



Ratko Mladić acquitted of genocide

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Fokus

The long awaited Mladić judgment concludes the work of the ICTY. The Chamber convicted and acquitted Mr Mladić of the counts of genocide emphasizing some of the main difficulties when dealing with the crime of genocide in practice.

Sources:

ICTY Judgment,
<http://www.icty.org/case/mladic/4>

The Guardian,
<https://www.theguardian.com/world/2017/nov/22/ratko-mladic-convicted-of-genocide-and-war-crimes-at-un-tribunal>

More than 20 years after conflict in the former Yugoslavia and after 530 days of trial in which more than 600 witnesses were heard, the International Criminal Tribunal for the Former Yugoslavia („ICTY“) found the former chief of staff of the Bosnian Serb forces, General Ratko Mladić, guilty of genocide, crimes against humanity and war crimes. However, the court acquitted him of one of the eleven charges in total – genocide in several municipalities in Bosnia and Herzegovina. According to the Judges, Mr Mladić is liable for some of the atrocities that occurred in the former Yugoslavia in the early 1990ies and the large-scale killings of Bosnian Muslims in Srebrenica in July 1995. The legal requirements that constitute the crime of genocide are particularly high. Hence, it is not surprising that the court found Mr Mladić not guilty of genocide in the first count and that the ruling is mostly in line with the judgment in the Karadžić case.

Genocide as to the wording of Article 4(2)(a) of the ICTY Statute requires as *actus reus* the killing of members of a specific national, ethnical, racial or religious group. The killings have to amount to murder. The *mens rea* requires the intent to destroy the relevant group in whole or in part. The ICTY already in earlier judgments came across the legal and factual issues especially with regard to the specific intent. Being an inner condition, the intent cannot always be directly proven in trial. Instead it may be inferred from the surrounding facts and circumstances. These include the general context,

the perpetration of other culpable acts systematically directed against the same group, the scale of the atrocities committed, the systematic targeting of victims on account of their membership in a particular group, proof of the mental state with respect to the commission of the underlying acts, the repetition of destructive and discriminatory acts or the existence of a plan or policy (see *i.a.* Karadžić Rule 98 bis Appeal Judgment, 5 July 2013). In the present case, the court found that from the large scale of killings in several of the municipalities and from the intensity of the attacks the only reasonable inference is that the perpetrators acted with the specific intent. Judge Orie in his dissenting opinion, however, correctly stresses that the mentioned inference is not the only one. Given the particularities of the attacks, the perpetrators may have had the intent to clear the municipal areas from the presence of the Bosnian Muslims. It cannot be held, however, that they necessarily possessed the intent to extinguish the group as such. Regardless, the chamber denied the first count of genocide in the end. It relies on a criterion developed by the ICTY. The wording “intent to destroy the group in whole or in part” could in principle include the killing of a single person under the condition that the specific intent is directed towards the extinction of the group. In order not to equalize murder and genocide, the ICTY stated on other occasions that the intent has to focus on a substantial part of the group (see *i.a.* Krstić Appeal Judgment, 19 April 2004). Substantiality requires the relevant part of the group to be significant enough to have an impact on the group as a whole. It includes the relative numerical size of the targeted part, the prominence of the part of the group within the larger whole, and the area of the perpetrators’ activity and control. In the several municipalities, the group of Bosnian Muslims was numerically not significant enough.

In the case of Srebrenica, the court emphasized the differences. From all the people living in Srebrenica, approximately 73 per cent were Muslims, even though the population of Bosnian Muslims in Srebrenica formed less than two per cent of the Bosnian Muslims in Bosnia-Herzegovina as a whole. The decisive factor was, moreover, the characteristic of the region. The enclave of Srebrenica was of significant strategic importance to the Bosnian-Serbs because despite the proximity to Serbia and constant claims, the Bosnian Muslims made it difficult for the Serbs to take over “their” land. Furthermore, as a designated UN safe area, the municipality became a refuge to Bosnian Muslims during the conflict.

Although Ratko Mladić has been sentenced to life imprisonment, the reactions by the people in the region have been expectedly diverse. Ultimately, the judgment is only a little piece of comfort for the victims as it does not make any of the incidents undone.

Verantwortung

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