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PARAMILITARY AND WAR CRIMES COMMITTED IN BOSNIA AND HERZEGOVINA

PARAVOJNE JEDINICE I RATNI ZLOČINI POČINJENI U BOSNI I HERCEGOVINI

Summary

The last armed conflict in Bosnia and Herzegovina, which took place between 1992 and 1995, was a bloody one. Not only was lots of real blood were spilled, but metaphorically speaking, it resulted in millions of displaced persons, hundreds of mass graves, hundreds of places of detention, hundreds of thousands of prisoners of war, hundreds of thousands of tortured and destroyed lives. During the aftermath of the war, around 700 war crime cases were prosecuted, spanning one thousand defendants, and including all possible war crimes, including genocide. These war crime trials could be observed from different perspectives. While most of these crimes were committed by soldiers and police officers, among those who were not soldiers or police officers, one category is to be particularly observed, the paramilitary. Members of the paramilitary, not soldiers or civilians, according to the database of war crimes, were charged in some 5% of all war crimes cases. But then, if these persons are not soldiers or civilians, the question is who were they, and why they do what they did? Furthermore, what interest did they have in behaving in a way that is characterized as criminal, more precisely, a war crime. Among number of the war crimes committed by the paramilitary groups in Bosnia and Herzegovina, this paper will analyze ones including most serious crimes and those of most significance. By doing that, this paper will contribute to the better understanding of the position and behavior of the paramilitary groups involved in committing war crimes, further legal regulation of their position, and social understanding of the nature of paramilitary forces in and after the armed conflict.

Keywords: *paramilitary, war crimes, Bosnia and Herzegovina*

Sažetak

Posljednji oružani sukob u Bosni i Hercegovini, koji se vodio između 1992. i 1995. godine, bio je krvav. U njemu, ne samo da je proliveno mnogo prave krvi, metaforički rečeno, nego je rezultirao i milionima raseljenih osoba, stotinama masovnih grobnica, stotinama mjesta zatočenja, stotinama hiljada ratnih zarobljenika i stotinama hiljada mučenih i uništenih života. U vremenu nakon rata, procesuirano je oko 700 predmeta ratnih zločina sa oko hiljadu optuženih, a predmeti uključuju sve kategorije ratnih zločina, uključujući i genocid. Ova suđenja za ratne zločine mogu se promatrati iz različitih perspektiva. Dok su većinu ovih zločina počinili vojnici i policajci, među onima koji nisu bili vojnici ili policajci posebno treba istaknuti jednu kategoriju, paravojne jedinice. Pripadnici paravojnih jedinica, niti vojnici niti civili, prema bazi podataka o ratnim zločinima, optuženi su u oko 5% svih predmeta ratnih zločina. Ali onda, ako te osobe nisu vojnici ili civili, postavlja se pitanje tko su oni bili i zašto su činili to što su činili? Nadalje, kakav im je bio interes ponašati se na način koji je okarakteriziran kao zločinački, tačnije ratni zločin. U nizu ratnih zločina koje su počinile paravojne formacije u Bosni i Hercegovini, u ovom radu će se analizirati oni koji uključuju najteže i one od najvećeg značaja. Time će ovaj rad pridonijeti boljem razumijevanju položaja i ponašanja paravojnih skupina uključenih u počinjenje ratnih zločina, daljnjem pravnom reguliranju njihovog položaja, te društvenom razumijevanju prirode paravojnih snaga u i nakon oružanog sukoba.

Ključne riječi: *paravojne jedinice, paravojska, ratni zločini, Bosna i Hercegovina*

1. Introduction

The most comprehensive database containing all the trials for the war crimes committed in Bosnia Herzegovina (hereinafter: “BiH”) during the period of 1992-1995 (Šimić, 2021), indicates a large number of cases. More than 900 persons have been tried so far, with some 250 of them having been acquitted and 650 having been found guilty of committing war crimes, including genocide. A detailed analysis of these numbers shows that these war crime trials also have found and established facts about more than 500 mass graves in BiH, more than 200,000 people who have been in the concentration camps and places of detention, more than 30,000 sexually assaulted persons, more than 500 places of detention (some of them definitely resembling concentration camps), 2 million internally or externally persons displaced from their homes in ethnic cleansing, and property destroyed beyond any measure that could be numerically illustrated.

