

**DISTRICT COURT OF PEJË/PEĆ**

**P.nr.285/10**

**9 November 2010**

**IN THE NAME OF THE PEOPLE**

The District Court of Pejë/Pec, in the trial panel composed of Judge Ingo Risch as Presiding Judge, Judge Gunnar Oyhaugen, and Judge Salih Berisha as panel members and Court Recorder Robina Struthers in the criminal case against **Vukmir CVETKOVIĆ** (hereinafter "the Defendant"), charged pursuant to the Indictment number PPS 18/09 filed by the Special Prosecution Office of the Republic of Kosovo ("SPRK") on 15 September 2010 of having committed the following criminal offences:

*War Crime against Civilian Population in violation of Articles 22 and 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (CCSFRY), because, in violation of Article 3 common to the four Geneva Conventions of 12 August 1949, and Articles 1 and 17 of Protocol II of 8 June 1977, Additional to the 1949 Geneva Conventions, all rules of international law effective at the time of the internal armed conflict in Kosovo and at all times relevant to the present charge, the defendant, acting jointly with members of the Serbian Police and wearing himself a uniform, forcibly displaced Albanian civilian population of Klinë/Klina by ordering, in at least one case at gun point, the villagers to immediately vacate their houses and move away from the town and by setting fire to at least two houses, in Klinë/Klina, at the end of March 1999.*

After having held a public trial on 26 October, 27 October and 28 October 2010 as well as 9 November 2010 at which Ms. Alenka Sagmeister-Ranzinger appeared for the Prosecution, Mr. Ljubomir Pantovic appeared for the Defendant and Mr. Zeqyr Berdyna appeared for the Injured Party Zef Qetaj, and at which the Defendant and the Injured Parties SMS, STS, PS, ET, Zef Qetaj and Krist Qetaj were also present, on 9 November 2010 took and publicly announced the following:

**VERDICT**

The defendant Vukmir CVETKOVIĆ, son of Dragoljub born on 12 August 1969, in Klinë/Klina, Pejë/Peć, residing at Boro Milotovic No.4, Klinë/Klina, Pejë/Peć, Kosovo Serb, is

**GUILTY**

Because:

1. On the 27<sup>th</sup> or 28<sup>th</sup> of March 1999, the defendant together with another individual, both wearing uniform and both armed, forced **Š T Š** and his family to leave their house in Klinë/Klina and go to Albania.
2. On 27<sup>th</sup> or 28<sup>th</sup> of March 1999, the defendant wearing a uniform set on fire at least two houses in Klinë/Klina - the house of Nue Simonaj and the house of Zef and Krist Qetaj - by using a flame-thrower.

THEREFORE, the Defendant has committed the criminal offence of War Crimes contrary to *Articles 22 and 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia ("CCSFRY")*, in violation of *Article 3 common to the four Geneva Conventions of 12 August 1949, and Articles 1 and 17 of Protocol II of 8 June 1977, Additional to the 1949 Geneva Conventions.*

And he is therefore

### **SENTENCED**

To seven years of imprisonment

Pursuant to Article 73 of the Kosovo Criminal Code (hereinafter "the KCC") and Article 391 Paragraph 1 of the KCC, the time already spent in arrest and detention shall be deducted. Vukmir Cvetkovic has already spent 490 days in detention in Norway, i.e. from 10 March 2009 until 13 July 2010.

In accordance with Article 102 (1) of the KCCP, the Defendant shall pay the costs of these criminal proceedings.

Pursuant to Article 393 (5) of the KCCP, the Defendant shall remain in detention until the Judgment becomes final. A separate ruling on detention is issued.

The Injured Parties shall pursue any claim for compensation through the civil courts pursuant to Article 112 of the KCCP.

Pursuant to Article 391 (1) (6) of the KCCP, the final Judgment may be announced in the public media.

## REASONING

### A. PROCEDURAL BACKGROUND – THE INDICTMENT

A ruling on initiation of investigation was filed by the Public Prosecutor on 17 September 2007 against Vukmir Cvetkovic and extended until 17 September 2008.

On 4 July 2008, the District Court of Pejë/Peć issued an Order for Arrest against the Defendant.

