

United Nations  
Nations UniesInternational Criminal Tribunal  
for the former Yugoslavia  
Tribunal Pénal International  
pour l'ex-Yougoslavie

“PILICA FARM” (IT-96-22)

# DRAŽEN ERDEMOVIĆ


**DRAŽEN ERDEMOVIĆ**
*Convicted of murder*

Soldier in the 10th Sabotage Detachment of the Bosnian Serb Army (VRS), operating in the region of Zvornik in the Zvornik Municipality in north-eastern Bosnia and Herzegovina

- Sentenced to 5 years' imprisonment

*Crimes convicted of (examples):*
**Murder** (violations of the laws or customs of war)

- Dražen Erdemović participated, as part of a firing squad, in the shooting and killing of hundreds of unarmed Bosnian Muslim men from Srebrenica, a town located in eastern Bosnia and Herzegovina, about fifteen kilometres from the Serbian border, at the nearby Pilica collective farm, on or about 16 July 1995.
- He personally killed about 70 people.

<b>Born</b>	25 November 1971 in Tuzla, Bosnia and Herzegovina
<b>Indictment</b>	29 May 1996
<b>Arrested</b>	2 March 1996, by the authorities of the Federal Republic of Yugoslavia (FRY)
<b>Transferred to ICTY</b>	30 March 1996
<b>Initial appearance/guilty plea</b>	31 May 1996, pleaded guilty to murder as a crime against humanity
<b>Trial Chamber sentencing judgement</b>	29 November 1996, sentenced to 10 years' imprisonment
<b>Appeals Chamber judgement</b>	7 October 1997, case remitted to new Trial Chamber to give the accused the opportunity to re-plead
<b>Re-plea before Trial Chamber</b>	14 January 1998, pleaded guilty to murder as a violation of the laws or customs of war
<b>Second sentencing judgement</b>	5 March 1998, sentenced to 5 years' imprisonment
<b>Sentence served</b>	Transferred to Norway on 26 August 1998 to serve the remainder of his sentence; credit was given for time served since 28 March 1996; early release granted on 13 August 1999

## STATISTICS

As the plea agreement was reached before the beginning of trial, no trial was necessary.

TRIAL CHAMBER SENTENCING JUDGEMENT	
<i>29 November 1996</i>	
Trial Chamber I	Judge Claude Jorda (presiding), Judge Elizabeth Odio Benito, Judge Fouad Riad
Counsel for the Prosecution	Eric Ostberg, Mark Harmon
Counsel for the Defence	Jovan Babić

APPEALS	
Appeals Chamber	Judge Antonio Cassese (presiding), Judge Gabrielle Kirk McDonald, Judge Haopei Li, Judge Ninian Stephen, Judge Lal Chand Vohrah
Counsel for the Prosecution	Grant Niemann, Payam Akhavan
Counsel for the Defence	Jovan Babić
Judgement	7 October 1997

SECOND SENTENCING JUDGEMENT	
<i>5 March 1998</i>	
Trial Chamber II <i>ter</i>	Judge Florence Ndepele Mwachande Mumba (presiding), Judge Mohamed Shahabuddeen, Judge Wang Tieya
Counsel for the Prosecution	Grant Niemann, Peter McCloskey
Counsel for the Defence	Jovan Babić, Nikola Kostić

RELATED CASES	
<i>by geographical area</i>	
BLAGOJEVIĆ & JOKIĆ (IT-02-60) "SREBRENICA"	
KARADŽIĆ & MLADIĆ (IT-95-5/18) "BOSNIA AND HERZEGOVINA" & "SREBRENICA"	
KRSTIĆ (IT-98-33) "SREBRENICA-DRINA CORPS"	
MILOŠEVIĆ (IT-02-54) "KOSOVO, CROATIA & BOSNIA"	
NIKOLIĆ MOMIR (IT-02-60/1) "SREBRENICA"	
OBRENOVIĆ (IT-02-60/2) "SREBRENICA"	
ORIĆ (IT-03-68)	
PERIŠIĆ (IT-04-81)	
POPOVIĆ <i>et al.</i> (IT-05-88) "SREBRENICA"	
STANIŠIĆ & SIMATOVIĆ (IT-03-69)	
TOLIMIR (IT-05-88/2) "SREBRENICA"	
TRBIĆ (IT-05-88/1) "SREBRENICA"	

## INDICTMENT AND CHARGES

The initial indictment against Dražen Erdemović was confirmed on 29 May 1996. According to the indictment, after the take-over of the UN safe area of Srebrenica (see map) by the Bosnian Serb Army (VRS) in July 1995, bus loads of Bosnian Muslim civilian men from Srebrenica, between the ages of approximately 17 and 60 years, were transferred to, amongst other places, a collective farm near Pilica in the Zvornik Municipality. On arrival at the farm, the Bosnian Muslim men were removed from each bus in groups of about 10 and escorted by members of the 10th Sabotage Detachment of the VRS to a field adjacent to the farm buildings, where they were summarily executed.