We can undoubtedly conduct various research and analysis of these crimes and their perpetrators. We choose to look specifically at the issue of paramilitary personnel who have been convicted of war crimes in this conflict.

In connection with the research on paramilitary organization members as perpetrators of war crimes, it is interesting to observe that the vast majority, more than 90% of all crimes committed, were committed by an organized force, namely members of the armed forces and police, most of them were professional members, but also many of them were conscripted. The remaining 10% are those who were not members of these state organized forces. Among those, we can also find a certain percentage of politicians and civilians who occupied high social and political positions and were able to influence or directly commit crimes such as mayors of the municipalities, heads of crisis committees in those municipalities, and leaders of local political parties. Not being civilians or members of official forces, and at the same time committing some of the most serious war crimes, the role of these individuals has been neglected and seems to be easily overlooked in the context of armed conflicts and their consequences. In reality of the conflict, they are combatants, no matter are they financed by themselves or by the state or other organizations (Bassiouni, 2008).

Regardless of analyzing recognized or unrecognized state authorities that occupied and controlled the territory in BiH during the last armed conflict, the fact that some 90 percent of all war crimes were committed by armed forces and police officers clearly shows that crimes were primarily committed in an organized and systematic way. That brings us to a conclusion that war crimes or at least the vast majority of crimes committed in this conflict in BiH, concealed bigger plans and bigger goals and ideals beyond the individual interests of the perpetrators themselves. It is further evident that those organized crimes, represented by number and scope, cannot be reduced to a simple individual criminal responsibility of the few or few hundred perpetrators, since most of these crimes were not committed for their own personal goals, but for the sake of much wider plans and ideas, of which the perpetrators were a part (Šimić, 2016). If we continue along this line of thought, the next question is obvious. If the members of the armed and police forces were allowed, encouraged, and pushed to commit crimes in the interest of the state, whatever that state may be, then the question is: for whose account did the paramilitary forces committed these crimes, because the state has the police and the armed forces as tools and instruments of enforcement of its will? If not for the state, and themselves, then for whose account did those paramilitary forces do what they did?

There are only two possible answers to this question. The first answer suggests that those individuals committed war crimes for the sake of their own interests, and for their own individual goals. This means that they killed, tortured, violated, and plundered only for themselves, without any wider plan or goal

in sight. Furthermore, they were so lucky to see that the organized state and its representatives were blind and unwilling to prosecute, during and after the conflict, those obvious crimes, tolerating such behavior and pretending nothing is happening.

And there is the second possibility, The members of the paramilitary forces committed war crimes either under the direct supervision or indirect approval of official authorities, and what they did, and how they acted, was part of or in correlation with the official policies of those who controlled a certain territory. The fact is that those individuals, during their actions, displayed certain criminal activity by violating, stealing from, and harming their victims, which should not be confused with motivation to commit war crimes. Finally, and that is to be observed in the case of BiH, there are several war crimes, committed by the paramilitary forces, that have nothing to do with the individual interests of the members of those paramilitary groups since there is no obvious evidence that they benefited from those crimes, partly because the subsequent criminal prosecution resulted in long prison sentences not foreseen during the criminal act.

2. Paramilitary and war crimes

According to Üngör (2020), paramilitarism refers to, more or less, secret and irregular armed organizations that carry out illegal acts of violence against clearly defined civilian individuals or groups. Other authors, studying the paramilitary groups all around the world, suggest that it is possible to conclude that paramilitary groups have generally been presented as self-defense groups whose origin is associated with a fragile or absent state, that would normally be responsible for combatting insurgencies (Sprinzak, 1995). Looking at paramilitarism in the different areas, paramilitary groups tend to have regional orientations and different motivations depending on the time and location of their formation and activity. In that sense, some paramilitary groups are formed as vigilantes, often protecting small areas, while others work as militias for drug lords or local strongmen (Arjona, 2008). Regardless of the different definitions of paramilitarism and paramilitary groups, one thing is certain. All researchers associate them with violence and illegal activities, predominantly against civilians.

