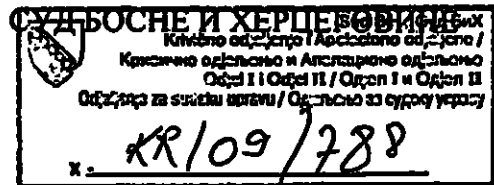


SUD BOSNE I HERCEGOVINE



Number: X-KR-09/788
Sarajevo, 7 October 2009



The Court of Bosnia and Herzegovina, Judge Zoran Božić as the Preliminary Hearing Judge, in the criminal case against the accused Stipe Žulj, for the criminal offence of *Unlawful Killing or Wounding of the Enemy* in violation of Article 177(1), in conjunction with Article 180(1) of the Criminal Code of Bosnia and Herzegovina (hereinafter: the CC of BiH), deciding upon the Motion of the Prosecutor's Office contained in the Indictment number KT-RZ-2/08 dated 1 October 2009, confirmed on 5 October 2009, to transfer the criminal case against the accused to the court of territorial jurisdiction, pursuant to Article 27 of the Criminal Procedure Code of Bosnia and Herzegovina (hereinafter: the CPC of BiH), on 7 October 2009 rendered the following

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DECISION

The Motion of the Prosecutor's Office of BiH contained in the Indictment number KT-RZ-2/08 dated 1 October 2009, confirmed on 5 October 2009, to transfer the criminal case against the accused Stipe Žulj to the Livno Cantonal Court which has territorial jurisdiction is hereby granted.

Reasoning

On 1 October 2009 the Prosecutor's Office of BiH submitted to the Court Indictment number KT-RZ-2/08 charging Stipe Žulj with the commission of the criminal offence of *Unlawful Killing or Wounding of the Enemy* in violation of Article 177(1), in conjunction with Article 180(1) of the CC of BiH with the attached evidence corroborating the existence of grounded suspicion that during the war in Bosnia and Herzegovina and the armed conflict between the Army of the Republic of Bosnia and Herzegovina and the Croat Defense Counsel on one side and the armed forces of the Serb Republic of BiH on the other side, in the territory of the Kupres municipality, as a member of HVO, he acted in violation of the rules of International Humanitarian Law, breaching the provision of Article 3, paragraph 1, sub-paragraph a) of the Geneva Convention relative to the Treatment of Prisoners of War during the times of war of 12 August 1948, in the way that he:

In early November 1994, as a member of the armed forces of HVO BiH, Special Police of the HZHB MUP, Livno Police Administration, in the settlement of Olovo, the municipality of Kupres, in front of his family house he approached Pero Periz, a member of the Army of the Serb Republic of BiH, who left the house with his hands lifted and hit him several times in the head and then, having previously pulled out a pistol from the holster, he fired a bullet at him which resulted in the

instant death of Pero Periz. After that, the suspect took 50 German Marks out of his pocket and left.

The Prosecution proposed in the Indictment that the case should be transferred to the court of subject-matter and territorial jurisdiction for the existence of valid grounds which can be seen in the following:

Pursuant to the Criteria for the Review of War Crimes Cases which is an integral part of the National Strategy for Processing of War Crimes Cases, adopted on 29 December 2008, the Prosecutor in charge of the case against the accused Stipe Žulj believes that it could not be assessed as a complex case which should be tried before the Court of BiH.

Furthermore, at the time of the commission of the criminal offence the accused is charged with he had not held any command position nor was he directly responsible for the implementation of the rules of International Humanitarian Law. Additionally, the transfer of the case is in the interest of the accused himself as he maintains residence in the territory of Canton 10, as well as the majority of the witnesses proposed in the Indictment. Moreover, the Prosecutor's Office of BiH does not have enough staff to quickly and efficiently prosecute this case while on the other hand, the entity courts do not have such a big war crime caseload.

Finally, the Prosecution believes that the transfer of the case to the court of territorial jurisdiction would not have a significant impact on the return of displaced persons, nor would the interest of the victims or the community be brought into a question considering that the aggrieved family did not object to the Motion to transfer the case.

