

Prosecutor v. Refik Saric

Delivered on 25 November 1994 by the 3rd chamber of the Eastern Division of the Danish High Court (Judge Bent Okten, Judge Birte Lynæs, Judge Øesterborg and the jury).

During this case tried by a jury, the public prosecutor for Sjælland, by indictment of 19 October 1994 and supplementary indictment of 4 November 1993, as amended during the hearing, under Section 8, paragraph 5, of the Penal Code, cf Articles 129 and 130 and Articles 146 and 147 respectively of the 3rd and 4th Geneva Conventions of 1949 relating to the protection of victims of war, charges Refik Saric

1.

of causing grievous bodily harm of such a grave nature and with such serious consequences as to constitute aggravated circumstances as defined by Section 246, cf Section 245 of the Penal Code, in that, on 5 August 1993, in the Croatian prison camp of Dretelj in Bosnia, together with a number of Croatian military police and another prison guard named Senad Besic ("Trebinjac", alias "Bunda"), he beat and manhandled Emir Repak for some 45 minutes by dint of punches, kicks and blows from a wooden truncheon and stamped on him while he was down, which ill-treatment resulted in the death of Emir Repak.

2.

of causing grievous bodily harm of such a grave nature and with such serious consequences as to constitute aggravated circumstances as defined by Section 246, cf Section 245, of the Penal Code, in that, at the beginning of August 1993, in the Croatian prison camp of Dretelj in Bosnia, together with Croatian military police among others, he manhandled Omar Kohnic several times, punching and kicking him, and subsequently again dealt Omar Kohnic blows to the head and body for some 20 to 30 minutes, which ill-treatment together resulted in Omar Kohnic's death the same evening or night.

3.

of causing grievous bodily harm of such a grave nature as to constitute aggravated circumstances as defined by Section 246, cf Section 245 of the Penal Code, in that, in July and August 1993, in the Croatian prison camp of Dretelj, Bosnia, on a number of occasions punched and kicked Safet Gudic; the accused also a number of times beat Safet Gudic and kicked him in the face and on the body.

4.

of causing grievous bodily harm of such a grave nature as to constitute aggravated circumstances as defined by Section 246, cf Section 245 of the Penal Code, in that, in July and August 1993, in the Croatian prison camp of Dretelj, Bosnia, he twice dealt Omer Suta blows to the body and face.

5.

of causing grievous bodily harm of such a grave nature and as to constitute aggravated circumstances as defined by Section 246, cf Section 245 of the Penal Code in that, in July and August 1993, in the Croatian prison camp of Dretelj, Bosnia, together with many Croatian military police, he dealt a

number of prisoners of war, including Jasmin Smailohodzic, all of whom were ordered to lie down on their backs, a series of blows with sticks, rifles, chains and metal pipes.

6.

of causing grievous bodily harm of such a grave nature as to constitute aggravated circumstances as defined by Section 246, cf Section 245 of the Penal Code in that, in July and August 1993, in the Croatian prison camp of Dretelj, Bosnia, together with Croatian military police among others, he repeatedly beat Izet Zujo with chains, metal pipes and sticks, the accused also on a number of occasions jumping and stamping on Izet Zujo as he lay on the ground.

7.

of causing grievous bodily harm of such a grave nature as to constitute aggravated circumstances as defined by Section 246, cf Section 245 of the Penal Code in that, in July and August 1993, in the Croatian prison camp of Dretelj, Bosnia, he on several occasions struck Senad Salcin with a wooden truncheon, the accused also, on another occasion, in order to extract a statement from Senad Salcin, beating him repeatedly with a wooden truncheon about the body, as a result of which Senad Salcin passed out.

8.

of causing grievous bodily harm of such a grave nature as to constitute aggravated circumstances as defined by Section 246, cf Section 245 of the Penal Code in that, on 15 July 1993, in the Croatian prison camp of Dretelj, he 3 or 4 times banged Senad Salcin's head against a pane of reinforced glass, as a result of which Salcin suffered a gash on the temple.

9.

of causing grievous bodily harm of such a grave nature as to constitute aggravated circumstances as defined by Section 246, cf Section 245 of the Penal Code in that, in July 1993, in the Croatian prison camp of Dretelj, Bosnia, he dealt Hamdo Husic a number of blows to the back and shoulders with a wooden stick.

10.

of causing grievous bodily harm of such a grave nature as to constitute aggravated circumstances as defined by Section 246, cf Section 245 of the Penal Code in that, in July 1993, in the Croatian prison camp of Dretelj, Bosnia, on an asphalted road, he ordered Hamdo Husic to undress and lie down on the hot asphalt for 4 to 5 minutes, as a result of which Hamdo Husic suffered burns to the back.