Potentially, any person could be part of those organizations, in an individual or organized capacity. Those who are organized, show characteristics of a basic structured chain of command operating outside the control of the formal “state” that uses force to achieve its political or other objectives (Sjöberg,

2007). The main difference between those who are governed by the state and those “para”, remains in the idea that those representing the state are supposed to follow the rules and care for a common good, while those “para” are “freed” from formal responsibility, apart of their own interests. To their “misfortune”, international and domestic laws do not exclude them from criminal and other forms of responsibility, which could potentially and easily be overlooked by members of paramilitary forces who, unlike the state, are not part of the international law system and various binding conventions and rules (ICRC, 2008). The tendency of a rising number of different “non-state” groups involved in conflicts around the world, makes this even more problematic (Alvarez, 2006).

However, unlike the organized armed forces of the state (where there is a regular reporting), there is a small and insufficient amount of collected data on paramilitary forces’ activities in the conflict, so a full understanding of their activities is often unclear in the general context of the conflict, which was mostly the intention. While some paramilitary groups act independently, others act under the “umbrella” of governments, but covertly.

The rationale behind this phenomenon is simple. States wish to hide their involvement in “suspicious” activities because that could significantly harm their internal and external positions (Ron, 2003). Another reason could lie in the fact that, as criminal prosecutions suggest, most of the crimes committed by the paramilitary forces are brutal and violent. Not to make hands “dirty” with this “dirty business” is another good reason for the “state” to “outsource” this “dirty work” to the non-state players (Cohen, 2015).

For the paramilitary groups, wartime could be described as a “sacred time” (Eliade, 1967), when acts of mythic heroes were revoked and were distributed to those individuals who were prepared (eagerly) to enter those “sacred times” when nation/state-building was scheduled. While the importance of the paramilitary groups is significant during the conflict, it is less important during times of peace. In particular, this is what happens when the actual role of the paramilitary is reviled and brought before the criminal prosecution (Vivod, 2009). Even then, prosecuting paramilitary groups’ crimes is more difficult than the crimes committed by “state governed” forces, since their nature is covert and with less evident traces. The fact that those traces sometimes lead to the state authorities, is an even stronger reason why they are not prosecuted in the aftermath of the conflicts. Paramilitary groups rarely make such a “mistake” and record video footage of their “acts” that are used in the criminal proceedings, like one Serbian paramilitary group did.

In the context of the breakup of former Yugoslavia, it is important to observe that during the wars of the 1990s, many, local, and non-local paramilitary groups were established. Although mostly unclear during armed conflicts, criminal prosecutions of state and non-state officials in the aftermath of those conflicts, clearly emphasized the existence of many paramilitary groups, mostly organized to support local efforts or, in a much more organized manner, efforts of the state security agencies or political parties. Observing some comprehensive data on paramilitary groups during the Yugoslav wars of the 1990s, according to United Nations, all major sides in the conflicts were supported by paramilitary groups. Out of enumerated and identified 83 paramilitary groups that operated in the territory of former Yugoslavia, 56 of them supported Serbin efforts, 13 of them Croatian, and 14 of them supported BiH government forces (UN, 1994). In the context of paramilitary violence during the last BiH armed conflict, it is necessary to make some more introductory remarks.

