and carried out [...] attacks on the civilian population[s] and settlements, without selecting the targets, and the result of it was [the] death of numerous persons, inhuman treatment of civilians, expelling of people, terrorising, intimidating, looting, destructing [sic] property, unjustified from the military point of view, and above all the attacks were performed on the buildings and dam and water power plant objects with enormous and dangerous power. [...]

Discussion

1. How can the Court apply the law of international armed conflict to the soldiers belonging to the army of

the so-called “Republic of Serb Krajina”? Does it thereby recognize that “Republic” as a State? Does the Court consider those soldiers as fighting for the Federal Republic of Yugoslavia? Taking into account the events described in *Armed Conflicts in the Former Yugoslavia*, Sections 2, 6, and 31, when could the conflict be qualified as international?

2. Is “ethnic cleansing” prohibited by IHL? In international armed conflicts? In non-international armed conflicts? Does the qualification of the conflict matter for determining whether any of the acts mentioned in the verdict are prohibited? Is the forced movement of civilians, independently of the means used, prohibited in international armed conflicts? Within and outside occupied territories? In non-international armed conflicts? (GC I-IV, Art. 2; GC IV, Arts 27, 31-33, 35-39, 49 and 53; P I, Arts 51-53, 56 and 57; P II, Arts 1-17)
3. Was the destruction of the Peruca dam a violation of IHL? Even if the IHL of non-international armed conflict had been applicable? Was the destruction an “attack” and thus prohibited by Art. 56 of Protocol I? Could such an attack under the circumstances described in the verdict have possibly been justified under Art. 56 of Protocol I? Is the destruction of the dam a grave breach of IHL? (Hague Convention IV, Art. 23 (g); GC IV, Arts 53 and 147; P I, Arts 49, 52 and 85(3)(a); PII, Art. 15)
4. Was the attack against the Kenyan UNPROFOR soldiers a violation of IHL?
5. If the argument of the Defence is assumed to be accurate, how could Miroslav Vincic be sentenced? Does the verdict mention any individual responsibility? To sentence him, is it sufficient that he belonged to a unit which violated IHL? Is the fact that he unloaded explosives at the Peruca dam also sufficient to make him responsible for its destruction? At least if he knew that those explosives were to be used to destroy the dam?