As a soldier in the 10th Sabotage Detachment, Dražen Erdemović was charged with shooting, killing and participating with other members of his unit and soldiers from another brigade in the shooting and killing of hundreds of unarmed Bosnian Muslim men on or about 16 July 1995.

Dražen Erdemović was charged on the basis of individual criminal responsibility (Article 7(1) of the Statute) with:

- Murder (crime against humanity, Article 5), or alternatively:
- Murder (violations of the laws or customs of war, Article 3).

## GUILTY PLEA

At his initial appearance hearing on 31 May 1996, Dražen Erdemović pleaded guilty to the count of murder as a crime against humanity adding that he would have been killed if he had refused to participate in the murders. The Trial Chamber accepted the accused's guilty plea and dismissed the alternative count of a violation of the laws or customs of war. A sentencing hearing was held on 19 and 20 November 1996.

## STATEMENT OF DRAŽEN ERDEMOVIĆ

"I wish to say that I feel sorry for all the victims, not only for the ones who were killed then at that farm, I feel sorry for all the victims in the former Bosnia and Herzegovina regardless of their nationality.

I have lost many very good friends of all nationalities only because of that war, and I am convinced that all of them, all of my friends, were not in favour of a war. I am convinced of that. But simply they had no other choice. This war came and there was no way out. The same happened to me. Because of my case, because of everything that happened, I of my own will, without being either arrested and interrogated or put under pressure, admitted even before I was arrested in the Federal Republic of Yugoslavia, I admitted to what I did to this journalist and I told her at that time that I wanted to go to the International Tribunal, that I wanted to help the International Tribunal understand what happened to ordinary people like myself in Yugoslavia... in the Federal Republic of Yugoslavia I admitted to what I did before the authorities, judicial authorities, and the authorities of the Ministry of the Interior, like I did here.

/My lawyer/ when he first arrived here, he told me, "Dražen, can you change your mind, your decision? I do not know what can happen. I do not know what will happen." I told him because of those victims, because of my consciousness, because of my life, because of my child and my wife, I cannot change what I said to this journalist and what I said in Novi Sad, because of the peace of my mind, my soul, my honesty, because of the victims and war and because of everything. Although I knew that my family, my parents, my brother, my sister, would have problems because of that, I did not want to change it. Because of everything that happened I feel terribly sorry, but I could not do anything. When I could do something, I did it." (Dražen Erdemović, sentencing hearing, 20 November 1996)

## TRIAL CHAMBER SENTENCING JUDGEMENT

On 6 July 1995, the Srebrenica enclave was the target of attacks by the Bosnian Serb Army. At the time, the enclave was recognised by the UN Security Council resolution 819 as a safe area which could not be the target of any armed offensive or other hostile act. The assault continued until 11 July 1995, the date when Srebrenica fell to Bosnian Serb forces.

The fall of the enclave triggered the flight of thousands of Muslim civilians. Some sought refuge in the UN base at Potočari; others, about 15,000 people, fled across the woods towards Tuzla, an area under the

control of the Bosnian government.

After having been separated from the women and children by members of the Bosnian Serb police and army, an undetermined number of Muslim men who had sought refuge in Potočari were transported by bus out of the enclave to various sites where they were to be executed. Many of the men who had fled towards Tuzla either surrendered or were arrested by the VRS or police. Some were summarily executed while others were grouped together and killed later at various locations.

The first location in question is the Branjevo Military-run Farm, around 20 kilometres north of Zvornik in eastern Bosnia where, according to the statement of the accused at the hearing, about 1,200 Muslims were executed by the soldiers of the unit of which Dražen Erdemović was a member. He admitted to having participated in the massacres. Exhumations performed revealed 153 bodies, approximately half of which had their hands tied behind their back. Identity papers were also found on the victims, who were Bosnian Muslims from the Srebrenica region. On-site observations also permitted the discovery of "some clothing, shoes, human debris, in other words, things indicating that a mass grave might be located nearby". The existence of the mass grave was attested to by aerial photographs taken on the date of the events which were presented to the Trial Chamber during the 19 November 1996 hearing.

The second location is the Pilica public building in the Zvornik municipality where, according to the statement of the accused at the aforementioned hearing, about 500 Muslims were executed by members of the 10th Sabotage Detachment. Members of the Office of the Prosecutor visited the building, and assessed that massacres may have occurred there. Furthermore, photographs showing bullet marks, traces of blood, human remains and bits of hair were submitted to the Trial Chamber during the hearing.

On the morning of 16 July 1995, Dražen Erdemović and seven members of the 10th Sabotage Detachment of the VRS were ordered to leave their base at Vlasenica and go to the Pilica farm, north-west of Zvornik. When they arrived there, they were informed by their superiors that buses from Srebrenica carrying Bosnian Muslim civilians between 17 and 60 years of age, who had surrendered to the members of the Bosnian Serb police or army, would be arriving throughout the day.

