



Humanitarian Law Center



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REPORT ON WAR CRIMES TRIALS IN SERBIA DURING 2020



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Abbreviations

BIH	Bosnia and Herzegovina
ECtHR	European Court of Human Rights
EU	European Union
European Convention	European Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe
HLC	Humanitarian Law Center
JNA	Yugoslav People's Army
CC FRY	Criminal Code of the Federal Republic of Yugoslavia
IHL	International humanitarian law
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the former Yugoslavia
MUP	Ministry of the Interior of the Republic of Serbia
KLA	Kosovo Liberation Army
PJP	Special police units
ORPP	Office of the Republic Public Prosecutor
TO	Territorial Defence
OWCP	Office of the War Crimes Prosecutor
VJ	Yugoslav Army
VRS	Army of Republika Srpska
VS	Serbian Armed Forces
VTO	Military-Territorial Detachment
Law on Prosecution of War Crimes	Law on Organisation and Jurisdiction of State Authorities in Prosecuting War Crimes
CPC	Criminal Procedure Code



Introduction and methodology

This is the ninth report of the Humanitarian Law Center (HLC) on war crimes trials in Serbia.

The HLC has monitored all war crimes trials conducted in the territory of Serbia in 2020, namely a total of 21 cases conducted before the War Crimes Departments of the Higher Court and/or the Court of Appeal in Belgrade. The Report provides a brief overview of the proceedings and of the HLC's basic findings in respect of cases which are of public relevance. A large number of the war crimes cases covered by this Report have been going on for a number of years now, so that previous HLC annual trial reports are also relevant for a full grasp of the course of the proceedings and the pertinent HLC findings.

The report focuses on the work of the Office of the War Crimes Prosecutor (OWCP) and of the courts in parts of the judicial proceedings open to the public, primarily by analysing the indictments and the judgements in each particular case. An analysis of the work of other bodies involved in the prosecution of war crimes – the War Crimes Investigation Service of the Serbian Ministry of the Interior (MUP), the Witness Protection Unit and others, cannot not be undertaken in respect of the individual cases, as no information on their activities is publicly available.

In the reporting period, the War Crimes Department of the Higher Court in Belgrade handed down first-instance judgments in five cases.¹ The War Crimes Department of the Court of Appeal in Belgrade handed down three judgments and two rulings on appeals lodged against judgments of the Higher Court in Belgrade.² In the reporting period, the OWCP issued seven indictments against seven persons.³

Since it began working in 2003 until the end of 2020, the OWCP brought indictments in 83 war crimes cases, indicting a total of 205 persons and encompassing 2,491 victims who lost their lives.⁴ Three of the cases were joined with cases instituted earlier, and final rulings were rendered in 52 out of 80 cases; one case was terminated on account of the death of the defendant; in three cases the indictments were dismissed because the defendants had been found unfit to stand trial; and 24 cases are ongoing. In cases which have been concluded by a final decision, a total of 78 defendants have been convicted and 54 acquitted. Also, indictments were dismissed against 20 out of the total number of the indictees, either on account of their incapacity to stand trial, or because proceedings were terminated on account of their deaths. In the finally concluded cases, the indictments listed a total of 957 victims who had lost their lives, whereas the final judgments list 726 victims who had perished. In war crimes proceedings up until the end of 2020, a total of 57 first-instance judgments were rendered, 22 of which have been quashed.

1 The *Bosanski Petrovac – Gaj, Dobož – Kožuhe, Ključ – Velagići, Hrasnica and Bogdanovci* Cases.

2 Judgments were rendered in the *Bratunac, Brčko and Lovas* Cases, and Rulings in the *Ključ – Režovići and Bosanska Krupa II* Cases.

3 OWCP Letter PL.no. 24/20 of 31 December 2020.

4 At the time of drafting the report, the HLC had no data on the number of victims in five indictments filed during 2020, as it is still not publicly available since the proceedings are not in the main hearing stage.



Preceding the analyses of the cases in the Report is an overview of general findings on war crimes trials in 2020, and of important socio-political developments which have had some bearing on war crimes trials.

General findings and the socio-political context

Inefficient work of the War Crimes Prosecutor's Office

Over the reporting period the negative trend has continued of a declining number of indictments being issued against fewer suspects, and with the indictments mainly a result of cases having been transferred from Bosnia and Herzegovina, rather than of investigations conducted by the OWCP. According to the OWCP, in 2020, seven indictments were filed against seven persons⁵, five of which were from transferred cases. ⁶ Account being taken of the fact that the OWCP has a prosecutor and nine deputy prosecutors, issuance of just two indictments resulting from its own investigation over the course of a whole year can be considered very inefficient indeed. Namely, the indictments in the transferred cases came from Bosnia and Herzegovina, where prosecutorial work leading up to the indictment had been fully completed – the investigation had been conducted, the indictment issued and confirmed by the competent court. The case was transferred to Serbia solely because the trial could not be conducted before a competent BIH court owing to the inaccessibility of the defendants, because they are in the territory of Serbia.

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As well, according to the OWCP, the two indictments “concern complex criminal offences related to events involving a large number of victims, and at the time of the commission of the criminal offences the accused were high-ranking military personnel.”⁷ The HLC maintains that the OWCP should address itself to prosecuting senior military and police personnel as a matter of priority, but that it should primarily result from OWCP's own efforts rather than from regional cooperation between Serbia and Bosnia and Herzegovina. The two cases referred to, which the OWCP says are indictments against high-ranking individuals, are cases transferred to it by the BIH judiciary.

Attesting to the OWCP's disinclination to initiating proceedings against high-ranking military personnel on its own is also the fact that as far back as November 2016, the HLC filed a criminal complaint for a war crime committed in the village of Lovas against Dušan Lončar, the former Commander of the 2nd Proletarian Guards Mechanised Brigade of the Yugoslav People's Army.⁸ In July 2019, the HLC filed another criminal complaint against Dušan Lončar for a war crime against the

5 Indictments: KTO 1/20 against Osman Osmanović, KTO 2/20 against Nezir Mehmetaj, KTO 3/20 against Višnja Aćimović, KTO 4/20 against Novak Stjepanović, KTO 5/20 against Rajko Kušić, KTO 6/20 against Dragan Dopuđa and KTO 7/20 against Drago Samardžija.

6 OWCP Letter PI.no 24/20 of 31 December 2020.

7 *Ibid.*

8 See HLC press release of 3 November 2016, “Criminal Complaint for the 1991 Crime in Lovas”, available at <http://www.hlc-rdc.org/?p=32894>, accessed on 17 February 2017.



civilian population committed in the village of Bogdanovci in the first half of November 1991, but the OWCP has not acted upon it either. The HLC has described these criminal complaints in detail in its *Report on War Crimes Trials in Serbia in 2019*.⁹

In March 2018, the HLC filed a criminal complaint against Svetozar Andrić, the former commander of the VRS Birač Brigade¹⁰ for crimes committed in the zone of responsibility of his brigade, but the OWCP has not acted upon this complaint either. In the meanwhile, Svetozar Andrić has become a people's deputy in the National Assembly of Serbia and a member of the Committee on Kosovo and Metohija, representing the Serbian Patriotic Alliance SPAS.¹¹

Inappropriately long proceedings for war crimes

The inordinately long duration of judicial proceedings in complex cases, a characteristic of the prosecution of war crimes in Serbia, continued in the reporting period as well.

Lengthy proceedings are most frequently the result of inadequately prepared indictments, poor trial planning, and unsatisfactory first instance judgments, causing them to be overturned and remanded for retrials,¹² but also of delays owing to the failure of defendants and witnesses to appear. In 2020, the challenging epidemiological situation brought about by the Covid-19 epidemic caused quite a few scheduled trials to be postponed. The most conspicuous example of unreasonably and unduly long proceedings has been the *Ovčara* case, where the case ended in a final ruling 14 years after the first indictment had been filed.¹³ The situation is similar with the *Lovas* case, in which the indictment was issued in 2007¹⁴, and which ended in a final decision only in November 2020, as well as with the *Čuška* case, where the indictment was filed in 2010 and which is now in the main hearing stage at retrial, with the final ruling a long way off.¹⁵

The consequences of long-lasting proceedings are far-reaching and grave. Year after year the defendants are dying and the witnesses are losing confidence in Serbia's judiciary and refuse to testify in retrials. Thus in the *Lovas* case, five defendants died in the course of the proceedings, and one

9 Humanitarian Law Center (Belgrade, HLC 2020) Report on War Crimes Trials in Serbia in 2019, pp. 103-112, available at http://www.hlc-rdc.org/wp-content/uploads/2020/03/Izvestaj_o_sudjenjima_za_ratne_zlocine_u_2019_godini.pdf, accessed on 1 February 2021.

10 HLC press release of 2 March 2018, *Criminal Complaint against Svetozar Andrić*, available at <https://www.hlc-rdc.org/?p=34855>, accessed on 2 February 2021.

11 List of MPs of the National Assembly of Serbia, http://www.parlament.gov.rs/%D0%A1%D0%92%D0%95%D0%A2%D0%9E%D0%97%D0%90%D0%A0_%D0%90%D0%9D%D0%94%D0%A0%D0%98%D0%8B.1141.245.html accessed on 11 February 2021.

12 First instance judgments have been quashed and the cases remanded for retrial in the following cases: *Škorpioni*, *Ovčara*, *Suva Reka*, *the Gnjilane Group*, *Skočić*, *Čuška*, *Lovas*.

13 HLC press release of 24 January 2018, *The Ovčara Case: The 14-year Long Wait for Justice*, available at <http://www.hlc-rdc.org/?p=34727>, accessed on 14 January 2021.

14 OWCP Indictment in the *Lovas* Case, KTRZ 7/07 of 28 November 2007, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2016-05/o_2007_11_28_lat.pdf, accessed on 22 January 2019.

15 OWCP Indictment in the *Čuška* Case, KTRZ 4/10 of 10 September 2010, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2016-05/o_2010_09_10_lat.pdf, accessed on 22 January 2019.



became unfit to stand trial, while witnesses declined to take the stand again. Apart from that, the lengthy duration of proceedings and/or their repetition, sends a negative and discouraging message to the injured parties – that justice will be hardly attainable before Serbia’s institutions. Finally, the procrastination of proceedings demotivates the public, disinterested as it already is, and deters it from following the trials, with the result being that media outlets are not even dispatching their reporters to cover war crimes trials.¹⁶

Adverse impact of the COVID-19 epidemic on war crimes trials in 2020

Due to the COVID-19 epidemic, a state of emergency was declared in the Republic of Serbia on 15 March 2020,¹⁷ and was lifted on 6 May 2020.¹⁸ No war crimes trials were held in that period, and the same were resumed only on 28 May 2020. After the state of emergency was lifted, trials were conducted with special protective measures applied in accordance with the regulations on special measures and the extraordinary situation caused by the COVID-19 epidemic. However, hearings were repeatedly postponed in that period also, because witnesses failed to appear before the court, particularly those from the region, due to epidemic-related issues (e.g. increased risk of a possible infection with negative consequences in view of poor individual health, or that of household members, or due to their current health condition presenting COVID-19-like symptoms) or the required isolation measures on returning from Serbia. Trials would also be postponed because some of the defendants and their defence counsel claimed having COVID-19-like symptoms or being under mandatory isolation measures.

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This epidemiological situation has also had a particularly adverse effect on the attendance of victims’ family members at war crimes trials. After the state of emergency had been lifted, the number of persons in the public gallery was limited for security reasons, even though many members of victims’ families, among whom many elderly and with health issues, had themselves abandoned the idea of travelling, for health reasons. Following the exacerbation of the epidemiological situation in November 2020, war crimes trials were barred to the public. A special court permit was required to follow them either in the courtroom or the press room.

National Strategy on the Rights of Victims and Witnesses of Crime for the 2020 – 2025 Period

On 30 July 2020, the government of the Republic of Serbia adopted the National Strategy on the Rights of Victims and Witnesses of Crime for the 2020 – 2025 Period.¹⁹ The objective of the Strategy

16 War Crimes Trials are not covered by national frequency broadcasters; as a rule only reporters of BIRN and the daily *Danas* can be seen in the courtrooms.

17 Decision declaring the state of emergency (Official Gazette of the Republic of Serbia 29/2020)

18 Decision of the National Assembly of Serbia lifting the state of emergency (Official Gazette of the Republic of Serbia 65/2020).

19 National Strategy on the Rights of Victims and Witnesses of Crime for the 2020 – 2025 Period, available at <https://www.mpravde.gov.rs/sr/tekst/30567/nacionalna-strategija-za-ostvarivanje-prava-zrtava-i-svedoka-krivicnih-dela-u-republici-srbiji-za-period-2020-2025-godine-19082020.php>, accessed on 3 February 2021.



is enhancement of the rights of victims and witnesses in the criminal law system of the Republic of Serbia in accordance with EU standards set out in Directive (2012)029.²⁰ An Action Plan regulating the manner of implementation of the Strategy in the 2020-2025 period was adopted along with the Strategy as its component part.

The adoption of this Strategy has paved the strategic way for promoting the rights of victims of all crimes in the Republic of Serbia in keeping with highest European standards. As part of the implementation of the Action Plan attending the Strategy, countrywide victim and witness support services shall be established within all higher courts in Serbia. Additionally, substantive and procedural criminal law shall be amended to ensure alignment with European standards in this field.

As well, the National Network of Victim and Witness Support Services shall make it possible, through cooperation with focal points at public prosecutors' offices and law enforcement agencies, for all victims to be provided timely support in the most opportune manner and when most needed. Under the new strategic framework, compensation to victims will be awarded more efficiently, namely by associated actions for damages being decided as part of the criminal proceedings. Additionally, the training of holders of judicial offices, of police officers and legal counsel working with victims shall be delivered in a new and more systematic manner.

The HLC is of the opinion that the adoption of the National Strategy on the Rights of Victims and Witnesses of Crime for the 2020 – 2025 marks a step forward towards improving the position of victims and witnesses in Serbia and that victims of war crimes shall be provided more comprehensive support and assistance in the future. Account being taken of the fact that in 2019 the “Guidelines for the Improvement of Jurisprudence in Proceedings for the Compensation of Damage to Victims of Serious Criminal Offences in Criminal Proceedings”²¹ were adopted, it is to be expected that victims of war crimes will finally be able to exercise their right to damages already during the criminal proceedings, which has never been the case so far. Namely, courts in Serbia have never to date addressed associated actions for damages of victims of war crimes within the criminal proceedings, but always referred them to civil action to exercise their right to compensation. The court has taken such decisions even in the case of victims of sexual violence in war who testified in the criminal proceedings under protection measures. In practice, that means that such victims would have to choose between remaining under identity protection measures granted them during the criminal proceedings or renouncing them in order to litigate their case as claimants. Victims are thus placed before the choice of remaining under the protective measure of hidden identity or exercising their right to damages in civil action.

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20 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA/PUP (SL L 315 of 14 November 2012).

21 “Guidelines for the Improvement of Jurisprudence in Proceedings for the Compensation of Damage to Victims of Serious Criminal Offences in Criminal Proceedings”, available at <https://www.podrskazrtvama.rs/lat/media/domaci/Smernice.pdf>, accessed on 5 February 2021.



Low visibility and lack of public awareness of war crimes trials

Keeping the public informed about war crimes trials and the judicially established facts about war crimes is a key prerequisite for promoting an objective perception of the past and a societal memory of committed crimes. That means that it is the duty of the state to assure the right of the public to know what had happened in the recent past and who the principal protagonists were. UN principles to combat impunity, “every people has the inalienable right to know the truth about past crimes and about the circumstances that led to the perpetration of those crimes [...]”²²

Recent surveys of public opinion in Serbia, carried out in September 2020 for the HLC by a team of the Demostat Research and Publishing Centre, present citizens’ attitudes on war crimes trials before domestic courts, but also on other issues, including an assessment of the performance of Serbia’s institutions in conducting war crimes trials, and show how familiar citizens generally are with the wars and crimes of the 1990’s.²³ The survey was actually a follow-up to the one published in the summer of 2017. This survey, like the previous, 2017 one, was carried out through personal “face to face”, interviews, with the same number of respondents, i.e. 1,200; for comparison purposes with the 2017 survey findings, most of the questions were the same as in the previous survey.

The key finding of the survey is that there are no notable differences in the perception of the events that unfolded in the 1990s, with minor oscillations having been observed in some aspects of the perception of those events and of the variety of ways they have been sanctioned over the past two or three decades, including the current state of affairs.

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The results of the survey demonstrated a high level of respondents’ ignorance of the wars of the 1990’s, of the crimes, and of trials of persons accused of war crimes, and an upward trend. Namely, the 2020 survey showed that 63% of the respondents are for the most part poorly informed. A comparison of the 2020 survey findings and those from the one published in 2017 shows a mild increase of general unawareness, namely from 59% in 2017 to 63% in 2020.

It was observed that unawareness is considerably higher among the younger population. It is almost as if it were a rule: unawareness declines and awareness increases with age. In the younger generation (18-24) the ratio of predominantly uninformed to the predominantly informed is 3:1, and in the generation between 45 and 64 years of age, that ratio is practically 1:1 (50% to 45%). These findings are indicative for assessing the needs for education and for imparting systematic information about the events of the 1990’s and about their disastrous consequences.

22 Updated set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102.Add.1), 8 February 2005.

23 Public opinion survey “Serbian Citizens’ Awareness of the Wars of the 90’s, War Crimes and War Crimes Trials”, published in September 2020.



Only 4% of the respondents keep abreast of war crimes trials regularly; 42% occasionally, and 54% of the respondents never. In that context, among those who keep themselves informed, the dominant source of information is television, accounting for 31%, followed by the internet, accounting for 10%, and lastly by newspapers and radio, accounting for 5%. These findings are similar to the 2017 ones.

A comparison of the replies from 2017 and those from 2020 to the question whether it was necessary to transmit war crimes trials on televisions having a national frequency, indicates a downward tendency in respect of this need.

A very worrisome result of the survey is that only 10% of the respondents had knowledge of an event concerning which trials have been or are being conducted before domestic courts. Only half of the respondents (52%) are of the opinion that war crimes trials should continue to be held before domestic courts in Serbia, and three fourths of the respondents (74%) are unable to name any domestic judicial body responsible for war crimes trials.

The performance of institutions having jurisdiction to conduct war crimes trials has been assessed as unsatisfactory, with 42% respondents having assessed it as prevalently poor.

The level of confidence in the judicial institutions of the Republic of Serbia is quite low, ranging from 1 (none) to 5 (full confidence); the average confidence level is 2.67 ("a weak grade 3").

Half of the respondents are of the view that the contribution of trials to revealing the truth about the war is nil or small, whereas the other half believe that contribution to be either only partial, fair, or big.

13

Only 24 % of the respondents agreed with the statement "(Is it right for) *Serbia to compensate civilians for the damage caused them by members of the army and the police during the armed conflicts?*", this being an accurate indicator of the reception, assessment and ethical comprehension of what had happened in the 1990's in the territory of the former SFRY.

A comparison of the 2017 and 2020 replies to the question whether war crimes trials need to be transmitted on national frequency televisions, indicates a downward tendency in respect of this need. In fact, the possibility for Serbian citizens to be informed about war crimes trials via television is very small. Notwithstanding the legal framework which provides for that possibility²⁴, ever since the commencement of war crimes trials in Serbia the public has not had the opportunity of seeing on television a single testimony of the victims, perpetrators or witnesses participating in war crimes trials, nor, for that matter, the handing down of a single judgment. On the other hand, video footage showing war crimes trials is regularly shown by the media of other states in the region.²⁵

24 Law on Organisation and Jurisdiction of State Authorities in Prosecuting War Crimes (Official Gazette of the Republic of Serbia nos. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011- state law and 6/2015), Article 16a.

25 See, e.g., pronouncement of judgment on Veselin Vlahović; video footage in TV1 newsreel on the pronouncement of judgment on Aleksandar Cvetković; video footage in TV1 newsreel on pleas entered in the *Naser Orić* case; video footage of Al Jazeera Balkans, pronouncement of judgment on Tomislav Merčep before the County Court in Zagreb, accessed on 2 February 2021.



Public promotion of convicted war criminals

The trend of publicly promoting convicted war criminals continued in 2020.

The promotion of Vojislav Šešelj's three-volume book titled "There was no Genocide in Srebrenica" was held on 5 February 2020 in the ceremonial hall of the Belgrade municipality of Stari Grad.

Activists of the HLC, ZDF Forum and Youth Initiative NGOs who came to the promotional event were showered with abuse and physically assaulted by members and sympathizers of the Serbian Radical Party, and then floored and brutally thrown out.²⁶

After having been convicted by the Hague tribunal by a final ruling in 2018 and sentenced to a term of imprisonment of 10 years, Vojislav Šešelj was not divested of his MP status, even though the Law on the Election of Members of Parliament clearly stipulates that an MP's mandate shall be terminated if he, among other things, "has been convicted by a final court decision to an unconditional prison sentence of not less than six months".

The decision terminating Vojislav Šešelj's mandate should have been taken by the Administrative Committee of the Serbian Assembly, but that did not happen.

On the occasion of marking the 63rd Parachute Brigade Day, the Military Paratroopers Day and the 63rd Parachute Brigade Patron Saint's Day, at the "Sergeant Pilot Mihajlo Petrović" military airfield in Niš, on 14 October 2020, the minister of defence Aleksandar Vulin said, among other things, that the Serbian Armed Forces would never again "be ashamed of Lazarević or Pavković or any of those who defended this country".²⁷

The HLC would like to call attention to the fact that Nebojša Pavković, a retired general of the Yugoslav Army (VJ), was, together with Nikola Šainović, former Vice-Premier of the FRY, Sreten Lukić, Chief of Staff of the MUP in Kosovo and Vladimir Lazarević, another retired VJ general, finally convicted on all five counts of an ICTY indictment– the forcible transfer, deportation, murder and persecution of the Albanian population in Kosovo.²⁸

26 "Kandić: "In over 30 years of activism I have never been floored in this way " news, portal N1, 5 February 2020, available at <https://rs.n1info.com/vesti/a566952-kandic-za-30-godina-aktivizma-nisam-ovako-obarana-na-pod/>, accessed on 2 February 2021.

27 "Minister Vulin: "63rd Parachute, always brigade, never battalion", portal of the Ministry of Defence of the Republic of Serbia, 14 October 2020, available at <http://www.mod.gov.rs/lat/16614/ministar-vulin-63-padobranska-uvek-brigada-nikad-bataljon-16614>, accessed on 2 February 2021.

28 See the case: *Šainović et al.* (IT-05-87), at the official ICTY webpage <http://www.icty.org/bcs/case/milutinovic/4>, accessed on 2 February 2021.



First instance proceedings before the War Crimes Department of the Higher Court in Belgrade

I. The Čuška/Qyshk Case²⁹

CASE OVERVIEW	
Current stage of the proceedings: first instance proceedings (retrial)	
Date of indictment: 10 September 2010	
Trial commencement date: 20 December 2010	
Prosecutor: Bruno Vekarić	
Defendants: Toplica Miladinović, Abdulah Sokić, Srećko Popović, Siniša Mišić, Slaviša Kastratović, Boban Bogičević, Veljko Korićanin, Vladan Krstović, Lazar Pavlović, Milan Ivanović and Predrag Vuković	
Criminal offence charged: war crime against the civilian population under Article 142 of the FRY Criminal Code	
Chamber	Judge Vladimir Duruz (Chairperson) Judge Vinka Beraha-Nikićević (member) Judge Vera Vukotić (member)
Number of defendants: 11	Number of court days in the reporting period: 0 Number of witnesses heard in the reporting period: 0
Defendants' rank: low and middle rank	
Number of victims: 141	
Number of witnesses heard: 116	
Key developments in the reporting period: Retrial main hearing	

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²⁹ The Čuška case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/cuska.html>, accessed on 30 December 2020.



The course of the proceedings

Proceedings overview up to 2020

Indictment

The OWCP issued the first indictment for the crime in Ćuška/Qyshk on 10 September 2010 against nine accused persons – Toplica Miladinović, Srećko Popović, Slaviša Kastratović, Boban Bogičević, Zvonimir Cvetković, Radoslav Brnović, Vidoje Korićanin, Veljko Korićanin and Abdulah Sokić.³⁰

The accused were charged with having, as members of the 177th Peć Military-Territorial Detachment (177th VTO) of the Peć Territorial Defence, and the active and reserve police forces, together with their commander, the late Nebojša Minić, attacked on 14 May 1999, the civilian population of the village of Ćuška/Qyshk (Peć/Pejë municipality, Kosovo), killing on that occasion 44 Albanian civilians, setting fire to at least 40 family homes and over 40 other structures, three trucks and five passenger vehicles, seizing gold, jewellery and other valuables of unspecified worth and a total of DM 125,000 in cash, a number of passenger vehicles and two trucks, and expelling over 400 civilians, women, children and the elderly, from the village.³¹

The War Crimes Prosecutor's Office brought indictments for this crime against Zoran Obradović³², Milojko Nikolić³³, Ranko Momić³⁴, Siniša Mišić³⁵ and Dejan Bulatović³⁶ on 1 April 2011, 27 April 2011, 31 May 2011, 7 November 2011 and 26 September 2012 respectively.

The indictment was amended on 27 September 2012 with the accused also charged with crimes they had committed in the villages of Ljubenić/Lubeniq, Pavljan/Pavlane and Zahać/Zahaq. On 1 April 1999, in the village of Ljubenić/Lubeniq, they killed at least 43 Albanian civilians and wounded 12, torched 11 houses, seized money from civilians and expelled them to Albania. Following an attack on the village of Ćuška/Qyshk that same day, namely 14 April 1999, in the village of Pavljan/Pavlane they killed 10 civilians, set fire to at least seven family homes and seized money and valuables from civilians. On the same day in the village of Zahać/Zahaq they killed at least 22 civilians of Albanian ethnicity, seized about DM 28,000 and about 30 motor vehicles, set fire to at least five houses and relocated civilians.³⁷

30 OWCP Indictment number KTRZ 4/10 of 10 September 2010, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2016-05/o_2010_09_10_lat.pdf, accessed on 30 December 2020.

31 *Ibid.*

32 OWCP Indictment KTRZ 4/10 of 1 April 2011.

33 OWCP Indictment KTRZ 07/11 of 27 April 2011.

34 OWCP Indictment KTRZ 9/11 of 31 May 2011, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2016-05/o_2011_05_31_lat.pdf, accessed on 30 December 2020.

35 OWCP Indictment KTRZ 19/11 of 7 November 2011.

36 OWCP Indictment KTO no. 5/2012 of 26 September 2018.

37 OWCP Indictment KTRZ 4/10 of 27 September 2012.



The OWCP dropped criminal charges against the accused Zvonimir Cvetković and, on 17 December 2012, issued a single amended indictment against 13 accused persons: Toplica Miladinović, Srećko Popović, Slaviša Kastratović, Boban Bogićević, Radoslav Brnović, Vidoje Korićanin, Veljko Korićanin, Abdulah Sokić, Zoran Obradović, Milojko Nikolić, Ranko Momić, Siniša Mišić and Dejan Bulatović.³⁸

In the course of the proceedings, on 2 July 2013 the OWCP dropped criminal charges against the accused Vidoje Korićanin. Also, on 28 December 2012 it entered into a testimony agreement with another accused who, in the subsequent course of the proceedings, took the witness stand under the pseudonym "A1". Under the said agreement, the OWCP would drop criminal charges against the accused following his testimony, which the OWCP did with a submission issued on 19 June 2013. By the end of the first-instance proceedings, the OWCP had expanded and amended the indictment three times, (2 October³⁹, 16 October⁴⁰ and 5 December 2013⁴¹) with the final version including the rape of 13-year old G.N. in the village of Pavljan/Pavlane.

First instance judgment

On 11 February 2014, the Higher Court in Belgrade⁴² rendered a judgment pronouncing nine defendants guilty of the commission of the criminal offence of a war crime against the civilian population, and sentenced them to imprisonment terms ranging from two to twenty years, and acquitting two of the defendants – Radoslav Brnović and Veljko Korićanin – on account of lack of evidence.⁴³

The court found the accused Toplica Miladinović, Commander of the 177th Peć VTO, guilty, because he had issued an order to the late Nebojša Minić, Commander of the 177th Peć VTO Intervention Platoon, to attack civilians of Albanian ethnicity and displace them, although aware that members of the unit would destroy and loot civilian property and kill civilians, which is exactly what happened. He had first-hand knowledge of all this, because during the attack on the village of Ljubenić/Lubeniq he had been stationed at the very entrance to the village, and, during the attack on the villages of Čuška/Qyshk, Pavljane/Pavlane and Zahać/Zahaq, had constantly been in touch with the members of his unit via a radio link with the late Nebojša Minić. So it was that, under the command of the late Nebojša Minić, on 1 April 1999, in Ljubenić/Lubeniq, the defendants killed at least 42 civilians and inflicted grave bodily injuries in the form of gunshot wounds on eleven injured parties; on 14 May 1999, they killed at least 41 civilians in the village of Čuška/Qyshk; on 14 May 1999, in the village of Pavljane/Pavlane, they killed 10 civilians, torching the houses and the mortal remains of the slain civilians afterwards. During this attack, the 13-year old G.N. was raped. Additionally, the Chamber established that 20 civilians had been deprived of life in the attack on the village of Zahać/Zahaq on

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38 Amended OWCP Joint Indictment KTRZ 4/10 of 17 December 2012, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents_sr/2016-05/o_2012_12_17_lat.pdf, accessed on 30 December 2020.

