



Number: X-KR-09/705

Sarajevo, 17 June 2009

The Court of Bosnia and Herzegovina, Section I for War Crimes, in the Panel composed of Judge Mira Smaljović /*Translator's note: As rendered in BCS*/, as the President of the Panel, and Judges Senadin Begtašević and Carol Peralta, as the members of the Panel, in the criminal case against the accused Safet Bukvić for the criminal offence of War Crimes against Civilians in violation of Article 173 (1) (c), in conjunction with Article 29 and Article 180 (1) of the Criminal Code of Bosnia and Herzegovina (hereinafter: the CC of BiH), deciding on the Motion of the Prosecutor's Office of Bosnia and Herzegovina number KT-RZ-22/06 contained in the Indictment which was confirmed on 14 May 2009 for transfer of jurisdiction against the accused to the court with the subject-matter and territorial jurisdiction, pursuant to Article 27, in conjunction with Article 24 (7) of the Criminal Procedure Code of Bosnia and Herzegovina (hereinafter: the CPC of BiH), on 17 June 2009 rendered the following

DECISION

To uphold the Motion of the Prosecutor's Office of Bosnia and Herzegovina No. KT-RZ-22/06 contained in the Indictment which was confirmed on 14 May 2009, and to transfer the proceedings against Safet Bukvić to the court with the subject-matter and territorial jurisdiction, which is the Cantonal Court of Mostar.

Reasoning

On 14 May 2009, the Prosecutor's Office of Bosnia and Herzegovina filed the Indictment No. KT-RZ-22/06 which was confirmed on the same date charging the accused Safet Bukvić with the following: that he, as a member of the BiH Army during the armed conflict in the territory of the Municipality of Konjic, during the relevant period committed the criminal offence of War Crimes against Civilians in violation of Article 173 (1) (c), in conjunction with Article 29 and Article 180-(1) of the CC of BiH. In the Indictment, the Prosecutor's Office of BiH moved the Court to transfer the proceedings to the court with the territorial and subject-matter jurisdiction.

Basing this motion primarily on the purposes of judicial economy and efficiency and simplicity of the proceedings, the Prosecutor's Office noted that all proposed witnesses maintain their permanent place of residence of in the same territory as the accused, which is also the territorial jurisdiction of the court with the subject-matter jurisdiction within which the offence was actually committed. The motion primarily indicated the fact that there was a large number of cases at investigative stage that require the full engagement of the prosecutors from the Prosecutor's Office of BiH; on the other hand, it indicated the obligations of the trial panels of this Court in numerous war crimes cases, due to which the principle of judicial economy and efficient the proceedings would not be satisfied to a large extent in the present case. Being mindful of the War Crime Strategy, the Prosecutor's Office submits that the present case is not a complex one, and that the consequences of the committed criminal offence are significantly less grave in comparison to the other cases tried before this Court, because it is appropriate to transfer the proceedings to the court with the territorial and subject-matter jurisdiction.

On 15 June 2009, the defence attorney for the accused Binasa Alispahić submitted to the Court a response indicating her agreement with the Motion of the Prosecutor's Office to transfer of the proceedings in question to the court with the territorial and subject-matter jurisdiction, i. e. the Cantonal Court of Mostar. In particular, the defence respectively submits that the right of the accused to efficient defence and a fair trial within a reasonable timeframe will be secured in this manner, additionally mentioning the other reasons to secure the functionality and judicial economy of such proceedings.

Therefore, the defence agrees with the position taken by the Prosecutor's Office of BiH that the court with the territorial and subject-matter jurisdiction in this case, which is less complex in its essence, can conduct full, quality-based and efficient proceedings.

Deciding upon the Motion of the Prosecutor's Office, and having inspected the file and having upheld the position taken by the defence, the Court rendered its decision as indicated in the operative part on the following grounds:

While deciding on the Motion filed by the Prosecutors' Office, the Panel was primarily guided by the rights of the accused to trial without delay, i. e. the principles prescribed by the provision of Article 13 (2) of the CPC of BiH, which obliges the Court to prevent any abuse of the rights of any participant in the criminal proceedings. The aforementioned is also pursuant to the provision of Article 6 of the European Convention on Human Rights, which guarantees every individual the right to a fair trial and within reasonable timeframe, due to which it was decided as specified in the operative part of this Decision.

In fact, transfer of jurisdiction, as prescribed by the provision of Article 27 of the CPC, requires the cumulative fulfilment of three conditions, as follows: a) it does not involve a criminal offence against the integrity of BiH, b) the main trial has not been scheduled yet, and c) there are important reasons which require that the proceedings be transferred to the court with territorial and subject-matter jurisdiction.

Considering the circumstances of the case in question, the Panel holds that every single prescribed condition has been satisfied in the following manner that: a) – the accused has been charged with the commission of the criminal offences against civilians and values protected by international law, b) – the Indictment was confirmed on 14 May 2009, the plea hearing has not been held yet, that is the main trial has not been scheduled yet, and c) – there are important reasons to transfer the proceedings to the court with the territorial and subject-matter jurisdiction.

In terms of the existence of the important reasons, the Court primarily considered the fact that at the time of the commission of the relevant offences, the accused did not perform any commanding duty; on the contrary, he was a member of the BiH Army and, being so, he had no direct responsibility for general compliance with the rules of international humanitarian law by the individuals subordinated to him. Further on, the Court holds that the assertions of the Prosecutor's Office are correct which indicated that the case was not a complex one because the accused has been charged with the commission of an individual act, which is indicated in the Indictment containing one count only, while the circumstances of the committed criminal offence are significantly less grave in comparison with the majority of the war crime cases tried before the Court of BiH. Additionally, the total number of proposed witnesses is 8, which

additionally reflects the simplicity of the case, while the fact that may be in the interest of achieving the efficiency of transfer of jurisdiction is that all the witnesses maintain their permanent place of residence in the territory of the court with the territorial and subject-matter jurisdiction, on whose territory the criminal offences were actually committed, which the accused has been charged with, and by which their summoning and appearing in court has become even more simple.

Considering all of the aforementioned, including the fact that the defence agrees with the motion, the Panel holds that the motion filed by the Prosecutor's Office is well-founded and it also holds that the court with the territorial and subject-matter jurisdiction, the Cantonal Court of Mostar possesses the capacities which enable the conduct of quality-based and efficient criminal proceedings, and which will entirely satisfy the right of the accused to a trial within reasonable timeframe.

**PRESIDENT OF THE PANEL
JUDGE**

Mira Smajlović

(Signature and stamp affixed)

INSTRUCTION ON LEGAL REMEDY: An appeal from this Decision may be lodged with this Appellate Panel of the Court of BiH within 3 (three) days following the delivery of this Decision.
