

IT-98-34-I
D425-D416
11 AUGUST 1999

Translation

625
HG

Ref. no. KV-I 200/99

REPUBLIC OF CROATIA
ZAGREB COUNTY COURT
5 Trg N. Šubića Zrinjskog

DECISION

Zagreb County Court, in the Chamber consisting of judges of the court, Judge Erna DRAŽANČIĆ as the presiding judge of the Chamber, together with Ranko MARIJAN and Rajko TOMERLIN-ALMER as members of the Chamber, and with the participation of Draženka MRAOVIĆ as clerk, in considering the request of the International Criminal Tribunal to hand over the accused Vinko MARTINOVIĆ (Štela) to the Tribunal to allow proceedings to be undertaken concerning crimes against humanity, grave breaches of the Geneva Conventions and violations of the laws and customs of war, at a session of the Chamber held on 8 June 1999

decided that

pursuant to Article 20 of the Constitutional Law on Cooperation of the Republic of Croatia with the International Criminal Tribunal, the request of the International Criminal Tribunal for the handover of the accused Vinko MARTINOVIĆ (Štela) shall be granted, and in regard to:

the accused Vinko MARTINOVIĆ aka Štela, son of Ivan, born 21 September 1963 in Mostar in the Republic of Bosnia and Herzegovina, citizen of the Republic of Croatia, now in detention in Zagreb District Prison,

IT SHALL ALLOW THE HANDOVER TO THE INTERNATIONAL CRIMINAL TRIBUNAL

to allow criminal proceedings to be undertaken for crimes against humanity, punishable according to Article 5 of the Statute of the International Criminal Tribunal, grave breaches of the 1949 Geneva Conventions, punishable according to Article 2 of the Statute of the International Criminal Tribunal, and violations of the laws and customs of war, punishable according to Article 3 of the Statute of the International Criminal Tribunal, as factually and legally described in the confirmed indictment of the International Criminal Tribunal no. IT-98-34/I of 18 December 1998.

Statement of Reasons

The International Criminal Tribunal /for the Prosecution of Persons Responsible/ for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia Since 1991 (hereinafter: the International Criminal Tribunal) submitted a request to the Government of the Republic of Croatia for the arrest and handover to the Tribunal of the accused Mladen NALETILIĆ under no. IT-98-34-I (D2-I/378) of 21 December 1998, and a request for the arrest and handover to the Tribunal of the accused Vinko MARTINOVIĆ under no. IT-98-34-I (D2-I/375) of 21 December 1998, on the basis of grounds to suspect that they committed crimes against

humanity, punishable according to Article 5 of the Statute of the International Criminal Tribunal, grave breaches of the 1949 Geneva Conventions, punishable according to Article 2 of the Statute of the International Criminal Tribunal, and violations of the laws and customs of war, punishable according to Article 3 of the Statute of the International Criminal Tribunal.

Together with the request for the arrest and handover, the International Criminal Tribunal submitted indictment no. IT-98-34-I (D201/368) of 18 December 1998 against: 1) the accused Mladen NALETILIĆ aka Tuta, and 2) the accused Vinko MARTINOVIĆ aka Štela, and also a warrant of 21 December 1998 confirming the indictment.

In a Decision of 10 March 1999, the President of the Supreme Court of the Republic of Croatia ordered Zagreb County Court to hear the case on the basis of the warrant of the International Criminal Tribunal of 21 December 1998 for the arrest and handover of the first and second accused to the International Criminal Tribunal.

In view of the fact that during these proceedings, on the basis of the findings and opinion of expert physicians Dr. Davor STRINOVIĆ and Dr. Antun ŠMALČELJ, it was established that the health of the accused Mladen NALETILIĆ was such that he was for the present unable to participate in proceedings before a court, the accused Mladen NALETILIĆ did not attend the session of the Chamber held on 8 June 1999. When called to expound their views on the possible severance of proceedings, the counsel for the second accused Vinko MARTINOVIĆ and the second accused Vinko MARTINOVIĆ himself stated that they proposed such a severance of proceedings and that they would agree to such a severance. The Deputy County Prosecutor stated that in principle he would not oppose a severance of proceedings, while the counsel for the first accused considered that a severance of proceedings was not necessary.