11.

of causing grievous bodily harm of such a grave nature as to constitute aggravated circumstances as defined by Section 246, cf Section 245 of the Penal Code in that, in July and August 1993, in the Croatian prison camp of Dretelj, Bosnia, he struck Edin Selimic several times with a wooden stick and kicked him, in the course of which the accused on one occasion kicked out 6 of Edin Selimic's front teeth as he lay on the ground.

12.

of causing grievous bodily harm of such a grave nature as to constitute aggravated circumstances as defined by Section 246, cf Section 245 of the Penal Code in that, in July or August 1993, in the Croatian prison camp of Dretelj, Bosnia, he on one occasion kicked Zukan Balavac in the back, thus knocking him down, and also struck Zukan Balavac a number of blows to the body with a wooden stick.

13.

of causing grievous bodily harm of such a grave nature as to constitute aggravated circumstances as defined by Section 246, cf Section 245 of the Penal Code in that, in July and August 1993, in the Croatian prison camp of Dretelj, Bosnia, together with Croatian military police, he repeatedly punched Avdo Kalender and beat him with rifle butts etc, the accused also ordering Avdo Kalender to lie on the ground on some barbed wire, where he was dealt a series of blows all over his body.

14.

of causing grievous bodily harm of such a grave nature as to constitute aggravated circumstances as defined by Section 246, cf Section 245 of the Penal Code in that, in August 1993, in the Croatian prison camp of Dretelj, Bosnia, he dealt Atif Bektas many blows to the head with a leather belt, thus injuring his eye and impairing his sight.

15.

of causing grievous bodily harm of such a grave nature as to constitute aggravated circumstances as defined by Section 245, cf Section 245 of the Penal Code in that, in July 1993, in the Croatian prison camp of Dretelj, Bosnia, he twice kicked Damir Boskailo in the kidneys, and also subsequently struck Damir Boskailo on the arms, the body and the head with a large stick.

16.

of causing grievous bodily harm of such a grave nature as to constitute aggravated circumstances as defined by Section 246, cf Section 245 of the Penal Code in that, in July 1993, in the Croatian prison camp of Dretelj, Bosnia, he twice kicked Zahir Nuhanovic on the body.

17.

of causing grievous bodily harm of such a grave nature as to constitute aggravated circumstances as defined by Section 246, cf Section 245 of the Penal Code in that, in August 1993, in the Croatian prison camp of Dretelj, Bosnia, he dealt Enver Satara a number of blows to the body with a 60-70 centimetre-long wooden stick and also kicked him in the back.

18.

of causing grievous bodily harm of such a grave nature as to constitute aggravated circumstances as defined by Section 246, cf Section 245 of the Penal Code in that, in July 1993, in the Croatian prison camp of Dretelj, Bosnia, he struck Ahmed Kapic with a wooden stick, and also kicked him in the mouth, thus causing him to lose two teeth, and also kicked him a number of kicks in the stomach and struck him with a wooden stick in the area of the kidneys, as a result of which Ahmed Kapic lost consciousness.

19.

of causing grievous bodily harm of such a grave nature as to constitute aggravated circumstances as defined by Section 246, cf Section 245 of the Penal Code in that, in August 1993, in the Croatian prison camp of Dretelj, Bosnia, he kicked Izet Nuhanovic 3 or 4 times in the ribs and two or three days later struck Izet Nuhanovic a number of blows on the back with a thin cane.

20.

of causing grievous bodily harm of such a grave nature as to constitute aggravated circumstances as defined by Section 246, cf Section 245 of the Penal Code in that, at the beginning of August 1993, in the Croatian prison camp of Dretelj, Bosnia, he twice struck Alija Kunjaric in the back with a wooden stick.

21.

of causing grievous bodily harm of such a grave nature as to constitute aggravated circumstances as defined by Section 246, cf Section 245 of the Penal Code in that, at the end of July 1993, in the Croatian prison camp of Dretelj, Bosnia, he dealt Suad Zekic two blows to the back with a wooden stick about half a metre long, and also, in mid-August, punched Suad Zekic in the face, knocking him down.

22.

of causing grievous bodily harm of such a grave nature as to constitute aggravated circumstances as defined by Section 246, cf Section 245 of the Penal Code in that, in July 1993, in the Croatian prison camp of Dretelj, Bosnia, he twice kicked Esad Islamovic hard on the right side of the body, thus knocking him over and crushing or breaking two of his ribs.