On 8 July 2008 the Office of the International Public Prosecutor informed the District Court of Pejë/Peć that Vukmir Cvetkovic had been located in Norway. Therefore, on 15 July 2008, the above-mentioned court issued a domestic wanted notice against him, and addressed the competent authority with a request to issue an international wanted notice.

On 21 July 2008, since the Defendant was at large, the Public Prosecutor decided to suspend the investigation.

On 26 November 2008, the international wanted notice was issued and a red notice distributed by Interpol.

On 13 July 2010, Vukmir Cvetkovic was extradited to Kosovo and arrested. A detention hearing was held at the District Court of Peja/Pec on 14 July 2010. A one-month detention was decided.

On 12 August 2010, a three-judge panel extended the detention of the defendant until 13 October 2010.

The Special Prosecutor of the Republic of Kosovo (“SPRK”) filed an indictment on 8 September 2010 charging Vukmir Cvetkovic for War Crimes against Civilian Population in violation of Articles 22 and 142 of the CCSFRY and requested detention to be extended. Therefore, on 10 September 2010, a three-judge panel extended the detention until 10 November 2010, under Article 360, paragraph 5 of the Kosovo Criminal Code of Procedure (“KCCP”).

On 21 September, a confirmation hearing was held in the presence of the defendant, his defence counsel and the Prosecutor. The confirmation judge ruled that the indictment contained all the required elements and was therefore confirmed. The case was sent to the Presiding Judge.

On 26 October 2010, the main trial was opened and was concluded on 9 November 2010.

### B. COMPETENCE OF THE COURT

1. Procedure, Competence and Panel Composition of the District Court of Peja/Pec.

In accordance with the Article 23, paragraph 1 of the KCCP, District Courts shall have jurisdiction to adjudicate, at first instance, criminal offences punishable by imprisonment of at least five years or by long-term imprisonment.

In the present case the accused was charged with War Crimes against Civilian population in violation of Articles 22 and 142 of the CCSFRY, punishable by imprisonment between five and 15 years of imprisonment<sup>1</sup>. Therefore, District Court of Pejë/Peć has the subject-matter jurisdiction to adjudicate the case.

The criminal offences, according to the indictment, were committed in Klinë/Klina town, which is within the territory of the District of Pejë/Peć. Therefore, in accordance with the Article 27, par. 1 of KCCP, the District Court of Pejë/Peć has the territorial jurisdiction to adjudicate the present case.

Pursuant to the Article 3.1 of the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo, a case tried by the SPRK falls under the primary competence of EULEX judges.

The Trial panel for this case was composed of a mixed panel of two EULEX Judges and one Local Judge. None of the parties objected to the panel composition.

2. The Main Session

The main trial was held in public on 26 October, 27 October, 28 October and 9 October 2010 in the presence of the accused (with the exception that he did not attend the site inspection on 28 October 2010, because he waived his right to take part in this part of the procedure, since he was represented during the site inspection by his defence counsel and having been informed about the results of the site inspection on 9 November 2010) and his defence counsel, the EULEX Public Prosecutor, the injured parties SMS  
TS, Zef Qetaj and Krist Qetaj and the legal representative of the injured party Zef Qetaj, Mr. Zeqir Berdyna.

In accordance with the article 15 of KCCP, international interpreters translated court proceedings and all court documents relevant to the trial from English into Serbian and Albanian and vice-versa, as necessary.

**C. SUMMARY OF EVIDENCE PRESENTED**

<sup>1</sup> According to Article 142 of CCSFRY, this criminal offence shall be punished by imprisonment for not less than five years or by the death penalty. The death penalty was abolished in Kosovo by the UNMIK regulation 1999/24 dated 12 December 1999. According to Article 38 of the CCSFRY, the general frame for the punishment of imprisonment may not be shorter than 15 days nor longer than 15 years.

1. During the proceedings of the main trial, the following witnesses were examined by the parties and by the trial panel:

- SMS on 26 October 2010 and 28 October 2010 during the site inspection,
- STS on 26 October 2010,
- ET on 27 October 2010 and 28 October 2010 during the site inspection,
- PS on 27 October 2010 and 28 October 2010 during the site inspection.

