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## First war crimes trial in Republika Srpska

Trial Chamber of the District Court of Banja Luka (Republika Srpska, BiH), with Dusko Bojovic presiding, rendered an acquitting verdict on February 11, 2005 in the case of 11 police officers, Bosnian Serbs, accused for illegal detention of Catholic Church priest Tomislav Matanovic and his parents in the town of Prijedor, during the armed conflict in BiH (Article 142 of the Criminal Law of the Republika Srpska). Judge Bojovic explained the verdict by the lack of evidence, in accordance with Article 350, paragraph 3 of the Criminal Law of RS). He stated that the court proceedings did not establish that the accused had actually committed the crime they were accused of and that the principal defendant, Ranko Jakovljevic, never ordered the illegal detention of Matanovic. The presiding judge Bojovic also concluded that this case was about standard police protection, ordered by the commanding officer of the Public Security Center (CJB) in Prijedor, the late Simo Drljaca.

The trial started on May 17, 2004 and 23 main hearing sessions were held altogether, during which, in addition to the accused, 57 witnesses were heard, 34 witnesses for the Prosecution and 23 witnesses for the Defense. All of the accused pleaded not guilty to the charge that they had committed a criminal act and stated instead that they were only performing their duty, that they were sorry about the fate of the Matanovic family, but that they took no part in that crime. Besides, a decision of the Human Rights Chamber of BiH in the case “Josip, Bozana, and Tomislav Matanovic vs Republika Srpska”, from 1996 was reviewed, which, among other things, contains urgent pleas of the Banja Luka Catholic Church Diocese to release the priest Matanovic addressed to the institutions of the Republika Srpska in November of 1995, and several times in 1996. This trial was the only war crimes trial in Republika Srpska.

Having monitored the trial, the Humanitarian Law Center (Serbia and Montenegro), Center for Peace, Non-violence and Human Rights, Osijek (Croatia), Research and Documentation Center, Sarajevo (BiH), have concluded that the first war crimes trial in Republika Srpska did not bring justice to the Matanovic family. The Trial Chamber based its acquitting decision on the lack of evidence, which speaks more in favor of an inadequate investigation and the passive role of the Prosecutor’s Office and the Trial Chamber in collecting evidence. Beside that, it is difficult to accept the explanation of the Trial Chamber that many important evidence had been lost in the course of the destruction of documents of CJB Prijedor, allegedly committed by the then commanding officer of the CJB, the late Simo Drljaca. Since the investigation into the murder of the Matanovic family begun during the trial, the question really is why that court process was not consolidated with the indictment for illegal detention, which would prove that the Republika Srpska judiciary is really doing its best to establish the truth in connection with the murder of the Matanovic family.

Although it was a war crimes indictment, only in the detailed indictment did the Prosecution state that the accused were in violation of Article 147 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, in relation to Article 146 (1) of the same Convention. Article 147 states that illegal detention constitutes a grave breach of the Convention, while in Article 146 (1) it is said that the high parties to the Convention are obliged to undertake each and every available judiciary measure in order to determine criminal sanctions against the persons who committed or gave order to commit any of the grave breaches listed in Article 147. The Office of the Prosecutor did not invoke Articles 41, 42 and 43 which in a more precise manner describe situations when state authorities can order forced detention of protected persons. It is here defined that the forced detention for protected persons can only be ordered if that is in the best interest of the Power who has the custody of these persons, or if the protected person asks for it. Also, each protected person has a right to have each decision made about his or her forced detention reconsidered by a court or other competent administrative body. In the Matanovic case, none of these requirements were met.

In terms of establishing responsibility for this criminal act, it is relevant to mention that in the judgment reached in the Tadic case the Appeals Chamber of the ICTY case provides that in order to determine the existence of illegal detention, it is necessary that 1) there is an ongoing international armed conflict, 2) the victims are civilians, i.e. protected persons, and 3) there is a connection between the detention and the conflict itself. Aside from that, in the Celebici case, the Appeals Chamber also provides that the essence of this criminal act only exists when a person committing the act of detention also has mandate to end that detention. However, in the Matanovic case, the Trial Chamber established that none of the accused had such mandate, although the principal defendant, Ranko Jakovljevic occupied a position superior to the positions of the rest of the defendants.