23.

of causing grievous bodily harm of such a grave nature as to constitute aggravated circumstances as defined by Section 246, cf Section 245 of the Penal Code in that, in July 1993, in the Croatian prison camp of Dretelj, Bosnia, he struck Esad Zuhric two blows on the right shoulder with a metal-sheathed wooden truncheon, thus rendering Esad Zuhric unconscious.

24.

of causing grievous bodily harm of such a grave nature as to constitute aggravated circumstances as defined by Section 246, cf Section 245 of the Penal Code in that, in July and August 1993, in the Croatian prison camp of Dretelj, Bosnia, he many times dealt Mujo Razic heavy blows to the kidneys with a large wooden stick.

25.

of causing grievous bodily harm of such a grave nature as to constitute aggravated circumstances as defined by Section 246, cf Section 245 of the Penal Code in that, in August 1993, in the Croatian prison camp of Dretelj, Bosnia, he struck Avdo Bajric a number of times with a wooden truncheon, in the kidneys among other places.

It was submitted that, under Section 73 of the Penal Code, the accused should be placed in a psychiatric hospital until the sentence delivered could be served.

It was also submitted that the sentence should be increased under Section 88, paragraph 1, subparagraph 2, of the Penal Code.

It was further submitted that the accused should be extradited from the country never to return.

The accused declared that he was not guilty of any of the charges.

The accused has undergone a psychiatric examination at the Ministry of Justice's Medico-Legal Clinic, from which there is a statement dated 17 May 1994.

On the basis of the psychiatric report and the other evidence in the case, the Medico-Legal Council, in a statement dated 29 June 1994, stated that "it cannot be said with certainty that, prior to his arrival in Denmark, Refic Saric displayed any signs of mental disturbance or illness.

He is now described as mentally disturbed, his illness characterised by delusions, megalomania, hallucinations and a belief in magical powers. He gives the impression of being "carried away", with rapid speech and a tendency to lose himself in detail. He will only permit emotional contact on his own terms. Diagnostically speaking, he is most likely suffering from acute polymorphous psychosis (previously known as reactive psychosis), triggered off by mental strain.

It is therefore unlikely that he was mentally deranged at the time of the alleged charges. On the other hand, he subsequently developed a mental condition of not merely passing duration. He is of average intelligence. There is no indication that, at the time of the charges, he was in a state of pathological intoxication.

As a result of his present condition and the linguistic and cultural circumstances, taken in conjunction with the psychiatric observations, the Medico-Legal Council finds that it is impossible, with reasonable certainty, to comment on his habitual personality traits. It cannot therefore be determined with certainty whether he is covered by Section 69, paragraph 1, of the Penal Code. On the other hand, he is now in all probability in a condition corresponding to that referred to in Section 16 of the Penal Code. Under Section 73, paragraph 1, of the Penal Code, the Medico-Legal Council shall, if he is found guilty, recommend, as the most suitable measure, that he be placed in a mental hospital until such time as any sentence that may be handed down could be served" .

Since, in the main hearing, the prosecution withdrew its indictment on charges 5, 13, 15, 21 and 24, the accused shall be acquitted of those charges.

As the jury found the accused innocent on counts 4, 9, 12, 16, 17 and 20 under the main and subsidiary questions, the accused is found not guilty of the charges on those counts.

The jury found the accused guilty on the main question on charges 1, 2 and 14 relating to violations of Section 246, cf 245, of the Penal Code.

The jury found the accused not guilty on the principal question of the violation of Section 246, cf Section 245 of the Penal Code, on counts 3, 6, 7, 8, 10, 11, 18, 19, 22, 23 and 25, but found him guilty on the subsidiary question of the contravention of Section 245 of the Penal Code on these counts.

The jury were in agreement on an additional question relating to the possibility of increasing the sentence under Section 88, paragraph 1, subparagraph 2, of the Penal Code.

The Court has based its decision on the findings of the Jury.

The accused shall therefore be sentenced under Section 246, cf Section 245, paragraph 1, cf Articles 129 and 130 and Articles 146 and 147 respectively of the 3rd and 4th Geneva Convention of 12 August 1949 relating to the protection of victims of war.

The sentence shall be 8 years' imprisonment.

In accordance with the statement from the Medico-Legal Council, the accused shall be placed in a mental hospital until the sentence can be served under Section 73, cf Section 16 of the Penal Code.

The accused shall be permanently extradited from Denmark in accordance with Section 10 of the Act on the delivery of temporary residence permits to certain persons from the former Yugoslavia, cf Section 32, paragraph 1, of the Aliens Act.

The accused has been held in custody since 16 February 1994.

The Court hereby rules that:

Refik Saric shall be sentenced to 8 years' imprisonment and permanently extradited from Denmark.

The accused shall be placed in a mental hospital until the sentence can be served.

The accused shall pay the legal costs.