2. Statements, police reports and other documentary evidence read out during the trial sessions or considered as read out.

- Police reports
- Pictures of the houses burnt by the defendant
- Pictures of the mills door taken by the Public Prosecutor and those provided by the injured party Zef and Krist Qetaj during the site inspection performed in Klinë/Klina village on 28 October 2010
- Statement of the defendant given on 17 August 2010 to the SPRK (read out on 27 October 2010)

#### D. FACTUAL RECONSTRUCTION OF THE EVENTS

In the following part of the reasoning the various statements will be presented in reference to the most relevant events of the present case.

SMS was called by the prosecutor and gave evidence in the main trial on 26 October 2010. He was also questioned on 28 October 2010 during the site inspection.

He stated that on 28 March 1999, after having being expelled from his house by Serbian forces he saw the defendant setting fire on the house of his paternal uncle, Ndue Simonaj as well as on the house of Krist and Zef Qetaj's house. He could see him at a distance of 100 meters and noticed that he was holding a canister on his back with a pump. He was accompanied by his brother Mishko as well as four or five other soldiers.

The witness decided to report Vukmir Cvetkovic to the Kline/a police station on 24 September 2005, after he had seen him returning to Kline/a and wearing the police uniform of the Kosovo Police Service ("KPS").

The witness was asked by the presiding judge to comment on photograph number 4 in the prosecution binder (page 59). He could identify the house of his paternal uncle in the back of the picture and explained that the house of Krist and Zef Qetaj was also standing

there. The two owners of this house were abroad when it was burnt. The witness was then shown Photograph number 2 in the prosecution binder (page 57) and the witness clarified that this was the mill which the defendant and other people attempted to burn unsuccessfully. The witness was asked to mark on Photograph 4 page 59 where he was standing when he observed the defendant setting fire to the two houses.

**STS** was called by the prosecutor and gave evidence in the main trial on 26 October 2010.

The witness explained that he and his family were expelled from their house around 27 or 28 March 1999 by a couple of paramilitary personnel. They were told to leave within five minutes and to walk to Albania. He had known the defendant since childhood and recognized him as one of the paramilitary personnel in his yard on that day. It was his colleague who told them to leave. The defendant was armed with a Kalashnikov however he did not put his weapon towards the witness. The defendant did not try to protect him. He confirmed that he had not seen the defendant setting fire to any house in Klina even though it was mentioned in his statement dated 24 September 2005 that: "Vuleta was the one who burnt whole our neighbourhood and Klina town". The witness said it was a translation mistake.

The witness reported the defendant to the Kline/a police station when he saw him wearing the KPS uniform. He did not report him immediately after the war as he was busy with fulfilling primary needs for his family, such as foods for his children. The witness stated that the defendant was the only Kosovo Serb employed in KPS in 2005 but this is not the reason why he reported him. He just decided with his friends and family that considering what he had done during the war, it was not right that he was now wearing the KPS uniform.

**PS** was called by the prosecutor and gave evidence in the main trial on 27 October 2010. He was also questioned on 28 October 2010 during the site inspection.

He explained that after having expelled from his house by three persons, he saw Vukmir Cvetkovic and others setting fire to Krist and Zef Qetaj's s house and his paternal uncle Ndue Simonaj, by using canisters. The two houses are next to each other. The defendant had a canister on his back measuring between 40 and 50 centimeters long and used it to throw flames at a distance of 2 meters in front of the houses. He also had an AK-47 in his hands. The witness stated that he had seen them from a distance of 40 to 50 meters.

The witness did not report the defendant after the war as he was busy with other things. When he returned to Kline/a after the war, all the houses in the neighbourhood had been burnt.

**ET** was called by the prosecutor and gave evidence in the main trial on 27 October 2010. He was also questioned on 28 October 2010 during the site inspection.

He stated that he saw the defendant with two other persons burning the house of Zef and Krist Qetaj. The defendant had a canister on his back. He was wearing a camouflage uniform from above the waist. He had been previously expelled from his house by three Serbs but not from Vukmir Cvetkovic, even though he mentioned him in a statement given on 24 September 2005. He stated that it might have been a translation issue as the defendant did not expel him from his house.