39 Amended OWCP Indictment KTRZ 4/10 of 2 October 2013.

40 Transcript of the main hearing held on 16 October 2018.

41 Amended OWCP Indictment KTRZ 4/10 of 5 December 2013.

42 Chamber composition: Snežana Nikolić-Garotić, Chairperson, Judges Vinka Beraha-Nikićević and Rastko Popović, members.

43 Judgment of the Higher Court in Belgrade K Po2 no. 48/2012 of 11 February 2014.



14 May 1999. The attacks on all these villages were attended by large-scale destruction and looting of property.

Second instance decision

On 26 February 2015, the Court of Appeal in Belgrade⁴⁴ rendered a decision upholding the appeals of the defence counsel for all the accused, overturned the first-instance judgment and remanded the case to the court of first instance for retrial. The Court of Appeal found that the first-instance decision was to a considerable extent procedurally flawed, because “the enacting terms of the judgment” were “incomprehensible and self-contradictory”, and because it lacked sufficient reasoning on key facts, with the reasons that were given being vague or substantially contradictory. The Court also found that the facts had not been fully established.⁴⁵

Retrial

The retrial started before a new Chamber⁴⁶ on 8 June 2015. Criminal proceedings were severed in respect of the accused Ranko Momić, as he is at large and inaccessible to the state authorities. Also, the court decided on a joinder of these proceedings and those against former members of the police Vladan Krstović, Lazar Pavlović and Milan Ivanović, defendants in the Ljubenić/Lubeniq Case, whom the OWCP Indictment charges with participation with the other accused in the crimes in the village of Ljubenić/Lubeniq on 1 April 1999.⁴⁷

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Criminal proceedings against the accused Radoslav Brnović were terminated on 29 September 2015, as he had died in the meantime.

The previously protected witness Zoran Rašković took the stand and stated that the accused Krstović and Ivanović had been in the village of Ljubenić/Lubeniq on the critical day, while he was not sure about the accused Pavlović. Witness Zoran Rašković fully stood by all of his prior statements given during these proceedings. He described the attack on the village of Ljubenić/Lubeniq and stated that between 60 and 100 men – Albanian civilians - had been shot dead on that occasion. He said that the commander of the “Šakali” (Jackals) unit had issued an order for all males above 12 years of age to step out of a group of assembled Ljubenić/Lubeniq villagers, and that they were then executed.⁴⁸

44 Chamber composition: Judge Sonja Manojlović, Chairperson, Judges Nada Hadži-Perić, Vučko Mirčić, Bojana Paunović and Jasmina Vasović, members.

45 Decision of the Court of Appeal in Belgrade number Kž1 Kpo2 6/14 of 26 February 2015, available at <http://www.bg.ap.sud.rs/cr/articles/sudska-praksa/pregled-sudske-prakse-apelacionog-suda-u-beogradu/krivicno-odeljenje/ratni-zlocini/kz1-po2-6-14.html>, accessed on 30 December 2020.

46 Chamber composition: Judge Vladimir Duruz, Chairperson, Judges Vinka Beraha-Nikićević and Vera Vukotić, members.

47 OECF Indictment number KTO 8/13 of 7 April 2014, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents_sr/2016-05/o_2014_04_07_lat.pdf, accessed on 30 December 2020.

48 Transcript of the main hearing held on 23 November 2015.



On 22 December 2015, the OWCP brought a joint indictment against 12 accused – Toplica Miladinović, Srećko Popović, Miloško Nikolić, Siniša Mišić, Slaviša Kastratović, Boban Bogićević, Dejan Bulatović, Abdulah Sokić, Vladan Krstović, Lazar Pavlović, Milan Ivanović and Veljko Korićanin.⁴⁹

The criminal proceedings in respect of the defendant Dejan Bulatović were severed on 25 January 2016, because he was unfit to follow the proceedings on account of ill health.⁵⁰

During the evidentiary procedure, two defence witnesses for the defendants Vladan Krstović and Lazar Pavlović were examined, who stated that the defendants had been in their company in catering establishments at the critical time.⁵¹ Witnesses who had already taken the stand earlier were also examined.⁵²

In 2017 the proceedings against the accused Miloško Nikolić, who had passed away in the meantime, were terminated.

New indictment

In July 2019, the OWCP also issued an indictment against Predrag Vuković⁵³, a former member of the 177th Peć VTO, for the criminal offence of war crime against the civilian population committed in the Ljubenić/Lubeniq and Čuška/Qyshk.⁵⁴

He is charged with attacking civilians in the village of Ljubenić/Lubeniq, namely, searching the houses of Albanians, threatening them with weapons, expelling them from their houses, shooting in the direction of civilians and their houses from an automatic weapon and killing four civilians as a result. Having rounded up the villagers in the centre of the village, the accused VTO members singled out a group of 60 men, and drove out most of the civilians, forcing them to head in the direction of Albania. Vuković is also charged with the large-scale destruction of the property of Albanian civilians, namely setting family houses and other buildings on fire, as well as with participation in the infliction of bodily injuries on and killing of civilian men, by shooting together with other VTO members at the group of men they had separated from the crowd, killing 42 men and wounding 11 on that occasion. The same indictment charges Vuković with having participated, on 14 May 1999, together with the other accused and some unidentified members of the VTO, in an attack on the civilian population of the village of Čuška/Qyshk, killing 17 civilians, expelling other civilians, massively destroying their property and committing murders of civilians; namely, he and the late Miloško Nikolić and Ranko Momić forced a group of 12 civilians into the house of Azem Gaši and then opened fire on them from automatic weapons, killing 11 and wounding one civilian and setting the house with the dead bodies

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49 OWCP Indictment KTRZ no. 4/10 of 22 December 2015.

50 Transcript of the main hearing held on 25 January 2016.

51 *Ibid.*

52 Transcript of the main hearing held on 15 March 2019; Transcript of the main hearing held on 17 May 2019; Transcript of the main hearing held on 27 June 2019.

53 The request for investigation KTRZ 4/2010 of 13 March 2010 also included Predrag Vuković as an accused, but he was at large. He was arrested in 2018 in Montenegro and extradited to Serbia.

54 OWCP Indictment KTO 3/19 of 3 July 2019.



inside on fire afterwards. Also, together with Dejan Bulatović, he separated three civilians from the group of civilians gathered in the yard of Brahim Gaši's house, took them into the yard of Rasim Rama's house and shot them dead there with his firearm.

At the main hearing held on 22 November 2019, the Chamber adopted a Decision on Joinder, consolidating the current proceedings with the proceedings conducted against the accused Predrag Vuković.⁵⁵

Entering his plea, the accused stated that he understood the indictment, that he was not guilty and that he would exercise his right to remain silent until further notice.⁵⁶

Overview of the proceedings in 2020

Not a single court day was held in 2020. The trial was postponed five times because the summoned witnesses who live abroad were unable to appear before the court on account of the Covid-19 pandemic.

HLC Findings

Protracted proceedings

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This trial has been going on for over nine years now, with it being uncertain when the proceedings will end in a final decision. During the retrial, a small number of main hearings were held annually, with five court days held in 2016, six in 2017, three in 2018, three in 2019, and not a single court day in 2020. The hearings were not held principally owing to the failure of witnesses from Kosovo to appear. Since the last revision of the indictment in 2015, the accused Miloško Nikolić has passed away, while the indictment was dismissed in respect of the accused Dejan Bulatović. In view of the joinder of these proceedings with the proceedings conducted against the subsequently accused Predrag Vuković, the OWCP will obviously have to revise the indictment once again so as to include all the accused in a single indictment.

Flawed indictment

Over the course of the trial, the OWCP repeatedly issued indictments against new perpetrators, dropped criminal charges against some of the defendants, and amended and revised the indictments a number of times. Thus it was only two years after it had issued the first indictment for the crime in the village of Čuška/Qyshk, that the OWCP amended the indictment to also include the crimes committed on the same day in the neighbouring villages of Pavljan/Pavlane and Zahać/Zahaq. All this reveals the very perfunctory approach to the prosecution of the crimes committed in these villages, with issues which should have been resolved already in the investigation stage left to be

⁵⁵ Transcript of the main hearing held on 22 November 2019.

⁵⁶ *Ibid.*



addressed during the actual trial, delaying the proceedings and subjecting the victims to additional traumatisation, as they do not know when the proceedings will finally end and whether after such a long time justice will finally be served.

Incomplete OWCP Indictment

1. Non-prosecution of senior military personnel

The extensive evidence which has been presented since the commencement of this trial points to the responsibility of a number of individuals who have not been charged in the indictment, although they held superior positions in the Yugoslav Army hierarchy at the critical time.

The Chairperson of the Chamber addressed this matter when pronouncing the first trial judgment in February 2014, stressing that: “The rules of military hierarchy warrant the conclusion that there must have been other persons there besides Toplica Miladinović; however, we have only dealt with what these defendants stand accused of in the indictment.” This was confirmed by the prosecutor himself in his closing arguments: “...it has not been determined at what level all this had been organised, nor is that the subject of these proceedings...”⁵⁷

There seemed to be some progress towards establishing the responsibility of some senior military personnel as well in connection with the crimes charged in the indictment for the Čuška/Qyshk Case, when in August 2014 the OWCP decided to initiate an investigation against the Commander of the 125th VJ Motorised Brigade, Dragan Živanović, whose zone of responsibility encompassed these villages. However, on 1 March 2017, the OWCP issued an order ending the investigation, having established that insufficient evidence existed to charge him. The grounds for such a decision on the part of the OWCP can be seriously challenged, it remaining unclear how the deputy prosecutor entrusted with the matter concluded that there was not sufficient evidence to indict, since he had neither examined all of his own witnesses nor all the witnesses proposed by the legal representative of the injured parties and the defence.⁵⁸

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2. Unclear role of the Ministry of the Interior

The role of the MUP in organising, executing and covering up crimes was not clarified during these proceedings either. A number of witnesses spoke about the role of the police forces, as did some of the defendants in presenting their defences.⁵⁹ Apart from that, inspection of the war diary of the Peć Military Recruitment Office in the course of the evidentiary proceedings revealed entries relating to the 177th VTO. One of the entries registers that two MUP companies had been attached to the 177th VTO. Furthermore, several injured parties, and in fact the defendants, testified that in addition to military personnel there had also been a large number of police officers in their village when the crimes were being committed. The Chairperson of the Chamber also stressed this upon the pronouncement

57 Transcript of the delivery of judgment on 11 February 2014.

58 For more, see: Humanitarian Law Center, *Report on War Crimes Trials in Serbia 9* (Belgrade, HLC, 2019), pp. 23-25.

59 Witnesses M.J, M.V. and Z.R, as well as the accused Toplica Miladinović, Srećko Popović and Radoslav Brnović.



of the first-instance judgment; she said: “The Court is satisfied and certain that the injured parties are able to distinguish between blue and green uniforms, and they say that someone else was there too...”⁶⁰ Nonetheless, and all this evidence notwithstanding, the OWCP failed to investigate allegations of the involvement of MUP members in this crime, in contravention of its legal obligation to conduct an efficient and effective investigation so as to adequately look into all allegations of crimes committed.

Witness protection

The testimony of witness Zoran Rašković is among the most striking witness accounts in all war crimes proceedings conducted to date. In addition to rendering a significant contribution to the establishment of the facts, his testimony is particularly important for highlighting one of the major problems plaguing all war crimes trials in Serbia, that being the inefficient protection of insider witnesses, i.e. of former or active members of security forces. Witness Zoran Rašković (who had been granted the status of protected witness during the investigation but at the trial took the witness stand under his full name and surname of his own accord) at the first trial repeatedly openly pointed to the shortcomings of the witness protection programme and the threats being levelled at him, including by the very policemen in charge of his security.⁶¹ Giving evidence in the retrial, he stressed that these problems had continued and said that he was unable to obtain an identity card which made it impossible for him to live a normal life.⁶² The HLC analysed this problem comprehensively in its *Report on War Crimes Trials in Serbia in 2011*⁶³ and *Analysis of the Prosecution of War Crimes in Serbia*.⁶⁴

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The Court of Appeal’s biased interpretation of the presented evidence intended to raise doubts about the role of the VJ in the crimes

The Court of Appeal ruled to uphold the appeal of defendant Toplica Miladinović’s defence counsel challenging the factual finding that Miladinović had given the order for attacking the civilians. The Court of Appeal found that the conclusion that Miladinović had issued the order in question was based on statements of witnesses who only had second-hand knowledge of it and on the war diary of the 177th Peć VTO, the authenticity of which the Court of Appeals assessed as questionable.

However, the Court of Appeal did not contest the fact that the late Nebojša Minić had transmitted Miladinović’s alleged order saying: “Guys, get ready, we are leaving in 10 minutes, it is the village of Čuška, we are to drive out some Germans, torch some houses, tear up some documents and do whatever else needs to be done.” Neither did the Court of Appeal infer an alternative conclusion to the effect that, for example, as he was leaving the meeting with Miladinović, Nebojša Minić might himself have conceived the order that he passed on. Nevertheless, the Court of Appeal did question the content of the alleged order transmitted in this way, stating: “It is unclear how the court

60 Transcript of the delivery of judgment on 11 February 2014.

61 Transcript of the main hearing held on 25 January 2012.

62 Transcript of the main hearing held on 23 November 2015.

63 For details see: Humanitarian Law Center, *Report on War Crimes Trials in Serbia in 2011*, (Belgrade: HLC, 2012), pp. 99, 100 and 101.

64 *Analysis of the Prosecution of War Crimes in Serbia in the Period from 2004 to 2013*.



of first instance became satisfied that these orders pertained to the mounting of an attack on and displacement of Albanian civilians in the villages in question and why it ruled out the possibility that the orders might have referred to a legitimate military operation targeting members of the adversary in the armed conflict, namely possibly uncovering KLA members and seizing their weapons.”⁶⁵

The Court of Appeal, however, failed to consider the finding of the court of first instance that the KLA had not been present in the mentioned villages, rendering wholly unfounded the Court of Appeal’s interpretation of the possible meaning of the said order. Finally, the Court’s suggestion that torching houses and tearing up documents might be interpreted as a call for a legitimate military mission, constitutes a tendentious interpretation of the factual findings, particularly bearing in mind that a number of court judgments have established this to have in fact been the *modus operandi* of the Serbian forces during the war in Kosovo.

The Court of Appeal also contested the finding of the court of first instance that Toplica Miladinović had first-hand knowledge of the crime because at the time of the attack on the village of Ljubenić/Lubeniq he was stationed at the very entrance to the village. The Court of Appeal based this conclusion on two findings. Firstly, the statement of the witness who said that Miladinović had been present was not corroborated by other evidence. Secondly, “none of the injured parties, women, children and elderly people heard during the proceedings, who, being forced to leave the village, had had to pass through the village entrance, noticed that the defendant Toplica Miladinović was present at the entrance to the village of Ljubenić/Lubeniq, nor did they notice anyone holding a rank superior to that of the late Nebojša Minić participating in the attack on the village...”⁶⁶ The HLC maintains that attributing decisive weight to the capacity of victims to observe such details as the presence at the village entrance of a person they did not know or his insignia, at a time when they are striving to survive, constitutes in effect an attempt to shift the burden of proof onto the victims and traumatise them further, and is yet more proof of the Court of Appeal’s bias in arriving at its conclusions.

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The Court of Appeal also found that, as the court of first instance “failed to conclusively establish the organisational structure of the 177th Peć VTO”⁶⁷, it remained unclear whether the 177th VTO Intervention Platoon had existed at all, whether it had been under Miladinović’s command, and whether he had actually had the authority to issue orders for military action.⁶⁸ The “uncertainties” that the Court of Appeal found are questionable in many respects. Namely, it is absolutely of no consequence for establishing Miladinović’s criminal responsibility whether the order was issued to the 177th VTO Intervention Platoon or to an armed group of another designation. However, the suggestion that the existence of the Intervention Platoon had not been proven could mislead one to conclude that the crimes in Ljubenić/Lubeniq, Ćuška/Qyshk, Pavljane/Pavlane and Zahać/Zahaq had been committed by informal armed units, i.e. not by official forces, although it was conclusively established in the first-instance proceedings that they were affiliated with the VJ. It is equally irrelevant for determining

65 Ruling of the Court of Appeal in Belgrade number Kž1 Kpo2 6/14 of 26 February 2015.

66 *Ibid.*

67 *Ibid.*

68 *Ibid.*



Miladinović's criminal responsibility whether he had been in a commanding position and had had the authority to issue orders, because issuance of orders as a mode of criminal responsibility for a war crime does not require that they be issued in any official capacity.



II. The Srebrenica Case⁶⁹

CASE OVERVIEW	
Current stage of the proceedings: first instance proceedings	
Date of indictment: 21 January 2016	
Trial commencement date: 12 December 2016	
Prosecutor: Bruno Vekarić	
Defendants: Nedeljko Milidragović, Milivoje Batinica, Aleksandar Dačević, Boro Miletić, Jovan Petrović, Dragomir Parović, Aleksa Golijanin and Vidosav Vasić	
Criminal offence charged: war crime against the civilian population under Article 142 of the FRY Criminal Code	
Chamber	Judge Mirjana Ilić (Chairperson) Judge Zorana Trajković Judge Dejan Terzić
Number of defendants: 8	Number of court days in the reporting period: 4 Number of witnesses heard in the reporting period: 3 Number of expert witnesses heard: 0
Defendants' rank: low rank	
Number of victims: 1,313	
Number of witnesses heard: 25	
Key developments in the reporting period: Main hearing	

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⁶⁹ The *Srebrenica–Kravica* Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/srebrenica.html>, accessed on 20 December 2020.



The course of the proceedings

Proceedings overview up to 2020

Indictment

The accused are charged with having killed, on 14 July, 1995, as members of the Jahorina Training Centre of the Special Police Brigade of the Ministry of the Interior (MUP) of Republika Srpska, at least 1,313 Bosniak civilians inside and in the immediate vicinity of an agricultural cooperative warehouse in the village of Kravica (Bratunac municipality, Bosnia and Herzegovina).⁷⁰

The accused are Nedeljko Milidragović (Commander of the 2nd Platoon of the 1st Company), Milivoje Batinica, Aleksandar Dačević, Boro Miletić, Jovan Petrović and Dragomir Parović (members of the 2nd Platoon) and Aleksa Golijanin and Vidosav Vasić (members of the 1st Platoon of the 1st Company).

In the early morning of 14 July 1995, Nedeljko Milidragović ordered Golijanin, Batinica, Dačević, Miletić, Parović and Vasić, as well as other members of his company, to kill about a hundred civilians who were detained in a warehouse in Kravica. Complying with the order, they formed a firing squad, took the civilians out of the warehouse, forced them to sing Chetnik songs and, assisted by Milidragović himself, killed them with automatic weapons. Milidragović, Batinica, Petrović and Golijanin then killed with single shots those who were still showing signs of life.

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On the same day, as the civilians arrived aboard buses and trucks at the warehouse in Kravica, Milidragović issued multiple orders to Golijanin, Batinica, Dačević, Miletić, Petrović and Parović to kill them. Together with Milidragović, the accused killed several hundred civilians outside and around the warehouse.

At least 1,313 civilians were deprived of life in this way. They have been identified and their mortal remains have been found in mass graves at a number of sites in Bosnia and Herzegovina: Glogova, Ravnice, Hangar Kravica, Blječeva, Zeleni Jadar, Zalazje and Pusmulici.

Defences of the accused

The accused Nedeljko Milidragović, Aleksa Golijanin, Vidosav Vasić and Aleksandar Dačević did not present a defence, i.e. continued to exercise their right to remain silent.⁷¹ The accused Boro Miletić, Dragomir Parović and Jovan Petrović did not wish to present a defence at the main hearing stating that they stood by their statements given before the OWCP; therefore the audio recordings of their questioning before the OWCP were played. In his statement given before the OWCP, the accused Boro Miletić stated that he was a refugee from Croatia when he was arrested in Belgrade on 29 June

⁷⁰ OWCP Indictment KTO no. 2/2015 of 21 January 2016, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2016-10/kto_2_15_dopuna_optuznice_od_21_01_2016_1.pdf, accessed on 20 December 2020.

⁷¹ *Ibid.*



1995 and then transferred to Mt. Jahorina and told that he was now assigned to the police force of Republika Srpska. There were many people at Jahorina who, just like him, had been forcibly brought there. The defendant Nedo Milidragović was his platoon commander. On 11 July, they set off from Mt. Jahorina on a field mission towards a village by the River Drina, whose name he did not remember. On the following day, they reached a road and the bus that he was on stopped near a group of UNPROFOR soldiers who had surrendered. They got off the truck and walked all the way up to the UNPROFOR base, around which he saw women and children. The accused Milidragović ordered them to comb the terrain to check whether there were any Muslims in the nearby houses or woods. They found a boy whom commander Neđo handed over to a group of soldiers. They continued searching the area all day.⁷² On the third day, 14 July, they set out again to secure the asphalt road, in order to be on the lookout for anyone wanting to surrender, but no one showed up. In the two days that he spent securing the road he saw about ten busloads of captured Muslims. On the fourth day they were on the move again; they came to a place where they stopped near a level tract of land with a building enclosed by a wire mesh fence, which looked like a factory compound. Behind the fence there were many women and children, perhaps around a thousand, and no men. Their task was to guard them, to make sure that no women or children escaped through holes in the wire fence. A large number of buses and trucks came to take them away and kept transporting them all day long until dark. On the fifth day his unit returned to Jahorina.⁷³

In his statement given before the OWCP, the accused Dragomir Parović stated that on 19 or 20 June 1995 he was arrested by police in Belgrade and transferred to Jahorina, where they informed him that he was now a member of the special police. He could not recall the exact date on which about 100 police officers were transported from Jahorina to Bratunac. On the following day they were transported to the UNPROFOR base and tasked with disarming members of UNPROFOR. Then the accused Milidragović ordered him to search the houses near the base with another lad from the platoon. They finished searching the houses by two or three o' clock, and were then ordered to march towards a factory where there were civilians, a couple of thousands of them, mostly women and children, with a few men. That evening they were driven away by buses and trucks. The next morning the accused Milidragović lined them up and said that they would be going on a mission. They were to watch a section of the road in case anyone surrendered. Neđo brought a boy, between 12 and 13 years old, and ordered him to call out to his relatives to give themselves up. Half an hour later, some Muslim civilians surrendered. The civilians who surrendered were transported by trucks in groups of 20-30, and the accused believes that two groups surrendered that day. The accused went on to say that the boy whom Neđo brought was with them also the next day when they deployed to comb the terrain, and that at a certain point Neđo took him behind some shrubs by the road and then a pistol went off. The following day, they remained in position. An UNPROFOR personnel carrier also arrived that day, from which they called out to the people to surrender, over a bullhorn and in the Serbian language. Quite a few men surrendered, all of them civilians. They were taken somewhere in trucks. The accused Milidragović and Golijanin issued orders for guarding a group of 20-30 men who had

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⁷² Transcript of the main hearing held on 7 February 2017.

⁷³ Transcript of the main hearing held on 13 April 2017.



surrendered, and demanded of them that they hand over the money they had on their persons. After that, they were marched to a house by the road and ordered to lie on the ground face down, next to one another. Milidragović signalled to him and another man, whose name he could not remember, and told them to shoot them. According to the defendant's words, the other guy opened fire first, discharging a burst of fire. Some men were still alive after the shooting. The accused states that he could not bring himself to shoot at them and discharged half of the magazine at the ground, claiming that all those near him survived. During the night, some of the wounded men cried out in pain, and other members of the unit mocked them because of that. In the morning Milidragović and Golijanin went to those men who were still alive, bursts of fire rang out and the cries stopped. That was their last day in the area. They trudged through the forest on a beaten track made by the Muslims who had surrendered over the previous days. En route, buses picked them up and drove them to the school in which they were previously billeted and from the school on to Jahorina. He claimed that he and his platoon had not been involved in the event in the warehouse in Kravica.⁷⁴

28 In his statement given before the OWCP, the accused Jovan Petrović stated that in May or June 1995 he had been forcibly taken from the Pećinci municipality to Mt. Jahorina. He was forced to sign a contract to the effect that he was joining the police unit voluntarily. On arrival at Jahorina he was assigned to the 3rd Platoon, which was under the command of the accused Milidragović. They were assigned their first mission on 14 or 15 July 1995, which was to go to Srebrenica. They arrived at Bjelovac by bus and spent the night in a school. There they waited for the Zvornik Corps and General Mladić. The task was to take Srebrenica. They reached Bratunac by bus and then walked on to Potočari, but found no one there. The next day they deployed to the Sandići village area, securing a road to prevent Muslims from crossing from one side of the road to the other. He heard Mladić call out over the loud hailer: "Neighbours, surrender, you will come to no harm," after which he saw some men surrender. He knew nothing about the events in the warehouse in Kravica, he had heard "some stories" and volleys of fire, but he was in the vicinity of Konjević Polje, some 14 km from the warehouse, at the time. He heard that 10 to 15 Muslims had been shot outside the warehouse and that two or three women had been raped.

As they were retreating through the woods, they came across two bodies. He said that one body belonged to a man who had hanged himself, which he concluded from the suicide note they found in his pocket. He explained that the other man had been killed by his compatriots, as they had quarrelled over whether to surrender or not. About 100 men from his company made it through the forest to Konjević Polje, where they found 30 captured men. He did not know who had captured them or what became of them. They were then driven back to Jahorina by buses.⁷⁵

Presenting his defence, the accused Milivoje Batinica denied having committed the criminal offence that he was charged with. He stated that in 1992 he fled Sarajevo and came to Zrenjanin, where police arrested him on the street at the end of June 1995 and took him to the Training Centre of the Special

74 Transcript of the main hearing held on 31 May 2017.

75 *Ibid.*



Police Brigade of the Ministry of the Interior of Republika Srpska at Mt. Jahorina, and assigned him to the 3rd Platoon of the 1st Company of the Brigade. Company commander Tomislav Krstović was his immediate superior. He saw the accused Nedeljko Milidragović and Aleksa Golijanin at Jahorina, but did not know the other defendants at the time. Most of the members of his unit had been forcibly recruited, just like him. They were treated like traitors and deserters. On 11 or 12 July 1995, they were all bussed from Jahorina to the village of Bjelovac, to be billeted at the local school where they spent the night. The next day they went to Potočari. They came close to the UNPROFOR base, but did not enter it. There were several thousand people outside by the base. They were civilians – women, children, elderly people and perhaps about ten middle-aged men. These people were frightened, but no one prevented them from moving around. His unit was tasked with maintaining order and ensuring that the assembled people did not come to any harm. In Potočari he also noticed VRS troops. While he was in Potočari, buses arrived, which he believed came to take away the civilians. At about 1300 or 1400 hours his unit received orders to return to Bjelovac; so he did not know what happened to the civilians later. That evening or the next, they set off from Bjelovac, tasked with securing the Bratunac–Konjević Polje road. They were to ensure the safe passage of buses transporting women and children from Bratunac towards Konjević Polje and further on to Tuzla. There was a forest along the section of the road they were manning; the road was winding and there was shooting from all directions all night. The shooting abated just before daybreak, and members of the BiH Army started to surrender that day - some 20 or 30 surrendered. Some of them wore uniforms, others were in plain clothes, and they were unarmed. The men who had surrendered were picked up by a truck on board which were VRS members. From the truck they kept calling over a loud hailer to Muslims to surrender. Members of his unit only guarded those who had surrendered. Early in the afternoon they returned to Bjelovac, and on the following day they headed through the forest in the direction of Konjević Polje to search the area, looking for members of the BiH Army who had not surrendered. He had never been to Kravica and he had never heard of the warehouse before.⁷⁶

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Dismissal of the indictment

On 5 July 2017, the Court of Appeal in Belgrade ruled to dismiss the OWCP indictment in this case. The Court found it indisputable that at the time the indictment was filed, on 21 January 2016, this Office was without a war crimes prosecutor or acting war crimes prosecutor.⁷⁷ Namely, the previous prosecutor's term of office had expired on 1 January 2016, and the new prosecutor assumed office only on 31 May 2017. Not even an acting prosecutor was appointed in that period, as required under the Law on Public Prosecution Service, to enable the OWCP to function properly.⁷⁸ Consequently, deputy public prosecutors could not act in that period or file indictments on behalf of the Office.