Starting at 10 o'clock in the morning, members of the sabotage detachment made the male civilians in the first buses, get off in groups of 10. The men were escorted to a field adjacent to the farm buildings where they were lined up with their backs to the firing squad. The members of the 10th Sabotage Detachment, including Dražen Erdemović, who composed the firing squad, then killed them. Dražen Erdemović carried out the work with an automatic weapon. The executions continued until about 3 o'clock in the afternoon.

The accused estimated that there were about 20 buses in all, each carrying approximately 60 men and boys. He believes that he personally killed about 70 people.

The Trial Chamber stated that there was no valid reason for discussing the charge of crime against humanity since Dražen Erdemović pleaded guilty to this count.

The Trial Chamber considered that, in view of the intrinsic gravity of his crime and the individual circumstances which surrounded its commission, it was appropriate to grant Dražen Erdemović the benefit of mitigating circumstances based on his age, his subordinate level, his remorse, his desire to surrender to the ICTY, his guilty plea, his cooperation with the Office of the Prosecutor and the fact that he did not constitute a danger anymore. However the Judges deemed that they were unable to accept the plea of extreme necessity and considered it a mitigating circumstance because the Defence produced no testimony, evaluation or any other elements to corroborate what the accused said.

On 29 November 1996, the Trial Chamber rendered its judgement, sentencing Dražen Erdemović to 10 years' imprisonment.

## APPEALS CHAMBER JUDGEMENT

On 14 April 1997, counsel for Dražen Erdemović lodged an appeal against the sentencing judgement of 29 November 1996 asking the Appeals Chamber to revise the sentencing judgement, (a) by pronouncing the accused Dražen Erdemović guilty as charged, but excusing him from serving the sentence on the grounds that the offences were committed under duress and without the possibility of another moral choice, that is, in extreme necessity, and on the grounds that he was not accountable for his acts at the time of the offence, nor was the offence premeditated; or, in the alternative, (b) taking into consideration all the

reasons stated in the appeal and the mitigating circumstances stated in the sentencing judgement, and consequently significantly reducing the sentence.

The Appeals Chamber rendered its judgement on 7 October 1997. It unanimously rejected the appellant's application that the Appeals Chamber should acquit him. The majority rejected the application that the Appeals Chamber should revise the sentence, found that duress would not afford a complete defence to a soldier charged with a crime against humanity and/or a war crime involving the killing of innocent human beings. It held, however, that Dražen Erdemović's plea at his initial appearance had not been informed and thus remitted the case to a new Trial Chamber in order that the accused be given an opportunity to re-plead.

## RE-PLEA BEFORE A TRIAL CHAMBER

On 8 January 1998, both sides filed a confidential "Joint Motion for Consideration of Plea Agreement between the Office of the Prosecutor and Dražen Erdemović". The confidentiality was lifted on 26 August 2003 by a decision of the Trial Chamber in the case of *Prosecutor v. Slobodan Milošević*.

On 14 January 1998, a hearing was held in which Dražen Erdemović changed his plea to one of guilty with respect to the count of murder as a violation of the laws or customs of war. The Prosecutor withdrew the alternative count of murder as a crime against humanity.

## SECOND SENTENCING JUDGEMENT

The Trial Chamber rendered its judgement on 5 March 1998, sentencing Dražen Erdemović to 5 years' imprisonment. The Office of the Prosecutor and the Defence had jointly recommended that the Trial Chamber impose a sentence of 7 years' imprisonment.

In its judgement, the Trial Chamber accepted as facts the version of events which the parties submitted, that is that the facts alleged in the indictment and the version of events described by Dražen Erdemović in his previous testimonies were statements of fact. The Trial Chamber also accepted that Dražen Erdemović committed the offences under threat of death. There was a real risk that he would have been killed had he disobeyed the order: he had to kill or be killed.

The Chamber considered the magnitude of the crime and the scale of the accused's role in it as aggravating circumstances. However, the Chamber considered it appropriate to grant Dražen Erdemović the benefit of mitigating circumstances based on his age, his family background, his character, his admission of guilt, his remorse, his cooperation with the Office of the Prosecutor and duress.

In addition to the aggravating and mitigating circumstances, the sentence determined by the Trial Chamber took into account, on the one hand, the circumstances of the killings, looking in particular at the degree of suffering to which the victims of the massacre were subjected, the means used by Dražen Erdemović to kill and his attitude at this time. On the other hand, the Trial Chamber took into consideration that he truthfully confessed his involvement in the massacre at a time when no authority was seeking to prosecute him in connection therewith, knowing that he would most probably face prosecution as a result.

Judge Mohamed Shahabuddeen appended a Separate Opinion to the sentencing judgement in which he discussed certain propositions of law.

## CONCLUSION OF PROCEEDINGS

Neither party lodged an appeal against the second sentencing judgement. On 2 July 1998, the Deputy Registrar certified that the trial and appellate proceedings were "definitely concluded". On 26 August 1998, Dražen Erdemović was transferred to Norway to serve his sentence. Credit was given for time served since 28 March 1996. On 13 August 1999, he was granted early release.