When he observed the defendant setting fire, he was at a distance of 60-70 meters. The defendant was burning the house at a distance of 1.5 meters.

The witness stated that the defendant returned to Kline/a in 2005 and he decided to report him because he saw him wearing again an uniform (from the KPS this time). The witness confirmed that after the defendant returned to Kline/a, he had discussions with him, but not about the war. He also drove him around in his taxi.

### **The defendant Vukmir Cvetkovic**

The defendant stated that he stands by his statement given to the Public Prosecutor on 17 August 2010 and did not wish to give further evidence.

On 17 August 2010, the defendant was questioned by the Prosecutor in the presence of his defence lawyer. He explained that, in March 1999, when the NATO bombing started, he was wearing the police uniform and had been called by the police station in Klina as he was a reserve policeman. He is not aware that the police had equipment such as flame-thrower.

The defendant saw civilians leaving Klina but did not see houses burning.

On the critical day, when he was coming back a place called Perline, he stopped in the center of Klina where he observed a group of people made of police officers and civilians. He recognized some of the civilians and told the police officers to treat them well as they are his neighbours. He even assisted one of his Albanian neighbours by asking the police to allow him to take out his car and leave. Further in the city, he saw another group of his neighbours leaving near the railway station and felt sorry for them.

He returned to Klina only in 2005 and he found out that houses of some of his neighbours had been burnt down. He stated that he always had good relations with his neighbours both before and after the war. He stated that he had good relations with *SMS*, *STS*, *PS*, Zef Qetaj and *ET*. He did not see them that day.

He also reported that during that period, he had an AK-47.

## **E. EVALUATION OF PRESENTED EVIDENCE**

### **Factual findings and examination of the pieces of evidence**

#### **I.) Findings regarding the forcible displacement (expulsion) of civilian population**

1.) The panel is convinced that the accused Vukmir Cvetkovic on 27 or 28 March 1999 took part as a co-perpetrator together with other members of Serbian Police in a military operation in the village of Klinë/Klina in order to expel the Albanian civilian population out of this village by ordering them to vacate their houses and leave their home village due to a previously developed operational plan which he accepted to execute; the accused Cvetkovic as a member of a Serbian forces unit, wearing a Serbian uniform and equipped with an AK-47 automatic gun went at the critical day at an uncertain time of the day together with at least one unidentified Serbian co-perpetrators in order to execute the expulsion plan to the house of STS and his family; with Cvetkovic's consent his comrade, who was also uniformed and armed with a Kalashnikov, pointed his gun at witness STS and gave order to him and his family to leave within five minutes their house and the village of Klinë/Klina and to go to Albania. Under this compulsion and being frightened to be shot by the accused and or his comrade STS and his family immediately left for Albania.

The panel is convinced that the accused had knowledge of the Serbian operational plan to expel the Albanian civilian population out of Klinë/Klina and that he knew he was acting accordingly to this plan when he expelled as a co-perpetrator STS and his family from the village of Klinë/Klina. He acted beyond all reasonable doubts with the corresponding intention, because he was part of the Serbian forces, he was equipped with a Serbian uniform which he wore and a machine gun which he carried when he was called to Klinë/Klina as a reserve police officer.

2.) The findings under I.1.) are based on the statement given by witness STS | whose statement given to the panel is reliable. The panel has well assessed the result of the interview of this witness and finds his statement credible, although the panel is aware that there are discrepancies compared with his previous statements when he was questioned in an earlier stage of the proceedings and in particular when this witness was heard previously.

It is a matter of common knowledge that the capacity for remembering in general diminishes by and by and elements of interviews in particular those of minor importance use to vary the more often the same witness is questioned on the same subject. And it should be understandable for everyone that normally a witness will be less aware of details after a period of ten years, a period which has elapsed since the time of the offence. It is also common knowledge that in general those statements which were produced at the earliest after the commitment of a crime might be considered the most credible ones, because then the memory of the witness was freshest. The particularity of a comparison of the statements of witness STS consists in the fact that his previous statement was of more incriminating nature since the witness described the accused earlier as the more active co-perpetrator claiming that it had been him to point the gun at the witness and who did all the talking.