After the aforementioned proposals and statements, the Chamber severed proceedings against the second accused Vinko MARTINOVIĆ. In regard to proceedings against the first accused Mladen NALETILIĆ, proceedings will continue separately, since the file contained two separate requests for the arrest and handover of the suspects. Furthermore, during the proceedings, from the findings and opinions of expert physicians Dr. Davor STRINOVIĆ and Dr. Anton /name as printed/ ŠMALČELJ, it was established that the first accused Mladen NALETILIĆ was for the present unfit to participate in proceedings on the grounds of illness. In the view of this chamber, it is not possible at this time to predict with any certainty when the accused Mladen NALETILIĆ will be fit to participate in proceedings. Since all legal provisions exist for undertaking proceedings against the second accused according to the separate request of the International /Criminal/ Tribunal, the procedure for handover was also severed.

At a session of the Chamber held following the request of the International Criminal Tribunal for the arrest and handover of the accused Vinko MARTINOVIĆ (Štela), the accused Vinko MARTINOVIĆ gave his personal details, presented his statement, the Deputy County Prosecutor was heard according to Article 19 of the Constitutional Law, and the accused Vinko MARTINOVIĆ and counsel Branko ŠERIĆ expounded their viewpoints and proposals concerning the request of the International Criminal Tribunal.

In his statement, the accused Vinko MARTINOVIĆ stated that he was not surprised by the Hague indictment because he believed that the indictment was raised in Mostar by the Muslim and Croatian secret services, and because of such action by them, he had been sentenced, pending appeal, by this court to eight years in prison for something he had not done, on the basis of a statement by a witness who had been instructed by the police, and the police were cooperating with the Muslim secret service. He would therefore ask to be re-tried in The Hague for this act for which he had been sentenced, pending appeal. He considered that this judgment (which is pending) like the Hague indictment, was in fact a screen which served to shield other culprits. In 1991 he "rose up" to defend his homeland from Serbian aggression, and in 1993 from Muslim aggression when Mostar was under attack, and it was sad that this had to be proved today. There was a desire to make a criminal out of him, as portrayed by the press. He considers that in these proceedings too, as was the case with those in which he was sentenced pending appeal, everything has been decided in advance, so he would gladly say: let him be handed over and he would wash his hands of everything. It was an attempt to portray him as a coward and a traitor, as if he were afraid of an indictment from The Hague, yet for five years he had fought and come face to face with death. He was not a coward, nor would he be. He did not feel guilty of the criminal acts of which he is accused in the International Criminal Tribunal's indictment and did not commit these criminal acts. It was his sacred right to defend his homeland, and he would do so again. The Hague Tribunal was looking for culprits responsible for ethnic cleansing and the establishment of camps, while he had had absolutely nothing to do with such things. His handover to the Hague Tribunal was a condition for Croatia's entry into Partners for Peace and /?this/ would enable the rapid development of democracy, and so if that was how matters stood, let it be decided that he be handed over and he would not appeal against such a decision. He said that that was all he had to state, and that thenceforward he did not wish to give testimony or answer questions.

The Deputy County Prosecutor was heard according to Article 19 of the Constitutional Law, and stated that he believed that the conditions under Article 20 of the Constitutional Law on Cooperation of the Republic of Croatia with the International Criminal Tribunal for the handover of the accused Vinko MARTINOVIĆ to the Tribunal had been fulfilled, but that it would be opportune for criminal proceedings to be undertaken in the Republic of Croatia in accordance with indictment no. DO-K-24/98 for the criminal act of attempted murder under Article 34, paragraph 1 of the Criminal Code of the Republic of Croatia in conjunction with Article 17 of the Basic Criminal Law of the Republic of Croatia, with which the accused Vinko MARTINOVIĆ was charged, proceedings filed under no. K-38/99.

Counsel for the accused Vinko MARTINOVIĆ, Branko ŠERIC, was called upon to expound his viewpoint and proposals concerning the request of the International /Criminal/ Tribunal, and stated that Article 20 of the Constitutional Law, and this is an imperative regulation, provides for the conditions for the handover of accused persons to the International Criminal Tribunal, and thus he had nothing particular to say on the matter.