76 Transcript of the main hearing held on 7 February 2017.

77 Ruling of the Court of Appeal in Belgrade Kž2 Po2 7/17 of 5 July 2017.

78 Law on Public Prosecution Service, Article 36.



Continuation of the proceedings

Following the dismissal of the indictment, the OWCP moved that the proceedings continue on the existing indictment as the request for continuation had been submitted by the authorised prosecutor now in office. The Higher Court ruled to decline this request on the grounds that the proceedings could continue only when a new indictment had been filed by the OWCP.

Deciding on the OWCP appeal against the ruling dismissing the indictment, on 19 September 2017, the Court of Appeal ruled⁷⁹ that the proceedings could continue on the previously filed indictment and reversed the decision of the Higher Court accordingly. The grounds for this position of the Court of Appeal was its interpretation of the provision of the Criminal Procedure Code stipulating that once the reasons for dismissing an indictment ceased to exist, criminal proceedings shall be resumed at the request of the authorised prosecutor.⁸⁰ The indictment had been dismissed because it had not been filed by an authorised prosecutor. However, when the request for resuming the proceedings was submitted by the authorised prosecutor, the Court of Appeal determined that the statutory requirements for continuing the proceedings had been met, as the impediment, i.e. absence of an authorised prosecutor, had been overcome.

The criminal proceedings continued with the re-opening of the case and the indictment being read out. All the defendants entered pleas of not guilty. In their opening statements, the deputy prosecutor and defence counsel for the accused all stood by the allegations and motions they had made at the pretrial hearing. The Court determined that the records from the pretrial hearing could be used even though it had been held in the absence of an authorised prosecutor, as, not being trial records, their reading did not amount to a substantial procedural error.

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Witnesses in the proceedings

The most important testimonies were those of two protected witnesses, who took the stand under the pseudonyms “302” and “303”, with the court cautioning all present that they were to keep confidential everything they heard at this hearing.

Witness and injured party Saliha Osmanović recounted how in July 1995 she had left Srebrenica with her husband and son and that they parted at the place called Kazani (The Pit). She went to Potočari while her husband and son headed in the direction of Tuzla through a forest. She never saw them again.⁸¹

Two of the witnesses heard, Krsto Simić and Ostoja Stanojević, were drivers who were dispatched to Kravica to transport the bodies of murdered civilians. They described in detail how the bodies were transported first to a primary and subsequently to a secondary mass grave, but they did not know who had perpetrated the killings in Kravica.⁸²

79 Ruling of the Court of Appeal in Belgrade of 19 September 2017.

80 Criminal Procedure Code, Article 417, paragraph 1, item 1.

81 Transcript of the main hearing held on 25 September 2018.

82 Transcript of the main hearing held on 26 September 2018.



Witness Zoran Erić stated that on 11 July 1995 he was sent from Bratunac to the agricultural cooperative in Kravica to feed the cattle kept in a cattle shed behind the warehouse. From the shed he could not see what was going on in front of the warehouse. In the afternoon of 13 July 1995, he was in the shed, when he heard shouts “Allahu Akbar!”, and then “Let’s strangle the Chetniks with our bare hands!” He later heard that four prisoners from the warehouse had caught a guard, dragged him into the warehouse and killed him. “Thunderous shooting” ensued and he also heard hand grenades exploding. The shooting started during the day, but lasted throughout the night as well. Short bursts were fired from multiple weapons. The warehouse was packed with people. The shooting stopped on 14 July 1995 before noon; two to three hours later survivors were called over a loud hailer to come out of the warehouse. They were calling people out and telling them that a water tank truck had arrived, as well as ambulances and buses to take them away. After the calls he heard the order “Fire!” issued three times, with an interval between each order, as well as shots coming from the road. Those who came out were all killed. He did not dare leave the shed during the shooting. When he came out of the shed he saw many dead bodies. He thinks that there were 200–300 bodies outside the warehouse. He also saw about ten slaughtered people whose bodies were by the roadside. He did not know how many people had been killed inside the warehouse, as he did not go inside.⁸³

Witnesses for the prosecution who were heard, members of the Jahorina Training Centre of the Special Police Brigade of the MUP of Republika Srpska, described their stay at Jahorina and their deployment to the Srebrenica area in July 1995, but had no first-hand knowledge of the events in Kravica and only heard much later that “something had happened” there.⁸⁴

Witness for the prosecution Radenko Đurković, a construction machinery operator, recounted how in July 1995, Dragan Mirković, the director of the Bratunac Public Utility Company summoned him and ordered him to excavate a grave in Glogova. He was shown the actual location at which to dig by Mirković and Momir Nikolić, an officer of the VRS. He dug a grave between 30 and 50 metres long. When he had excavated the grave, Mirković sent him to the warehouse in Kravica, where he loaded bodies on trucks. By his estimation there were some 200 bodies in the warehouse. The next day, again on Mirković’s orders, he excavated another, larger grave across from the first one. That same day he again went to Kravica to load bodies on trucks. Buried at Glogova were the bodies of the men killed in Kravica, but the trucks also hauled in the bodies of men killed elsewhere, e.g. on the attempted breakthrough line. Namely, there was fighting in the forests below Crni Vrh with the BiH Army which was trying to breach the line. When it was all over, he filled in the graves at Glogova. After two to three months, Momir Nikolić recruited the same team, this time to dig up and relocate the bodies. They worked for 15 days, and only at night, apparently in order to remain unseen. The bodies were transported towards Bratunac, to a location unknown to him.⁸⁵

Defence witnesses and the defendants’ fellow-combatants, Jugoslav Stanišić, Stojan Savić, Ljubiša Janjić and Nikola Rudan had no knowledge whatsoever of what happened in the warehouse in

83 *Ibid.*

84 Transcript of the main hearing held on 13 November 2018.

85 Transcript of the main hearing held on 19 March 2019.



Kravica⁸⁶, while witness Ljubisav Simić, mayor of Bratunac at the relevant time, had no first-hand knowledge of the critical events, but had heard from the director of the Agricultural Cooperative in Kravica and other fighters that they had seen dead bodies around the warehouse.⁸⁷

Defence witness Boško Budimir explained that he had been taken together with his brother Veljko Budimir to the Police Training Centre at Jahorina and that the accused Milidragović was their commander. Both of them, being car mechanics and drivers, repaired the vehicles that were at the Centre. Upon their field deployment to Bjelovac, on the orders of Duško Jević, Commander of the Jahorina Centre, they repaired and drove back UNPROFOR personnel carriers. Thus, on one occasion they drove a personnel carrier to Zvornik and the accused Milidragović and his *kum* /his best man or children's godfather/ followed behind them in a passenger car. After they had parked the personnel carrier behind the Zvornik police station, Milidragović took them to his home and they stayed there for the night. The next day, 12 July, St. Peter's Day, they returned to Bjelovac. The witness and his brother were then ordered to go and check several other personnel carriers which were somewhere near the road to Potočari, and to drive them back to Bjelovac too. They managed to fix one of the carriers and drove it to Bjelovac, and Jević ordered them to drive it to Janja. They set off for Janja around 10 a.m. on 14 July 1995 and were on the way to Janja again followed by the accused Milidragović, whom he had in fact seen earlier that morning in Bjelovac. From Janja they went to Zvornik and spent the night at Milidragović's place, and in the morning of 15 July 1995 they returned to Bjelovac.⁸⁸

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Witness Veljko Budimir, describing the movements of the accused Milidragović in the critical period, stated that on 12 July 1995 he and his brother drove an UNPROFOR personnel carrier to Zvornik and that the accused Milidragović and his *kum* followed behind them in a passenger vehicle. In Zvornik they spent the night at Milidragović's home and in the morning of the next day, 13 July 1995, returned to Bjelovac. The witness and his brother were then ordered by Duško Jević to go and check another personnel carrier and drive it to Janja. They headed for Janja, again followed by the accused Milidragović, and returned to Bjelovac on 14 July 1995 at around midday.⁸⁹

At the time of the critical event defence witness Duško Jević⁹⁰ served as Assistant Commander of the Special Police Brigade of the RS MUP and Commander of the Special Police Brigade Training Centre at Mt. Jahorina. He said that the Centre also organised training for persons who had been forcibly brought to Jahorina from Serbia in the beginning of summer 1995, referred to as deserters. On 11 July 1995, Ljubiša Borovčanin (Deputy Commander of the RS Special Police Brigade at the time) ordered them to deploy to the area of Srebrenica. He set out with the 1st Company and they arrived in the village of Bjelovac and were billeted at the primary school there. That same evening they received orders that the following day they were to go to Potočari to secure civilians. In the morning of 12 July 1995, they went there together with members of the Zvornik Public Security Station. They

86 Transcript of the main hearing held on 26 February 2019.

87 Transcript of the main hearing held on 12 December 2019.

88 Transcript of the main hearing held on 9 April 2019.

89 Transcript of the main hearing held on 16 May 2019.

90 The Appeals Chamber of the Court of Bosnia and Herzegovina finally sentenced Duško Jević to a term of imprisonment of 20 years for a crime of genocide (aiding).



were tasked firstly with guarding civilians up to the moment of their evacuation and, secondly, with securing the Bratunac–Konjević Polje road. The 2nd Company from Jahorina also arrived to secure the road. The evacuation of civilians from Potočari began that day and continued until the afternoon of 13 July 1995. They guarded the civilians in Potočari so that nobody would harm them. Also manning the road were RS Army soldiers. In the evening of 13 July 1995, he went to Bijeljina and returned on 14 July. He reported to Borovčanin who informed him that there had been an incident. About midday he inspected the road and, driving along, noticed a pile of hay, a truck and a loader outside the warehouse in Kravica. He did not see members of his unit in the vicinity of the warehouse on that occasion – but he saw them on the road together with members of the Zvornik Special Police Unit (PJP). None of his platoon commanders had informed him that there had been an incident, nor was he aware that any of them had ordered killing the prisoners. He heard about the critical incident only later. While on field duty they came across two broken-down UNPROFOR personnel carriers, and he ordered the accused Milidragović to repair them with his men and move them to the RS Police base in Janja. He entrusted Milidragović with this task because he was an expert on armoured vehicles. He did not know when the personnel carrier was transferred.⁹¹

Defence witness Tomislav Kovač was Deputy Minister of the Interior of Republika Srpska at the time of the critical incident and held the highest rank (general). He stated that he knew the accused Nedeljko Milidragović and Aleksa Golijanin from an earlier period. He had cooperated with the accused Milidragović before the war as well, as he was an expert for armoured personnel carriers in the Special Police Unit and an instructor at the Police Training Centre at Jahorina. On 14 July 1995, the witness travelled from the direction of Zvornik towards Srebrenica, his task being to set up a police station in Srebrenica. On the way, in the section of the road between Bratunac and Konjević Polje, he observed the defendants’ unit deployed along the road. On arrival at the warehouse in Kravica at around 1 p.m. he noticed the accused Milidragović some 300 to 500 metres from the warehouse, but did not know when he had arrived at the location or what his movements had been. He did not see the bodies of the executed captives in front of the warehouse. He believed Kravica to have been an event unassociated with the events in Srebrenica, that actually “an incident happened” there. He knew nothing about the involvement of any members of the Jahorina unit in this event. The order “to go ahead and kill the prisoners” had been given by Ljubiša Beara, Chief of Security of the VRS Main Staff at the time⁹². He had issued such an order to all of his security personnel, and his deputy Popović⁹³ was put in charge of the operation. According to information he had obtained by September 1995, there had been 320 victims in Kravica.⁹⁴

91 Transcript of the main hearing held on 20 May 2019.

92 On 30 January 2015, the ICTY finally sentenced Ljubiša Beara to life imprisonment for genocide, conspiracy to commit genocide, crimes against humanity and violation of the laws or customs of war in the “Srebrenica” Case (IT-05-88).

93 On 30 January 2015, the ICTY finally sentenced Vujadin Popović to life imprisonment for genocide, conspiracy to commit genocide, crimes against humanity and violation of the laws or customs of war in the “Srebrenica” Case (IT-05-88).

94 Transcript of the main hearing held on 11 June 2019.



Nedo Jovičić, who had testified in several trials before the ICTY and the BiH court and was under protective measures when giving evidence in those proceedings about the events in Kravica on 13 July 1995, was also scheduled to take the stand as a defence witness for the accused Aleksa Golijanin. The Chamber therefore instructed the defence counsel for the accused Aleksa Golijanin to file an application or request for leave and/or authorisation with the court, and address a written request to the president of the International Residual Mechanism for Criminal Tribunals in order to obtain information on the specific decision and types of ICTY protective measures in respect of witness Nedo Jovičić, and to request that the protective measures be identified or confirmed, or possibly to apply to the International Residual Mechanism for Criminal Tribunals for cancellation or variation of the protective measures.⁹⁵

Overview of the proceedings in 2020

In 2020 four court days were held during which three witnesses were heard. The hearings were postponed three times because of the absence of some of the defendants and once due to the state of emergency imposed to prevent the spread of the Covid-19 pandemic. No trials were scheduled for the duration of the state of emergency.

Witness Kristina Nikolić had to do compulsory service during the war, milking cows in the cattle shed of the cooperative in the village of Kravica, but she was in Bratunac at the time of the critical event.⁹⁶ Defence witness Dobrila Stojanović, a distant female relative of the accused Nedeljko Milidragović, stated that she had been living in Zvornik at the critical time and that she kept company with the defendant's wife. She knows nothing about the events in the village of Kravica. She saw the accused Milidragović on 12 July 1995 in Zvornik, when he came to town in a white UNPROFOR personnel carrier and pulled up outside the shop in which the witness worked together with his wife. The accused entered the store and had a chat with them. She saw him again that day when he came home in the company of another two soldiers, as she was having coffee with his wife at that time.⁹⁷

Numerous written exhibits in the case file were examined in the evidentiary proceedings.⁹⁸

HLC Findings

Regional cooperation

The Prosecutor's Office of BiH issued an indictment against Milidragović and Golijanin for genocide, which was confirmed by the BiH Court back in July 2012. However, they could not be tried in Bosnia and Herzegovina, as they have been living in Serbia ever since the end of the war in Bosnia and Herzegovina in 1995. On the basis of the Protocol on Cooperation in the Prosecution of Suspected

⁹⁵ Transcript of the main hearing held on 26 September 2019.

⁹⁶ Transcript of the main hearing held on 31 January 2020.

⁹⁷ *Ibid.*

⁹⁸ Transcripts of the main hearings held on 28 May and 7 September 2020.



Perpetrators of War Crimes, Crimes against Humanity and the Crime of Genocide, signed in 2013 between the OWCP and the Prosecutor's Office of BiH, the two prosecutorial offices efficiently exchanged information and evidence, as a result of which proceedings were initiated before the domestic judiciary for the crime in Srebrenica.

Selective indictment

True to its customary practice, in this case as well the OWCP indicted lower-ranking individuals only. Namely the principal defendant and highest ranking individual in this case was a platoon commander at the time these crimes were committed. The HLC filed back in 2010 a criminal complaint with the OWCP for the crime of genocide in Srebrenica against several high-ranking VRS members who are living in Serbia, are seen in public, receive media coverage⁹⁹ and are accessible to the state authorities.¹⁰⁰ The complaint, among others, was against Petar Salapura, formerly a VRS Colonel and Chief of Intelligence of the VRS Main Staff, Milorad Pelemiš, Commander of the 10th Sabotage Unit of the VRS Main Staff, for whom an international wanted notice has been issued, and Dragomir Pećanac, a VRS Major and Deputy Commander of the Military Police of the Bratunac Light Brigade, which was comprised within the VRS Drina Corps. Nonetheless, none of these individuals have been indicted so far.

Protracted proceedings

The trial in this case began on 12 December 2016, being four years later in the evidentiary procedure stage, namely the examination of defence witnesses. Main hearings have been postponed a number of times due to the absence of some of the defendants and motions for recusal of the Chamber, but no hearings could be held between July 2017 and 1 March 2018, as the indictment had been dismissed and because the Court of Appeal failed on two occasions to promptly return the case file which had been referred to it for deciding on appeals against decisions of the Trial Chamber seized of the case. In 2020, due to the Covid-19 epidemic, trials were not held during the state of emergency. Under the Protocol on Cooperation between the OWCP and the Prosecutor's Office of BiH, evidence and information pertaining to a specific case may not be forwarded to the prosecutorial office of the other state without the consent of the victims. In the case at hand, representatives of the victims' families consented, namely placed their confidence in the judiciary of the Republic of Serbia to conduct this trial and, until the outbreak of the Covid-19 pandemic, had been regularly following the proceedings in the courtroom. A full four years into the trial, with the final ruling a long way off, the families of the victims are increasingly under the impression that Serbia has no intention of convicting war criminals and that its legal system is non-functional.

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99 See, e.g. Milorad Pelemiš' guest appearance in the programme "Goli život/Bare Life/" 2014, available at <https://www.youtube.com/watch?v=BPQUH78yhI>, accessed on 2 February 2020.

100 HLC release "Criminal Charges for the Genocide in Srebrenica", 16 August 2010, available at <http://www.hlc-rdc.org/?p=13072>, accessed on 20 December 2020.



III. The Bosanska Krupa II Case¹⁰¹

CASE OVERVIEW	
Current stage of the proceedings: appellate proceedings	
Date of indictment: 26 December 2017	
Trial commencement date: 7 June 2018	
Prosecutor: Bruno Vekarić	
Defendants: Joja Plavanjac and Zdravko Narančić	
Criminal offence charged: war crime against the civilian population under Article 142 of the FRY Criminal Code	
Chamber	Judge Mirjana Ilić (Chairperson) Judge Zorana Trajković Judge Dejan Terzić
Number of defendants: 2	Number of court days in the reporting period: 1 Number of witnesses heard in the reporting period: 0 Number of expert witnesses heard: 0
Defendants' rank: low- ranking	
Number of victims: 11	
Number of witnesses heard: 25	
Key developments in the reporting period: Retrial main hearing	

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¹⁰¹ The *Bosanska Krupa II* Case, trial reports and case file documents available at http://www.hlc-rdc.org/Transkripti/bosanska_krupa_II.html, accessed on 15 December 2020.



The course of the proceedings

Proceedings overview up to 2020

Indictment

The accused Joja Plavanjac is charged with murdering 11 Bosniak civilians in the first half of August 1992 in the “Petar Kočić” Elementary School in Bosanska Krupa (BiH), and the accused Zdravko Narančić with aiding in the murder. The accused Zdravko Narančić, a member of the military police of the 11th Krupa Light Infantry Brigade of the VRS at the time, while on guard duty at a prison set up in the Elementary School, let the accused Joja Plavanjac, a VRS soldier, enter the prison armed with an automatic rifle. In the prison, the accused Plavanjac first looked for detainee Predrag Praštalo, a man who had killed his mother several days before. Although Praštalo had already been transferred to the detention facility in Banja Luka, the accused Narančić unlocked and opened the door to a room in which a group of Bosniaks, members of the “Joks” group, were held, and as soon as the door was opened, the accused Plavanjac opened fire on them from his automatic rifle, killing: Rasim Kaltak, Nezir Kaltak, Enes Kaltak, Emsud Kaltak, Ferid Kaltak, Fadil Alijagić, Edin Alijagić, Mirsad Omić, Rasim Nasić and Ismet Čehajić. The accused Narančić then unlocked and opened the door to another room and called for Tofik Sedić to come out, and when he did, Plavanjac took him to the gymnasium and after asking him why he had stopped his uncle Mićo Plavanjac, killed him with his automatic rifle.¹⁰²

Defences of the accused

Presenting their defence, the defendants denied committing the crimes they were charged with. The accused Joja Plavanjac claimed that the murders had been committed by his father, Lazo Plavanjac (now deceased). He explained that a VRS soldier, Predrag Praštalo, had killed his mother on 31 July 1992, after which his father Lazo came to his place on 3 August 1992 and insisted that he drive him to the “Petar Kočić” Elementary School in Bosanska Krupa, where he was told Praštalo was detained. Both he and his father were armed. A guard, the accused Narančić, a subordinate of his, opened the door to let them in. Narančić explained that Praštalo had been transferred to Banja Luka, but the father nonetheless insisted that he unlock the doors to the rooms holding Bosniak detainees, to see for himself if that was so. When Narančić opened the door to one of the rooms, the father recognized Tofik Sedić amongst the detainees in the room and talked to him. Meanwhile, Plavanjac and Narančić went to an office for Plavanjac to check the duty officers’ log and make sure that Praštalo had indeed been transferred to Banja Luka. At a certain point they heard a shot, dashed out of the office and saw Tofik Sedić lying dead on the floor; then they again returned to the office to check the documents. Soon afterwards, they heard more shots, ran back to Plavanjac’s father and saw that he had shot several prisoners. He did not know how his father had opened the door to the room with the prisoners. Narančić grabbed Plavanjac’s father to prevent him from shooting again and pushed him out of the school. After that, father and son left.¹⁰³

102 OWCP Indictment KTO 4/17 of 26 December 2017, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents_sr/2018-03/kto_4_17_latinica~3.pdf, accessed on 8 January 2020.

103 Transcript of the main hearing held on 7 June 2018.



Presenting his defence, the accused Zdravko Narančić stated that he had let the accused Plavanjac into the school premises because he was his superior and he had to obey him, confirming at the same time the account of the critical event the accused Joja Plavanjac gave in his defence.¹⁰⁴

Witnesses in the proceedings

Witnesses and injured parties Asim Nasić, Mirela Rekić, Osman Alijagić, Fatima Kaltak and Safija Kaltak were examined via a video-conference link with the Cantonal Court in Bihać. They had no first-hand knowledge of the critical event, but, due to poor sound quality, their examination was impossible to follow.¹⁰⁵

Witnesses Duško Jakšić and Zdravko Marčeta, both members of the RS Army, did not have first-hand knowledge of the critical event either. They stated that they had heard that the late Lazo Plavanjac, father of the accused Joja Plavanjac, had also been involved in the killing of persons detained at the “Petar Kočić” Elementary School, even though they had made no reference whatsoever to the father of the accused Plavanjac when testifying earlier before the competent authorities in Bosnia and Herzegovina.¹⁰⁶

Witnesses Mehmed Gerzić, Šefkija Kozlica, Sabit Alijagić, Miralem Selimović and Kasim Haluzović were all detained on the premises of the “Petar Kočić” Elementary School in Bosanska Krupa. None of them had seen the late Lazo Plavanjac, the father of the accused Joja Plavanjac, at the time of the critical event. Witness Šefkija Kozlica said in his statement that he had seen the accused Joja Plavanjac coming to the school, and had then heard Plavanjac talking with the accused Narančić, a guard at the school at the time, and that afterwards he heard at first ten, and then one more shot.¹⁰⁷

Witness Sabit Alijagić, a neighbour of the accused Plavanjac, stated that he knew that the mother of the accused Plavanjac had been killed a few days prior to the critical event, and that he thought this to have been the cause of the critical event. Namely, Plavanjac’s mother had been killed by a neighbour who was brought to the school, but was then taken somewhere shortly afterwards. On the following day, the accused Plavanjac came to the school, drunk and looking for his mother’s killer. He entered the room where, among others, the witness was being held, and took out Tofik Sedić. He took Tofik to the gym and killed him there, after which he entered the room where the men referred to as “Joksovcı” were imprisoned, and opened fire at them.¹⁰⁸ Witness Kasim Kaluzović stated that he had seen the accused Plavanjac coming to the school, that the door to the room where the witness was detained swung open, and that he then saw the guard Narančić with Plavanjac. Plavanjac pointed at Tofik Sedić, who was imprisoned in the same room, and took him out and to the gym. He heard Plavanjac asking Tofik where his brother Zijad was, as well as why he, as a reserve policeman, had halted Plavanjac’s uncle, and who was he to dare do that. Then, a single

104 *Ibid.*

105 Transcript of the main hearing held on 3 October 2018.

106 Transcript of the main hearing held on 25 December 2018.

107 Transcript of the main hearing held on 5 March 2019.

108 *Ibid.*



shot was heard from that direction. After this, single shots were also heard coming from the room where the “Joksovcı”, ten of them, were detained.¹⁰⁹

First instance judgment

On 15 November, 2019, the Higher Court in Belgrade rendered a judgment pronouncing the accused Joja Plavanjac and Zdravko Narančić guilty of the criminal offence of a war crime against the civilian population, and sentenced Joja Plavanjac and Zdravko Narančić to terms of imprisonment of 15 and 7 years respectively.¹¹⁰

The Chamber amended the enacting terms of the judgment relative to the operative part of the indictment of 26 December 2017 in accordance with the statements of the examined witnesses, namely changed the chronological order of the victims’ murders. To wit, during the proceedings, based on consistent witness statements, the court established that: “... the accused Zdravko Narančić, as a member of the military police of the 11th Krupa Light Infantry Brigade, while on guard duty on the school premises, enabled [...] the accused Joja Plavanjac, a member of the Army of Republika Srpska, to enter the prison premises armed with an automatic rifle, who in the prison first looked for the detained Predrag Praštalo, who had killed his mother several days before. Although Praštalo had already been taken to a detention facility in Banja Luka, the accused Narančić first unlocked and opened the door to the room where the person named Tofik Sedić was held, and called him to come out. When he came out, the accused Plavanjac took him to the school gym and first asked him why he had stopped his uncle Mićo Plavanjac and then killed him by shooting from his automatic rifle. Afterwards, the accused Narančić unlocked and opened the door to a second room where Bosniaks, members of the “Joks” group, were detained. Plavanjac opened fire from his automatic rifle at them immediately after the door swung open, murdering Rasim Kaltak, Nezir Kaltak, Enes Kaltak, Emsud Kaltak, Ferid Kaltak, Fadil Alijagić, Edin Alijagić, Mirsad Omić, Rasim Nasić and Ismet Čehajić”.

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The court assessed Joja Plavanjac’s allegations that the said crime had been committed by his late father Lazo Plavanjac not to have been proven, as the defence failed to provide adequate substantiating evidence to that effect, and maintains that this statement was solely aimed at evading criminal responsibility. This conclusion of the court is also supported by the claims of witnesses who were detained at the school at the time the criminal offence was committed, who stated that none of them had seen Lazo Plavanjac then. Neither did the court accept the contention of the defence of Zdravko Narančić to the effect that he had let Joja Plavanjac enter the school where he was on guard duty out of fear because Plavanjac was his commander and he had to obey him. Namely, the court determined that Narančić’s duty as a guard had been to safeguard the prisoners and prevent third parties’ access to them. Pursuant to the testimonies of witnesses heard during the proceedings, it was established that Narančić had not attempted at any moment to prevent Plavanjac from committing the criminal offence, and that he had not only wilfully enabled him to commit the offence, but had also made it possible for him to leave the school unhindered afterwards.

¹⁰⁹ Transcript of the main hearing held on 8 April 2019.

¹¹⁰ Judgment of the Higher Court in Belgrade K. Po2 no. 11/17 of 15 November 2019.



Weighing the penalty for the defendant Joja Plavanjac, the court assessed the death of 11 persons of Bosniak ethnicity as an aggravating circumstance, and his family situation, the absence of a prior criminal record and the lapse of time since the perpetration of the offence as mitigating circumstances. With respect to the accused Zdravko Narančić, the court also considered the absence of a criminal record and the lapse of time since the perpetration of the offence as mitigating circumstances.¹¹¹

Overview of the proceedings in 2020

Second instance decision

On 22 September 2020, the Court of Appeal in Belgrade¹¹² ruled to quash the first instance judgment on account of a substantial procedural error and erroneous and incomplete factual findings and remanded the case to the court of first instance for retrial.¹¹³ The HLC has not been able to analyse this decision of the Court of Appeal as it was unavailable at the moment of drafting this report.

The main hearing in the retrial scheduled for December 2020 was not held owing to the deterioration of the epidemiological situation in Serbia.

HLC Findings

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Regional cooperation

These proceedings are a good example of the cooperation between Serbia and Bosnia and Herzegovina in the prosecution of war crimes, which was intensified after the Office of the War Crimes Prosecutor and the Prosecutor's Office of Bosnia and Herzegovina signed in 2013 the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide. Namely, this case was transferred by the Prosecutor's Office of Bosnia and Herzegovina, given that the accused, who are nationals and residents of the Republic of Serbia, were not accessible to the authorities of Bosnia and Herzegovina.

Length of sentence and mitigating circumstances

The prison sentences of 15 and seven years imposed on the accused Joja Plavanjac and Zdravko Narančić respectively are just and reflect the gravity of the committed criminal offence. However, the HLC is of the opinion that in determining sentences for this type of criminal offences the lapse of time should not be considered as a mitigating circumstance. That the lapse of time is not a circumstance to be considered in sentencing, is indirectly suggested also by the universal provision stipulating that this type of crime is not subject to the statute of limitations. The position of the court was therefore

¹¹¹ *Ibid.*

¹¹² Chamber composition: Judge Rastko Popović, Chairperson, Judges Miodrag Majić, PhD, Aleksandar Vujičić, Nada Hadži Perić and Omer Hadžiomerović.