It speaks in the favor of the witness's credibility that he now incriminated the accused in a less severe way than previously. After a period of more than ten years the witness reported only on those facts which were still present in his memory. And the core fact of his statement was that the accused as a member of the Serbian Forces jointly with somebody else committed the crime of expulsion of Albanian civilians. The panel is

convinced that the witness truly reported on the criminal act of expulsion committed by the defendant although a long time passed until he reported the first time about this criminal event to the police.

It is comprehensible that the witness did not press charges on the defendant during the period of his absence after the armed conflict in Kosovo. To incriminate someone whose whereabouts were unknown could not have made much sense to witness STS

during that period of time. And after the defendant returned to Klinë/Klina the witness informed the police about the criminal offence the defendant had committed.

There are no indications that the witness incriminated the defendant wrongfully and unjustified. The panel trusts him and is convinced that he told the truth when he was interviewed by the court on 26 October 2010.

The panel is convinced that witness STS did not give false testimony by intention. There are no indications for a willful false statement given by this witness since they maintained a friendly relationship as neighbors prior to the critical day and there were no tensions between them for ethnic reasons.

With respects to the chronological correlation of the first incriminating report on the suspect to the police and the service of the accused for the Kosovo Police the panel has considered the possibility that the witness could have given false testimony driven by the motivation to avoid or to terminate the service of the accused - being a Serbian - for KPS at any price, even for the price of unjustified testimony.

The court negates this possibility with which witness STS was confronted. He has clearly denied having acted with such unlawful intention. And he reasonably and convincingly explained how intolerably he took the fact that someone served as a policeman although this man had committed serious crime before, regardless his ethnicity. The panel believes this witness' statement and is convinced that the witness found the accused being disqualified as a KPS-Officer only because of his previous criminal act and not because of his ethnicity. And not even the accused himself alleged such unlawful motivation of the witness.

The panel has also excluded the option that the witness gave wrong testimony by negligence. An *error in persona* is absolutely unrealistic, because witness STS and the accused know each other since their childhood. With regards to this fact and due to the lack of any indication of a mistake in the identification of the perpetrator the panel negates that the witness was mistaken.

Also the fact that the witness reported the first time on the defendant only years after the crime in question was committed does not give grounds to doubt the correctness of the witness's testimony. It is easy to understand that the witness in the first years after the war/armed conflict was busy to reorganize the living conditions of his family rather than to report on crimes which were committed during a period of which he most probably did not like to be remembered, since he and his family had suffered and became victims, although none of STS's family was killed or bodily injured by the accused. The defendant had left Klinë/Klina for several years and the witness did not know where the defendant lived during that period of his absence. Since the witness could not expect him to return to Klinë/Klina it is comprehensible that he did not report on a perpetrator with unknown residence. And it is also easy to comprehend that the witness

recalled the past when he saw the defendant after some years of his absence suddenly again in the village of Klinë/Klina. Furthermore it appears easy to understand how unacceptable the witness found the fact that someone served in the same village as a police officer where this very person had committed a serious crime some years ago. And the panel also understands well that the witness did not report on the perpetrator immediately upon he saw him again in his village because of the position of the perpetrator to be reported on being a police officer himself. To report on a KPS-Officer to KPS was not an easy taken decision and caused time consuming negotiations with other family members of the witness with the result that the defendant served already some months for Kosovo Police until the day he was reported on the crime in question.

Also the statement given by the defendant does not give any reasons to doubt that witness STS testified the truth. The defendant only claimed not to be guilty and not to have committed a crime; he was not ready to give further statements nor was he ready to answer any questions by the panel. It is the indisputable right of the defendant to defend himself in this way. But the mere denial of being guilty and the allegation of the defendant not to have committed a crime and not even alleging witness STS testimony had been wrong by error or on purpose can only be qualified as the desperate attempt to escape from his criminal liability and cannot establish grounded doubts on what the witness has reported.

## II.) Findings regarding the setting on fire of at least two houses

1) Furthermore the panel is convinced that the accused Vukmir Cvetkovic on 27 or 28 March 1999 wearing a Serbian uniform took part in a planned and organized military operation together with other members of the Serbian Forces with the aim to expel Albanian civilians from the village of Klinë/Klina by setting on fire at least the house of Nue Simonaj on one hand and that one of Zef and Christ Qetaj on the other hand by using a flame thrower.

