

# Prosecutor vs. Dražen Erdemović

## Getting started

### Original case disclaimer

This case was argued in front of the International Criminal Tribunal for the Former Yugoslavia in The Hague, Netherlands between May and November 1996. For the purpose of MICC, the indictment has been simplified to one count, and the information provided, whilst being taken from court transcripts, is highly selective, shortened and simplified. Therefore, the original outcome of the case is not relevant for the proceedings at MICC, and we recommend that you do not extend your research beyond the tasks outlined below.

### Preparation tasks

Before attending the MICC conference, you should get familiar with the case materials. For that purpose, we have prepared a few tasks we think you should work on before coming to MICC. It's also a good idea to take up contact with other members of your team and prepare preliminary answers. You do not need to have perfect answers: There will be trainers with whom you can discuss your questions and prepare for the trials. But a good background knowledge and some ideas in advance will make the work easier at the conference.

### Getting to know the case

This task should help you to get an overview of both the background of the case, and of the subject matter: International criminal law. Do not worry if you do not understand every detail – please take a note of questions you might have, so we can discuss them at the conference.

- Read all the case materials!
- Read the Preamble and the Table of Contents of Articles 1-33 of the Rome Statute<sup>1</sup> (<https://goo.gl/n0ZxK1>)
- Establish a timeline of Erdemović's life. What happened when? Can you put the different events in order, and understand the different armies he has served in?
- If time allows, you can research further background information on the massacre in Srebrenica and the war in Yugoslavia. Do you understand what happened in Srebrenica?

### "Material Element": Crime against Humanity of Murder

- Read Art. 7 RS<sup>2</sup>. Do you understand all the words?
- Try to establish what elements need to be fulfilled to call an action a "crime against humanity".

### "Mental Element"

- Read Art. 30 RS. Do you understand all the words?
- Is it a valid defence that Mr. Erdemović did not want to kill the civilians?

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<sup>1</sup> Lawyers love abbreviations. So from now on, we will shorten "Article 7 paragraph (1) subparagraph (a) number (ii) of the Rome Statute" to Art. 7 (1) (a) (ii) RS – and all other mentions of the Rome Statute accordingly.

<sup>2</sup> Please always make sure you read the entire article, even if only one case is relevant.

### “Reasons to exclude responsibility”

- Read Art. 33 RS. It is formulated a bit confusingly, so try to understand what it is telling you.
- Do you think it is applicable as a defence for Mr. Erdemović that he received the order to shoot?
- Read Art. 31 RS. Do you understand all the words?
- Now focus on Art. 31 (1) (d) RS. Mr. Erdemović testifies that he was forced to shoot people if he wanted to stay alive. Are you able to define what “duress” means? Try to find and highlight the parts of the case material where he talks about the circumstances and why he was forced to do it.
- Do you think the article is a way to justify his actions? Give reasons for your decision!