According to Wikström and Treiber (2009), it is important to make a distinction between expressive and instrumental violence in conflict. That difference lies in the fact that expressive violence is predominantly perpetrated with the intention to harm someone, while instrumental violence has a broader goal to achieve some wider effect lying outside the harm done. Observing the events and court judgments regarding the war crimes committed in BiH, this distinction, becomes obvious and important. Crimes committed by the paramilitary groups in last BiH violent conflict, falls in category of the most serious ones. As it will be presented in this paper, most of them were not committed in some hidden places, far from the eyes of the public, but to the contrary, were publicly “displayed”. Taking in consideration works of authors dealing with “violent display” phenomenon (Fujii, 2017), it is important to put their views into the context of these “violent events” in BiH. As suggested, “violent display” includes collective effort of staging the violence to be seen and noticed by the people, occurring in the different contexts, and involving state and non-state actors. By doing so, process of the socialization helps different actors to adopt the events and construct and strengthen social ties (Cohen, 2017). That socialization could be observed thru two processes. One, that socialize the fighters of the units and make them willing to do the things that they probably would not do (Green, 2017), and the other one, that aims socialization of the members of the society with the crimes committed “in their interest”. Additionally, some forms of “extra-lethal violence”, like humiliation of the victims, could be used to produce even more “vivid” graphic effects (Fujii, 2013). By doing so, members of the society, taking the part in “display” that eventually led to the “acceptance” of the violent acts. From persuasion, to

organized rituals and violent display, these mechanisms are well calculated for the individual members to accept the norms and rules of the community (Checkel, 2017). All of this can be well observed in analyzed cases from BiH, that can give significant contribution to better understanding of the establishing and functioning of the paramilitary groups in conflicts.

3. Paramilitary and war crimes in Bosnia and Herzegovina (1992-1995)

Looking at the numbers of those who was charged with war crimes in BiH in the period of 1992-1995, we can see that until the end of 2022, more than 900 persons have been charged for these crimes. Among those persons, more than 650 have been found guilty and more than 250 have been acquitted. Looking solely at persons that could be classified as members of paramilitary forces 49 were charged for war crimes (12 have been acquitted).

To better illustrate the war crimes committed by paramilitary forces in the last BiH armed conflict, this paper will focus on four cases. The case of defendant Milan Lukić, sentenced not only by one but two courts, the International Criminal Tribunal for the former Yugoslavia (hereinafter: "ICTY"), to life imprisonment, and the Supreme Court of Serbia, to 20 years of imprisonment, for committing some of the severest crimes committed in the last BiH armed conflict (including burning people alive), and leading not only one, but two groups of paramilitary forces (ICTY case IT-98-32/1-A and the Supreme Court of Serbia case Kž I 1807/05).

The second case is even more complex, where the defendants, although being members of paramilitary forces (and not in line or part of the "official" policy of the "state"), conducted actions and activities that perfectly fitted the widespread discriminatory policy of ethnical cleansing an ethnic group in BiH. Furthermore, they managed to make and run two places of detention classified as a prison and detention camp (Court of BiH case S1 1 K 009124 16 Krž 8). The third case, the notorious paramilitary group "Škorpioni" (eng. The Scorpions), is a case of a paramilitary group from Serbia operating in BiH during the genocide in Srebrenica (1995), made "famous" all around the world by videos they shot of themselves killing six young boys and civilians in Trnovo (BiH). Finally, probably the most "curious" case of these four is the case of the so-called "Mujahideen" forces, the foreign fighters who came to BiH at the beginning of the war to support BiH government forces. At the beginning of the conflict, these forces operated as paramilitary forces, but at some point, they were "legalized" as part of the governmental forces,

contributing to the guilty verdict of the ICTY against the Chief of Staff of the Armed Forces of BiH government, Rasim Delić (ICTY, IT-04-83, Trial Judgement, 15.09.2008).