Having considered the case, the Chamber was satisfied that the legal requirements for granting the request to hand over the accused Vinko Martinović to the International Criminal Tribunal had been met, pursuant to Article 20 of the Constitutional Law on

Co-Operation between the Republic of Croatia and the International Criminal Tribunal (Official Gazette no. 32/96)

Pursuant to the provisions of Article 20 of the Constitutional Law on Co-Operation between the Republic of Croatia and the International Criminal Tribunal, the Chamber shall reach a Decision which will grant the request to hand over the accused to the International Criminal Tribunal, if it is established that the request refers to the person against whom hand-over proceedings are currently underway and that it refers to a criminal act for which the International Criminal Tribunal has jurisdiction according to its Statute. If not, the Chamber shall reject the request of the International Criminal Tribunal in a Decision. In the case that the accused has been judged for the same offence by a judgement that has come into force in the Republic of Croatia, and that a request to hand over /the accused/ has not been submitted in order to repeat the proceedings before the International Criminal Tribunal, pursuant to the provisions of Article 10, paragraph 2 of the Statute of the International Criminal Tribunal, the Chamber shall issue a Decision denying the request.

Having compared information on the identity of the accused, submitted by the International Criminal Tribunal, the arrest warrant and request to hand over the accused Vinko Martinović and the facts established at the Chamber's session on 8 June 1999, it has been indisputably established that the accused Vinko Martinović aka Štela, is the person whose hand-over has been requested by The International Criminal Tribunal.

Further, it is indisputably within the competence of the International Criminal Tribunal to initiate proceedings, because of the criminal offences against humanity, grave breaches of the Geneva Conventions and violations of the laws and customs of war described factually and legally in the confirmed indictment of the International Criminal Tribunal, since it is explicitly specified in the Tribunal's Statute that it is competent to deal with such offences.

Since the provisions of article 20 of the Constitutional Law on Co-operation between the Republic of Croatia and the International Criminal Tribunal envisage the rejection of the request by a decision of the Chamber in the case that the accused has been sentenced for the same offence by a judgement which has come into force, by a court in the Republic of Croatia, and the request for hand-over was not submitted in order to repeat the proceedings before the International Criminal Tribunal, the Chamber read the documents in the files of this court: K-237/97 and K-38/99 and established that in judgement K-237/97 of 1 December 1998 that has not yet come into force, the accused Vinko Martinović was found guilty of committing the criminal offence of murder under Article 34, paragraph 1 of the Criminal Code of the Republic of Croatia, sentenced to eight years imprisonment and detained pursuant to a Decision of 1 December 1998. The offence that he was found guilty of is not mentioned in the indictment by The International Criminal Tribunal, and the judgement in this case has not yet come into force.

A reading of file K-38/99 established that the County Prosecutor's Office in Zagreb, no: DO-K-24/98 of 17 February 1999, issued an indictment against the accused Vinko Martinović, because of the criminal offence of attempted murder under Article 34, paragraph 1 of the Criminal Code of the Republic of Croatia, in conjunction with Article 17 of the OKZ /Basic Criminal Code/ of the Republic of Croatia and the

offence with which the accused was charged is not included in the indictment by the International Criminal Tribunal.

The Chamber considered the statement by the Deputy County Prosecutor, who considers that the legal requirements under Article 20 of the Constitutional Law of the Republic of Croatia with the International Criminal Tribunal /as printed/ were fulfilled, for the hand-over of the accused Vinko Martinović to the Tribunal, but it considers that it would be opportune for the Republic of Croatia to take criminal proceedings against the accused Vinko Martinović because of the criminal offence described in Article 34, paragraph 1 of the Criminal Code of the Republic of Croatia in conjunction with article 17 of the OKZ of the Republic of Croatia, for which offence the accused has been charged in an indictment by the County Prosecutor's Office in Zagreb of 17 February 1999.

After the Chamber had established that the provisions of Article 20 of the Constitutional Law do not envisage the second proceedings being held against the accused before a court in the Republic of Croatia as being an obstacle to granting the request to hand over the accused to the International Criminal Tribunal, the Chamber did not find that the same circumstances would be an obstacle to Court proceedings.

Because of all of the above and considering that all the legal requirements of Article 20 of the Constitutional Law on Co-operation between the Republic of Croatia and the International Criminal Tribunal had been met for handing over the accused to the International Criminal Tribunal, the Chamber has, pursuant to the regulations quoted in the Rationale, reached a Decision to grant the request by the Tribunal for the hand-over of the accused, Vinko Martinović Štela. His hand-over to the International Criminal Tribunal is allowed in order for criminal proceedings to take place for crimes against humanity, grave breaches of the 1949 Geneva Conventions and violations of the laws and customs of war as described factually and legally and confirmed in the indictment issued by the International Criminal Tribunal of 18 December 1998.

