

Bosnian Croat Sentences Disputed

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Both sides seek changes to hefty prison terms facing two Bosnia Croat leaders, but while the defence wants a reduction, prosecutors ask for longer sentences.

For three long days this week, the tribunal heard arguments in the appeals hearing of Bosnian Croats Dario Kordic and Mario Cerkez, convicted in 2001 of grave breaches of the Geneva Conventions, violations of the laws or customs of war, and crimes against humanity.

The charges against both men stem from the conflict between Bosnian Croats and Muslims in central Bosnia's Lasva Valley in the early Nineties.

Kordic had been sentenced to 25 years and Cerkez to 15 for their roles in persecutions, murder, inhumane acts, and destruction of property, among other things.

This week, on appeal, the defendants' lawyers sought to have their clients' prison terms slashed. The prosecution, meanwhile, asked for the sentences to be increased.

It was a complex series of days in a complicated case—one which the prosecution compared to an impressionist painting. Viewed up close, the picture is hard to see, the prosecutor said, but "when you stand back a bit, the image starts to emerge".

Kordic's lawyer argued the reverse, saying, "when you step back, you see more dots". There is "no cohesive pattern" to the case against his client, he said.

Kordic, who was the highest-ranking Bosnian Croat political leader, and Cerkez, commander of the Vitez brigade under the Croatian Defence Council, HVO, both pleaded not guilty in 1997, soon after they voluntarily surrendered to the tribunal.

Their trial—which ran for a full 240 days—involved 241 witnesses and 4,365 exhibits.

On appeal, the issues involved seemed no simpler.

This week, Kordic's defence team told the tribunal that the trial court's judgment was full of inconsistent factual findings and faulty legal conclusions. It was not a "reasoned decision", his lawyer insisted.

Moreover, there was "no proof beyond a reasonable doubt in Kordic's involvement" in the crimes, the lawyer said, arguing there was no evidence he planned crimes, ordered crimes, instigated crimes, or had the required intent to commit crimes.

He disputed the claims made by a key prosecution witness known only as "AT" who, in one of the trial's closed sessions, testified that Kordic was present at a meeting at the headquarters of HVO military commander Tihomir Blaskic on April 15, 1993, where the plan to attack Bosnian Muslims was developed.

Blaskic, who was initially indicted along with Kordic and Cerkez, has been convicted of grave breaches of the Geneva Conventions, violations of the laws or customs of war, and crimes against humanity.

Kordic's lawyer insisted that unlike Blaskic, his client had no military authority and no power to control HVO forces.

Furthermore, he told the tribunal, "There is no evidence Kordic intended to cause Muslims harm...because they were Muslims."

But the prosecution painted a different picture.

Placing Kordic "squarely in the middle" of the persecution carried out by the HVO, prosecution lawyers insisted that he bore responsibility because of his "very significant participation in a common criminal plan" to "subjugate or remove the Bosnian Muslims of this region".

The prosecution insisted that Kordic was responsible for all crimes that were either intended by the criminal plan, or could have reasonably been foreseen in it.

"He played his part as surely as the men who fired the guns," argued the prosecutor.

Calling Kordic's personal motive for the persecutions "irrelevant", the prosecutor insisted that "even if the only thing Kordic had against Muslims were that they were on the territory he wanted for [the self-declared Croat republic of] Herceg-Bosna, that is enough".

The prosecution argued that in meting out a 25-year sentence, the trial chamber did not take into account the gravity of the crimes of which Kordic was found guilty, and that it did not give due weight to Kordic's position of senior authority or maintain consistency with sentences imposed for similar crimes.

In particular, comparisons were drawn with the 45-year prison term that Blaskic received for similar, though not identical, crimes. Blaskic is appealing against his sentence.

Cerkez's appeal took a slightly different track, with lawyers arguing that he did not receive a fair trial because they were not given enough preparation time, and that the court's factual findings did not meet the criteria of "beyond a reasonable doubt". Furthermore, they argued that said the judges erroneously found Cerkez guilty of certain crimes — including grave breaches of the Geneva Conventions — that only apply in times of international war, which the defence felt was not the case in central Bosnia at that time.

Much attention was given to the testimony of witness "AT," who placed Cerkez, too, at the fateful 1993 meeting in Blaskic's headquarters.

Prosecutors argued that Cerkez's participation in the joint criminal plan could be inferred from his presence at this meeting.

The defence lawyer insisted that no evidence had been presented to show that Cerkez was present at the meeting in question, that any criminal plan was decided upon at any such meeting, or that, even if Cerkez was at the meeting and a joint criminal enterprise was developed there, that Cerkez shared the intent of

the plan's other participants.

The statement by "AT" was hearsay, Cerkez's lawyer insisted, and, because it was made by a "convicted murderer and liar", it was not at all credible. Media reports identify "AT" as a former member of the HVO military police who is accused in another case before the tribunal.

When given a chance to present their own case, prosecutors asked the judges to overturn the trial court's ruling in two areas. First, they said, Cerkez should not have been acquitted of crimes committed in the Ahmici district. And second, they argued, there was "manifest inadequacy" in the 15-year sentence given Cerkez's prominent role in the campaign of persecution.

Before the week's hearings concluded, presiding judge Wolfgang Schomburg asked both defendants if they would like to address the tribunal.

Kordic declined the opportunity, saying simply, "thank you for showing such kindness to me".

But Cerkez approached the witness chair and, standing before it, delivered a several-minute long statement.

"I accept all responsibility for everything that happened in my area of responsibility," he told the court. "I am ashamed and hurt by the fact that the HVO is responsible for crimes."

But, he said, he felt consolation from the fact that the crimes committed were outside his region of control—and he insisted that he could not have prevented them "as a soldier or a human being".

After expressing "deep and sincere remorse and regret for every victim" – a response that he acknowledged was inadequate – Cerkez said he hoped his words would nonetheless be accepted by the families and friends of those affected by the conflict.

Before adjourning, the judges acknowledged that it might take them some time to reach a decision in this very complex case.

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