¹¹³ Decision of the Court of Appeal in Belgrade Kž1 Po2 3/20 of 22 September 2020.



contrary to the established jurisprudence of the ICTY - that the length of the period between the offending conduct and the judgment should not be considered a mitigating circumstance¹¹⁴ – as well as at variance with contemporary jurisprudence generally.¹¹⁵

114 ICTY Judgment *Dragan Nikolić* – item 273

115 BGH, 2 StR 538/01, Judgment of 21 February 2002 – in a case of murder decided by the German Federal Supreme Court, reference was made to the length of the time span between the criminal conduct and the subsequent judgment as a possible mitigating factor. However, it was emphasised by that court that due to the seriousness of the crimes committed during World War II in 1943-44 by the accused, now 90 years old, extraordinary circumstances mitigating the accused's guilt were not applicable.



IV. The Zvornik – Standard Case¹¹⁶

CASE OVERVIEW	
Current stage of the proceedings: first instance proceedings	
Date of indictment: 10 May 2019	
Trial commencement date: 27 September 2019	
Prosecutor: Ognjen Đukić	
Defendant: Dalibor Maksimović	
Criminal offence charged: war crime against the civilian population under Article 142 of the FRY Criminal Code	
Chamber	Judge Vladimir Duruz (Chairperson) Judge Vera Vukotić Judge Vinka Beraha-Nikićević
Number of defendants: 1	Number of court days in the reporting period: 3 Number of witnesses heard in the reporting period: 4 Number of expert witnesses heard: 0
Defendant's rank: no rank	
Number of victims: 4	
Number of witnesses heard: 8	
Key developments in the reporting period: Main hearing	

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¹¹⁶ The *Zvornik-Standard* Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/zvornik.html> accessed on 20 December 2020.



The course of the proceedings

Proceedings overview up to 2020

Indictment

The accused Dalibor Maksimović¹¹⁷ is charged that, as a member of the Milići Territorial Defence military unit, on the afternoon of 18 April 1992, in the “Standard” building in Karakaj, (Zvornik Municipality, Bosnia and Herzegovina), where the Zvornik Serbian Public Security Station, and military formations including his unit were stationed on the upper and ground floors respectively, on learning that a fellow combatant had been killed in Zvornik that day, and as the apprehended and handcuffed Bosniak civilians, the brothers Iljaz, Nijaz and Nedžad Karaosmanović, and Fadil Čirak and an unidentified person, were escorted downstairs from the police station on the upper floor, he discharged his firearm at their backs, killing Fadil Čirak and Iljaz and Nijaz Karaosmanović on the spot, while the unidentified person managed to escape. Then the defendant and an unidentified soldier walked up to Nedžad Karaosmanović, who at that moment was still giving signs of life, and the two of them kicked him to death.¹¹⁸

Defence of the accused

At this stage of the proceedings the accused exercised his right to remain silent.¹¹⁹

Witnesses in the proceedings

Witnesses and injured parties Fehrija Čirak, whose husband Fadil had been killed, Alija Handžić, whose brothers Ilijaz, Nijaz and Nedžad Karaosmanović had been killed, Zilha Karaosmanović, whose husband Ilijaz Karaosmanović had been killed, and Mila Karaosmanović whose husband Nedžad Karaosmanović had been killed, had no first-hand knowledge of the critical event. Witness Fehrija Čirak stated that on 7 April 1992, when war operations started in Zvornik, she and her husband Fadil and their children went to Belgrade to stay with a friend of hers. On television they saw that the newly established Serbian authorities in Zvornik were publicly calling upon Zvornik inhabitants to return to the city and report their property, and her husband Fadil decided to go back. He did not manage to enter Zvornik on the first attempt, but went there again two days later, after which all trace of him was lost. She received word that her husband had been detained at the “Alhos” for interrogation, that a Serb soldier had perished in Zvornik, and that someone had killed her husband Fadil and the three Karaosmanović brothers in retaliation.¹²⁰

117 The Higher Court in Belgrade sentenced the defendant by Judgment nisi K.Po2 8/2017 of 23 September 2019 to a term of imprisonment of 15 years for the criminal offence of a war crime against the civilian population committed on 9 May 1992 in the Bratunac and Milići municipality areas, which was confirmed by Judgment Kž1 Po2 4/20 of the Court of Appeal in Belgrade of 17 September 2020.

118 OWCP Indictment KTO no. 1/2019 of 10 May 2019, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents_sr/2019-09/kto_1_19_lat.pdf, accessed on 20 December 2020.

119 Transcript of the main hearing held on 27 September 2019.

120 Transcript of the main hearing held on 7 November 2019.



Witness Alija Handžić stated that her whole family had fled Zvornik at the beginning of the war, and had gone to Šabac to stay with the uncle of her sister-in-law Ljilja, Nijaz's wife. Nijaz registered them as refugees with the Red Cross in Šabac. A couple of days later they saw Branko Grujić, the then mayor of Zvornik, on television, calling the people to come back and report their property. Therefore, her two sisters-in-law decided to go to Zvornik and Nijaz drove them to the bus station. In the meanwhile, two men in plain clothes came to the house where they were staying asking for Nijaz, and said that he was to report to the Secretariat of the Interior (SUP) in Šabac. As soon as he came back, Nijaz went to report to the SUP, and while he was there, the same two men came and told her other brothers, Ilijaz and Nedžad, to go and report to the SUP. That was the last time she saw them. She first learned of the fate of her brothers in 1999, when a taxi driver from Memići recognised her and told her that he had heard about the tragedy that had befallen them, and that her brothers had been killed by someone from Milići. Edina, a friend of the witness, who is married to Mimo Perić, a shoemaker from Milići, told their mother that her sons had been killed by one "Dača from Milići", who had boasted of it to her husband. She also heard what had happened to her brothers from Zoran Crnogača, from Zvornik, who came to see her sometime in 2007 and told her that he had been apprehended and tied to the radiator in the building in which a soldier from Milići killed her brothers. He also said that Fadil Čirak had been killed with her brothers.¹²¹

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Witness Božo Drmonjić, a fellow combatant of the defendant, stated that on the critical day he had heard some shooting on the ground floor of the building in Zvornik where they were stationed, and had later learned that a man had been killed. He did not know anything about the defendant's whereabouts at the time of the shooting. He said that on 17 December 2009 he gave a statement to the State Investigation and Protection Agency of Bosnia and Herzegovina (SIPA) under duress, and that he was threatened while giving it. SIPA personnel threatened him and even his daughter, who lives in France. They blackmailed him by saying that he would be "put away for 20 years if he did not sign". Therefore the allegations in that statement, to the effect that he had witnessed the critical event and that he was the person who had wrested the rifle away from the defendant after the latter had shot at the civilians, are untrue.¹²²

Witness Pero Milanović, another fellow combatant of the accused, explained that their unit had come to Zvornik from Milići several days prior to the critical event, tasked with securing facilities of vital importance in the city. On arrival in Zvornik, they were put up in rooms on the ground floor of a building belonging to the "Standard" company. On the critical day, he was at "Standard" in a room on the ground floor where he slept, when he heard over the radio communications link that a member of their unit, Miladin Vujadinović, a.k.a. "Luta", had been killed in town. At a certain point, a burst of fire rang out in the corridor and he went out to see what was going on. He saw the defendant brandishing a weapon, and men seeking to restrain him and wrest away the weapon. He noticed the motionless body of a man in civilian clothes in a pool of blood on the corridor floor. They took the defendant to a room upstairs and held him there overnight. The following day, the whole unit returned to Milići, but

121 *Ibid.*

122 *Ibid.*



he was not sure whether the defendant had also returned with the unit. He said that he had given an earlier statement regarding this event before the competent authorities of Bosnia and Herzegovina, and that no one had ever exerted any pressure on him in that connection.¹²³

Overview of the proceedings in 2020

In 2020, three court days were held during which four witnesses were examined. There were no hearings during the state of emergency, and subsequent hearings were postponed in two instances because witnesses, who are from Bosnia and Herzegovina, did not wish to appear before the court due to the Covid-19 pandemic.

Witnesses and injured parties Zilha Karaosmanović and Mila Karaosmanović did not have first-hand knowledge of the critical event. Witness and injured party Zilha Karaosmanović, the wife of the murdered Ilijaz Karaosmanović, explained that before the outbreak of war in Bosnia and Herzegovina she and her family, husband Ilijaz and their two sons, lived in Zvornik, in their own house. Her father-in-law, her mother-in-law and her brother-in-law Nedžad and his wife Mila and their children, her sister-in-law (husband's sister) Alija with her husband and their children, all lived in Zvornik in a single household. Her husband's brother Nijaz also lived in Zvornik with his wife Ljilja and their children, in their own apartment. At the beginning of the war the entire family fled Zvornik and went to Šabac to stay with the uncle of her sister-in-law Ljilja. Ljilja's husband Nijaz registered them as refugees with the Red Cross in Šabac. Several days later she saw the then mayor of Zvornik municipality on TV calling upon the people to return and report their property. So she and her sister-in-law Mila decided to go to Zvornik, and her husband's brother Nijaz drove them to the bus station. They first went to Mali Zvornik, to see the witness's family and check what the situation in Zvornik was like. On arrival in Mali Zvornik, Alija told them over the phone that after their departure the police had taken away all three Karaosmanović brothers, namely Ilijaz, Nijaz and Nedžad. On hearing this, she went to the Zvornik police station to inquire about the fate of her husband and his brothers. The commander of the police station told her that her husband and his brothers had been taken to the "Standard" facility, where, allegedly, they were to be interrogated. Together with Mila she went to the "Standard" building, but they could not enter because they saw that there were many soldiers in the compound. The soldiers hurled all manner of comments their way, and one of them in fact advised them to leave and told them that their husbands would be interrogated and then released. They remained in Zvornik for another seven or eight days, but did not manage to find out what had happened to their husbands. They left Zvornik and went back to Mali Zvornik to her parents' place. On 23 April 1992, one Ostoja from Zvornik told a co-worker of her neighbour's that he had been present in "Standard" when all the three Karaosmanović brothers were killed there. This information was relayed to her by a person who wished to remain anonymous. Her husband's mortal remains were found after the war at the Kazan Bašča site in Zvornik, were identified and handed over to the family.¹²⁴

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¹²³ Transcript of the main hearing held on 18 December 2019.

¹²⁴ Transcript of the main hearing held on 21 February 2020.



Witness and injured party Mila Karaosmanović gave an identical statement.¹²⁵

Witness for the prosecution Petar Golić stated that during the war he had been a member of the Milići Battalion; its Rudnik Company went to Zvornik in early April 1992, its task being to secure the Glinica /Alumina/ factory. On arrival in Zvornik they were quartered at the building of the present-day Faculty of Technology, which at the time was the building of “Standard” company, but their task was to stand guard at various checkpoints around town. On the critical day, a member of their unit, Milutin Vujadinović, a.k.a. Luta, was killed in the town; together with another two soldiers he went to bring his body to the premises of “Standard”. In the meantime, this “mess” happened at “Standard”. When he came to “Standard” with Luta’s body, there was a commotion there and he saw a body on the floor at the far end of the corridor near the stairway leading upstairs. He believes that the man was in civilian clothes. He saw bullet traces on the wall. People said that a person had jumped out of the window and escaped. He did not see the accused then.¹²⁶

Witness for the prosecution Goran Kaldesić, explained that in the beginning of April 1992 he was a member of the Milići Territorial Defence, and that his unit had been dispatched to Zvornik with the task of securing vital economic facilities. Upon arrival in Zvornik they were put up in rooms on the ground floor of the “Standard” building, and police were accommodated on the upper floor. The witness was on duty at a checkpoint in town when he was informed over his radio unit that a fellow fighter nicknamed “Luta” had been killed. They then set off towards “Standard”, and on arrival he learned that a soldier had been wounded. He saw men in the building corridor, and heard from some combatants that a person named “Žučo” and his men had killed a prisoner, and that one had escaped.¹²⁷

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HLC Findings

Regional cooperation

These proceedings are a result of the cooperation between Serbia and Bosnia and Herzegovina in the prosecution of war crimes, which was intensified after the Office of the War Crimes Prosecutor and the Prosecutor’s Office of Bosnia and Herzegovina signed in 2013 the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide. Namely, the confirmed indictment against the accused was transferred by the Prosecutor’s Office of Bosnia and Herzegovina, given that the accused, who is a national and resident of the Republic of Serbia, was not accessible to the authorities of Bosnia and Herzegovina. This was the second transferred indictment against the same defendant.¹²⁸

125 Ibid.

126 Transcript of the main hearing held on 25 June 2020.

127 Transcript of the main hearing held on 7 December 2020.

128 On the basis of the first transferred indictment of the Prosecutor’s Office of Bosnia and Herzegovina, proceedings were conducted against the accused in the *Bratunac* Case, K.Po2 8/2017, and a first-instance judgment handed down on 23 September 2019.



Excessive Anonymisation of the indictment

The OWCP (Office of the War Crimes Prosecutor) Indictment in this case, which is publicly accessible on the OWCP homepage under “indictments”¹²⁹, has been anonymised by publishing only its operative part, with data on the names of the accused and the victims redacted, which is not in accordance with the OWCP Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes.¹³⁰ Namely, the Rulebook provides that OWCP indictments “*shall as a rule be published in their entirety on the OWCP webpage, but with data on the basis of which the accused, the injured parties, their legal representatives, witnesses, relatives, persons close to them, neighbours and similar could be identified, substituted or omitted in a consistent manner*”.¹³¹ Instead of the entire indictment, only the operative part was posted, making it entirely impossible to ascertain on what evidence the OWCP based the indictment. As well, the Rulebook envisages anonymisation of the personal particulars of the participants in the proceedings, such as “*the names and surnames and nicknames of physical persons, the address, date and place of birth*”¹³², but, however, it also provides that “*data on the name, surname and nickname of a physical person who is a participant in the proceedings shall not be subject to anonymisation if the legitimate interest of the public to know prevails over the protection of the identity of the physical person in question*”.¹³³ As the names of both the accused and the victims have been anonymised, the OWCP is evidently in breach of a provision of its own Rulebook, in total disregard of the public interest, that being public disclosure of the identity of persons who stand accused of war crimes the commission of which poses a grave danger to society, and equally that of the victims, public reference to whom provides a form of redress for the victims and their families and is a prerequisite for the recognition of the sufferings they had gone through, primarily on account of their identity.

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129 OWCP Indictment KTO no. 1/2019 of 10 May 2019, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents_sr/2019-09/kto_1_19_lat.pdf, accessed on 20 December 2020.

130 Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes of 20 March 2019, available at http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document_sr/2019-05/%D0%9F%D1%80%D0%B0%D0%B2%D0%B8%D0%BB%D0%BD%D0%B8%D0%BA_%D0%9B%D0%B0%D1%82.pdf accessed on 20 December 2020.

131 *Ibid*, Article 1, paragraph 2.

132 *Ibid*, Article 5, paragraph 1.

133 *Ibid*, Article 5, paragraph 2.



V. The Sanski Most – Lušci Palanka Case¹³⁴

CASE OVERVIEW	
Current stage of the proceedings: first instance proceedings	
Date of indictment: 3 April 2017	
Trial commencement date: 12 July 2017	
Prosecutor: Bruno Vekarić	
Defendant: Milorad Jovanović	
Criminal offence charged: war crime against the civilian population under Article 142 of the FRY Criminal Code	
Chamber	Judge Vinka Beraha-Nikićević (Chairperson) Judge Vladimir Duruz Judge Vera Vukotić
Number of defendants: 1	Number of court days in the reporting period: 5 Number of witnesses heard in the reporting period: 2 Number of expert witnesses heard: 0
Defendants' rank: low rank	
Number of victims: 15	
Number of witnesses heard: 21	
Key developments in the reporting period: Main hearing	

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¹³⁴ The *Sanski Most – Lušci Palanka* Case, trial reports and case file documents available at http://www.hlc-rdc.org/Transkripti/Sanski_Most_Lusci_Palanka.html, accessed on 11 December 2020.



The course of the proceedings

Proceedings overview up to 2020

Indictment

The accused Milorad Jovanović is charged with having, as a reserve police officer in the Lušci Palanka Branch Police Station of the Sanski Most Public Security Station (SJB) of the Ministry of the Interior of Republika Srpska, together with his commander Slavko Vuković¹³⁵ and other unidentified police officers, in June and July 1992, forcibly removed and detained non-Serb civilians from villages in the general area of Sanski Most (Bosnia and Herzegovina). He locked them up in the building of the “Simo Miljuš” Memorial Museum in Lušci Palanka, where, in order to extract information about the possession of weapons or the alleged organising of resistance to the Serbian army, he punched and kicked them, hit them with a rifle and various other objects, tied them to a chair or a beam in the ceiling and then beat them viciously, as a result of which one civilian died. He also forced the civilians to cross themselves, crawl on the floor and kiss his boots.¹³⁶

Defence of the accused

Presenting his defence, the accused denied having committed the offence he is charged with. He stated that at the relevant time he was a member of the reserve police force of the Sanski Most Public Security Station and that his duty post was at the Lušci Palanka branch police station. He apprehended Bosniak civilians on the orders of his immediate superior. He admitted to having hit one of the detainees several times but not so hard as to cause him any suffering.¹³⁷

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Dismissal of the indictment

On 27 October 2017, the Trial Chamber ruled to dismiss the indictment on the grounds that it had been filed by an unauthorised prosecutor.¹³⁸ Namely, the previous prosecutor's term of office had expired on 1 January 2016, and the new prosecutor assumed office only on 31 May 2017. Not even an acting prosecutor was appointed in the meantime, leaving the OWCP without an authorised prosecutor in the relevant period. As the indictment in this case was filed precisely at that time, namely on 3 April 2017, it is considered to have been filed by an unauthorised prosecutor.

135 Slavko Vuković died in the meantime.

136 OWCP Indictment KTO 1/17 of 3 April 2017, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents_sr/2018-03/kto_1_17_latinica~0.pdf, accessed on 11 December 2020.

137 Transcript of the main hearing held on 12 July 2017.

138 Transcript of the main hearing held on 27 October 2017.



Continuation of the proceedings

Following the dismissal of the indictment, the Chamber granted the motion submitted by the new war crimes prosecutor for the continuation of the criminal proceedings and they were resumed in March 2018 from the point when they had been interrupted, namely by continuing the evidentiary procedure.¹³⁹

Witnesses in the proceedings

Neither witnesses Vahida Kugić and Sulejman Kaltak, family members of the injured parties, nor witness Munira Ramić had first-hand knowledge that the accused had beaten Bosniak civilians detained on the premises of the “Simo Miljuš” Memorial Museum in Lušci Palanka.¹⁴⁰ Witness Ejup Beširević, who at the time of these events lived in the village of Modra, Sanski Most municipality, described how he had been taken with a group of villagers to the “Simo Miljuš” Memorial Museum building in Lušci Palanka. The defendant was among the police officers who had escorted them there and he later beat him as well as another detainee.¹⁴¹ Witness Mesud Avdić also stated that the accused had beaten him while he was being held captive¹⁴², and witnesses Sadržir Alibegović and Hajro Beširević testified likewise. The accused admitted to having hit witness Hajro Beširević three times and apologised to him, saying that he had just been following his commander’s orders, for had he disobeyed he would have been deployed to the front.¹⁴³

Witnesses and injured parties Fuad Cerić and Vehid Handanagić, who were confined in the “Simo Miljuš” Memorial Museum building in Lušci Palanka alleged that the accused would come to the rooms in which they were detained and beat them.¹⁴⁴

Witness Ramiz Ramić, another detainee, stated that the accused had beaten Sadržir Alibegović.¹⁴⁵

Witnesses Drago Predojević,¹⁴⁶ Duško Grujić,¹⁴⁷ Željko Marković,¹⁴⁸ Marko Praštalo, Duško Vranješ and Milan Dekić,¹⁴⁹ who, like the defendant, were reserve police officers at the time of the critical event, had no knowledge of the accused having beaten or otherwise mistreated any person confined within the building of the “Simo Miljuš” Memorial Museum.

Witness Vid Bilbija, who at the time of the critical event was an active police officer in the village of Lušci Palanka, stated that he knew the accused but that he did not know whether he had beaten the prisoners either. He had had the occasion to see some of the confined persons and

139 Transcript of the main hearing held on 28 March 2018.

140 *Ibid*; Transcript of the main hearing held on 9 May 2018.

141 Transcript of the main hearing held on 28 March 2018.

142 Transcript of the main hearing held on 20 September 2018.

143 Transcript of the main hearing held on 8 November 2018.

144 Transcript of the main hearing held on 18 March 2019.

145 Transcript of 22 May 2019.

146 Transcript of the main hearing held on 28 June 2019.

147 *Ibid*.

148 Transcript of 4 November 2019.

149 Transcript of 13 December 2019.



observed that Hilmija Majdaković had been beaten up, and he also knew that Džafer Kugić had died from his injuries sustained in detention, but he did not know how he had come to harm.¹⁵⁰

Course of the proceedings in 2020

Five court days were held in 2020 during which two witnesses were examined. No hearings were held during the Covid-19 pandemic and trials were postponed three times because the defendant was unable to appear before the court for reasons of health.

Witness Amor Mašović, Chairman of the Board of Directors of the Missing Persons Institute of Bosnia and Herzegovina, explained the discrepant dates of death in the documentation pertaining to victim Dedo Dervišević. He said that the Institute maintained personal records on missing persons, and that data on the time of their disappearance was obtained from the members of their families. Often different data is given, namely family members report the date when they last saw the missing person as the date of their disappearance. Additionally, in non-contentious procedures conducted in order to pronounce a missing person dead, courts do not deal with the issue of ascertaining the exact date of death. As an example, he said that 15 December 1996 is stated as the date of death in numerous decisions declaring missing persons dead. That is so because under the law missing persons shall be pronounced dead if they went missing during the war and if there had been no news about their fate for a year after the cessation of hostilities, and the hostilities ceased on 15 December 1995. That is why the date of death entered for Dedo Dervišević in the register of deaths is 9 June 1992, because that was given as the date of his disappearance, although the actual date of death can be a different one. In respect of Dervišević, an official memo was also obtained stating that he had succumbed to his injuries towards the end of June 1992 on the premises of the “Brano Miljuš” building in the village of Lušci Palanka. The document does not indicate the source of information on the date of his death.¹⁵¹

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Witness Boško Petrović was the patrol unit leader in the Police Station (SM) in Lušci Palanka in June and July 1992. Together with the patrol, he brought in injured party Džafer Kugić on the orders of the police station commander Slavko Vuković. People were always apprehended on his orders, and it was always stated that they would be brought in for interrogation. Kugić was brought in and duly handed over to the commander, after which the witness went about his other tasks. As he was about to leave, two military policemen came to the station and rushed into the commander’s office where Kugić was and then a racket ensued. It was only after he had returned from the field that the officer on duty told him that Džafer Kugić had been beaten up in the commander’s office and had died. He did not see the accused when Kugić was brought in. The witness asked the commander who had allowed that, to which the latter replied “that it was none of his business as he was the commander”. Injured party Dedo Dervišević was brought to the station a couple of days later. The witness left for field duty and on the following day he heard people talking in the station mentioning Dedo. The accused Jovanović was also present on that occasion, and he said that Dedo had left. When he asked him whether Dedo

150 Transcript of the main hearing held on 17 September 2019.

151 Transcript of the main hearing held on 2 July 2020.



had gone home, the accused replied that “he had left in a car boot”, and that he had slit his throat. He asked the commander about Dedo Dervišević, and commander Vuković told him that the accused had beaten up Dedo and that he died. He knows that Sado Kaltak was also brought in, as he saw him when he arrived at the station. Sado was wearing white trousers and a shirt. He was brought by Drago Predojević. He does not know what happened with him later. He described the defendant as a good comrade and as obedient and fair while they were on patrol duty together. He believes that commander Vuković is principally responsible for everything that went on in the police station, because he allowed apprehended persons to be beaten up, and in fact himself encouraged the police to do so.¹⁵²

On 2 July 2020, the Office of the Prosecutor particularized the indictment, namely specified that the part of the indictment stating that the accused “tied some of the detained civilians by the feet or hands to a chair or a beam in the ceiling with a rope” referred to injured parties Refik Hadanagić and Šefik Handanagić.¹⁵³

The presentation of the parties’ closing arguments has been scheduled for January 2021

HLC Findings

Regional cooperation

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This case is a good example of the cooperation between Serbia and Bosnia and Herzegovina in prosecuting war crimes, which intensified after the OWCP and the Prosecutor’s Office of Bosnia and Herzegovina signed in 2013 the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide. Namely, the Una-Sana Cantonal Prosecutor’s Office in Bihać transferred the case to the OWCP since the accused, who is a national and resident of Serbia, was not available to the authorities of Bosnia and Herzegovina. This was at the same time the first indictment brought by the OWCP in 2017.

The proceedings were impossible to follow

In this case as well, main hearings were held in a courtroom that is not technically equipped with headphones for the public. This made it very difficult for the audience to follow witness testimonies provided via video conferencing, as the sound quality was extremely poor. Only the Trial Chamber and the parties were provided headphones to follow the proceedings.

The HLC maintains that the court has a duty to provide headphones to the gallery as well in order to enable the public to adequately follow witness testimonies being given via a video conference link.

¹⁵² Transcript of the main hearing held on 1 September 2020.

¹⁵³ Transcript of the main hearing held on 2 July 2020.



VI. The Ključ–Rejzovići Case¹⁵⁴

CASE OVERVIEW	
Current stage of the proceedings: appellate proceedings	
Date of indictment: 1 February 2018	
Trial commencement date: 19 April 2018	
Prosecutor: Miodub Vitorović	
Defendant: Željko Budimir	
Criminal offence charged: war crime against the civilian population under Article 142 of the FRY Criminal Code, in co-perpetration, in conjunction with Article 22 of the FRY Criminal Code	
Chamber	Judge Vinka Beraha-Nikićević (Chairperson) Judge Vladimir Duruz Judge Vera Vukotić
Number of defendants: 1 Defendants' rank: low rank Number of victims: 2 Number of witnesses heard: 9	Number of court days in the reporting period: 1 Number of witnesses heard in the reporting period: 1 Number of expert witnesses heard: 0
Key developments in the reporting period: Retrial main hearing	

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¹⁵⁴ The *Ključ–Rejzovići* Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/kljuc-rejzovici.html>, accessed on 18 December 2020.



The course of the proceedings

Proceedings overview up to 2020

Indictment

The accused Željko Budimir is charged that on 21 November 1992 at around 2300 hours in Rejzovići, a settlement in the Ključ municipality, Bosnia and Herzegovina, he and Predrag Bajić and Mladenko Vrtunić¹⁵⁵, armed with automatic rifles, a pump-action shotgun, a pistol and a knife, smashed the glass on the front door and broke into the house of injured party Ale Štrkonjić, who was at home with his wife Fatima Štrkonjić and mother-in-law Fata Koljić. In order to extract money from him, the perpetrators beat, stabbed and slashed injured party Ale Štrkonjić with a knife, inflicting injuries on him in the form of cuts to the head, left forearm and left lower leg. When he gave them 800 German marks, dissatisfied with the amount, they demanded more. The injured party then told them that he had some money buried in the garden. The accused Budimir and Bajić then took him to the garden, and the injured party dug out another 5,500 German marks and gave it to them, and, seizing the opportunity, escaped while they were counting the money. Afterwards, one of the perpetrators killed Fatima Štrkonjić by shooting her in the head, and then killed Fata Koljić too by slitting her larynx, oesophagus and large blood vessels with a knife.¹⁵⁶

Defence of the accused

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Presenting his defence, the accused denied having committed the offence he stands accused of. He stated that he did not know the family of the injured party and that at the time of the critical event he had been at another location.

Witnesses in the proceedings

Nine witnesses were heard during these proceedings.

Witness and injured party Ale Štrkonjić was adamant that the accused had been at his house on the critical day and had cursed, insulted and beat him. He could not identify the accused in the photo array shown him during his testimony, although he had recognized him in the same when giving his statement before the Cantonal Court in Bihać in 2010.¹⁵⁷

Witness Mladen Vrtunić, who was finally convicted of the same criminal offence, denied his involvement in it, claiming he had been at another location at the time. He claimed that his conviction was based

¹⁵⁵ Predrag Bajić and Mladenko Vrtunić were finally sentenced for the same criminal offence before the Cantonal Court in Bihać, namely, Predrag Bajić in case number 01 0 K 008800 14 K to a prison sentence of 13 years, and Mladenko Vrtunić in case number 01 0 K 007438 13 K to a prison sentence of 10 years.

¹⁵⁶ OECF Indictment KTO 2/18 of 1 February 2018, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents_sr/2018-03/redigovana_budimir_zejlkodoc~0.pdf, accessed on 28 December 2020.