Therefore the decision was reached as above

In Zagreb, 8 June 1999.

Clerk:
Draženka MRAOVIĆ
/signed/

/stamp/

President of the Chamber:
Erna DRAŽANČIĆ
/signed/

Appeals procedure:

The Public Prosecutor, the accused or his defence counsel have the right to appeal within 8 days of receipt of this document. Appeals shall be submitted to this Court in writing, in three identical copies. The appeal shall postpone the execution of the Decision and shall be decided by the Supreme Court of the Republic of Croatia.

IT-98-34-I

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REPUBLIKA HRVATSKA
 ŽUPANIJSKI SUD U ZAGREBU
 Trg N. Šubića Zrinjskog 5

Poslovi broj: KV-I-200/99

R J E Š E N J E

Županijski sud u Zagrebu, u vijeću sastavljenom od sudaca toga suda Erne Dražančić kao predsjednika vijeća, te Ranka Marijana i Rajke Tomerlin-Almer, kao članova vijeća, uz sudjelovanje Draženke Mraović kao zapisničara, odlučujući o zahtjevu Međunarodnog kaznenog suda za predaju tom sudu okr. Vinka Martinovića - Štele, za vođenje postupka zbog zločina protiv čovječnosti, teške povrede Ženevskih konvencija i kršenja ratnih zakona i običaja, u sjednici vijeća održanoj 08. lipnja 1999.g.,

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Temeljem čl. 20. Ustavnog zakona o suradnji Republike Hrvatske s Međunarodnim kaznenim sudom u d o v o l j a v a se zahtjevu Međunarodnog kaznenog suda za predaju okr. Vinka Martinovića - Štele, te se u odnosu na:

Okr. Vinka Martinovića, zv. "Štela", sin Ivana, rođ. 21.09.1963. u Mostaru, Republika BiH, državljanin Republike Hrvatske, sada u pritvoru Okružnog zatvora Zagreb,

DOPUŠTA PREDAJA MEĐUNARODNOM KAZNENOM SUDU

za vođenje kaznenog postupka zbog zločina protiv čovječnosti, kažnjivih temeljem čl. 5 Statuta Međunarodnog kaznenog suda, teške povrede Ženevskih konvencija iz 1949.g., kažnjivih temeljem čl. 2 Statuta Međunarodnog kaznenog suda i kršenja ratnih zakona i običaja, kažnjivih temeljem čl. 3 Statuta Međunarodnog kaznenog suda, činjenično i pravno opisanih u potvrđenoj optužnici Međunarodnog kaznenog suda br. IT-98-34/I od 18. prosinca 1998.g.

Obrazloženje

Međunarodni kazneni sud za teška kršenja međunarodnog humanitarnog prava počinjenog na području bivše Jugoslavije od 1991.g. (u daljnjem tekstu: Međunarodni kazneni sud), dostavio je Vladi Republike Hrvatske, zahtjev za uhićenje i predaju tom sudu, okrivljenog Mladena Naletilića, pod brojem IT-98-34-I(D2-

I/378) od 21. prosinca 1998.g., te zahtjev za uhićenje i predaju tom sudu, okrivljenog Vinka Martinovića, pod brojem IT-98-34-I(D2-I/375) od 21. prosinca 1998.g., zbog postojanja sumnje da su počinili zločine protiv čovječnosti, kažnjive temeljem čl. 5 Statuta Međunarodnog suda, teška povrede Ženevskih konvencija iz 1949.g., kažnjive temeljem čl. 2 Statuta Međunarodnog suda i kršenja ratnog prava i običaja, kažnjive temeljem čl. 3 Statuta Međunarodnog suda.

Uz zahtjev za uhićenje i predaju, Međunarodni kazneni sud dostavio je optužnicu broj IT-98-34-I(D20I/368) od 18. prosinca 1998., protiv I okrivljenog Mladena Naletilića, zvanog "Tuta" i II okrivljenog Vinka Martinovića, zvanog "Štefa", te nalog kojim se potvrđuje optužnica, od 21. prosinca 1998.g.