2) The findings under II.1) are in first line based on the statements of the witnesses SMS and PS who testified before the court that they saw the accused setting the two houses of Ndue Simonaj and Krist and Zef Qetaj on fire and on the statement of ET who testified having seen the accused to have set the house of Krist and Zef Qetaj on fire.

The panel is convinced that all these three witnesses reported on what they had seen with their own eyes and what had really occurred and that all of them told the truth accordingly.

As far as deviations in their statements are concerned the plausibility was already explained in relation to the assessment of the statement of witness STS. The same applies to the testimony of the above three witnesses who testified regarding the setting houses on fire. Everyone will understand that several oral reports on an event that happened more than 10 years ago will deviate from each other. Regarding the matter of setting houses on fire by the accused there are differences within the statements of the

witnesses SMS, PS and ET compared to their previous statements and also in comparison of the witnesses' statements to each other. This is not surprising since for example witness SMS gave testimony on the event of March 1999 prior to this main trial already five times, namely by his

- statement given to UNMIK police on 24 September 2005
- statement given to UNMIK war Crimes Unit on 16 December 2006
- statement given to UNMIK War Crimes Unit on 16 February 2007
- statement given to UNMIK War Crimes Unit on 9 May 2008
- statement given to SPRK on 9 August 2010

And during this main trial he was interviewed on the same event two more times, in the session room of the court house on 26 October 2010 and during the site inspection on 28 October 2010. It would be more than suspicious and unexpectedly, if there were no certain variations in the later statements compared to the previous ones. The deviations were of less important character and minor changes are normal due to the time period that has elapsed and due to the number of interviews.

Regarding the core part of the witnesses' statements which is the setting of houses on fire there were no significant deviations in what they reported to the panel compared with their previous statements. This constancy demonstrates to the court that these three witnesses told the truth. In addition to this the use of a flame thrower is proven by the further witnesses' statement that the accused also tried to set the wooden door of the mill in Klinë/Klina on fire with his flame thrower and the panel took notice of the brand marks on that door during the site inspection and refers to the corresponding photo taken by the Public Prosecutor at the crime scene, see the attachment to the minutes regarding the site inspection. It is even obvious for a lay that the heavy entrance door of the little mill in Klinë/Klina was tried to set on fire by a flame thrower, but the door resisted until the attempt was abandoned, which occurred obviously already a short time after the use of the flame thrower.

By this the credibility of the three mentioned witnesses is supported by the objectively established existence, usage and effectiveness of the instrument that the accused used according to these witnesses' statements.

As far as the defendant claims to have no knowledge, if the Serbian police was equipped with flame throwers, this aspect is not qualified to cause any doubts in the credibility of the witnesses SMS, PS and ET. It does not make any difference, if the Serbian police was regularly equipped with these instruments or if they used military equipment while operating jointly, since the court knows for sure that Serbian military forces were for sure equipped with flame throwers.

Regarding the two issues that might have caused doubts, on one hand the duration of time which elapsed after the critical day until the three abovementioned witnesses reported on the defendant's setting houses on fire, and on the other hand the question, if one of the witnesses only reported on the defendant in order to avoid a Serbian police officer in Klinë/Klina, these aspects were explained above in connection with witness STS

and the same arguments apply to the statements of the three further witnesses with the result that the court is convinced they also testified the truth.

Also regarding the witnesses SMS PS and ET the panel is convinced that they did not testify by mistake that the accused was one of the co-perpetrators who set the corresponding houses on fire. Like witness STS

they know the defendant very well since a long time and it is excluded to the conviction of the panel that one of the witnesses failed in the identification of the person really acting. The certainty of the panel in this regard is also built on the findings during the site inspection. It is beyond any doubts that the witnesses indicated correctly from where they observed the defendant using his flame thrower at which of the objects. And there are also no doubts that there were no impediments in terms of the visibility regarding the distances, no cover by plants or buildings and also the light situation with daylight at lunch time was good.