¹⁵⁷ Transcript of the main hearing held on 20 June 2018.



on false witness testimonies and on a statement Predrag Bajić gave on 8 May 2014, confessing to his own participation in the commission of the crime and naming him and the accused Željko Budimir as co-perpetrators. On the basis of that statement Bajić had entered into a plea bargain with the Prosecutor's Office. Subsequently, at the trial of Milan Lukić for the same type of crime before the Cantonal Court in Bihać, he completely altered his statement, i.e. made no reference whatsoever to the accused or to him in the context of the critical event. On that occasion he stated that Mijo Stančević and Draško Krajcer had been with him at the house of injured party Štrkonjić.¹⁵⁸

The wife of the accused, a witness for the defence, stated that on the critical day the accused had celebrated his Patron Saint's Day in the village of Sanica, and that in the evening he had come to her house and asked her to marry him, and that he remained at her house until the next morning. Her statement was also confirmed by witness Dane Dobrić.¹⁵⁹

First instance judgment

On 23 September 2019, the Higher Court in Belgrade rendered a judgment pronouncing the accused Željko Budimir guilty of the criminal offence of a war crime against the civilian population, and sentenced him to a term of imprisonment of two years.¹⁶⁰

The Court found that during the proceedings it was conclusively established that the critical event had taken place in the manner as described in the indictment. To wit, it was established that an armed conflict of an internal character existed, and that during that conflict two persons were deprived of life in an attack at the house of Ale Štrkonjić on 21 November 1992, in the Ključ settlement of Mali Režovići.

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The Court accepted the statement of injured party Ale Štrkonjić in its entirety, whereas it did not accept Bajić's altered statement or the statements of the defence witnesses, assessing them as aimed at helping the accused.

The accused, together with Predrag Bajić and Mladenko Vrtunić, entered Ale Štrkonjić's house in which he was with his wife Fatima Štrkonjić and mother-in-law Fata Koljić.

Demanding money, they beat, stabbed and slashed Ale Štrkonjić with a knife. When they were given 800 German marks they asked for more, and Štrkonjić told them that he had more money buried in the garden. After Budimir and Bajić took him out to the garden, Štrkonjić dug up and handed over to them another 5,500 German marks, and then seized the opportunity to run away. Afterwards, one of the co-perpetrators murdered Fatima Štrkonjić by firing a shot at her head, and then also murdered Fata Koljić by slitting her larynx, oesophagus and major blood vessels with a knife.

158 Transcript of the main hearing held on 4 September 2018.

159 Transcript of the main hearing held on 24 May 2019.

160 Judgment of the Higher Court in Belgrade K. Po2 no. 1/2018 of 23 September 2019.



The Chamber convicted the accused of injury to bodily integrity and of robbery, omitting the murder charges, finding that there was no evidence that the accused Budimir had committed them. This was because the Prosecutor's Office did not specify the defendant's involvement in the murders of Fatima Štrkonjić and Fata Koljić, making it impossible to ascertain which, if any, of the actions contributing to the deprivation of their lives, had been taken by the accused.

In determining the sentence, the court assessed as mitigating circumstances in favour of the accused that he was 21 years of age at the time of the perpetration of the criminal offence, that he was a family man and the father of three children, and that much time had elapsed since the commission of the offence. As for aggravating circumstances, the court took into consideration the defendant's prior criminal record, given that Budimir had been sentenced in absentia in Bosnia and Herzegovina to 20 years of prison for murder.

Overview of the proceedings in 2020

In 2020 only one court day was held on which one witness was examined. Hearings were postponed four times on account of the serious epidemiological situation, while during the state of emergency none were in fact scheduled.

Second instance decision

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On 3 March 2020, the Court of Appeal in Belgrade¹⁶¹ ruled to quash the first instance judgment on account of a substantial procedural error and erroneous and incomplete factual findings and remanded the case to the court of first instance for retrial.¹⁶²

Being unavailable to the public, the decision of the Court of Appeal could not be analysed in more detail at the time this report was being drafted. Namely, even though the HLC addressed a request to the Court to make it available in keeping with the provisions of the Law on Access to Information of Public Importance, the request was not accommodated.

In the retrial at the court of first instance the accused again presented his defence, reiterating that at the time of the critical event, i.e. on 21 November 1992, he had been elsewhere.¹⁶³ Daliborka Budimir, the defendant's wife, again took the witness stand, and adhered to her earlier statement given in the main hearing. She explained that she clearly remembered the date of 21 November 1992, that being the date when the accused had asked her to marry him.¹⁶⁴

161 Chamber composition: Judge Nada Hadži Perić, Chairperson, Judges Miodrag Majić, PhD, Rastko Popović, Aleksandar Vujičić and Omer Hadžiomerović.

162 Decision of the Court of Appeal in Belgrade Kž1 Po2 1/20 of 3 March 2020.

163 Transcript of the main hearing held on 16 June 2020.

164 *Ibid.*



HLC Findings

Regional cooperation

These proceedings are a result of the cooperation between Serbia and Bosnia and Herzegovina in the prosecution of war crimes, which was intensified after the Prosecutor's Office for War Crimes and the Prosecutor's Office of Bosnia and Herzegovina signed in 2013 the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes Against Humanity and Genocide. Namely, this case was transferred by the Cantonal Court in Bihać, given that the accused, who is a citizen and resident of the Republic of Serbia, was not accessible to the authorities of Bosnia and Herzegovina.

The proceedings were impossible to follow

In this case the main hearings were held in a courtroom that is not technically equipped with headphones for the public. This made it very difficult for the audience to follow witness testimonies provided via video conferencing, as the sound quality was extremely poor. Only the Trial Chamber and the parties were provided headphones to follow the proceedings. As the hearings are public, the HLC maintains that the court has a duty to provide headphones to the gallery as well in order to enable the public observing the trial to adequately follow witness testimonies being given via a video conference link.

Assessment of the mitigating circumstances

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The court's consideration of the time lapse since the commission of the offence in weighing the penalty for the accused is not justified. Time lapse as a mitigating circumstance in determining the sentence may in principle be taken into account when classic criminality offences are in question, where the perpetrator's abstention from repeated offending over a protracted period of time is an indicator of his attitude towards the offence and his resocialisation. However, in the case of the criminal offence of a war crime against the civilian population, where the existence of an armed conflict is an objective condition of incrimination, the time lapse is of no significance whatsoever, as after the end of the armed conflict the offence can no longer be committed. That the lapse of time is not a circumstance to be considered in weighing penalties for this type of criminal offence is also implied by the universal provision on the non-applicability of the statute of limitations to this type of criminal offence. This view of the court runs counter to the established jurisprudence of the ICTY – that the length of the time span between the criminal conduct and the subsequent judgment shall not be considered as a mitigating circumstance¹⁶⁵ – as well as to contemporary jurisprudence.¹⁶⁶

165 ICTY Judgment *Dragan Nikolić* – item 273.

166 BGH, 2 StR 538/01, Judgment of 21 February 2002 – in a case of murder decided by the German Federal Supreme Court, reference was made to the length of the time span between the criminal conduct and the subsequent judgment as a possible mitigating factor. However, it was emphasised by that court that due to the seriousness of the crimes committed during World War II in 1943-44 by the accused, now 90 years old, extraordinary circumstances mitigating the accused's guilt were not applicable.



Length of sentence

The court sentenced the accused Željko Budimir to a term of imprisonment of two years. Account being taken of the fact that the statutory minimum prescribed for this criminal offence is a sentence of imprisonment of five years¹⁶⁷, extraordinary mitigating circumstances are a requirement for the sentence to be reduced below the statutory minimum. What circumstances the court evaluated as extraordinary mitigation was impossible to establish at the time of drafting this report, as none were referred to when the judgment was delivered, and the first instance judgment was not submitted to the HLC, notwithstanding the Law on Access to Information of Public Importance.

Non-compliance with the Law on Access to Information of Public Importance

The HLC was unable to undertake a detailed analysis of the first instance judgment and of the ruling quashing it because the Higher Court declined to submit them. The reason the court gave for its refusal was that *the relevant criminal proceedings had not yet resulted in a final ruling and that their submission: "might possibly lead to abuse of information and documents obtained in this manner and obstruct the conduct and conclusion of these judicial proceedings"*, without specifying concretely what would constitute such obstruction of the proceedings and offering evidence to that effect¹⁶⁸

Such an act on the part of the court is in contravention of the Law on Free Access to Information of Public Importance. Namely, for the court to deny access to information of public importance in the specific instance, it must prove that the requested access would seriously jeopardize, obstruct or impede the conduct of the proceedings.¹⁶⁹ The reasons for denying access to the requested decisions cannot be abstract and hypothetical, as those given by the court in its decision, but must be concrete and clear.

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The HLC lodged an appeal against this decision of the court with the Commissioner for Information of Public Importance and Personal Data Protection, but it has not been decided yet.

The HLC notes that lately this has invariably been the practice of the Higher Court in Belgrade, even though in the past period the Commissioner for Information of Public Importance and Personal Data Protection brought a number of decisions enjoining upon the court to submit judgments and rulings from proceedings that had not yet ended in a final decision.

167 Article 142 of the FRY Criminal Code.

168 Decision of the Higher Court in Belgrade SU II 17 a no. 84/20 of 18 June 2020.

169 Article 9, item 2 of the Law on Free Access to Information of Public Importance.



VII. The Brčko II Case¹⁷⁰

CASE OVERVIEW	
Current stage of the proceedings: first instance proceedings	
Date of indictment: 22 October 2018	
Trial commencement date: 28 May 2019	
Prosecutor: Miodjub Vitorović	
Defendant: Miloš Čajević	
Criminal offence charged: war crime against the civilian population under Article 142 of the FRY Criminal Code	
Chamber	Judge Zorana Trajković (Chairperson) Judge Mirjana Ilić Judge Dejan Terzić
Number of defendants: 1 Defendant's rank: no rank Number of victims: 13 Number of witnesses heard: 9	Number of court days in the reporting period: 3 Number of witnesses heard in the reporting period: 7 Number of expert witnesses heard: 0
Key developments in the reporting period: Main hearing	

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¹⁷⁰ The *Brčko II* Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/brckoII.html>, accessed on 21 December 2020.



The course of the proceedings

Proceedings overview up to 2020

Indictment

The accused Miloš Čajević is charged with having, from mid-May to July 1992, in Brčko (Bosnia and Herzegovina) as a member of the Intervention Platoon of the Brčko Reserve Police Force comprised within the Army of Republika Srpska, inhumanely treated, raped, intimidated and terrorised Muslim civilians. Thus, on 27 May 1992, he first drove the wounded Damir Brodlić from the “Luka” camp to the apartment of Mirela Brodlić, and then lined up at gunpoint and counted those present - Mirela Brodlić, Semka Čaluković, Muhamed Čaluković, Šuhreta Čaluković, Samir Čaluković, Goran Hasanović, and Fadil Hasanović, and also Vedad Hasanović and Rusmir Hasanović who were minors at the time -, shouted at them and threatened to kill them if he did not find them all there in the flat when he came the following day, and hit and insulted Goran Hasanović.

On an unspecified date between 10 and 12 May 1992, in the “Luka” camp detainee interrogation rooms, together with other uniformed camp security guards, he ordered S.A. to repeatedly hit his own brother M.A. and, dissatisfied with the severity of the blows exchanged, punched M.A. himself, then spilled some juice and ordered him to lick it off the floor, then whacked him with a stapler, and then, showering him with insults and threatening to slaughter him, cut him in the neck; he then ordered the injured parties to perform *fellatio* on one another.

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Between May and June 1992, he took injured party N.A., whom he knew from before, to the house of Faruk Rejzović in Brčko, at which members of the Intervention Platoon were quartered at the time. The injured party was held there for over twenty days doing the cleaning and tidying up the house. She was raped there almost every day.¹⁷¹

Defence of the accused

Presenting his defence, the accused denied having committed the crime of which he stands accused. He explained that he had been a member of an intervention platoon tasked with manning the front line and securing positions, organising the emptying of freezers in abandoned flats around town, because there was no electricity, and collecting information about weapons from the inhabitants. They also took individuals detained at the “Luka” camp to the Secretariat of the Interior (SUP) for interrogation and returned them to the camp afterwards. Because they came from the surrounding villages, some members of the Intervention Platoon were billeted at Faruk Rejzović’s house, and actually stayed there overnight. He lived in town and never spent the night at Rejzović’s house, but he did visit every morning, as meetings were being held there. At that time he had two dogs, Dobermans, which he held at Sinkovac, in an army compound with depots and vehicles. He supposes that he knew the injured

171 OWCP Indictment KTO no. 7/2019 of 22 October 2018, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents_sr/2019-04/kto_7_18_lat~1.pdf, accessed on 21 December 2020.



party N.A., as Brčko is a small town and they had probably come across each other, but her name rings no bells. He denies having taken her to the Režović house, nor does he recall having seen her there. He does not know any of the injured parties, and he never went to the “Luka” camp except to escort inmates for interrogation. Among the tasks of his intervention platoon was to inspect apartments, which he also did, but he never hit, insulted or threatened anyone during these inspections. At the Režović house he saw a brunette around 30 years of age and not too tall.¹⁷²

Witnesses in the proceedings

Witness Stevo Knežević, a fellow combatant of the accused, stated that members of the Intervention Platoon had been accommodated in a house near the Secretariat of the Interior. He saw three women in that house, but did not know whether they had been maltreated. He thought that they had been brought there unnecessarily and had therefore asked Commander Zarić to let them go. He confirmed that he had occasionally seen the accused at that house too, but did not know whether he slept there. The Intervention Platoon’s task had been to maintain law and order in the city and deploy to the front line if so required. They would also take people in for interrogation if they received an order to that effect.¹⁷³

Witness Zoran Jović stated that the accused had been a member of the Intervention Platoon, and that two Doberman dogs would walk beside him unrestrained, which he supposed people were afraid of. The witness himself would be scared when he encountered them, as they were large and vicious dogs. The accused would come with these dogs to the Režović home where the members of the Intervention Platoon were quartered. As members of the platoon they were tasked with apprehending specific individuals on the orders of the police station commander. He described the accused as a troublemaker who did whatever he chose, answered to no one, and came and went as he pleased. The members of the platoon were not required to check against specific lists who occupied which flats in town. He had not seen any females at the Režović house, but several colleagues had told him that there were some girls there. He argued with the accused, telling him that those women should not have been brought there, whereas the accused held the opposite view. Once he was dispatched to respond to a situation that the police had been informed had arisen in the Srpska Varoš neighbourhood. When they arrived at the scene, a man he knew as Muris ran up to the police complaining that he had been attacked by some masked individuals, and said that he had recognised one of them as the accused Čajević. They therefore took Čajević into custody. As they were bringing him in, he uttered threats against Muris and the witness, telling them that one of the two of them would not remain in town. Members of the Intervention Platoon would go to the “Luka” camp to pick up inmates and bring them in for interrogation. They had never been tasked with going around town to empty freezers in abandoned flats.¹⁷⁴

172 Transcript of the main hearing held on 28 May 2019.

173 *Ibid.*

174 *Ibid.*



Witness Aleksandar Lajić explained that the task of the Intervention Platoon had been maintaining law and order in Brčko. He had heard that the accused had been involved in a number of incidents, but did not know what exactly had been in question. He had seen several women at the Rejzović house who did the cleaning there. He had heard that the accused would come to the “Luka” camp and that “some beating” had taken place there, but could not remember who he had heard it from.¹⁷⁵

Expert psychological evaluation of the injured party N.A was ordered and she was found fit to testify before court.

Overview of the proceedings in 2020

In 2020, three court days were held during which seven witnesses were heard – five injured parties and two fellow combatants of the accused. No trials were held during the state of emergency imposed on account of the Covid-19 pandemic, and hearings were also postponed three times because the accused had not been brought from the Sremska Mitrovica Penal Correctional Facility where he is serving his prison sentence.¹⁷⁶ Namely, whenever the epidemiological situation deteriorated, the Sremska Mitrovica penitentiary decided not to take inmates out of the institution until further notice in order to avoid the danger of the spreading of the corona virus.

62 Giving his testimony, injured party S. A., explained that on 10 May 1992, five soldiers in fatigues came to his house and took him to the Ministry of the Interior (MUP) in Brčko, and that afterwards he was taken to the first shed in the Luka camp. On arrival at the camp he found his father and his brother M. A. there. He knows the accused from before as he had been on very good terms with his father. The accused came to the camp, armed and in a camouflage uniform. He produced a knife, put it to his neck and said “Balija /derogatory term for Muslims/, you motherfucker, I am going to slit your throat right now”. Somewhat later the witness noticed blood on his neck. The accused singled out the witness and his brother and took them to another room and forced them to perform *fellatio* on one another. In addition to the accused, also present during that were Ranko Češić and some soldiers he did not know. They observed the witness and his brother and laughed all the while. On that occasion the accused cracked his head open with a stapler. He also delivered a very strong blow to the witness’s brother who doubled over a desk and broke a flower pot. Then the accused spilled some juice and forced the witness to lick it off the floor.¹⁷⁷ The testimony of his brother, injured party M. A., is identical¹⁷⁸

175 *Ibid.*

176 The accused Miloš Čajević is serving a prison sentence for the murder of a 66-year old Bosniak woman committed in 1993 in the Brčko settlement of Srpska Varoš.

177 Transcript of the main hearing held on 4 February 2020.

178 *Ibid.*



Injured party Mehmed Čaluković stated that in the critical period, the accused, wearing a uniform and armed with hand grenades and an automatic rifle, often came to the flat in which the witness was staying with numerous members of his family, including Mirela Brodlić, who was a minor at the time. He maltreated the witness's brother-in-law Goran Hasanović, swore at him for bearing a Serbian name and not taking up arms and going to war, "there was no name that he did not call him". He would come every now and then, he was under the influence of alcohol and was "a terrible sight to behold".¹⁷⁹

Injured party Mirela Brodlić stated that the accused had brought her boyfriend, who was wounded, from the Luka camp to the flat in which she was staying with another 10 members of her family, and threatened everyone that he would kill them unless he found all of them there the following day. On that occasion he insulted and slapped her uncle Goran Hasanović. She was 17 at the time. She feared that she might be separated from her mother, because in that period Bosniak girls would be taken away and raped.¹⁸⁰

Witness Mikica Mitrović stated that he was a policeman with the Brčko Secretariat of the Interior (SUP) before the war as well and that in the critical period he was a member of the police Intervention Platoon just like the accused. Members of the Intervention Platoon were billeted at a privately owned house, where he saw, in passing, a young blonde female who was doing the tidying up there. That was injured party N.A. whom he occasionally saw in Brčko after the war as well. She told him then that she had had some problems, that she had been maltreated, and mentioned the accused. Incidentally, on one occasion the accused brought dogs to the house where the Intervention Platoon was accommodated. The accused answered to no one – on occasion he would be absent from work but would not be held to account.¹⁸¹

Witness Dubravko Češić, a fellow combatant of the accused, confirmed that he had seen a tall blonde girl in the house in which his platoon was billeted. Once he also saw two large dogs in the house.¹⁸²

As a particularly sensitive witness, injured party N. A. was examined in the presence of Ana Najman, court expert in the field of medical psychology. She explained that she knew the accused from before the war as they would come across each other socially. During the war she saw him in Brezovo Polje, a place near Brčko, where she had fled, and asked him to take her back to Brčko to her brother's place. The accused did so, but some ten days later he came to the flat in which she was staying and ordered her to go with him because "they needed her". He took her to a family home in Brčko in which the police Intervention Platoon, to which he also belonged, was quartered. Other members of the platoon were also in the house, of whom she remembers Ranko Češić, Mrkulja and a person called Travolta. She was told that she would be cleaning and tidying up the house. At night members of the Intervention Platoon would bring women to the house. On one occasion, the accused ordered her to go to her room and undress and then she had sexual intercourse with him against her will. She

179 Transcript of the main hearing held on 9 October 2020.

180 Ibid.

181 Ibid.

182 Ibid.



was reluctant to go into detail, but she emphasised that she had been forced and that she feared him, because he was armed – on that occasion his rifle was by the bed. She also feared for the life of her brother. The accused also intimidated her with dogs. He had brought two large Dobermans, said that they were hungry and left her alone with them for three days.¹⁸³

HLC Findings

Regional cooperation

These proceedings are a result of the cooperation between Serbia and Bosnia and Herzegovina in the prosecution of war crimes, which was intensified after the Office of the War Crimes Prosecutor and the Prosecutor's Office of Bosnia and Herzegovina signed in 2013 the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide. Namely, the Brčko District Prosecutor's Office submitted to the OWCP information and evidence that the accused Miloš Čajević had committed a crime, given the fact that he is a national and resident of the Republic of Serbia and was not accessible to the authorities of Bosnia and Herzegovina.

Cancellation of main hearings due to technical reasons

The main hearing in this case scheduled to hear the testimonies of three witnesses for the prosecution from the BH Brčko District Lower Court via a video conference link, was cancelled three times for technical reasons. That is, owing to technical problems, a video conference link could not be established.

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183 Transcript of the main hearing held on 6 November 2020.



VIII. The Bratunac-Suha Case¹⁸⁴

CASE OVERVIEW	
Current stage of the proceedings: first instance proceedings	
Date of indictment: 22 October 2018	
Trial commencement date: 5 November 2019	
Prosecutor: Svetislav Rabrenović	
Defendant: Jovan Novaković	
Criminal offence charged: war crime against the civilian population under Article 142 of the FRY Criminal Code	
Chamber	Judge Vladimir Duruz (Chairperson) Judge Vera Vukotić Judge Vinka Beraha-Nikićević
Number of defendants: 1 Defendant's rank: no rank Number of victims: 300 Number of witnesses heard: 0	Number of court days in the reporting period: 2 Number of witnesses heard in the reporting period: 0 Number of expert witnesses heard: 0
Key developments in the reporting period: Main hearing	

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¹⁸⁴ The *Bratunac-Suha* Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/bratunac-suha.html>, accessed on 27 December 2019.



The course of the proceedings

Proceedings overview up to 2020

Indictment

The accused Jovan Novaković is charged with having, as the Commander of the Moštanica Company of the Bratunac Territorial Defence, on 10 June 1992, forcibly uprooted about 300 Bosniak civilians from the village of Suha (Bratunac municipality, Bosnia and Herzegovina), among whom women and children, by ordering, during an attack on the village, Bosniak civilians out of their houses and participating in their displacement and threatening to kill individual civilians unless they found and brought other members of their families as well, following which he ordered them to set off in a column towards the Bratunac football stadium, where civilians from other places had also been brought under armed escort, and then women, children and elderly people were deported aboard buses to Kladanj, while men fit for military service were escorted to and detained at the “Vuk Karadžić” Primary School in Bratunac.¹⁸⁵

Defence of the accused

In the course of the proceedings to date the accused has not presented a defence. The accused failed to appear at the first scheduled main hearing citing health reasons.¹⁸⁶ The court granted the defence motion for the accused to undergo a medical assessment of his fitness to stand trial. As the Chairman of the Board of Experts which was to undertake this evaluation was unable to participate in its work for health reasons, another court expert was appointed Board Chairman.¹⁸⁷

The findings of the Board of Experts will be submitted to the court in early 2020. Should the expertise find the accused fit to stand trial, the proceedings shall continue, but in the case of a negative expert report, the Chamber shall dismiss the Indictment.¹⁸⁸

Overview of the proceedings in 2020

In 2020 only one court day was held on which two expert witnesses were examined and the accused presented his defence. During the state of emergency imposed on account of the Covid-19 pandemic no trials were scheduled and subsequent hearings were postponed in four instances owing to the failure of witnesses to appear and once because of the deterioration of the epidemiological situation.

185 OWCP Indictment KTO no. 6/2018 of 22 October 2018, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents_sr/2019-12/%D0%9A%D0%A2%D0%9E_6_18_%D0%9B.pdf, accessed on 27 December 2020.

186 Transcript of the main hearing held on 5 November 2019.

187 Transcript of the main hearing held on 16 December 2019.

188 Under Article 416, paragraph 1, item 3), the Chamber shall dismiss the indictment if during the main hearing it is established that the accused is unfit to stand trial.



Medical court experts Dr. Zoran Stanković and Dr. Vesna Jovanović, who evaluated the defendant's fitness to stand trial, determined that, despite his impaired health, and having regard to his cognitive capacities, the accused was fit to attend the trial and actively participate in the criminal proceedings.¹⁸⁹

Presenting his defence, the accused Jovan Novaković denied having committed the criminal offence he was charged with. He stated that the allegations in the indictment that at the critical time he had been the commander of the Bratunac Territorial Defence Moštanica Company were not true, and that he had only been a platoon leader. He swore by his children that he did not know that Bosniak civilians would be expelled from the village of Suha. As regards the able-bodied men from the village of Suha, who had been separated from the women and children and taken to the "Vuk Karadžić" Primary School, he said that he did not know what was happening to them at the school. He underlined that he had helped two Bosniak men escape, one of whom is now living in the USA, and the other in the vicinity of Tuzla. To his knowledge, members of the "White Eagles" and "Šešelj's men", were in Bratunac then and had come there to plunder.¹⁹⁰

HLC Findings

Regional cooperation

These proceedings are a result of the cooperation between Serbia and Bosnia and Herzegovina in the prosecution of war crimes, which was intensified after the Office of the War Crimes Prosecutor and the Prosecutor's Office of Bosnia and Herzegovina signed in 2013 the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide. Namely, the confirmed indictment against the accused was transferred by the Prosecutor's Office of Bosnia and Herzegovina, given that the accused, who is a national and resident of the Republic of Serbia, was not accessible to the authorities of Bosnia and Herzegovina.

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Excessive anonymisation of the indictment

The OWCP Indictment in this case, which is publicly accessible on the OWCP homepage under "Indictments"¹⁹¹, has been anonymised by publishing only its operative part, with data on the names of the accused and the victims redacted, which is not in accordance with the OWCP Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes.¹⁹² Namely, the Rulebook provides that OWCP indictments "shall as a rule be published in their entirety on the OWCP webpage, but with data on the basis of which the accused, the injured parties, their legal representatives,

189 Transcript of the main hearing held on 21 February 2020.

190 Ibid.

191 OWCP Indictment KTO no. 1/2019 of 10 May 2019, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2019-09/kto_1_19_lat.pdf, accessed on 20 December 2020.

192 Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes of 20 March 2019, available at http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document__sr/2019-05/%D0%9F%D1%80%D0%B0%D0%B2%D0%B8%D0%BB%D0%BD%D0%B8%D0%BA_%D0%9B%D0%B0%D1%82.pdf accessed on 20 December 2020.



witnesses, relatives, persons close to them, neighbours and similar could be identified, substituted or omitted in a consistent manner”¹⁹³ Instead of the entire indictment, only the operative part was posted, making it entirely impossible to ascertain on what evidence the OWCP based the indictment. As well, the Rulebook envisages anonymisation of the personal particulars of the participants in the proceedings, such as “the names and surnames and nicknames of physical persons, the address, date and place of birth”¹⁹⁴, but, however, it also provides that “data on the name, surname and nickname of a physical person who is a participant in the proceedings shall not be subject to anonymisation if the legitimate interest of the public to know prevails over the protection of the identity of the physical person in question.”¹⁹⁵ As the name of the accused, but also the names of the victims, have been anonymised, the OWCP is evidently in breach of a provision of its own Rulebook, in total disregard of the public interest, that being public disclosure of the identity of a person who stands accused of war crimes, the commission of which poses a grave danger to society, and equally that of the victims, public reference to whom provides a form of redress for the victims and their families and is a prerequisite for the recognition of the sufferings they had gone through, primarily on account of their identity.

193 *Ibid*, Article 1, paragraph 2.

194 *Ibid*, Article 5, paragraph 1.

195 *Ibid*, Article 5, paragraph 2.



IX. The Vlasenica Case¹⁹⁶

CASE OVERVIEW	
Current stage of the proceedings: first instance proceedings	
Date of indictment: 17 September 2020	
Trial commencement date: 7 December 2020	
Prosecutor: Miodjub Vitorović	
Defendant: Višnja Aćimović	
Criminal offence charged: war crime against the civilian population under Article 142 of the FRY Criminal Code in conjunction with Article 22 of the FRY Criminal Code	
Chamber	Judge Vladimir Duruz (Chairperson) Judge Vera Vukotić Judge Vinka Beraha-Nikićević
Number of defendants: 1	Number of court days in the reporting period: 1 Number of witnesses heard in the reporting period: 0 Number of expert witnesses heard: 0
Defendant's rank: no rank	
Number of victims: 37	
Number of witnesses heard: 0	
Key developments in the reporting period: Main hearing	

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¹⁹⁶ The *Vlasenica* Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/vlasenica.html>, accessed on 14 January 2021.



The course of the proceedings

Proceedings overview up to 2020

Indictment

The accused Višnja Aćimović is charged that, after she joined and was active on the side of the Army of Republika Srpska (VRS), in the beginning of June 1992 she participated together with Pero Kostić (now deceased) and other unidentified VRS members in the killing of 37 civilians of Bosniak ethnicity at the “Mračni dol” locality in Vlasenica Municipality, Bosnia and Herzegovina. The civilians, who had been in prison in Vlasenica, were bussed to the “Mračni dol” site where an unidentified soldier successively took them off the bus, and the defendant and Kostić shot them dead with their firearms.