During the proceedings before the ICTY, Milan Lukić was indicted and found guilty of persecution on political, racial, and religious grounds, murder, inhumane acts, extermination (crimes against humanity), and murder and cruel treatment (violations of the laws or customs of war) (ICTY, IT-98-32/1-PT, Second Amended Indictment, 27.02.2006, Counts 1-21). Milan Lukić, among others, led seven Bosnian Muslim men to a site on the bank of the river Drina, near Višegrad, forced them to line up along the bank, and then shot them, killing five of these men. He forced seven Bosnian Muslim men from the Varda sawmill and furniture factory in Višegrad to go to the bank of the river Drina, and then shot them repeatedly, killing all seven men. On another occasion, he brutally murdered a Bosnian Muslim woman in Potok near Višegrad, and on multiple occasions, beat Bosnian Muslim men who were held in the detention camp at the Uzamnica military barracks in Višegrad. But, two other events involving Milan Lukić, in their brutality go beyond these and are among the gravest events that happened during the armed conflict in BiH. On the first occasion, he murdered 53 Bosnian Muslim women, children, and elderly men in a house in Pionirska Street in Višegrad by barricading the victims in the house, setting the house on fire, and then firing automatic weapons at those who tried to escape through windows, killing some and injuring others.

On another occasion, he murdered approximately 70 Bosnian Muslim women, children, and elderly men in a house in the village of Bikavac, near Višegrad, by forcing the victims into the house, barricading all the exits, and throwing in several explosive devices (ICTY, IT-98-32/1-T, Trial Judgement, 20.07.2009., para. 1041-1045). All of this, Milan Lukić committed by leading the paramilitary group “Osvetnici” (eng. Vigilantes) (also mentioned in the judgments as “Beli orlovi” [eng. White Eagles]). During the proceedings before the District Court in Belgrade (and the Supreme Court of Serbia), Milan Lukić was charged and found guilty of committing war crimes against civilians. Observing these specific events, Milan Lukić, along with other members of the paramilitary group “Osvetnici”, in October 1992, in Mioče (municipality Rudo, BiH), forcibly abducted, tortured, and murdered 16 civilians. These civilians were abducted from a bus while returning from work, taken into the hotel “Vilina vlas” in Višegrad, tortured, and finally taken to the bank of river Drina and murdered (District Court in Belgrade, K.1419/04, Trial Judgement, 15.07.2005. pp. 2-3).

The second case is the one of the Court of Bosnia Herzegovina vs. Ivan Zelenika and others, where the defendants even managed to have and run two places of detention, de facto, prison and a detention camp (Court of BiH, S1 1 K 009124, Trial Judgement, 14.04.2015, p. 5). During the proceedings before the Court of Bosnia and Herzegovina, Ivan Zelenika and others were charged and found guilty of crimes against humanity. Ivan Zelenika, among others, as a member of the paramilitary group “HOS” (Hrvatske obrambene snage, eng. Croatian Defense Forces), and de facto warden of the prison in the Military Ambulance in Mostar, acted within a broad and systematic attack the HOS committed against Serb civilians in the municipalities of Mostar, Čapljina, and Stolac. He knew about the attack and that these actions constitute a part of the attack. He knowingly participated in a joint criminal enterprise, including other members of the HOS military structure, as the commander-in-chief of HOS for Herzegovina, the commander of the Dretelj camp and prison the staff, whose goal was the permanent removal of the Serb civilian population from the territory of Herzegovina, knowing the nature of that system and with the intention of implementing it. He took individual actions that represented a significant contribution to the maintenance and functioning of systematic illegal arrests of Serb civilians in the municipalities of Mostar, Čapljina, and Stolac.

Those arrested in the Mostar area were held for some time on the premises of the Military Ambulance Mostar, and finally held in prison in hangars within the "Bruno Bušić" barracks in Dretelj (near Mostar), which had all the characteristics of a camp, where captured civilians were held in inhumane and unhygienic conditions, subjected to various forms of physical, psychological, and sexual abuse, causing serious physical and mental injuries, and ill health of the victims (Court of BiH, S1 1 K 009124 16, Trial Judgement, 14.04.2015., pp. 5-7).