Predsjednik Vrhovnog suda Republike Hrvatske, rješenjem od 10. ožujka 1999.g., odredio je Županijski sud u Zagrebu za vođenje postupka povodom naloga Međunarodnog kaznenog suda od 21. prosinca 1998.g. o uhićenju i predaji I i II okrivljenih, Međunarodnom kaznenom sudu.

Budući da je, tijekom ovog postupka, na temelju nalaza i mišljenja liječnika vještaka prof.dr. Davora Strinovića i prof.dr. Antuna Šmalcelja, utvrđeno da je zdravstveno stanje okrivljenog Mladena Naletilića takovo da isti za sada nije sposoban sudjelovati u postupku pred sudom, sjednici vijeća održanoj dana 08. lipnja 1999.g. okrivljeni Mladen Naletilić nije prisustvovao. Pozvani na očitovanje o eventualnom razdvajanju postupka, branitelj II okr. Vinka Martinovića i I okrivljeni Vinko Martinović, naveli su da takovo razdvajanje postupka predlažu i sa takovim razdvajanjem su suglasni. Prisutni zamjenik Županijskog državnog odvjetništva izjavio je da se u načelu ne protivi razdvajanje postupka, dok branitelj I okrivljenika smatra da razdvajanje postupka nije neophodno.

Nakon navedenih prijedloga i očitovanja, vijeće je razdvojilo postupak prema II okrivljenom Vinku Martinoviću. U odnosu prema I okrivljenom Mladenu Naletiliću postupak će se nastaviti odvojeno i to s obzirom da u spisu prileže dva odvojena zahtjeva za uhićenje i predaju okrivljenika. Osim toga, tijekom postupka je iz nalaza i mišljenja liječnika vještaka prof.dr. Davora Strinovića i prof.dr. Antuna Šmalcelja, utvrđeno da I okrivljeni Mladen Naletilić, zbog bolesti, za sada nije sposoban sudjelovati u postupku. Po ocijeni ovog vijeća, za sada nije moguće s izvjesnošću predvidjeti kada će okrivljeni Mladen Naletilić biti sposoban sudjelovati u postupku. Kako postoje sve zakonske pretpostavke za vođenje postupka prema II okrivljenom, po odvojenom zahtjevu Međunarodnog suda to je i postupak za predaju razdvojen.

Na sjednici vijeća, koja je potom održana povodom zahtjeva Međunarodnog kaznenog suda za uhićenje i predaju okrivljenog Vinka Martinovića-Štefa, okrivljeni Vinko Martinović dao je o sebi osobne podatke, te iznio iskaz, saslušan je zamjenik

Županijskog državnog odvjetnika u smislu čl. 19 Ustavnog zakona, te su okrivljeni Vinko Martinović i branitelj Branko Šerić, iznijeli svoja stajališta i prijedloge glede zahtjeva Međunarodnog kaznenog suda.

Okrivljeni Vinko Martinović u svom je iskazu naveo da nije iznenađen haškom optužnicom jer smatra da je ona podignuta u Mostaru, od tajnih službi muslimanskih i hrvatskih, a zbog takovog njihovog djelovanja, pred ovim sudom je nepravomoćno osuđen na kaznu zatvora u trajanju od osam godina, za nešto što nije napravio, i to na temelju iskaza svjedoka koji je bio instruiran od policije, a policija je surađivala sa muslimanskom tajnom službom. Stoga će tražiti da se za ovo djelo, za koje je nepravomoćno osuđen, njemu ponovno sud u Hagu. Smatra da je ove nepravomoćna presuda, a isto tako i haška optužnica, zapravo paravan za kojim se kriju drugi krivci. 1991.g. "ustao" je da obrani svoj dom od srpske agresije, a 1993.g., od muslimanske agresije, u okolnostima kada je Mostar bio napadnut, pa je žalosno da to danas treba dokazivati. Od njega se htjelo napraviti kriminalca kako se to kroz tisak prikazuje. Smatra da je i u ovom postupku, kao i u onom u kojem je nepravomoćno osuđen, sve unaprijed odlučeno, pa bi najradije nekao neka ga se isporučiti i da će od svega doći ruke. Želi ga se prikazati kukavicom i izdajnikom, kao da se boji optužnice iz Haga, a pet godina se borio i sučeljavao sa smrću. Kukavica nije i neće ni biti. Za kaznena djela za koja ga se tereti optužnicom Međunarodnog kaznenog suda, ne osjeća se krivim i ta kaznena djela nije počinio. Njegovo je sveto pravo braniti dom i opet bi to učinio. Sud u Hagu traži krivce za etničko čišćenje i osnivanje logora, a on sa tim nije imao nikakove veze. Njegovo izručenje Haškom sudu je uvjet za ulazak Hrvatske u Partnerstvo za mir, omogućiti će brži razvoj demokracije, pa ako je to tako, neka se odluči da bude izručen i na takovu odluku se neće žaliti. Naveo je da je to sve što ima za izjaviti, te da dalje ne želi iskazivati niti odgovarati na pitanja.