Defence of the accused

Presenting her defence, the accused denied having committed the criminal offence she was charged with, claiming that she did not know “on what basis these things were being attributed to her”. She had never taken part in war operations or worn a uniform. She was living with her parents in their family home in Vlasenica, but at the time the civilians were killed she was in Bačka Topola. She explained that her brothers Milinko, Stanislav, Lazar and Miroslav had been VRS members, and that Milinko was killed on 22 May 1992. After his death, she went to Bačka Topola together with her parents to stay with her sister, remained there for 40 days, and then returned to Vlasenica. She believes that she is being accused by witnesses who wish to malign her family.¹⁹⁷

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HLC Findings

Regional cooperation

These proceedings are a result of the cooperation between Serbia and Bosnia and Herzegovina in the prosecution of war crimes, which was intensified after the Office of the War Crimes Prosecutor and the Prosecutor’s Office of Bosnia and Herzegovina signed in 2013 the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide. Namely, the confirmed indictment against the accused was transferred by the Prosecutor’s Office of Bosnia and Herzegovina, given that the accused, who is a national and resident of the Republic of Serbia, was not accessible to the authorities of Bosnia and Herzegovina.

¹⁹⁷ Transcript of the main hearing held on 7 December 2020.



The beginning of the trial was difficult to follow

The beginning of Višnja Aćimović's trial was difficult to follow because it had not been publicly disclosed what exactly the OWCP's Indictment charged the accused with.¹⁹⁸

Namely, the indictment against the accused had been read out at the pretrial hearing, which was barred to the public,¹⁹⁹ so that it was not read out at the main hearing, nor was it posted on the OWCP's webpage at that time.

Following the main hearing, the HLC addressed a Request for Access to Information of Public Importance to the OWCP, which was accommodated and the indictment against Višnja Aćimović was made available to it.²⁰⁰

198 OWCP Indictment KTO no. 3/20 of 17 September 2020.

199 Article 345, paragraph 2 of the Criminal Procedure Code.

200 OWCP letter PI.no. 23/30 of 31 December 2020.



X. The Kalinovik Case²⁰¹

CASE OVERVIEW	
Current stage of the proceedings: first instance proceedings	
Date of indictment: 26 September 2019	
Trial commencement date: 13 January 2020	
Prosecutor: Ljubica Veselinović	
Defendant: Dalibor Krstović	
Criminal offence charged: war crime against the civilian population under Article 142 of the FRY Criminal Code	
Chamber	Judge Zorana Trajković, Chairperson Judge Mirjana Ilić, member Judge Dejan Terzić, member
Number of defendants: 1	Number of court days in the reporting period: Number of witnesses heard in the reporting period: 10 Number of expert witnesses heard: 0
Defendant's rank: no rank	
Number of victims: 1	
Number of witnesses heard:	
Key developments in the reporting period: Main hearing	

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²⁰¹ The *Kalinovik* Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/kalinovik.html>, accessed on 14 January 2021.



The course of the proceedings

Proceedings overview up to 2020

Indictment

The accused is charged that, as a member of the Army of Republika Srpska, one evening on an unspecified date in August 1992, together with an unidentified fellow combatant, he came to the “Miladin Radojević” Primary School in Kalinovik, in which unlawfully detained Bosniak civilians from Kalinovik and the nearby villages, mainly women and children, were held, entered the classroom in which injured party B1 was, called her by name and told her to come out. After she came out holding her minor child by the hand, he ordered her to send the child back in, or else he would rape it, and when injured party B1 complied, he took her to an empty adjacent classroom and ordered her to undress. When the injured party refused, he threatened to take her children, and, in fear for the lives of her children, the injured party undressed; the accused then raped her and threatened that she was to tell no one about the rape, for if she did, first her children and then she would come to grief. After the rape, the accused ordered her to remain undressed and left the classroom, and immediately afterwards the unidentified fellow combatant went in and raped the injured party.²⁰²

Defence of the accused

Presenting his defence, the accused denied having committed the crime he was charged with. He said that during the armed conflict he had been a member of the Army of Republika Srpska and an ordinary soldier. He had relatives in the village of Rudice in the Kalinovik municipality, namely his grandparents and uncles, whom he used to visit. The village had a mixed ethnic composition – Serbs and Muslims lived in it side by side. He knew his Muslim neighbours. Early in August 1992, he was positioned above the village of Rudice. Members of the Bosnia and Herzegovina Army had mounted a major offensive on Trnovo, and he became concerned about his relatives. He came to Kalinovik and with three of his comrades went to the “Miladin Radojević” Primary School, where captured Muslims were held, in order to inquire about his kin. Namely, captured Muslims would be exchanged for prisoners and dead bodies, and, as his uncle had been killed, he went there to see about an exchange. Accompanying him on that occasion were Nenad Ćiro, Nenad Jokić and Zoran Popović, who was later killed. The accused wore a uniform and a bullet-proof vest, and was armed with a rifle and hand grenades. On arriving at the school, he noticed several soldiers and policemen, as well as some civilians - women and children - but he spoke to none of them, nor did he see anyone he knew among them. He asked one of the soldiers what was going on, and left the school some fifteen minutes later. He never again went to the school to obtain information, for already on the following day he was transferred to the village of Dobro Polje, to the defence line. He is unable

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202 OWCP Indictment KTO 2/19 of 26 September 2019, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents_sr/2019-12/%D0%9A%D1%82%D0%BE_2_19_%D0%9B%D0%B0%D1%82.pdf, accessed on 14 January 2021.



to put a face to the name and surname of injured party B1, he can only conclude from her surname that she could be from the environs of his village.²⁰³

Witnesses in the proceedings

Witness Memna Jašarević had no firsthand knowledge of the critical event, while the examination of protected witness B5 was barred to the public.²⁰⁴

Witness Elvir Čusto learned about the rape of injured party B1 from his mother who had been detained at the “Miladin Radojević” Primary School in Kalinovik together with the injured party. His mother told him that one day the accused Krstović came for the injured party and led her out of the classroom in which they were situated. When the injured party returned, she was in a bad state, “and one could gather that she had been molested”, because she was shaking and crying.²⁰⁵

Witness Duško Mandić was a reserve policeman at the time of the critical event and worked as a security guard at the “Miladin Radojević” Primary School in Kalinovik. Initially, Serbian women who had fled Konjic were put up at the school, then Bosniak men, and after that Bosniak women with their children. During August 1992, members of paramilitary units would enter the school premises. He stated that one morning after his arrival at the school, injured party B1 complained to him that she had been raped by a neighbour, but he did not know who was in question at the time, nor did he know him. He later learned the name of the accused.²⁰⁶

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Witness Milan Lalović stated that in July and August 1992, as a member of the reserve police force, he was a security guard at the “Miladin Radojević” Primary School in Kalinovik. He did not see anyone being raped, but he later heard about it. He had never seen the accused Krstović in his life. The Chairperson of the Chamber showed the witness a portion of his statement given before the competent authorities of Bosnia and Herzegovina on 18 October 2007, in which he had stated that he remembered the rape of injured party B1, because he had been on shift duty together with Slavko Lalović, nicknamed “Ustasha” when the accused Krstović came to the school and went to another room with Lalović. Shortly afterwards, other guards told him that Krstović had raped a woman then. The witness confirmed that these allegations in his statement were true.²⁰⁷

Witness Tahir Panjeta was detained for four days at the “Miladin Radojević” Primary School in Kalinovik in August 1992. He could see that the detainees had been mistreated. He heard about the defendant later, from women detainees; they told him that the accused had maltreated them.²⁰⁸

Defence witnesses Nenad Jokić and Nenad Čiro, fellow combatants of the defendant, stated that they had come outside the “Miladin Radojević” Primary School together with the accused, Nenad Čiro and

203 Transcript of the main hearing held on 13 January 2020.

204 Transcript of the main hearing held on 14 July 2020.

205 Transcript of the main hearing held on 6 October 2020.

206 *Ibid.*

207 *Ibid.*

208 Transcript of the main hearing held on 3 November 2020.



Zoran Popović (now deceased), to inquire about their family members, as they did not know what had become of them after Muslim forces had gained control over Trnovo. They were uniformed and armed on that occasion. They could not go inside the school because it was guarded by police – they only got as far as the main entrance.²⁰⁹

The examination of injured party and protected witness B1 was barred to the public.²¹⁰

During the evidentiary proceedings, the statements were examined of protected witnesses B2, B4 and B6 given before the Prosecutor's Office of Bosnia and Herzegovina, as owing to health reasons these witnesses were unable to appear before the court.²¹¹

HLC Findings

Regional cooperation

These proceedings are a result of the cooperation between Serbia and Bosnia and Herzegovina in the prosecution of war crimes, which was intensified after the Office of the War Crimes Prosecutor and the Prosecutor's Office of Bosnia and Herzegovina signed in 2013 the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide. Namely, the confirmed indictment against the accused was transferred by the Prosecutor's Office of Bosnia and Herzegovina, given that the accused, who is a national and resident of the Republic of Serbia, was not accessible to the authorities of Bosnia and Herzegovina.

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Excessive anonymisation of the indictment

The OWCP Indictment in this case, which is publicly accessible on the OWCP homepage under "Indictments"²¹², has been anonymised by publishing only its operative part, with data on the names of the accused and the victims redacted, which is not in accordance with the OWCP Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes.²¹³ Namely, the Rulebook provides that OWCP indictments "shall as a rule be published in their entirety on the OWCP webpage, but with data on the basis of which the accused, the injured parties, their legal representatives, witnesses, relatives, persons close to them, neighbours and similar could be identified, substituted or omitted in a consistent manner".²¹⁴ Instead of the entire indictment, only the operative part was posted, making it entirely impossible to ascertain on what evidence the OWCP based the indictment.

209 *Ibid.*

210 Transcript of the main hearing held on 10 December 2020.

211 *Ibid.*

212 OWCP Indictment KTO no. 1/2019 of 10 May 2019, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents_sr/2019-09/kto_1_19_lat.pdf, accessed on 20 December 2020.

213 Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes of 20 March 2019, available at http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document_sr/2019-05/%D0%9F%D1%80%D0%B0%D0%B2%D0%B8%D0%BB%D0%BD%D0%B8%D0%BA_%D0%9B%D0%B0%D1%82.pdf accessed on 20 December 2020.

214 *Ibid.*, Article 1, paragraph 2.



As well, the Rulebook envisages anonymisation of the personal particulars of the participants in the proceedings, such as “the names and surnames and nicknames of physical persons, the address, date and place of birth”²¹⁵, but, however, it also provides that “data on the name, surname and nickname of a physical person who is a participant in the proceedings shall not be subject to anonymisation if the legitimate interest of the public to know prevails over the protection of the identity of the physical person in question”²¹⁶. As the name of the accused has been anonymised, the OWCP is evidently in breach of a provision of its own Rulebook, in total disregard of the public interest, that being public disclosure of the identity of a person who stands accused of war crimes.

Apart from that, such anonymisation is unnecessary, because the BiH media had already reported on the indictment filed by the BiH Prosecutor’s Office against Dalibor Krstović²¹⁷, and information that the indictment against Dalibor Krstović had been confirmed has been on the web page of the BiH Court ever since April 2019.²¹⁸

215 *Ibid*, Article 5, paragraph 1.

216 *Ibid*, Article 5, paragraph 2.

217 Fokus, “*Dalibor Krstović charged with raping a Bosniak woman at 20 years of age*”, available at <https://www.fokus.ba/vijesti/dalibor-krstovic-optuzen-da-je-sa-20-godina-silovao-bosnjakinju/911585/>, accessed on 14 January 2021.

218 Court of Bosnia and Herzegovina, available at <http://www.sudbih.gov.ba/vijest/potvrena-optunica-u-predmetu-dalibor-krstovi-21093>, accessed on 14 January 2021.



XI. The Teslić Case²¹⁹

CASE OVERVIEW	
Current stage of the proceedings: first instance proceedings	
Date of indictment: 30 December 2019	
Trial commencement date: 28 September 2020	
Prosecutor: Ivan Marković	
Defendant: Nebojša Mirović	
Criminal offence charged: war crime against the civilian population under Article 142 of the FRY Criminal Code	
Chamber	Judge Vera Vukotić, Chairperson Judge Vinka Beraha Nikićević, member Judge Vladimir Duruz, member
Number of defendants: 1	Number of court days in the reporting period: 1 Number of witnesses heard in the reporting period: 0 Number of expert witnesses heard: 0
Defendant's rank: no rank	
Number of victims: 36	
Number of witnesses heard: 0	
Key developments in the reporting period: Main hearing	

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²¹⁹ The *Teslić* case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/teslic.html> accessed on 14 January 2021.



The course of the proceedings

Proceedings overview up to 2020

Indictment

The accused Nebojša Mirović is charged with having participated, in the summer of 1992, in the territory of Teslić municipality (Bosnia and Herzegovina) in the infliction of bodily and mental pain or suffering (torture) and bodily injury on Bosniak civilians, namely that:

1. In June 1992, in the community centre of the village of Donji Ružević, he and several members of the Teslić police station, while interrogating seven Bosniak civilians about the possession of weapons, hit them forcefully on the body with truncheons, hands and feet and a wooden bat,
2. In the summer of 1992, by the local mosque in the village of Donji Ružević, he and several members of the Teslić police station, while interrogating 12 Bosniak civilians about the possession of weapons, hit them with truncheons on the body, as a consequence of which one of the civilians died three days later,
3. In July or August 1992, he and three members of the Teslić police station, maltreated a Bosniak civilian outside his home in the Gornji Teslić district, by hitting him forcefully with the hands, police truncheons and wooden sticks, and when the injured party fell on the ground, proceeded to kick him; at the same place they beat another two Bosniak civilians, one of whom fainted twice as a consequence; a couple of days later the accused arrived at the injured party's house again and repeatedly punched him in the head,
4. In June 1992, in the village of Barići, while interrogating him about the possession of weapons, he kept hitting a Bosniak civilian in the neck and all over the body with a wooden bat,
5. In June 1992, in the community centre in the village of Ruževići, he beat two Bosniak civilians, father and son, for about 45 minutes with a wooden bat all over the body, and then grabbed one of them and banged his head against the concrete manhole so that he fainted,
6. In June, in the Teslić police station, while interrogating a Bosniak civilian as to why he had been in the Tešanj municipality area, punched and kicked him in the head, until a policeman stopped him with the words "enough, you will kill him",
7. In July 1992, in the village of Donji Ruževići, while local Bosniaks were digging a canal by the roadside, repeatedly forcefully hit a Bosniak civilian with a police truncheon and kicked him all over the body,
8. In the summer of 1992, in the village of Donji Ruževići, beat a Bosniak civilian and his minor son, then 14 years old, viciously with a wooden bat,



9. In June 1992, in the building of the Teslić Territorial Defence, together with a member of the Teslić Police Station, ordered a Bosniak civilian being interrogated to press his forehead against the wall and raise his arms with three fingers extended and then delivered two rounds of strong blows to his back with a wooden stick and wrung his arms behind his back, while the policeman pushed his fingers into his eyes forcing him to confess where he had been and to with whom.
10. In June 1992, in a room in the Teslić Police Station, while interrogating with another policeman a Bosniak civilian about the positions of the Bosniaks, forced him to stand against the wall and beat him with a police truncheon, and then ordered him to sit on a chair, grabbed him by the hair, pulled him downwards and then whacked him on the back with the truncheon so that he lost consciousness,
11. In the summer of 1992, at the local Muslim cemetery in the village of Ružević, together with a member of the police, beat six Bosniak civilians on the body with the metal barrel of a pump action rifle and a wooden stick,
12. In July 1992, in the vicinity of the local cemetery in the village of Donji Ruževići, beat a Bosniak civilian with a metal part of a horse-drawn cart, a crossbar, on the left shoulder and back, as a result of which the injured party fell down and fainted.²²⁰

Defence of the accused

Presenting his defence, the accused denied having committed the criminal offence that he was charged with. He stated that in the critical period he had been a member of the reserve police force and that he worked on protecting the Muslim population, but also on seizing weapons from them. He emphasised that he had been an ordinary reserve policeman who could be issued orders by any active police officer on his shift on a particular day. He also said that he did not know any of his superiors or of the injured parties.²²¹

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HLC Findings

Regional cooperation

These proceedings are a result of the cooperation between Serbia and Bosnia and Herzegovina in the prosecution of war crimes, which was intensified after the Office of the War Crimes Prosecutor and the Prosecutor's Office of Bosnia and Herzegovina signed in 2013 the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide. Namely, the confirmed indictment against the accused was transferred by the Prosecutor's Office of Bosnia and Herzegovina, given that the accused, who is a national and resident of the Republic of Serbia, was not accessible to the authorities of Bosnia and Herzegovina.

220 OWCP Indictment KTO 4/19 of 30 December 2019, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents_sr/2020-08/kto_4_19_lat.pdf, accessed on 18 January 2021.

221 Transcript of the main hearing held on 28 October 2020.



XII. The Štrpci Case²²²

CASE OVERVIEW	
Current stage of the proceedings: first instance proceedings	
Date of indictment: 10 May 2018	
Trial commencement date: 29 January 2019	
Prosecutor: Miodjub Vitorović	
Defendants: Gojko Lukić, Jovan Lipovac, Ljubiša Vasiljević, Duško Vasiljević, Dragana Đekić	
Criminal offence charged: war crime against the civilian population under Article 142 of the FRY Criminal Code	
Chamber	Judge Vera Vukotić (Chairperson) Judge Vladimir Duruz Judge Vinka Beraha-Nikićević
Number of defendants: 5	Number of court days in the reporting period: 6 Number of witnesses heard in the reporting period: 2 Number of expert witnesses heard: 1
Defendants' rank: no rank	
Number of victims: 20	
Number of witnesses heard: 34	
Key developments in the reporting period: Main hearing	

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²²² The Štrpci Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/strpci.html>, accessed on 30 December 2020.



The course of the proceedings

Proceedings overview up to 2020

Indictment

The accused Gojko Lukić, Ljubiša Vasiljević, Duško Vasiljević and Dragana Đekić, members of the “Osvetnici/Avengers/” unit, which in effect was part of the VRS, and the accused Jovan Lipovac, a member of the 1st Company of the 1st Battalion of the VRS Višegrad Brigade, and other members of the VRS (between 25 and 30 of them) are charged with belonging to an armed group entrusted with the special task of abducting, on 27 February 1993, non-Serb passengers from fast train number 671 operating on the Belgrade–Bar railway route. The accused Jovan Lipovac, Ljubiša Vasiljević and Duško Vasiljević, together with other members of the group, came to the railway station in the village of Štrpci, ordered the station master to stop the train, positioned themselves alongside both sides of the train when it stopped and then boarded it and asked the passengers for their ID papers. They took 20 passengers – non-Serb civilians - off the train, namely: Fevzija Zeković, Halil Zupčević, Ilijaz Ličina, Rasim Ćorić, Nijazim Kajević, Muhedin Hanić, Ismet Babačić, Esad Kapetanović, Senad Đečević, Safet Preljević, Adem Alomerović, Zvijezdan Zuličić, Šećo Softić, Fehim Bekija, Rafet Husović, Jusuf Rastoder, Džafer Topuzović, Fikret Memović, Tomo Buzov and an unidentified person, and forced them at gunpoint onto a truck and transported them to the building of the primary school in Prelovo, where the accused Gojko Lukić and Dragana Đekić joined them.

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On arriving in the school, members of the group, among whom were all the defendants, ordered the injured parties out of the vehicle and, punching, kicking and hitting them with rifle butts all the while, shoved them into the school gym and ordered them to strip, seized their money and valuables and continued to beat them.

Then they forced them, barefoot, in their underwear, their hands bound with wire behind their backs, to climb onto the truck again, in which they were taken to the village of Mušiči, to a burnt house belonging to Rasim Šehić.

Some of the members of the armed group took up positions around the truck and others around the house, their task being to prevent any of the prisoners from escaping, while a third armed group formed a gauntlet from the rear of the truck to the house. The defendants were also in the gauntlet. The injured parties had to run the gauntlet in twos or threes at a time to the house where two members of the armed group awaited them and then killed them with two shots to the back of the head. Eighteen of the civilians were killed in this way and two of them while attempting to flee - one of these was shot by an unidentified member of the group, and the other was first wounded by a member of the group (Nebojša Ranisavljević, who has been convicted of this crime by a final ruling), after which another member of the unit slit his throat with a knife.²²³

223 OWCP Indictment, KTO 1/15 of 10 May 2018, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents_sr/2019-08/kto_1_15_lat.pdf, accessed on 30 December 2020.



Defences of the accused

Presenting their defences, all the defendants denied having committed the criminal offence they were charged with. Thus, the accused Gojko Lukić stated that in the critical period he was working for the “Official Gazette” in Belgrade and that he would only go to Rujište near Višegrad to visit his parents.²²⁴ The accused Ljubiša Vasiljević stated that while on the reserve police force in Višegrad he was gravely wounded in the left leg on 2 January 1992 and was taken to hospital in Užice where he underwent treatment until the end of May 1993. At the time of the critical event he was only able to walk supporting himself with crutches. After the treatment, he was declared unfit for military service for the next five years.²²⁵ Duško Vasiljević stated in his defence that he was not in the Višegrad area at the critical time, nor had he participated in the critical event. He went to the battlefield early in May 1992 through the MUP of the Republic of Serbia out of patriotic motives, as his parents hailed from those parts. He returned to Obrenovac on 10 July 1992 as his wife was about to give birth and did not go back to Višegrad again.²²⁶ The accused Jovan Lipovac stated that he had participated in the war in Bosnia and Herzegovina as a member of the Višegrad Brigade and that he had been manning positions in his native village of Rujište and towards the border with Serbia.²²⁷ The accused Dragana Đekić stated that she had had nothing to do with the critical event whatsoever, except that she was in Višegrad in that period. Ever since 2002 she has been “subjected to torture at the hands of the state as they are planting on her all the events, from Zvornik to Višegrad“. They have been hounding her all these years, but she will only tell it like it is. She knows Milan Lukić from the Višegrad front, from where, after the events in Sjeverin (abduction from a bus and killing of non-Serb passengers), she returned to Belgrade. When Milan Lukić called and told her that he urgently needed fighters because the defence line had been penetrated, she mustered a group of about 15 volunteers, among them Nebojša Ranisavljević, and took them to Višegrad. On arriving in Višegrad, she was assigned to the Intervention Brigade.²²⁸

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Witnesses in the proceedings

Witnesses and injured parties Nail Kajević, Selma Čolović, Ragip Ličina,²²⁹ Alija Kapetanović, Etem Softić, Misin Rastoder, Edin Bakija,²³⁰ Islam Sinančević,²³¹ Đordije Vujović and Izudin Hanić,²³² did not have first-hand knowledge of the critical event. Witnesses Marko Palzinić and Radenko Grujičić, train conductors, and witness Vladan Tucović, train engineer, stated that on the critical day the train stopped at the station in Štrpci and that uniformed men took 15-20 male passengers off the train and led them somewhere towards the station building.²³³

224 Transcript of the main hearing held on 4 March 2019.

225 *Ibid.*

226 *Ibid.*

227 *Ibid.*

228 *Ibid.*

229 Transcript of the main hearing held on 3 April 2019.

230 Transcript of the main hearing held on 4 April 2019.

231 Transcript of the main hearing held on 13 May 2019.

232 Transcript of the main hearing held on 14 May 2019.

233 Transcript of the main hearing held on 2 September 2019.



Witness Zoran Udovičić, a police officer escorting the train, stated that the train stopped at the station in Štrpci and that soldiers in different outfits surrounded the train. He told a fellow guard, Miroslav Vranić, who was also escorting the train, to go to the front end of the train and check what the soldiers wanted, while he himself went towards the rear of the train. A group of four or five soldiers then entered the train and when he asked them to state their business they said that “they were looking for their strays”. They wore various uniforms; some were in camouflage fatigues, others in standard olive drab. He noticed a soldier who had a fur cap on. The soldiers opened the compartments and asked the passengers for their IDs, and also took some of the passengers off the train. The passengers who got off the train headed in the direction of the railway station. About seven or eight passengers were taken off that part of the train in which he was situated, and later his colleague Vranić told him that 12 or 13 passengers had been taken off his section of the train. All of them were men fit for military service and he thought that military reservists of Republika Srpska were being taken off the train for mobilisation purposes. The witness also said that he had specific instructions in his patrol sheet that should the train stop, VRS soldiers were to be let onto the train to check whether there were any conscripts among the passengers, and that, as that had also happened before, he suspected nothing.²³⁴

Witnesses Zoran Bogetić, Zoran Pantović,²³⁵ Ljubiša Radmirović and Nenad Cvetić,²³⁶ testified that the train stopped at Štrpci, that soldiers unknown to them boarded the train and checked the passengers’ ID’s and took some of them off the train.

Witness Damljan Mitrašinović was the commander of the VRS Goražde Brigade at the time of the critical event. On the critical day a truck belonging to his brigade was made available to a group of combatants from the Višegrad Brigade, who said they needed it to transfer themselves to the village of Rujšite, some 25 km from Višegrad, because a group of Muslim fighters had infiltrated the area. He requested that this information be verified through communications equipment, which his deputy Dobro Stanišić did. On receiving an affirmative answer about the incursion of Muslim fighters, he instructed his assistant Mičo Jakić to provide them with a truck and drivers. About ten days later, Jakić told him that the information they had received over the radio link had been false, that no Muslim fighters had infiltrated the area, and that it had been a pretext for getting the truck. At Dobrun, the soldiers who came to pick up the truck chucked out the drivers, members of the Goražde Brigade, and continued the trip on their own. He had not talked to the truck drivers about this incident personally, as a Brigade security officer was in charge of such matters. Jakić told him about the incident with the truck only later because he feared Milan Lukić – he feared for his family.²³⁷

Witness Dragoljub Čarkić, a member of the VRS Višegrad Brigade during the critical period, worked at the Agricultural Cooperative, repairing farm machinery or transporting by tractor whatever the army needed. In February 1993, the director of the cooperative summoned him and told him to drive a tractor to Mušići, to transport something for the military. When he arrived at Mušići, Krsto Papić,

234 *Ibid.*

235 Transcript of the main hearing held on 24 September 2019.

236 Transcript of the main hearing held on 28 October 2019.

237 *Ibid.*



commander of a Višegrad Brigade battalion, stopped him by a burnt house and signalled to him to head for the yard. He then saw dead persons lying in the snow, with pools of blood around them. He was told that he was to drive their bodies to the bank of the nearby River Drina. Some other people loaded the bodies, he only transported them. He also noticed there Dušan Božić, Krsto Papić's driver at the time. He was at the steering wheel of a "Lada Niva" parked on the other side of the road. When he returned, he asked the director of the cooperative why he had sent him on such a mission, to which the latter replied that he had been obliged to do so, having been given similar orders himself.²³⁸

Witness Dušan Božić, Krsto Papić's driver at the time of the critical event, stated that one evening in February 1993, he and Papić had gone to Prelovo, to the house of his father-in-law, which was some 100 metres away from the school building. Papić walked to the school, and soon afterwards called him on his "Motorola" telling him to bring the car around to the school, which the witness did. He saw a truck parked by the school; Papić told him that they would be returning to Rujište. He confirmed that witness Dragoljub Čarkić had hauled away bodies in the village of Mušići but said that he had not taken part in it but sat in the car all the while. The witness changed his prior statement given before the Prosecutor's Office of Bosnia and Herzegovina, namely the part relating to the identification of the persons he had seen outside the primary school in Prelovo, asserting that he had given that statement under duress.²³⁹

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Witness Krsto Papić was a battalion commander in the Višegrad Light Infantry Brigade at the time of the critical event. His zone of responsibility did not cover the village of Prelovo, where the school contained a kitchen and a signals unit component. On the evening of 27 February 1993, accompanied by his driver Dušan Božić, he had arrived at and entered the house of his uncle Kosta in Prelovo; someone called his uncle to come out. When he came back in, he told him that Milan Lukić had brought some Muslims. The witness headed for the school on foot and saw a couple of cars, a truck, some soldiers, Stanica the cook, and Mitrašin Glišić, a kitchen hand, outside the school. He entered the school and went to the signallers' room. There he found a frightened signaller and Milan Lukić who told him to mind his own business when he asked him what was going on. He called his driver on the Motorola to pick him up at the school and then rode to Rujište. While in Prelovo, he did not see Gojko Lukić, and was not sure that he saw the accused Jovan Lipovac either. He had seen the accused Ljubiša Vasiljević before this event and he knew that one of the Vasiljević brothers had crutches, but he could not remember which one. He knew the accused Dragana Đekić, and he used to see her in Višegrad and at Rujište. She had been with Milan Lukić. While in Prelovo, he had heard a female voice, but was unable to explain why in his statement to the OWCP he had said that he had recognised the voice as being that of the accused Dragana Đekić. He had entered into an agreement with the Prosecutor's Office of Bosnia and Herzegovina in connection with his activities in Mušići (the witness had organised the disposal of the bodies of the slain passengers from the execution site in Mušići, but did not testify about that at the main hearing but only before the OWCP). He had had numerous contacts with BiH and OWCP prosecutors in connection with this event. The prosecutor

238 Transcript of the main hearing held on 26 November 2019.

239 *Ibid.*



from Bosnia and Herzegovina Džermin Pašalić had exerted pressure on him, whereas there had not been any pressures exerted on him by the OWCP.²⁴⁰

Witness Nebojša Ranisavljević²⁴¹ changed the statement he had given in the investigation stage because allegedly the deputy prosecutor assigned to the case had come to his house and promised him all sorts of things “to say what he wanted him to say”. He explained that on the critical day, he and Mića Jovičić responded to a call for action that had come from Milan Lukić whom, “everyone dreaded” and dared not refuse him anything. They joined up with a group of fighters led on that occasion by Lukić, so that there were 15 to 20 of them. It was only when they came to the railway station in Štrpci that he realised where they were. Milan Lukić stopped the train and the witness boarded it and took some passengers off. After some fifteen minutes Lukić told them to stop and the passengers who had been taken off the train were then transported in a truck to the primary school in Prelovo and placed in the gym. Lukić had them all line up against the wall and ordered them to empty their pockets. They found a pistol on one of the young men and beat him. They took the passengers out of the gym and, on Lukić’s orders, tied their hands behind their backs; then they were transported aboard a truck to a burnt house around which Lukić had positioned his co-fighters. They proceeded to pull the men off the truck, and when two of them attempted to flee, shots were fired at them, including by the witness. One of them was wounded and Milan Lukić walked up to him, asked for a knife and slit his throat. Then they brought the passengers to Lukić one by one and the witness heard the muffled sound of shots impacting the ground. After killing the passengers, they returned to Višegrad. The next day, flashing a bloodstained knife, Mićo Jovičić boasted how he had slaughtered the passenger who had attempted to escape. Everyone else kept silent about the event. Among the defendants he knew only Dragana Đekić, but had not seen her during the critical event.²⁴²

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The Chamber ordered a forensic expert analysis to ascertain the causes of death of the injured parties whose bodies have been found²⁴³, as well as a ballistic analysis.