Also regarding the setting houses on fire all subjective requirements are fulfilled. The Serbian operational plan to expel Albanian civilian citizen from Klinë/Klina included to set their houses on fire. The accused knew that and he acted accordingly in order to execute this plan. He was wearing a Serbian uniform, he acted jointly with other members of the Serbian forces and he used a flame thrower with which he was specifically equipped in order to set houses of Albanian citizen on fire. He acted fully intentional.

There is no indication that the criminal liability of the accused was limited at any time.

## F. LEGAL QUALIFICATION

The constant jurisprudence about War Crimes has established, throughout the years, which are the requirements that found the criminal responsibility of the accused; in particular, the following must be proven as a minimum:

- the existence of an internal armed conflict and the binding nature of applicable international law on the parties;
- the participation of the accused in the armed conflict;
- a nexus between the alleged crime and the armed conflict;
- the civilian (protected) status of the victim;
- violation of both domestic law and international law;
- the participation of the accused in the criminal offences.

The existence of an internal armed conflict and the binding nature of applicable international law on the parties;

An armed conflict exists whenever there is resort to armed force whether between states or protracted armed violence between governmental authorities and organized armed

groups. International humanitarian law (IHL) applies from the initiation of such conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached.

To be considered an internal armed conflict under the common Article 3 to the Geneva conventions, the essential criteria is that protracted armed violence takes place between governmental authorities and organized armed groups or between such groups within a State. The Additional Protocol II of 1977 supplements this by requiring that those groups be under responsible command and exercise such control over a part of the territory of the State as to enable them to carry out sustained and concerted military operations and that hostilities take place at a level in excess of that which could be characterized as merely internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature.

It is a well-known fact<sup>2</sup> that, in March 1999, it existed an internal armed conflict in Kosovo involving the Yugoslav/Serbian forces and the Kosovo Liberation Army ("KLA"), which can be considered as an internal conflict contemplated by the Common Article 3 to the Geneva Conventions and the Additional Protocol II of 1977.

#### The participation of the accused in the armed conflict

It is clear that the defendant participated in the armed conflict being part of the Serbian police and being active in Klinë/Klina in March 1999. This has been proved by the fact the defendant was wearing the Serbian Police uniform on the critical days.

#### A nexus between the alleged crime and the armed conflict

The armed conflict played a fundamental role in the ability of the defendant to commit the crimes. Indeed, it is as part of the Serbian forces that the defendant was armed and in a position to commit the criminal offences as mentioned above. The offences occurred during the armed conflict and were part of a general plan to remove the Albanian civilian population from the area.

#### The civilian (protected) status of the victim

Article 142 of the CCFRSY expressly requires that the victim be part of the civilian population. In the case of internal conflict, the Common Article 3 to the Geneva Conventions and the Additional Protocol II of 1977 protect all persons who are not combatants and who do not take a direct part in hostilities. A civilian is defined as someone who does not actively participate in hostilities by intending to cause physical harm to enemy personnel or objects.

Article 5 of the IV Geneva Convention provides that, for a civilian to lose his/her status as a protected person, he/she must be "*definitely suspected of ... activities hostile to the security of the State...*"

<sup>2</sup> ICTY Judgment in *Milutinović et al.* case, IT-05-87, dated 26 February 2009, page 324.

The trial panel finds that there is no evidence that the injured parties in this case were combatants and did not take a direct part in the hostilities. The injured parties in this case must be considered as civilians.

The violation of both domestic law and international law:

The trial panel agreed that the CCSFRY was applicable at the time of the commission of the criminal offence as well as the Geneva Conventions of 12 August 1949 and the Protocol Additional of 8 June 1977. Indeed, Yugoslavia had signed the Geneva Conventions on ...

The Common Article 3 to the four Geneva Conventions provides that *"the persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.*

*To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:*

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;*
- (b) taking of hostages;*
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;*
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples."*

As to the expulsion, the Article 17 of the Additional Protocol II of 8 June 1977 to the four Geneva Conventions of 12 August 1949 on Prohibition of forced movement of civilians should be considered. It states that:

*"1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.*

*2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict."*

The article 142 of the CCSFRU should also be considered as a war crime against the civilian population encompasses among others actions: "displacement or re-settling or forced depatriation" of civilians.