The third case, the killing of six young boys and civilians in Trnovo (BiH) in 1995 by the “Scorpions” paramilitary group, was internationally recognized in the decisions of the ICTY, decision of the International Court of Justice (Bosnia and Herzegovina v. Serbia and Montenegro, 2007) (hereinafter: “ICJ”), and in the decisions of the courts in Serbia. Members of the group were: Aleksandar Medić, Branislav Medić, Slobodan Medić, Pero Petrašević, and Aleksandar Vukov (acquitted), as well as other unidentified members. In the case of the ICTY IT-05-88 (Popović et al.), the court recognized the killing of young boys and civilians in Trnovo (BiH) in July 1995 (during the genocide in Srebrenica) and associated those events with the responsibility of the Army of the Republic of Srpska (hereinafter: “VRS”) (responsible for the Srebrenica

genocide as the Joint Criminal Enterprise) (Trial Judgement, 10.06.2010, para. 597-599). In addition to other evidence, the most convincing evidence is the video footage recorded by members of the “Scorpions” themselves, showing the execution they committed. The criminal prosecution of the direct executors, six members of the “Scorpions” paramilitary group, took place in Serbia (by the District Court in Belgrade and the Supreme Court of Serbia). The prosecution established and confirmed with judgments, that the commander of the unit ordered other members of the unit to shoot the prisoners in the vicinity of the combat operations, claiming they died in combat. Persons were captured, transported by truck from Trnovo in the direction of the unit's position, and disembarked from the vehicle at an arranged location, lying face down, surrounded by members of the unit with automatic rifles in their hands.

The armed members of the unit escorted the captives to burnt cottages, while Aleksandar Medić and other unidentified members of the unit helped others in shooting, guarding the prisoners so that they do not escape. Pero Petrašević, Branislav Medić, Milorad Momić, and Slobodan Davidović shot four captives by shooting them in the back, while the remaining two captives carried the bodies of the dead into the house, and were shot in the back and head lying down inside the burnt cottage. After the killing, the corpses were doused with gasoline and burned. The youngest killed victim, Azmir Alispahić, was 16 years old (District Court in Belgrade, Trial Judgement, K.V. 6/2005, 05.04.2007, pp. 2-3). In the tragedy of these events, there are two important remarks to be made.

Firstly, it is obviously more than coincidental, like in the previous two cases, that the killings of civilians occurred during the large operation of the “official” armed forces of the Republic of Srpska, resulting in the Srebrenica genocide (July 1995).

Secondly, among all members of the paramilitary unit “Scorpions”, that were tried before the respective courts and found guilty, one member of the unit was acquitted of criminal responsibility. Noteworthy, ICJ, addressing the question whether the “Scorpions” were in fact acting in complete dependence on the Serbia and Montenegro, found that the acts of genocide at Srebrenica cannot be attributed to the Serbia and Montenegro as having been committed by its organs or by persons or entities wholly dependent upon it, and thus do not on this basis entail their international responsibility (2007, par. 395).

The fourth case is the most curious one of all mentioned. At the beginning of the war, motivated to fight, many foreign fighters joined forces on all sides in BiH. The majority supported BiH government forces (the Army of Republic

