

ANALYSIS: Tribunal Judges Restrict Racak Evidence

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Prosecutors concerned that the full story of the alleged Racak killings will not come out in court.

The prosecution in the Milosevic trial said last week that it would not be able to provide a comprehensive account of the Racak case because it wouldn't have sufficient time to present its case.

In any normal circumstances, the alleged killing by Serb forces of 45 ethnic Albanians on January 15, 1999 would have merited a separate trial lasting at least a year, but the Racak case is being heard as part of the Kosovo indictment.

The prosecution, headed by Geoffrey Nice, said there was no shortage of witness testimony to back its claims, but a trial deadline on the presentation of evidence meant that it could not give a full account of the alleged killings in the Kosovo Albanian village.

The prosecution's investigation into the Racak case examined some 62 witness statements. At first, it counted on 30 witnesses giving evidence at The Hague. The number was then cut to 17, then nine, and finally to five. Of these, only one will testify "in vivo", while the others will give written statements. They will only come to the tribunal to be cross-examined by the defendant.

The Racak case is important not just for the indictment against Milosevic. It is vital also in understanding the events that followed January 15, 1999.

Chronologically, it was the first case of alleged mass murder presented in the indictment and it was the only crime attributed to Milosevic that occurred before March 24, 1999 when NATO launched its air-strikes.

The discovery of 45 bodies in and around the village triggered the sequence of events that led ultimately to the alliance's intervention. But Milosevic and many others in Serbia still maintain Racak was "faked" to justify the latter.

The official Serbian version of events holds that the Racak victims were members of the Kosovo Liberation, KLA, killed in combat in a "legitimate anti-terrorist action" by the Serbian police.

The other interpretation comes from the then head of the Kosovo Verification Mission, KVM, ambassador William Walker. On January 16, 1999, after visiting Racak, he told a press conference a "massacre of civilians" had taken place. Because of this the Yugoslav authorities declared him *persona non grata* and ordered him to leave the country within 48 hours. Walker refused and stayed in the country until the KVM withdrew just prior to the air-strikes.

Louise Arbour, then chief prosecutor of the tribunal, tried to reach the scene with a team of investigators on January 18, 1999 but was stopped from entering Yugoslavia at the Macedonian border. Under international pressure, Serbia finally allowed in a European Union forensic team, led by Finnish pathologists, who carried out an autopsy on the bodies from Racak with Yugoslav and Belarus forensic experts.

Their findings only detail the causes, not manner, of death, and were interpreted in different ways, adding to the confusion over what really happened. The head of the Finnish forensic team, Dr Helen Ranta, made the uncertainty worse by saying Racak "was not a massacre" but failing to explain how all the victims were killed.

The Milosevic trial was a chance to finally solve the Racak case after

three-and-a-half years. However, the prosecution has now stated it will not be able to accomplish this.

Still, something was partially clarified last week, when it was claimed

that KLA members were present in Racak on January 15, 1999 and that eight to 10 were among the 45 victims.

This was revealed by the first witness, Canadian General Joseph Omer, Michel Maisonneuve, a regional KVM head early in 1999. Based on reports he got from his "verifiers" - who monitored events in Racak on the day of the alleged killings - and from what he himself saw when he reached the village that afternoon, Maisonneuve concluded it was an "operation against a relatively weak local defence force, in which heavy and random fire was used against civilians".

The force used was so disproportionate, he added, that it could

not be seen as a "legitimate military action".

Maisonneuve said Yugoslav army tanks and anti-aircraft guns on surrounding hills provided "support" for a police unit of about 100 to move into the village and clear the area, going from one house to another.

The general received confirmation of his observations the next day from a Yugoslav officer. When Maisonneuve made an official protest on behalf KVM, saying the operation violated the Milosevic-Holbrooke agreement of October 1998, the officer told him Racak was the work of the police, in which the army had "only provided artillery support".

In his cross-examination, Milosevic used the fact that the general's report to KVM headquarters on January 16, 1999 stated that eight or nine KLA men were among the dead to claim that Walker knew KLA fighters were among the victims when he issued the statement on "a massacre of civilians".

But Judge May did not let Milosevic question Maisonneuve on other persons' statements and opinions, telling him he would be able to ask Walker himself when he testifies in mid-June.

Introducing the testimonies of eye-witnesses and survivors from Racak, the prosecutor stressed that the Albanian witnesses "hesitate to speak about the presence and activities of the KLA". In the Racak case, the investigators tried to solve this problem by talking to the village mayor, who then urged the witnesses to tell all they knew, including KLA activities.

In their statements to the investigators, the witnesses spoke of the KLA presence in the village, of how the residents helped them dig the trenches, and about the KLA members who were killed on January 15, 1999. But the first witness from Racak, Drita Emini, 24, who watched from her cellar as the police separated the men and took them into the hills, where their bodies were found the next day, had trouble repeating to Milosevic what she earlier told the investigators.

Perhaps it was panic, triggered by a face-to-face meeting with the man that Kosovo Albanians see as the demon responsible for all their suffering. Whatever the reason, she refused to confirm some of the assertions made in her written statement, on how her father and brother had dug trenches and how the KLA soldiers staved off previous Serbian attacks.

One of the unresolved mysteries of Racak concerns whether the 23 men whose bodies were found in a ditch above the village were killed on the spot, or brought to the place where "the verifiers" found them the next day.

Milosevic tried to interpret Maisonneuve's words about the pattern in which the bodies were laid out on the ground as proof that they had been "arranged". He asked the witness if he could rule out the possibility that they were brought from elsewhere.

The general said the thought occurred to him when he first saw the bodies in the ditch but he had later concluded that this "group of elderly gentlemen", as he called them, "were going uphill in a single file" when they were shot.

One of the latter who survived the killing confirmed as much. In his statement, Bilal Avdiu, 55, said the men were woken at dawn that day by explosions and gunfire and that together with his son he had taken shelter in a stable and then in a house on the outskirts of village, near the forest, where a number of villagers had gathered. The police then arrived and, after separating one group of men from the others, ordered them to start walking uphill.

Avdiu said while they were crossing a ditch, they came across another group of policemen who opened fire. Avdiu was at the back of the line and although a bullet went through his jacket, he was unhurt. After falling down and playing dead for several hours, he escaped into the forest where he found another three survivors. One of the three is expected to testify next week.

Although he helped unravel the mystery over the site of the killing, Avdiu's testimony fuelled another mystery, which has circulated since January 1999, over whether some of the bodies were mutilated. The published findings of the autopsy say only one body was mutilated, probably by an animal. Avdiu claimed, however, he saw five or six such bodies and that the heart of one, whom he named as Bajrami Ragip, had been ripped out. Milosevic accused the witness of inventing things but the witness remained insistent.

It remains to be seen which segments of the Racak case will be covered by the testimonies of the remaining three eye-witnesses or survivors next week. But it is clear that only part of the story will be told in the Milosevic trial.

Yet the Racak case is "better off" than many other Kosovo killing sites listed in the indictment against Milosevic. Nice doubted the prosecution would present evidence for more than half of the alleged atrocities in the indictment, because of the court's time limits (July 26, 2002).

He said his team needed at least two more months to conclude the Kosovo case. But it is unlikely to be

granted that, given the judges' record on allocating the prosecution time, which has earned them the nickname, the "stop-watch" judges.

However, there is one consolation in all this. The unfinished stories of the Milosevic trial yet may be finished in the trials of his accomplices, Nikola Sainovic, Dragoljub Ojdanic and Milan Milutinovic, as well in the trials of other participants in the "joint criminal enterprise" in Kosovo who have yet to be indicted.

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