Overview of the proceedings in 2020

Six court days were held during the reporting period, on which two witnesses for the prosecution and a medical court expert were heard.

Medical court expert Dr. Zoran Stanković testified in respect of the duration of the treatment and recovery of the accused Ljubiša Vasiljević.²⁴⁴

240 Transcript of the main hearing held on 9 December 2019.

241 Nebojša Ranisavljević was finally convicted of the same crime and sentenced to a term of imprisonment of 15 years by Judgment K.no. 5/98 of 9 September 2002 of the Higher Court in Bijelo Polje, which was confirmed by Judgment Kž.no. 102/03 of 19 November 2003 of the Supreme Court of the Republic of Montenegro.

242 Transcript of the main hearing held on 10 December 2019.

243 The bodies of victims Halil Zupčević, Rasim Ćorić, Jusuf Rastoder and Ilijaz Ličina have been found so far.

244 Transcript of the main hearing held on 8 July 2020.



Witness for the prosecution Mićo Jovičić²⁴⁵ stated that, having been talked into it by Nebojša Ranisavljević and the accused Dragana Đekić, he arrived in Višegrad from Belgrade as a volunteer on 16 January 1993. He became a member of the Višegrad Light Infantry Brigade Intervention Company, which was positioned at Okolišta. He had met the accused Gojko Lukić, the brothers Vasiljević, Jovan Lipovac, as well as Milan Lukić, in Višegrad when walking about town in his spare time. He would often go from Okolišta to Višegrad, as it was only about a twenty-minute walk to Višegrad. On 27 February 1993, he was at Okolišta in the company of Nebojša Ranisavljević when Milan Lukić and Boban Indić, the Intervention Company commander, arrived and told them to get ready as they would be going into action, and that a truck would be waiting for them at the gate. It was a military truck, known as an “150”, olive drab and with a tarpaulin cover. The witness and Ranisavljević sat in the cargo area of the truck, where there were another ten or so soldiers, among whom he recognized the accused Duško and Ljubiša Vasiljević, Jovan Lipovac, Ranko Drekalo, the brothers Obrad and Novak Poluga, as well as two persons known as “Colonel” and “Slovene”. Indić and Lukić sat in the cab, and the witness thinks that Dragan Šekarić was at the wheel of the truck. He did not know where they were going. The truck got stuck on the way, and Milan Lukić shouted at them to quickly push it out of the rut because they would be late for the train.

86 They arrived at the railway station in Štrpci, where he noticed that two passenger cars had followed the truck. The soldiers formed a gauntlet along the railway track, while the witness remained by the truck with several combatants. He noticed that on arriving at the station some of the soldiers had put on balaclavas. He saw Milan Lukić, Boban Indić and another soldier going to the station master’s office, and he supposes that they had ordered him to stop the train. When the train stopped, Lukić, Indić, Drekalo and another soldier boarded it; he later heard that they had asked the passengers for their ID papers and had taken Muslims off the train. Some twenty passengers, men in civilian clothes, were taken off the train. Some of them were carrying their luggage. They put them all in the cargo area of the truck. Among the abducted passengers he noticed a person of about 50 years of age and with a darker complexion, who he believed was a Roma.

At dusk, the truck pulled up outside a school at a place he later heard was called Prelovo. Near the school, where the lights were on, he noticed the accused Dragana Đekić and Gojko Lukić. The abducted passengers were ordered off the truck and into the school. The witness remained by the truck and lit a cigarette, and later, on hearing screams, he entered the school premises to see what was going on. The abducted passengers had been led into the gym and lined up against the wall with their backs turned towards some sort of a ladder mounted on the wall (Swedish ladder). Facing the passengers were the soldiers with their rifles pointed at them. He saw Milan Lukić standing in the centre of the gym having words with and hitting with some kind of a cable one of the abductees who had protested. If they dared utter a sound, other abducted passengers would be hit with rifle butts, struck and kicked. He saw the accused Dragana Đekić hit one of the abducted passengers with a rifle,

²⁴⁵ Witness for the prosecution Mićo Jovičić entered into a plea agreement with the BiH Prosecutor’s Office for a criminal offence of the same type, and was sentenced to a term of imprisonment of five years, which he is currently serving in Serbia.



and the accused Gojko Lukić walking up to one of the abductees and hitting him with the barrel of his rifle. “Milling about” the gym were Duško Vasiljević and the Poluga brothers; he also saw the accused Jovan Lipovac in the gym. The abducted passengers had taken their clothes off, on someone’s orders, he guessed. They were in just their underpants and undershirts and some were barefoot; he saw three piles of their clothes, valuables, watches, chains, rings and documents in the gym. He remembers having seen a green passport among those things. In the school in Prelovo he noticed a man of small build, whose name he later learned was Glišić, shifting on his feet around the soldiers, one of whom would not let him enter the school.

Sometime later, the abducted passengers were led out of the gym, their hands bound with wire or string and ordered to climb into the truck cargo area. Several soldiers boarded the truck and helped them climb, as they were tied, and the witness also helped. The truck set off from Prelovo with the witness sitting in the cargo area, and the two passenger cars following as well. All the soldiers who had been at Prelovo arrived at a place he later learned was called Mušići, where they stopped near a burnt house. Boban Indić ordered the soldiers to secure the perimeter around the house. The witness remained by the truck together with one of the Poluga brothers, Mitar Vasiljević a.k.a. “Chetnik”, and a soldier nicknamed “Colonel”, while the others formed a gauntlet. The abducted passengers were taken off the truck in twos or threes and led to Boban Indić and Milan Lukić, who killed them with shots to the back of the head. He could see that it was Lukić because he wore a tall fur hat, which the witness could see when the flash from the discharging firearm illuminated it. One of the abducted passengers tried to escape. Nebojša Ranisavljević shot at him and wounded him, after which Milan Lukić walked up to him and slit his throat. After all the abducted passengers had been killed, the witness went back to Okolišta, while the others returned to Prelovo.²⁴⁶

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Witness for the prosecution Mitrašin Glišić²⁴⁷ stated that he knew all the accused. Gojko Lukić and his brother Milan Lukić, a primary schoolmate of his, are from Rujište, as is the accused Jovo Lipovac, whose family he also knows. He knows Duško and Ljubiša Vasiljević, who are from Đurevići, and he had met the accused Dragana Đekić in the company of one Riki from Užice when he arrived. He said that at the time of the critical event he had been working as a kitchen hand at the primary school in Prelovo and that he also slept there. On the upper floor of the school were the Command of the Župljanska Company, whose commander was Krsto Papić, and the radio communications unit. The signaller was Dragan Simić, a.k.a. “Učo”, and Duško Božić, Krsto Papić’s driver, would stand in for him. He remembers that it was winter, the month of February, about five o’clock in the afternoon, when Radomir Šušnjar told the cook Stanica Marković to go home because Milan Lukić would be bringing civilians to the school. He went outside to see what it was about, and noticed a truck that had skidded off the road near the driveway to the school, by the Ajdarovac drinking fountain. When he approached the truck, he saw soldiers there, and he recognized Milan Lukić, Gojko Lukić, Boban Indić, Jovo Lipovac, Ljubiša and Duško, Dragana Đekić and Petko Indić. Milan Lukić ordered him to go and get Kosta Ilić, a local, to come with his tractor and pull the truck out, and the witness did so. When he got

²⁴⁶ Transcript of the main hearing held on 27 January 2020.

²⁴⁷ Transcript of the main hearing held on 8 July 2020.



to Kosta's place, he saw Krsto Papić and Dušan Božić, Kosta's son-in-law, there. After pulling it back on the road, they drove the truck to the school. Following the truck were also two passenger vehicles. Some twenty soldiers positioned themselves around the truck. Among them were Niko Vujčić, Obrad Poluga, Novak Poluga, Mitar Četnik, Neša who had been in Montenegro, Milovan Vilaret and Stevo Vilaret, Jovo Lipovac, Radojica Ristić, Sredoje Lukić, as well as Duško and Ljubiša Vasiljević, Gojko Lukić, Dragana Đekić and Milan Lukić. A gauntlet was formed from the truck to the school entrance and the civilians in the truck were ordered to get off it, take their bags and go inside the school. The civilians entered the school hallway and were led to the gym. The witness does not know the exact number of the civilians, he thinks that there might have been some twenty of them. Dragana Đekić yelled at the civilians, cursed their Ustasha mothers and hit them with a rifle butt. He also saw Jovo Lipovac hit the civilians with a rifle butt and kick them. Later, Krsto Papić and Duško Božić arrived at the school. They went upstairs to the office where the signallers and Dragan Simić were. Milan Lukić, Boban Indić and Obrad Poluga followed them to the office. The witness was standing below the office window and he could hear them talking. Krsto was asking Milan why he had brought the civilians to Prelovo and had not taken them to some other place and killed whomsoever he chose there. Milan Lukić swore in response and then Milan, Boban and Obrad left the office and went into the gym. Cries and screams of the civilians being beaten in the gym could be heard. The witness was in front of the school all the while; the soldiers who were outside would not let him in. After some time, soldiers emerged from the school and again formed a gauntlet through which the men from the gym were ushered to the truck. The men were undressed and covered in blood. They had nothing on except for their underwear, namely just their underpants, and were barefoot; one tall man had a cross carved on his back. All the soldiers who were at the school boarded the truck and the passenger vehicles and drove away towards Višegrad. Before leaving, Milan Lukić gave the witness a jerry can with oil and ordered him to take all the things from the gym outside and burn them. He made several round trips taking out clothes and some papers and documents, and he burned them. As he was bringing out the fourth batch, Milan Lukić and the soldiers accompanying him came back. They first went into the gym and divided the booty, the valuable items that had been seized from the passengers; some of the soldiers were dissatisfied; they said that Milan had given them little money. Then Milan went upstairs to see Krsto Papić. The witness heard them arguing, Milan was ordering Krsto to go with the soldiers on the following day and "pick that up", and when Krsto asked where the slain men had been dumped, Milan answered that they were in a garage in Rasim's house in Mušići. In the days that followed, Krsto Papić and commander Damijan Mitrašinović from Višegrad had words over how Milan Lukić had obtained the truck. When the cook came to the school on the second day, she told the witness that news had been broadcast on TV about the people abducted from the train at Štrpci; they said that they had been taken in an unknown direction. While the two of them were in the kitchen, Krsto Papić came and told him to go and see Drago Čarkić and tell him to take his tractor to Mušići. In the meantime, Božidar and Ilija Vukadinović and Ilija Papić arrived at the school, and, together with Krsto and his driver, went somewhere in a "Niva" vehicle. After they had left, Milan Lukić arrived and proceeded to inspect how the witness had cleaned up the gym. When he saw that a sock and a button had remained, he slapped the witness in the face and ordered him to clean it up all over again. He cleaned the gym again but could not clean it thoroughly because the walls were blood-soaked. When



that same day Krsto Papić and the others returned to the school, over lunch they laughed about how Čarkić had been nauseated and had thrown up on seeing the bodies. Drago Čarkić was peeved at the witness and would not talk to him for not telling him why he had been dispatched to Mušići. People said that the bodies had been thrown into the River Drina. On the third day after the civilians had been taken away from the school, as the witness was sitting in the company of signaller Dragan Simić, Mile Joksimović, a unit leader in the Župljanska Company, whose soldiers were standing guard on the Drina, called to report that several bodies of civilians had become lodged in some vegetation, and then they pushed them with boat-hooks downstream the River Drina.²⁴⁸

HLC Findings

Excessive anonymisation of the indictment

The OWCP Indictment in this case, which is publicly accessible on the OWCP homepage under “Indictments”²⁴⁹, has been anonymised by publishing only its operative part, with data on the name of the accused and the victims redacted, which is not in accordance with the OWCP Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes.²⁵⁰ Namely, the Rulebook provides that OWCP indictments “shall as a rule be published in their entirety on the OWCP webpage, but with data on the basis of which the accused, the injured parties, their legal representatives, witnesses, relatives, persons close to them, neighbours and similar could be identified, substituted or omitted in a consistent manner.”²⁵¹ Instead of the entire indictment, only the operative part was posted, making it entirely impossible to ascertain on what evidence the OWCP based the indictment. As well, the Rulebook envisages anonymisation of the personal particulars of the participants in the proceedings, such as “the names and surnames and nicknames of physical persons, the address, date and place of birth”²⁵², but, however, it also provides that “data on the name, surname and nickname of a physical person who is a participant in the proceedings shall not be subject to anonymisation if the legitimate interest of the public to know prevails over the protection of the identity of the physical person in question.”²⁵³ As the names of both the accused and the victims have been anonymised, the OWCP is evidently in breach of a provision of its own Rulebook, in total disregard of the public interest, that being public disclosure of the identity of persons who stand accused of war crimes the commission of which poses a grave danger to society, and equally that of the victims, public reference to whom provides a form of redress for the victims and their families and is a prerequisite for the recognition of the sufferings they had gone through, primarily on account of their identity.

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248 Transcript of the main hearing held on 19 October 2020.

249 OWCP Indictment KTO no. 1/2019 of 10 May 2019, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents_sr/2019-09/kto_1_19_lat.pdf, accessed on 20 December 2020.

250 Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes of 20 March 2019, available at http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document_sr/2019-05/%D0%9F%D1%80%D0%B0%D0%B2%D0%B8%D0%BB%D0%BD%D0%B8%D0%BA_%D0%9B%D0%B0%D1%82.pdf accessed on 20 December 2020.

251 *Ibid*, Article 1, paragraph 2.

252 *Ibid*, Article 5, paragraph 1.

253 *Ibid*, Article 5, paragraph 2.



Not a single reason existed for anonymising the names of the victims in the indictment. To wit, they had been publicly known a long time before the indictment was issued, as the media had reported on the abduction of the passengers in Štrpci soon after the event, almost all the abducted passengers were nationals of the then FRY, and great public pressure was being exerted on the authorities in Serbia and Montenegro to shed light on their fate; the names of the abductees were also mentioned in reports on commemorations of the anniversaries of their ordeal.²⁵⁴ Neither was there any reason to anonymise the names of the defendants, as they too had already been publicly known, given that the OWCP had itself announced, at the end of February 2015, that it had completed investigations against five persons, stating their full names,²⁵⁵ while it posted the anonymised indictment on its webpage only following its confirmation, namely in October 2018, quite some time after the names of both the victims and the defendants had been published in the media.²⁵⁶

Good regional cooperation

This case is a very good example of regional cooperation. On the basis of the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes Against Humanity and Genocide that the BiH Prosecutor's Office and the Office of the War Crimes Prosecutor of the Republic of Serbia signed in 2013, the BiH Prosecutor's Office and the OWCP set up a joint investigative team for this case which gathered evidence on the crime in Štrpci, this resulting in the simultaneous arrest on 5 December 2014 of five suspects in Serbia and ten suspects in Bosnia and Herzegovina.

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Irresponsible conduct of the OWCP

The OWCP's approach to the issuance of the indictment in this case has been quite irresponsible, as it brought the first indictment as far back as 3 March 2015, but the Court returned it to the OWCP ten times before confirming it, either for rectification of the identified formal deficiencies as stipulated under the Criminal Procedure Code or because the investigation needed to be expanded.

254 Mondo, "Godišnjica otmice u Štrpcima /Anniversary of the Abduction in Štrpci/", 27 February 2010, available at <https://mondo.ba/Info/Region/a73400/Godisnjica-otmice-u-Strpcima.html>, accessed on 16 January 2020.

255 SD Serbia Today "Da se ne zaboravi: Pre 23 godine zaustavili voz u Štrpcima i oteli 20 putnika/ Lest it Be Forgotten: Train Stopped in Štrpci 23 Years Ago and 20 Passengers Abducted", 27 February 2016, available at <https://www.srbijadanas.com/clanak/da-se-ne-zaboravi-pre-23-godine-zaustavili-su-voz-u-strpcima-i-oteli-20-putnika-27-02-2016>, accessed on 16 January 2020.

256 Radio Television Vojvodina, "Osumnjičenima za zločin u Štrpcu određen pritvor od 30 dana /Suspects for the Crime in Štrpci Remanded in Custody for 30 Days/", 5 December 2014. http://rtv.rs/sr_lat/hronika/osumnjicenima-za-zlocin-u-strpcu-odredjen-pritvor-do-30-dana_544211.html, accessed on 16 January 2020.



The indictment was finally confirmed only on 24 October 2018.²⁵⁷ Having the indictment repeatedly returned for rectification of formal deficiencies is a disgrace for any prosecutorial office and for one of OWCP's rank it is impermissible.

257 **Indictment chronology in the Štrpci Case: the first indictment** (KTO no.1/15 of 03 March 2015) was remanded to the OWCP by a decision of the Higher Court in Belgrade, War Crimes Department (K-Po2 no. 3/15 Kv-Po2 no. 14/15 of 06 March 2015) for rectification of identified formal deficiencies; **the second indictment** (KTO no.1/15 of 9 March 2015) was remanded to the OWCP by a decision of the Higher Court in Belgrade, War Crimes Department (K.Po2 no. 3/15 Kv.Po2 no 16/15 of 12 March 2015) for rectification of identified formal deficiencies; **the third indictment** (KTO no. 1/15 of 13 March 2015) was remanded to the OWCP by a decision of the Higher Court in Belgrade, War Crimes Department ordering an additional investigation for clarification and substantiation of the merits of the indictment (Order K. Po2 no. 3/2015, Kv.Po2 no. 34/2015 of 09 April 2015); **the fourth indictment** (KTO no. 1/15 of 15 October 2015) was remanded to the OWCP by a decision of the Higher Court in Belgrade, War Crimes Department (K Po2 no. 3/15, Kv-Po2 no. 73/15 of 19 October 2015), for rectification of identified formal deficiencies; **the fifth indictment** (KTO 1/15 of 20 October 10 2015) was remanded to the OWCP by the Higher Court in Belgrade, War Crimes Department, ordering an additional investigation for clarification and substantiation of the merits of the indictment (K.Po2 no. 4/2015, Kv-Po2 no. 76/2015 of 20 November 2015); **the sixth indictment** (KTO no. 1/15 of 06 April 2017) was confirmed by the Higher Court in Belgrade, War Crimes Department (Decision K.Po2 no. 3/2015, Kv-Po2 no. 20/17 of 28 April 2017), but the Court of Appeal (by Decision Kž2-Po2 6/17 of 05 June 2017) reversed the decision confirming the indictment and remanded it to the court of first instance for reconsideration (the issue being whether an indictment could be filed without an authorized prosecutor). The War Crimes Department of the Higher Court in Belgrade brought a second decision (K.Po2 no. 3/15, Kv-Po2 no. 29/17 of 16 June 2017) confirming the same indictment but the Court of Appeal reversed the decision again and remanded it to the court of first instance for review (Ruling Kž2 Po2 8/17 of 24 July 2017). The War Crimes Department of the Higher Court in Belgrade brought a decision for a third time (K-Po2 no. 3/2015, Kv-Po2 no. 41/17 of 21 August 2017) confirming the indictment of 6 April 2017, but the Court of Appeals by its decision (Kž2 Po2 12/17 of 2 October 2017) reversed that decision and dismissed the indictment for not having been issued by an authorized prosecutor. **The seventh indictment** (KOT no. 1/15 of 26 October 2017) was remanded to the OWCP by the Higher Court in Belgrade, War Crimes Department, by decision (K-Po2 no. 4/17, Kv-Po2 no. 45/17 of 27 October 2017) for rectification of identified formal deficiencies. **The eighth indictment** (KTO no. 1/15 of 6 November 2017) was again remanded to the OWCP by the Higher Court in Belgrade, War Crimes Department, by decision K-Po2 no. 4/17, Kv-Po2 no. 47/17 of 8 November 2017, for rectification of identified formal deficiencies; **the ninth indictment** (KTO 1/15 of 20 November 2017) was remanded to the OWCP by the Higher Court in Belgrade, War Crimes Department, (by order K-Po2 no. 4/17, Kv-Po2 no. 51/17 of 21 December 2017) enjoining upon the former to issue an order on additional investigation; **the tenth indictment** (KTO 1/15 of 10 May 2018) was remanded to the OWCP by the Higher Court in Belgrade, War Crimes Department, by decision (K-Po2 no. 4/17, Kv-Po2 no. 6/18 of 14 May 2018) for rectification of identified formal deficiencies. The OWCP pleaded against this decision, following which the court found that the indictment had been drawn up in conformity with the Criminal Procedure Code and forwarded it to the defendants for their pleas. The tenth indictment, of 10 May 2018 was confirmed by the Higher Court in Belgrade, War Crimes Department by decision (Kv-Po2 24/18 of 01 October 2018). The Court of Appeal in Belgrade issued a ruling (Kž2-Po2 13/18 of 24 October 2018) confirming the decision of the Higher Court.



XIII. The Brčko –Rasadnik Camp Case²⁵⁸

CASE OVERVIEW	
Current stage of the proceedings: first instance proceedings	
Date of indictment: 21 February 2020	
Trial commencement date: 1 June 2020	
Prosecutor: Dušan Knežević	
Defendant: Osman Osmanović	
Criminal offence charged: war crime against the civilian population under Article 142 of the FRY Criminal Code	
Chamber	Judge Mirjana Ilić (Chairperson) Judge Zorana Trajković Judge Dejan Terzić
Number of defendants: 1 Defendant's rank: no rank Number of victims: 4 Number of witnesses heard: 8	Number of court days in the reporting period: 6 Number of witnesses heard in the reporting period: 8 Number of expert witnesses heard: 0
Key developments in the reporting period: Main hearing	

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²⁵⁸ The *Brčko –Rasadnik Camp* Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/rasadnik.html> accessed on 27 December 2020.



The course of the proceedings

Proceedings overview up to 2020

Indictment

The accused Osman Osmanović is charged with having, in May and June 1992, in a makeshift camp at the “Rasadnik (Nursery)” locality in Gornji Rahić (Brčko, municipality, Bosnia and Herzegovina), as a member of the security components of Muslim armed formations, inhumanely treated, intimidated, unlawfully detained, tortured and perpetrated violence against injured parties Aleksandar Pavlović, Milenko Radušić, Vasiljko Todić and Rado Simić, namely that:

- 1) On 6 May 1992, after the injured party, civilian Aleksandar Pavlović, was brought to him, he asked to see his papers, kept his identity card and interrogated him about his alleged participation in war activities on the side of the Serbian forces; during the interrogation other present persons threatened the injured party that he would be put to the knife should he be found guilty; afterwards the accused unlawfully confined the injured party, who on the following day was placed in a structure made of metal plate – formerly a fruit drying chamber - with a concrete base and without windows, fresh air or water, where he was held captive until 14 July 1992; once during this period the accused came with a comrade-in-arms and showed the injured party to him and the latter kicked him in the knee,
- 2) On 13 May 1992, while interrogating the injured party, civilian Milenko Radušić, previously deprived of freedom, he and several of his comrades-in-arms tortured him all night, seeking information about militarily engaged individuals in Brčko, on which occasion the injured party was punched and kicked, hit with a wooden bat and a truncheon on the head and the body, including by the accused, which caused the injured party to faint several times. After the interrogation, the injured party was transferred to the chamber from which he was repeatedly taken for subsequent interrogations, during which he was physically and psychologically maltreated and suffered bodily harm. On an unspecified date in June 1992, together with another member of his unit, the accused took the injured party out of the chamber, cursed his mother and threatened that he would kill him and that he would not be leaving the place alive, striking and kicking him repeatedly on the body until the injured party wet himself as a result of the sustained blows.
- 3) On an unspecified date in June 1992, after injured party Vasiljko Todić, who had been unlawfully detained as a member of Serbian armed units, was brought from the chamber, he attended his interrogation which other members of the defendant’s side in the conflict were carrying out, during which, in order to extract a statement from him, the injured party was subjected to torture and beaten, and was as a result all covered in blood, his eyes were almost completely shut and his nose, several teeth and one rib were broken. The accused walked up to the injured party, slapped him in the face, saying “I curse your mother, Chetnik, why are



you lying” after which the injured party was taken to the chamber where he was held captive for 31 days and from which he would be taken out occasionally to clean garbage dumps, dig up unexploded ordnance from the ground and for interrogation, at which times he would again be physically and psychologically maltreated.

- 4) On an unspecified date in June 1992, he took detained injured party, civilian Rado Simić, out of the chamber and physically maltreated him, striking and kicking him repeatedly on the body and head until the injured party went limp from the blows and was then taken back to the chamber.²⁵⁹

Defence of the accused

Presenting his defence, the accused denied having committed the criminal offence he was charged with. He stated that during the armed conflict he had been a member of the Brčko Public Security Station (SJB) of the Tuzla Security Services Centre of the Ministry of the Interior (MUP) of Bosnia and Herzegovina. He had not unlawfully detained or intimidated or tortured anyone, the injured parties included. He had only conducted an interview with injured parties Aleksandar Pavlović and Milenko Radušić; he did not know any persons named Vasiljko Todić and Rado Simić. He explained that when war broke out he was in Brčko as a white-collar crime inspector with the Brčko Public Auditing Service. When Serb forces started entering the city, he put himself at the service of the Territorial Defence, helping and directing refugees, and some kind of a defence line was also set up. He remained there up to 5 May 1992, when he went to Maoča, a village near Brčko. On 6 May 1992, he reported to Tahto Tanović at the Security Services Centre in Gornji Rahić, who had been appointed chief of a group of inspectors, later to be known as the State Security Operations Group. On the defendant's arrival in Gornji Rahić, Tahto informed him that he had been assigned to this task force and that a person of Serb ethnicity had been brought in and tasked him with investigating the matter. When he went out, he saw injured party Aleksandar Pavlović, whom he knew from before. The injured party was in the company of Suad Kurtović, and the two of them told him that they had been halted outside the military command at Okrajci, that they had barely managed to escape with their lives from the Croatian Defence Forces (HOS), that they had practically been saved by a police patrol which had escorted them to Rahić. He relayed the conversation with Pavlović to Tahto, but knows nothing about his further fate. He had never had any conflict with the injured party, they met and talked after the war on multiple occasions, the injured party would ask him to remember him to his brother who had moved to America. He is of the view that injured party Pavlović should not have been detained in the detention unit.

He also knows injured party Milenko Radušić from the pre-war period as a minor who was inclined to crime. He and his co-worker Senad Jašarević were tasked with conducting an interview with Radušić. The injured party was brought in by the military police, and the interrogation was conducted in the period from 16 to 18 May 1992 in the offices of the Operations Group, in a correct atmosphere.

²⁵⁹ OWCP Indictment KTO 1/20 of 21 February 2020, available at https://www.tuzilastvorz.org.rs/upload/Indictment/Documents_sr/2020-07/kto_1_20_lat.pdf, accessed on 14 January 2021.



Later the detainees were transferred to the forest nursery in Maoča, where, in July 1992, the accused and Senad Jašarević conducted another interview with injured party Radušić, which transpired in an almost friendly atmosphere.