Zamjenik Županijskog državnog odvjetnika, saslušan u smislu čl. 19 Ustavnog zakona, naveo je da smatra da su ispunjeni uvjeti iz čl. 20 Ustavnog zakona o suradnji Republike Hrvatske s Međunarodnim kaznenim sudom, za predaju okrivljenog Vinka Martinovića tom sudu, međutim, da bi bilo oportuno da se u Republici Hrvatskoj provede kazneni postupak po optužnici broj DO-K-24/98., zbog kaznenog djela pokušaja ubojstva iz čl. 34 st. 1 KZ RH u svezi s čl. 17 OKZ RH, za koje se okrivljeni Vinko Martinović tereti, a postupak se vodi pod brojem K-38/99.

Branitelj okrivljenog Vinka Martinovića, odvjetnik Branko Šerić, pozvan da iznese svoja stajališta i prijedloge glede zahtjeva Međunarodnog suda, naveo je da je čl. 20 Ustavnog zakona, a radi se o imperativnoj odredbi, predviđeno koji su uvjeti za predaju okrivljenika Međunarodnom kaznenom sudu, tako da o tome nema ništa posebno za reći.

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Nakon razmatranja predmeta, vijeće je utvrdilo da su ispunjene zakonske pretpostavke za udovoljenje zahtjevu za predaju okrivljenog Vinka Martinovića, Međunarodnom kaznenom sudu iz čl. 20 Ustavnog zakona o suradnji Republike Hrvatske s Međunarodnim kaznenim sudom (NN br. 32/96.).

Naime, prema odredbi čl. 20 Ustavnog zakona o suradnji Republike Hrvatske s Međunarodnim kaznenim sudom, vijeće će donijeti rješenje kojim udovoljava zahtjevu za predaju okrivljenika Međunarodnom kaznenom sudu ako utvrdi da se zahtjev odnosi na osobu protiv koje se vodi postupak za predaju i da se radi o kaznenom djelu za koje je Međunarodni kazneni sud nadležan prema svom Statutu. U suprotnom, vijeće će rješenjem odbiti zahtjev Međunarodnog kaznenog suda. Vijeće će rješenjem odbiti zahtjev i u slučaju ako je okrivljeniku za isto djelo presuđeno pravomoćnom presudom u Republici Hrvatskoj, a zahtjev za predaju nije podnesen radi ponavljanja postupka pred Međunarodnim kaznenim sudom prema odredbama čl. 10 st. 2 Statuta Međunarodnoga kaznenog suda.

Usporedbom podataka o istovjetnosti okrivljenika, koje je dostavio Međunarodni kazneni sud, iz naloga za uhićenje i predaju okrivljenog Vinka Martinovića, i podataka utvrđenih na sjednici vijeća od 08. lipnja 1999.g., nedvojbeno je utvrđeno da je okrivljeni Vinko Martinović zvan "Štela", osoba čiju predaju zahtjeva Međunarodni kazneni sud.

Nedvojbeno je, nadalje, da je Međunarodni kazneni sud nadležan za vođenje postupka, zbog kaznenih djela protiv čovječnosti, teških povreda Ženevskih konvencija i kršenja ratnih zakona i običaja, činjenično i pravno opisanih u potvrđenoj optužnici Međunarodnog kaznenog suda, budući da je nadležnost Međunarodnog kaznenog suda, za ta djela, izričito predviđena odredbama Statuta Međunarodnog kaznenog suda.