As to the setting of houses on fire, the Article 142 of CCSFRY should be considered as to the reference to the "looting of the property of the population" which is to be considered as a war crime against civilian population.

The Public Prosecutor has also clarified that the crime punishable under the applicable law of the CCSFR is still a crime under the current law (Criminal Code of Kosovo) under Article 121 (2) in connection with Article 23. The sentence of criminal offence of war crimes against civilian population is more severe under the current law and for this reason, the trial panel had to apply the abovementioned laws. The criminal act in question under the current law would be punishable more severely because Article 121 (2) (8) of the CCK referring to the displacement of civilian population foresees a frame of at least 10 years or long-term imprisonment, which is from 21 to 40 years, according to Article 37 (2) of the CCK.

#### The participation of the accused in the criminal offences.

The trial panel is satisfied beyond reasonable doubt that the defendant has committed the criminal offences of war crimes against civilian population by expelling one family and by setting on fire at least two houses.

### **G. DETERMINATION OF PUNISHMENT**

When imposing the criminal sanction, the court has to bear in mind both the general purpose of punishment - that is to suppress socially dangerous activities by deterring others from committing similar criminal acts - and the specific purpose, to prevent the offender from re-offending.

The panel has considered all pros and cons in order to find a fair and well balanced punishment and has taken into consideration in particular the following aspects:

To the favor of the defendant had to be counted

- a) that the defendant has not been convicted before, although a criminal record can fairly not expected when the perpetrator is a policeman,
- b) that the defendant is well educated and socialized, he is married and has a six years old son who is dependent on him, and the economical situation of the accused and his family is poor,
- c) being separated from his family, who lives in Serbia, causes additional burden on him because of the difficulties of his family members to visit him in Kosovo,
- d) the long period of time that has elapsed since the crime had been committed – see Article 6 European Human Rights Convention -, although this mitigating factor does not

fully apply since some part of this duration was caused by the flight of the defendant until he was arrested in Norway,

e) finally the fact that the commitment of the crime and its serenity compared with other commitments of crimes of this type was of average character and level since none of the victims was killed or bodily injured.

To the disfavor of the defendant had to be taken into consideration

a) that the defendant committed two modes of war crimes by taking part in the expulsion of civilian Albanian population as a co-perpetrator on one hand and in setting houses on fire on the other hand,

b) that the defendant did not set only one houses, but two houses on fire,

c) that the defendant by setting houses on fire caused serious danger to neighboring houses and to the population of Klinë/Klina by threatening their life.

#### **H. COSTS**


Since the accused Vukmir Cvetkovic was pronounced guilty; he has to reimburse the costs of criminal proceedings with the exception of interpretation (KCCP, Article 102, Paragraph 1). A separate ruling on the amount of the costs shall be rendered by the court when such data will be obtained.

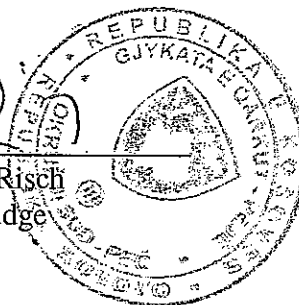
#### **I. COMPENSATION CLAIM**

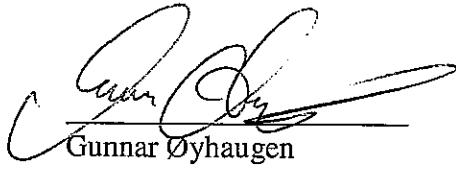
At the beginning of the main trial the injured parties have been reminded of the possibility to file a motion to realize a property claim within the criminal proceeding, pursuant to the KCCP, Article 355, Par. 2. They informed the trial panel that they would file such a claim through the civil courts.

Therefore the court did not have to make a specific decision on the issue.

Dated this ninth of November 2010.

  
 Judge Ingo Risch  
 Presiding Judge





Gunnar Øyhaugen  
Panel member



Salih Berisha  
Panel member



Robina Struthers  
Court Recorder

**LEGAL REMEDY: Pursuant to Article 400 of the KCCP, an appeal should be announced within eight (8) days following the announcement of the judgment and pursuant to Article 398(1) of the KCCP, the authorized persons may file an appeal of this Judgment within fifteen (15) days of the day the copy of the judgment has been served.**