The Defense Counsel for the accused Stipe Žulj, attorney Branka Praljak, underlined during the hearing held on 7 October 2009 that she concurred with the referenced Motion of the Prosecutor's Office of BiH expressed in the confirmed Indictment. The Defense added that they, too, have the intention of summoning a great number of witnesses who reside in the territory of Kupres, that is, Canton 10, for which reason the transfer of the case to the Livno Cantonal Court would indeed contribute to the efficiency of the proceedings. The Defense Counsel agreed with the arguments set out in the Motion that this case, which is a less complex one, should be tried before the court of territorial jurisdiction that would be capable of conducting a thorough, quality and efficient proceedings.

Deciding upon the Motion of the Prosecution and having heard the position of the Defense and upon the inspection of case file, the Judge rendered the Decision as in the operative part herein on the grounds set out below.

When deciding on the Motion of the Prosecutor's Office the Court was primarily guided by the rights of the accused to stand trial without delay; in other words, the principle prescribed under Article 13(2) of the CPC of BiH which binds the Court to



prevent any abuse of the rights of any participant in the criminal proceedings which is also in accordance with Article 6 of the European Convention on Human Rights stipulating that every individual is entitled to a fair trial within a reasonable time.

The transfer of the proceedings as stipulated under Article 27 of the CPC of BiH requires that three grounds are cumulatively met, namely: a) that the offence at issue is not committed against the integrity of Bosnia and Herzegovina, b) that the main trial has not been scheduled and c) that there are strong reasons to transfer the conduct of the proceedings to the court of territorial jurisdiction.

When assessing the circumstances of the referenced case the Court concluded that each of the prescribed requirements has been met, in other words a) the accused is charged with commission of the criminal offence of *Unlawful Killing or Wounding of the Enemy* in violation of Article 177(1), in conjunction with Article 180(1) of the CC of BiH, that is, the offence not directed against the integrity of BiH, b) the Indictment was confirmed on 5 October 2009, the plea hearing has not been held, that is, the case has not been forwarded to the trial panel/individual judge to schedule the main trial and c) there are strong reasons to transfer the case to the court of territorial jurisdiction.

As for the existence of strong reasons the Court primarily bore in mind that the accused did not hold a rank of the commanding officer at the time of the perpetration of the offence for which reason he was not directly responsible for the overall adherence to the rules of International Humanitarian Law on behalf of his subordinates.

Furthermore, the Court concluded that the assertions of the Prosecutor that the case is not a complex one are correct. This is confirmed by the Indictment containing only one count, that is, one act which resulted in the death of one individual. While not lessening the gravity of the committed criminal offence the Court found it necessary to underline that the manner of the perpetration of the offence at issue and the resulting consequence point to a lesser degree of complexity when compared to war crimes cases tried before this Court.

Additionally, not many witnesses were proposed which only supports the assertion that the case at hand is not complex. Moreover, the fact that nearly all of the witnesses reside in the territory of the court of territorial jurisdiction, including the Defense witnesses as noted by the Defense Counsel during the hearing held on 7 October 2009, speaks in favor of the interests of economy and efficiency. It is therefore obvious that by transferring this case witnesses would more easily respond to the summons of the court.

Bearing in mind all of the aforementioned, as well as the fact that the Defense agreed with the Motion, the Court found that the Motion of the Prosecution is grounded and concluded that the Livno Cantonal Court as the court of territorial jurisdiction has adequate capacities which would enable an effective conduct of the criminal

proceedings and it would also entirely comply with the accused's right to stand trial within a reasonable time.

PRELIMINARY HEARING JUDGE

Zoran Božić

/stamp and signature affixed/

LEGAL REMEDY: An Appeal from this Decision may be filed with the 24(7) Panel of the Court within three (3) days of the receipt hereof.

I hereby confirm that this document is a true translation of the original written in Bosnian/Serbian/Croatian.

*Sarajevo, 12 October 2009
Hana Halitović
Certified Court Interpreter for English*