Budući da je odredbom iz čl. 20 Ustavnog zakona o suradnji Republike Hrvatske s Međunarodnim kaznenim sudom predviđeno da će vijeće rješenjem odbiti zahtjev u slučaju ako je okrivljeniku za isto djelo presuđeno pravomoćnom presudom suda u Republici Hrvatskoj, a zahtjev za predaju nije podnesen radi ponavljanja postupka pred Međunarodnim kaznenim sudom, vijeće je izvršilo uvid u spise ovog suda broj K-237/97. i K-38/99., te je utvrdilo da je nepravomoćnom presudom ovog suda broj K-237/97., od 01. prosinca 1998., okrivljeni Vinko Martinović, proglašen krivim zbog počinjenja krivičnog djela ubojstva, iz čl. 34 st. 1 KZ RH, te osuđen na kaznu zatvora u trajanju od osam godina, te se po rješenju od 01. prosinca 1998.g., nalazi u pritvoru, a djelo za koje je oglašen krivim nije obuhvaćeno optužnicom Međunarodnog kaznenog suda, niti je u tom predmetu presuda postala pravomoćna.

Uvidom u spis broj K-38/99., utvrđeno je da je Županijsko državno odvjetništvo u Zagrebu, pod brojem DO-K-24/98. od 17. veljače 1999.g., podiglo optužnicu protiv okrivljenog Vinka Martinovića, zbog krivičnog djela ubojstva u pokušaju iz čl. 34

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st. 1 KZ RH u svezi čl. 17 OKZ RH, te da djelo za koje se okrivljenik tereti, nije obuhvaćeno optužnicom Međunarodnog kaznenog suda.

Pri tome je vijeće razmotrilo i navod zamjenika županijskog državnog odvjetnika, koji smatra da su ispunjeni zakonski uvjeti iz čl. 20 Ustavnog zakona Republike Hrvatske s Međunarodnim kaznenim sudom, za predaju okrivljenog Vinka Martinovića tom sudu, ali smatra da bi bilo oportuno da se u Republici Hrvatskoj provede kazneni postupak protiv okrivljenog Vinka Martinovića zbog kaznenog djela iz čl. 34 st. 1 KZ RH u svezi s čl. 17 OKZ RH, a za koje djelo se okrivljenik tereti optužnicom županijskog državnog odvjetništva u Zagrebu od 17. veljače 1999.g.

Nakon što je vijeće utvrdilo da odredbom iz čl. 20 Ustavnog zakona, nije predviđeno da bi drugi postupak, koji se protiv okrivljenika vodi pred sudom u Republici Hrvatskoj, bio zapreka za udovoljavanje zahtjevu za predaju okrivljenika Međunarodnom kaznenom sudu, vijeće nije našlo da bi ista okolnost predstavljala zapreku za postupanje suda.

Zbog svega naprijed navedenog, smatrajući da su ispunjeni svi zakonski uvjeti iz čl. 20 Ustavnog zakona o suradnji Republike Hrvatske s Međunarodnim kaznenim sudom, za predaju okrivljenika Međunarodnom kaznenom sudu, vijeće je, temeljem propisa citiranog u izreci, donijelo rješenje kojim se zahtjevu Međunarodnog kaznenog suda za predaju okrivljenog Vinka Martinovića-Štele, udovoljava, te se dopušta njegova predaja Međunarodnom kaznenom sudu, za vođenje kaznenog postupka zbog zločina protiv čovječnosti, teških povreda Ženevskih konvencija iz 1949.g. i kršenja ratnog zakona i običaja, činjenično i pravno opisanih u potvrđenoj optužnici Međunarodnog kaznenog suda od 18. prosinca 1998.g.

Stoga je riješeno kao u izreci.

U Zagrebu, 08. lipnja 1999.g.

Zapisničar:

Draženka Mraović
Draženka Mraović



Predsjednik vijeća:

Erna Dražančić
Erna Dražančić

UPUTA O PRAVU NA ŽALBU:

Protiv ovog rješenja, Državni odvjetnik, okrivljenik i njegov branitelj, imaju pravo žalbe u roku od 8 dana od dana primitka pismenog otpravka. Žalba se podnosi ovom sudu, pismeno, u tri istovjetna primjjerka. Žalba zadržava izvršenje rješenja, a o njoj odlučuje Vrhovni sud Republike Hrvatske.