of Bosnia and Herzegovina, hereinafter: “ABiH”), although they functioned as a separate armed force. The UN report on foreign forces in BiH (1994), notes that those fighters (called the Mujahideen) came to BiH mostly from the Muslim countries outside former Yugoslavia, particularly from Afghanistan. Although the Mujahideen forces were reported to be under the command of the ABiH, they frequently acted independently and, allegedly, even terrorized Muslims they came to protect, to enforce Islamic practices. Looking back at the events in BiH in those years, these forces were mostly active in the region of central BiH from June 1992 to June 1993. The most important case before the courts dealing with war crimes committed by the Mujahideen forces in BiH was the case of Rasim Delić, general and Chief of Staff of ABiH before the ICTY (IT-04-83). According to the indictment (ICTY, IT-04-83-PT, Amended Indictment, 14.07.2006, para. 15-20), Delić, as the chief of staff, had the general authority and responsibility for the ABiH. Delić oversaw planning and directing all ABiH operations and monitoring the activities of all subordinate officers and units to ensure that his orders had been implemented. As the Chief of Staff, Delić carried out military command and control of the ABiH throughout BiH. The indictment thus alleged that by holding this position, Delić was criminally responsible for the acts or omissions of his subordinates, pursuant to Article 7(3) of the Statute of the Tribunal. In this case, Rasim Delić was indicted on a number of charges in relation to activities of the Mujahideen forces, including the events in central Bosnia in June 1993 and Zavidovići in 1995. While the alleged murders of Croatian civilians in central Bosnia in 1993, in accordance with the findings of the court, were not proved with sufficient evidence (ICTY, IT-04-83-T, Trial Judgement, 15.09.2008. para. 346), the court established another important fact. After sending the representatives of the Mujahideen forces a request to formally join the ABiH, on 23 July 1993, Delić issued a written authorization to Sakib Mahmuljin (in 2022, by decision of the Court of BiH, found guilty of war crimes) (para. 175), then a member of the 3rd Corps of the ABiH, to enter into negotiations with the representatives of the “the Mujahideen unit from Zenica” regarding the following issues:

1. The inclusion of the Mujahideen unit in the [ABiH]
2. The use of the unit in joint combat against the Chetniks and the manner of its re-subordination to the 3rd Corps,

On 12 August 1993 (para. 176), the Commander of the 3rd Corps, Enver Hadžihasanović, submitted a written proposal to the Chief of Staff in view of “the need to organize and make use of foreign volunteers, as well as their written request to the 3rd Corps”. It provided the following:

1. Organize all foreign volunteers in the [ABiH] in the zone of responsibility of the 3rd Corps into a detachment [...]
2. The mobilization point for this detachment would be in the village of Mehurići [...]
3. The name of the detachment is El Mujahedin [...]
4. Logistic support will be governed by the logistics services of the 3rd Corps.
5. The request is urgent.

The next day, 13 August 1993, Rasim Delić signed an order authorizing the formation of a detachment named “El Mujahedin” in the area of responsibility of the 3rd Corps (para. 177). The Detachment was to be replenished with “foreign volunteers currently in the territory of the 3rd Corps zone of responsibility” and its formation was to be completed before 31 August 1993. The Detachment was also given a code and the military unit number “5689”. The 3rd Corps was ordered to provide logistics and submit a written report on the implementation to the Chief of Staff by 5 September 1993. Later in August 1993, an inaugural ceremony was held to commemorate the formation of the unit (para. 178). Contrary to the events of June 1993 (prior to the subordination of the Mujahideen unit to the ABiH), the ICTY investigated two more events in July and August 1995 (para. 238). On 21 July 1995, following a military operation in the “Vožuća pocket” called the “Operation Proljeće II”, the Mujahideen forces captured 12 members of VRS, including a doctor and a paramedic, and detained them in a house in Livade (area of Zavidovići, BiH) for the next two days. On two occasions on 21 July 1995, one Mujahideen brought to the detainees’ room a severed head from which fresh blood was gushing. These two severed heads belonged to Momir Mitrović and Predrag Knežević.

On another occasion, regarding the events in Kesten and the Kamenica Camp (area of Zavidovići, BiH), it was found that in the afternoon of 11 September 1995, soldiers from the 5th Battalion of the ABiH 328th Brigade, along with the Mujahideen, captured approximately 60 Bosnian Serb soldiers and civilians, including three women, in the vicinity of the village of Kesten. The captives were ordered to walk in a line toward Kesten. On the way, two captives, Milenko Stanić and Živinko Todorović were shot. The Mujahideen and ABiH soldiers then took 52 VRS soldiers to a hall in Kesten. At the hall, ABiH soldiers guarded the detainees. At a certain point, approximately 20 armed Mujahideen barged into the hall and seized the detainees from the ABiH soldiers at gunpoint. The detainees were transported on two trucks to the Kamenica Camp. There, some or all of the 52 detainees were incarcerated on

two floors of a derelict house. Circumstantial evidence, including exhumation evidence, indicated that those 52 detainees were eventually killed on 11 September 1995 and 14 December 1995. On or around 17 September 1995, a new group of ten Bosnian Serb captives arrived at the Kamenica Camp and were detained on the ground floor in the derelict house. Mujahideen unit members routinely subjected them to maltreatment amounting to serious mental and physical suffering, including beatings and electric shocks. Furthermore, Nenad Jović, who had been brought to the Kamenica Camp several days after 17 September, died either as a result of beatings or drinking bad water, or a combination of both in conjunction with the conditions of detention at the Kamenica Camp. Finally, the court found Delić responsible on grounds of superior criminal responsibility (Article 7(3) of the Statute of the Tribunal), for cruel treatment, in relation to the events in Livade and the Kamenica Camp in July and August 1995 (the violation of the laws or customs of war pursuant to Article 3 of the Statute), of his subordinates (para. 596).

4. Concluding remarks

Looking at the cases of prosecution of the paramilitary forces in the last BiH armed conflict, it seems that we can draw at least two conclusions. Firstly, it seems that in the case of BiH, there is much more military than “para” in the meaning of the word “paramilitary”. Paramilitary forces, at least in the case of war crimes in BiH, while committing war crimes in the territory that was heavily guarded, protected, and controlled by regular armed and police forces, recognized or not, but still “state” like entities, did not act and commit those crimes incidentally or for their own interests. These crimes were committed in the municipalities and communities that were controlled by, either official or unofficial state authorities, emphasizing the fact that these paramilitary forces did not commit these crimes for their own benefit. It seems more likely that these crimes were committed under direct order, supervision, or indirect consent and approval of the armed and civilian authorities. The absence of proper prevention and criminal investigation, prior, during, and after the events, significantly contributed to the thesis that these were directly or indirectly coordinated activities between “para” and “non-para” armed forces. Looking at the severe nature of the crimes committed, it looks likely that the dirty work was outsourced to paramilitary forces and those who were crazy enough to commit them without thinking that, maybe, one day, they will be held responsible for their actions.

Secondly, the most severe crimes committed in the last BiH armed conflict were in many cases connected with the actions of the paramilitary forces. On the surface, it seems hard to find a direct connection with the military structures or direct orders from civilian authorities in those municipalities, however it is evident that paramilitaries were operating in conjunction with other military and police structures dealing mostly with the ethnic cleansing of civilians as well as other war crimes. The fact that they were never prevented or sanctioned prior to or after these acts (even in the case of burning people alive in Višegrad), gives us sufficient material to believe that the acts of those individuals could not be treated as acts of some small uncontrolled group of criminals or some people who disobeyed the orders in affected territories. However, it seems that they did what the authorities did not want to do themselves and that these crimes were tolerated and approved directly or indirectly, but certainly not punished, and were even probably intentionally overlooked. Two prominent tragic cases, one in the town of Višegrad with Milan Lukić's paramilitary force called "Osvetnici", and the case of Dretelj detention camp operated by members of HOS, additionally emphasize the fact that these activities were not some small-scale activities conducted somewhere on the outskirts of large-scale operations of ethnic cleansing and war crimes. They were conducted along with predominant policies implemented in various areas in BiH and in correlation with official organizations, not sporadic nor devoid of meaning. The case of Mujahideen forces and Chief of Staff of ABiH, confirms that in some cases the operations and actions of paramilitary groups were even legalized by incorporating them into official organizations of the state's armed forces, without holding those groups accountable for war crimes, established years later, in unwanted criminal procedures. Looking at analyzed cases, it is obvious that these crimes were not some isolated incidents, but well planned and organized activities, with foreseen ending. However, taking in consideration all crimes mentioned, it is necessary to draw conclusion that gravity of all crimes was not the same, nor the legal qualification in accordance with that, so the approach to the activities of the paramilitary groups cannot be generalized, but the individual one, taking in consideration all the relevant circumstances of their existence.

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