He did not have the authority to decide whether people would be detained or not; he informed his superiors about the conducted interviews, and they brought the final decisions, but did not communicate them. He first received information about the camp from Rešid Musić in June 1992, who told him that HOS men were barging into the camp, that the police guarding the inmates were unable to stop them, that they would burst in and maltreat people.

He has no idea why the injured parties are accusing him, but supposes that it has to do with the lawsuit for damages for defamation of character which he had won against the paper "Press RS". The magazine had published an article in which his colleague Novalija Fazović accused him of torturing Serbs in the camp at Gornji Rahić, and the vice-president of the Association of Former Camp Inmates of Republika Srpska confirmed it. In his view, another reason why they were accusing him was the job he did after the war. He was the Chief of the Department for Fighting Organised Crime in the Ministry of the Interior (MUP) of the Tuzla Canton, and had, among other, conducted an investigation against the government. Investigated were ministers, heads of municipalities and directors of public companies. He had also conducted investigations in Brčko against a number of department heads while he served as director of the Public Revenue Office, and one of them, who had actually been prosecuted, vowed that he would exact revenge on him. The people he had conducted investigations against had certainly brought their influence to bear on the witnesses so that the latter would accuse him.²⁶⁰

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Witnesses in the proceedings

During the reporting period eight witnesses were examined. Injured party Vasiljko Todić stated that he had been detained in Gornji Rahić for 83 days, that the detainees were accommodated in a former fruit maturation chamber, devoid of elementary sanitary conditions. He had never had a change of clothes all that time, and the food they received was poor. Due to the meagre and poor quality meals he had lost a lot of weight. He recalls that detained with him were Aleksandar Pavlović, Milenko Radušić and Blagoje Vujanović who have died, as well as Miko Savić, Brano Sekučić, Budimir Stanišić and Rado Simić. The accused had been present during his interrogation. He would say to him "you are lying, Chetnik" and would slap him in the face, and others beat him and punctured him with awls, so that he lost consciousness a number of times. During his stay in the camp he would be taken out to load garbage and to dig up unexploded ordnance. On one occasion, as he was loading refuse, he saw the accused beating Radušić, kicking him in the head and stomach. He was beaten up so badly that he wet himself from the blows. Rado Simić told him that they had seized from him 3,500 German marks and a "Mercedes" which was given to the mullah in Rahić. When he asked that these be returned to him they thrashed him and the accused beat him the most.²⁶¹

²⁶⁰ Transcript of the main hearing held on 1 June 2020.

²⁶¹ Transcript of the main hearing held on 27 July 2020.



Witness Mara Vukmirović, the daughter of injured party Aleksandar Pavlović (now deceased), learned about the critical event from her father's accounts. She knows that he had been issued no decision whatsoever on detention or anything else in connection with his detention in the camp, nor had any proceedings been conducted against him. Her father told her that he had been locked up in Gornji Rahić in the refrigeration unit of the "Okrajci" plant nursery. Fruit used to be dried there, and her father called this metal container "the refrigerator". On the very day of his arrest, her father was brought before the accused; Galib Hadžić was in the same room and he threatened him with a knife. Her father was a civilian, he had neither a uniform nor a weapon. He was trying to save himself, as there had been an attempt on his life once before. He had set off in a car with his next-door neighbour Suad Kurtović, with whom they had always been on very good terms, and still were. Kurtović had meant well and wanted to help her father but they were stopped in the village of Gornji Rahić by HOS men; after that her father was taken to a house and brought before the accused. On that occasion they seized her father's car, and the accused seized his identity card. Kurtović tried to protect him then, vouching for him. The next day they transferred her father to the camp. Her father told her that he had seen the accused again only once, or rather that the accused was present when an inspector kicked him in the knee. Her father told her that he had gained the impression that Galib Hadžić and the accused were persons in charge wielding authority over the other guards, and also that the detainees were beaten the most by HOS members and the "Cobras", and that the accused had been present all the while.²⁶²

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Witness Snježana Simikić, paternal half-sister of injured party Milenko Radušić (now deceased), stated that her brother had been mobilised, and was then arrested in mid-May 1992 in Brčko and taken to Gornji Rahić. He told her that he had been beaten every day, and she saw scars on his body. From his words she learned that the conditions in Rahić had been poor, that they slept on the floor, that they did not have water or enough food. When her brother returned home he was very thin, and he felt the consequences of the beating for some time. After a month and a half in captivity in Rahić, he was transferred to a camp in Maoča, and then to Tuzla, but said that he had been tortured only in Rahić. He would never say who had beaten and maltreated him.²⁶³

Witness Zora Simić, the wife of the late Rado Simić, stated that her husband had been stopped as a civilian in his vehicle, which was seized on that occasion and was never given back to him. He was then taken to the camp in Rahić, and later transferred to Tuzla, from which he was released in July 1992. Her husband told her that he himself had not been beaten by anyone while in the camp, but he also said that Vasiljko Todić had been beaten and that he had been brought there unconscious. He also said that Milenko Radušić had been beaten too. Her husband never mentioned the accused.²⁶⁴

Witness for the prosecution Arman Jašarević stated that in the critical period he had been a military police platoon leader, and that they escorted captives to Gornji Rahić to be interrogated by members of a State Security group. In the words of the witness, State Security, or rather the

262 Transcript of the main hearing held on 1 July 2020.

263 *Ibid.*

264 Transcript of the main hearing held on 29 September 2020.



accused Osmanović, was the “alpha and omega” there. The military police only brought people to the State Security Command in Gornji Rahić for interrogation, while the actual interrogation and decisions as to whether they would be dispatched to the Rasadnik Camp were within the purview of the State Security. Interrogated persons would be transferred from Gornji Rahić to structures in the old nursery, in order to be hidden from the public eye. The house in which they were interrogated in Rahić was in the centre of the village, so that tortured people would be heard screaming. Among the persons who interrogated the captives were the accused Osman Osmanović, and Halil Tahto, Galib Hadžić and Novalija Fazlović. The Rasadnik Camp commander was Selim Karamehić, now a judge, as well as Zekerija Mujkanović, now the chief prosecutor of the Brčko District Prosecutor’s Office. The witness was present when the accused interrogated the detainees, he saw them being tortured. When interrogating the detainees, State Security men would have them undress, the witness saw only one or two in underpants while all the others were stark naked. They beat them with open and closed fists, rods and feet.²⁶⁵

Defence witness Senad Jašarević stated that he was a good friend of the accused and that in the critical period they had worked together. They were members of a State Security task force comprising former MUP members and stationed in the village of Gornji Rahić. In mid-May 1992, he and the accused were given the task of conducting an interview with Milenko Radušić. They were told that Radušić had been arrested in an automobile which was not his property, that there were hidden explosives in the vehicle and that Radušić was falsely representing himself as one Alija Zukić. The injured party was brought in by the military police and the interview with him was conducted in the premises of the Operations Group in a correct atmosphere, and an official note of the interview was compiled. The witness had noticed visible injuries on Radušić, but had not recorded that observation in the official note. Whether apprehended persons would be detained or released would be decided by the military authorities. Some of the interviewees were later transferred to the forest nursery in Maoča, where, in July 1992, together with the accused, he conducted another interview with injured party Radušić, which evolved in an almost friendly atmosphere. A record of the interview was drawn up and the witness signed it.²⁶⁶

Defence witnesses Hazim Mujkić and Novalija Fazlović had no knowledge that the accused had maltreated detained civilians.²⁶⁷

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265 Transcript of the main hearing held on 27 July 2020.

266 Transcript of the main hearing held on 23 November 2020.

267 Transcript of the main hearing held on 17 December 2020.



HLC Findings

Excessive anonymisation of the indictment

The OWCP Indictment in this case, which is publicly accessible on the OWCP homepage under “Indictments”²⁶⁸, has been anonymised by publishing only its operative part, with data on the names of the accused and the victims redacted, which is not in accordance with the OWCP Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes.²⁶⁹ Namely, the Rulebook provides that OWCP indictments “shall as a rule be published in their entirety on the OWCP webpage, but with data on the basis of which the accused, the injured parties, their legal representatives, witnesses, relatives, persons close to them, neighbours and similar could be identified, substituted or omitted in a consistent manner.”²⁷⁰ Instead of the entire indictment, only the operative part was posted, making it entirely impossible to ascertain on what evidence the OWCP based the indictment. As well, the Rulebook envisages anonymisation of the personal particulars of the participants in the proceedings, such as “the names and surnames and nicknames of physical persons, the address, date and place of birth”²⁷¹, but, however, it also provides that “data on the name, surname and nickname of a physical person who is a participant in the proceedings shall not be subject to anonymisation if the legitimate interest of the public to know prevails over the protection of the identity of the physical person in question.”²⁷² As the name of the accused, but also the names of the victims, have been anonymised, the OWCP is evidently in breach of a provision of its own Rulebook, in total disregard of the public interest, that being public disclosure of the identity of a person who stands accused of war crimes.

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Apart from that, such anonymisation is unnecessary, because the media have been reporting on the accused ever since his arrest in 2019²⁷³ and some have also published his photograph.²⁷⁴

268 OWCP Indictment KTO no. 1/2019 of 10 May 2019, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2019-09/kto_1_19_lat.pdf, accessed on 20 December 2020.

269 Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes of 20 March 2019, available at http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document__sr/2019-05/%D0%9F%D1%80%D0%B0%D0%B2%D0%B8%D0%BB%D0%BD%D0%B8%D0%BA_%D0%9B%D0%B0%D1%82.pdf, accessed on 20 December 2020.

270 *Ibid*, Article 1, paragraph 2.

271 *Ibid*, Article 5, paragraph 1.

272 *Ibid*, Article 5, paragraph 2.

273 Novosti, „*Osman Osmanović uhapšen zbog ratnih zločina nad Srbima: „Pao“ na prelazu Sremska Rača*“/“*Osman Osmanović arrested for war crimes against Serbs: “Nabbed” at the Sremska Rača crossing*”, available at <https://www.novosti.rs/vesti/naslovna/dosije/aktuelno.292.html:831995-Osman-Osmanovic-uhapsen-zbog-ratnih-zlocina-nad-Srbima-Pao-na-prelazu-Sremska-Raca>, accessed on 24 January 2021.

274 Radio Brčko District BiH, “Serbian judiciary issues Indictment against Osman Osmanović”, available at <https://radiobrcko.ba/arhiva/srbijansko-pravosudje-podiglo-optuznicu-protiv-osmana-osmanovica/>, accessed on 24 January 2021.



Avoidance of regional cooperation in the prosecution of war crimes

The Prosecutor's Office of Bosnia and Herzegovina requested Serbia to extradite the accused Osman Osmanović, in view of the fact that he is a BiH national and that the criminal offence was committed in BiH territory where the witnesses and the injured parties are; however, the request was declined. It is indubitable that according to the Law on Organisation and Jurisdiction of State Authorities in Prosecuting War Crimes²⁷⁵, the government authorities of the Republic of Serbia have jurisdiction for conducting proceedings against Osman Osmanović. Namely, under the said law they have jurisdiction for prosecuting the criminal offence of war crimes committed in the territory of the former Yugoslavia as of 1 January 1991, regardless of the nationality of the perpetrator or of the victim.²⁷⁶

However, with a view to intensifying regional cooperation, which is necessary to efficiently prosecute all suspects but also for building victims' confidence, the HLC is of the opinion that these proceedings should have been transferred to Bosnia and Herzegovina.

275 Law on Organisation and Jurisdiction of State Authorities in Prosecuting War Crimes ("Official Gazette of RS" nos. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011-state law and 6/2015)

276 Law on Organisation and Jurisdiction of State Authorities in Prosecuting War Crimes, Articles 2 and 3.



First instance judgments passed by the War Crimes Department of the Higher Court in Belgrade

I. The Bosanski Petrovac – Gaj Case²⁷⁷

CASE OVERVIEW	
Current stage of the proceedings: appeal proceedings	
Date of indictment: 10 October 2014	
Trial commencement date: 15 June 2015	
Prosecutor: Miodjub Vitorović	
Defendant: Milan Dragišić	
Criminal offence charged: war crime against the civilian population under Article 142 of the FRY Criminal Code	
Chamber	Judge Vladimir Duruz (Chairperson) Judge Vera Vukotić Judge Vinka Beraha-Nikićević
Number of defendants: 1	Number of court days in the reporting period: 4 Number of witnesses heard in the reporting period: 0 Number of expert witnesses heard: 0
Defendant's rank: low – no rank	
Number of victims: 5	
Number of witnesses heard: 26	
Key developments in the reporting period: First instance judgment on retrial	

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²⁷⁷ The *Bosanski Petrovac – Gaj* case, trial reports and case file documents available at http://www.hlc-rdc.org/Transkripti/bosanski_petrovac_gaj.html, accessed on 20 December 2020.



The course of the proceedings

Proceedings overview up to 2020

Indictment

The accused Milan Dragišić is charged with having killed, as a member of the Army of Republika Srpska (VRS), on 20 September 1992, in the Bosanski Petrovac Gaj district (Bosnia and Herzegovina), Bosniak civilians Asim Kavaz, Eldin Zajkić and Safet Terzić, and attempting to kill Muhamed Kavaz, Asmir Lemeš and Šaćir Hujjić, inflicting bodily injuries on Muhamed Kavaz and Šaćir Hujjić. Namely, after the body of his brother Dragan Dragišić, who had died on the battlefield, had been brought back, the accused, armed with an automatic rifle and in uniform, ran out into the street swearing at his Bosniak neighbours and cursing their “Turkish and Moslem mothers”, and shot several of them.²⁷⁸

Defence of the accused

Presenting his defence, the accused Milan Dragišić pleaded not guilty. He stated that when the body of his brother had been brought in he took an automatic rifle with a bullet in the chamber out from the car boot. Then he heard a burst of fire, but could not recall what happened. He was “beside himself”, and “everything had turned black” before his eyes when he saw the mangled body of his dead brother. Consequently, he did not know if he had killed his neighbours.²⁷⁹

Witnesses in the proceedings

During the evidentiary proceedings, a total of 26 witnesses were examined. Injured party Muhamed Kavaz described how on the critical day the accused wounded him and killed his father, Asim Kavaz.²⁸⁰ Witness Branko Srdić, an eyewitness to the critical event, also confirmed that the accused had killed Asim Kavaz.²⁸¹

Witnesses Mirko Velaga and Edin Bašić had not witnessed the critical event, but their second-hand knowledge corroborated the statement of injured party Muhamed Kavaz about the killing of his father Asim, and the allegation that, after killing Asim Kavaz, the accused went around the Gaj district shooting at Bosniak civilians.²⁸²

Witness Milorad Radošević, who was present when the bodies of killed combatants were brought to Bosanski Petrovac, stated that he saw the accused among the assembled people, crying and wailing over the death of his brother, and that friends and relatives were holding him and escorted him into

278 OWCP Indictment TRZ number KTO 7/14 of 10 October 2014, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents_sr/2016-05/o_2014_10_10_lat.pdf, accessed on 20 December 2020.

279 Transcript of the main hearing held on 15 June 2015.

280 Transcript of the main hearing held on 14 July 2015.

281 Transcript of the main hearing held on 18 November 2015.

282 Transcript of the main hearing held on 8 October 2015.



a car with great difficulty. Witnesses Željko Kuburić and Duško Karanović, who came to the Dragišić family home to express their condolences, testified that the accused had seemed lost, abstracted and “oblivious to their presence.”²⁸³

Defence witness Milorad Dragišić, the defendant’s full brother, stated that he had not witnessed the critical events. As soon as he had heard in town about the death of his brother he rushed home, where he saw the dead body of their neighbour Asim Kavaz nearby. Friends and relatives told him that the defendant had killed Asim and wounded his son Muhamed Kavaz, and had set off armed for the town. He followed him and soon, with the help of some friends, managed to overpower him and bring him back home. Having seen the mutilated body of their dead brother, the accused was beside himself – he struck the witness “as being stuffed”. He believed that the accused had not been of sound mind when he killed their neighbour Asim, and that he was in fact unaware of who he was shooting at, as there had been no reason whatsoever for him to have done anything of the kind, seeing that they had been on very good terms with the Kavaz family. He had heard that another three persons were killed that day near the hotel, but was convinced that it had not been done by the accused, as they had managed to get him back home before he reached town.²⁸⁴

Defence witnesses Nenad Dragišić, a relative of the accused, Brankica Dragišić, the wife of the accused, and Drena Latinović, a neighbour of the accused, stated that they had no first-hand knowledge of the killing and wounding of Bosniak civilians. The accused had impressed them as being “totally lost” because of his brother’s death.²⁸⁵

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Witness Semira Mešić-Pašalić stated that in her capacity of court expert, as a forensic medicine and pathology specialist, she had provided her findings and opinion on the injuries sustained by injured parties Muhamed Kavaz, Eldin Zajkić and Safet Terzić to the Cantonal Prosecutor’s Office in Bihać. However, she explained that at the time she submitted her findings she was not on the expert witness roster, because owing to her extensive duties related to exhumations, in addition to her regular work, she had not found the time to register.²⁸⁶

Following the statement of this witness, the court ordered a forensic medical evaluation to be undertaken to establish the type, severity and mechanisms of the injuries sustained by injured parties Asim and Muhamed Kavaz, Safet Terzić and Eldin Zajkić, and entrusted this task to court expert Dr Branimir Aleksandrić.

Psychiatric and psychological evaluations were also ordered and entrusted to court experts Dr Branko Mandić, a neuropsychiatrist, and Dr Ana Najman, a psychologist, to assess whether at the time of the commission of the crime the accused had been mentally competent.

283 Transcript of the main hearing held on 15 September 2016.

284 Transcript of the main hearing held on 21 June 2017.

285 Transcripts of the main hearings held on 8 March 2018 and 10 September 2018.

286 Transcript of the main hearing held on 20 January 2018.



Expert witness findings

Forensic expert Branimir Aleksandrić established that the late Asim Kavaz, Eldin Zajkić and Safet Terzić had sustained grave and fatal bodily injuries inflicted by projectiles fired from small arms. He also established that Muhamed Kavaz had sustained grave life-threatening injuries but survived, having been adequately treated.²⁸⁷

Court experts Branko Mandić²⁸⁸ and Ana Najman²⁸⁹ found that at the time of the commission of the criminal offence he is charged with, the accused had been temporarily mentally incompetent as a consequence of a breakdown of his defensive psychological mechanisms, and that his capacity to appreciate the significance of his acts and control them had been substantially diminished.

First instance judgment

On 24 April 2019, the Higher Court in Belgrade rendered a judgment pronouncing the accused Milan Dragišić guilty of having, in a state of substantially diminished mental competence, deprived of life one Bosniak civilian and attempting to deprive of life another two Bosniak civilians, and sentenced him to four years of imprisonment.²⁹⁰

The Trial Chamber determined that on 20 September 1992, on JNA Street in the Bosanski Petrovac Gaj district, during the armed conflict in Bosnia and Herzegovina, the accused, as a member of the Army of Republika Srpska, Petrovac Military Post 7463, in a state of substantially diminished mental competence after the body of his brother Dragan Dragišić, who had died on the Bihać battlefield, had been brought back home, caught sight of his next-door neighbour Asim Kavaz in the street outside his house and turned to him with these words – “I curse your Turkish mother, I curse your Muslim mother, I shall kill the lot of you!” He then shot him dead with an automatic rifle. After this, spotting Muhamed Kavaz, the son of the murdered Asim, who had walked up to his father’s body, he shot at him too with the intention to kill, inflicting a number of bodily injuries on him. Immediately afterwards, he proceeded down along JNA Street, armed, caught sight of Asmir Lemeš and shot at him too, intending to kill him. But Asmir Lemeš managed to escape unscathed.

The court found that it could not be conclusively established that the accused had attempted to kill the injured party Šaćir Hujčić, owing to the extremely general nature of the accounts of the witnesses describing this incident.

It also concluded that there was no proof that the accused had killed Safet Terzić and Eldin Zajkić, since the witnesses who claimed to have observed this event describe it in different ways. Although the accused was charged with having killed Terzić and Zajkić using an automatic rifle, the court was unable to arrive at such a conclusion. This was primarily owing to the fact that a number of witnesses

287 Transcript of the main hearing held on 14 January 2019.

288 *Ibid.*

289 Transcript of the main hearing held on 1 March 2019.

290 Judgment of the Higher Court in Belgrade K. Po2 13/2014 of 4 April 2019.



alleged that there had been more shooting around town on that particular day as well as in the days that followed, and that more people had been killed, as well as that rumour had it that some of the killings had been committed by a person nicknamed “Rambo”.

Accordingly, the court omitted from the enacting terms of the judgment the aforementioned acts the accused was alleged to have committed, as unsubstantiated by the evidence presented.

In determining the sentence, the court considered as mitigating circumstances in favour of the accused the lack of a prior criminal record, his poor state of health and his family situation. It assessed as an aggravating circumstance the fact that in addition to depriving Asim Kavaz of life the accused had attempted to deprive another two persons of life. As the accused had committed the criminal offence in a state of substantially diminished mental competence, where statutory provision for leniency exists,²⁹¹ the court sentenced the accused to a term of imprisonment below the statutory minimum, deeming that such a penalty would also accomplish the purpose of the punishment.

Second instance decision

Deciding on the appeals of the defence counsel for the accused and of the Office of the War Crimes Prosecutor on 25 November 2019, the Court of Appeal in Belgrade²⁹² overturned the judgment of the Higher Court in Belgrade on account of a substantial procedural error and remanded the case to the court of first instance for retrial and reconsideration.²⁹³

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The Court of Appeal concluded that substantial procedural errors had been made in rendering the first instance judgment in respect of the criminal acts of the accused to the detriment of Asmir Lemeš, Safet Terzić and Eldin Zajkić. Namely, the court of first instance failed to offer clear reasons underlying its conclusion that the accused had attempted to murder injured party Asmir Lemeš, or to provide clear reasons for its contention that it had not been proven that the accused had killed Safet Terzić and Eldin Zajkić. That is because it failed to analyse the presented evidence regarding these acts of the accused with sufficient attention.²⁹⁴

Overview of the proceedings in 2020

In 2020, during the retrial, two court days were held on which the accused again presented his defence²⁹⁵, and the parties presented their closing arguments.²⁹⁶

291 Article 12, paragraph 2 of the FRY Criminal Code provides for the possibility of mitigated punishment for crimes committed in a state of substantially diminished mental competence.

292 Chamber composition: Judge Omer Hadžiomerović (Chairperson), Judges Rastko Popović, Nada Hadži-Perić, Aleksandar Vujičić and Miodrag Majić, members.

293 Decision of the Court of Appeal in Belgrade KŽ1 Po2 6/19 of 25 November 2019.

294 Ibid.

295 Transcript of the main hearing held on 11 February 2020.

296 Transcript of the main hearing held on 22 June 2020.



First instance judgment upon retrial

On 1 July 2020 the Higher Court in Belgrade rendered a judgment by which it again found the accused Milan Dragišić guilty of having, in a state of substantially diminished mental competence, deprived of life one Bosniak civilian and attempting to deprive of life another two Bosniak civilians, and sentenced him to a term of imprisonment of four years. Due to the lack of evidence he was again acquitted of the charges that he had killed civilians Safet Terzić and Eldin Zajkić.²⁹⁷

In giving the reasons for the judgment rendered, the Chairperson of the Trial Chamber

stated that in the retrial proceedings the Chamber had addressed the objections of the Court of Appeal related to the attempted murder of Asmir Lemeš and the murders of Safet Terzić and Eldin Zajkić that the accused is charged with. Following a detailed analysis of all the presented evidence, the Chamber found that the accused had definitely wanted to kill Asmir Lemeš, because he, among other things, tried to jump over the fence darting towards the injured party, thus demonstrating a clear intention to kill him. As regards the murders of injured parties Terzić and Zajkić, the Chamber stood by its position that there was no evidence that the accused had killed them, particularly taking account of the testimonies of witnesses which are contradictory, so that it could not be determined on their basis either who had fired at the injured parties or what weapon had been used.

HLC Findings

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Regional cooperation

These proceedings are a good example of the cooperation between Serbia and Bosnia and Herzegovina in the prosecution of war crimes, which was intensified after the Office of the War Crimes Prosecutor and the Prosecutor's Office of Bosnia and Herzegovina signed in 2013 the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide. Namely, this case was transferred to the Office of the War Crimes Prosecutor by the Prosecutor's Office of Bosnia and Herzegovina, given that the accused, who is a national and resident of the Republic of Serbia, was not accessible to the authorities of Bosnia and Herzegovina.

Unacceptable expertise

The Bihać Cantonal Office of the Prosecutor was evidently remiss in allowing a person not on the roster of court experts to perform an expert evaluation. Such an act not only tarnished the reputation of the Prosecutor's Office as such, but also resulted in the delay of these proceedings. To wit, the main hearing was repeatedly postponed because the alleged court expert was unable to appear, citing health reasons, with the expert evaluation ultimately having to be repeated when it was established that the person in question was not in fact a court expert.

²⁹⁷ Judgment of the Higher Court in Belgrade K. Po2 4/2019 of 1 July 2020.



Non-compliance with the Law on Free Access to Information of Public Importance

The Higher Court declined to submit to the HLC the first instance judgment explaining that the relevant proceedings had not yet resulted in a final ruling. Such an action on the part of the court is in direct contravention of the final decision of the Commissioner for Access to Information of Public Importance and Personal Data Protection who has already assessed this position of the court to be unlawful.²⁹⁸ Notwithstanding the fact that the HLC submitted the Commissioner's decision to the court, the authorised official entrusted with the matter adhered to his stance. This is invariably the practice with every newly appointed Higher Court official authorised to handle requests for access to information of public importance, reflecting their failure to adequately familiarise themselves with existing standards prior to assuming duty.

²⁹⁸ Decision of the Commissioner for Information of Public Importance and Personal Data Protection no. 07-00-01776/2012-03 of 30 August 2012; Decision of the Commissioner for Information of Public Importance and Personal Data Protection no. 07-00-00625/2012-03 of 14 October 2013.



II. The Dobož – Kožuhe Case²⁹⁹

CASE OVERVIEW	
Current stage of the proceedings: appeal proceedings	
Date of indictment: 13 July 2018	
Trial commencement date: 19 February 2019	
Prosecutor: Dušan Knežević	
Defendant: Nebojša Stojanović	
Criminal offence charged: war crime against prisoners of war under Article 144 of the FRY Criminal Code	
Chamber	Judge Vera Vukotić (Chairperson) Judge Vladimir Duruz Judge Vinka Beraha-Nikićević
Number of defendants: 1	Number of court days in the reporting period: 5 Number of witnesses heard in the reporting period: 5 Number of expert witnesses heard: 2
Defendant's rank: no rank	
Number of victims: 1	
Number of witnesses heard: 11	
Key developments in the reporting period: First instance judgment	

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²⁹⁹ The *Dobož – Kožuhe* case, trial reports and case file documentation available at <http://www.hlc-rdc.org/Transkripti/doboz-kozuhe.html>, accessed on 21 December 2020.



The course of the proceedings

Proceedings overview up to 2020

Indictment

The accused Nebojša Stojanović is charged with having, one evening in early May 1992, in the village of Kožuhe (Doboj municipality, Bosnia and Herzegovina), as a member of a volunteer unit attached to Serbian armed units, taken Croatian Defence Council (HVO) member Ivan Sivrić, captured earlier, from the compound of the „Energoinvest“ factory where he was held, to the locality of Djelovačke Bare near the Bosna River, and killing him in a pre-dug grave with two pistol shots to the head.³⁰⁰

Defence of the accused

The defendant denied having committed the crime. He stated that he had participated in the war in Bosnia and Herzegovina, having gone to the battlefield from Serbia as a volunteer. He had reported at Bujanj Potok, where he was issued with a rifle, and he already had a uniform from his stint at the Vukovar theatre of war. He went to the Bosnia battlefield in May 1992 and returned towards the end of June or in July that same year, having sustained an arm injury. At the critical time he was in the village of Kožuhe, where there were prisoners of war, HVO members. He had seen them being brought in –between seven and nine of them, some of them in black uniforms. Some inhabitants of Kožuhe were engaged by the Serbian military to stand guard. He was a guard shift leader, but had no military function whatsoever. He would take the guard shift to a guard post located at Djelovačke Bare, and they always went there on foot. He denied having claimed to be the village commander and introducing himself as “Neša Četnik”, or ordering one of the locals to dig a grave at the Djelovačke Bare site. There had been no ill feelings between him and any of the villagers, and he had in fact been in contact with some of them, but at the moment he was giving his statement could not recall their names, except for a certain “Buca”. He did not personally know the injured party Ivan Sivrić – he had never established contact with the captured HVO members, and he had never led the injured party around the village. He believes this to be a case of mistaken identity, as there was a person there who physically resembled him, his hairstyle in particular.³⁰¹

Witnesses in the proceedings

Injured party Ružica Miloš, the sister of the murdered Ivan Sivrić, said that she had no first-hand knowledge about his killing. Her deceased father had been trying for years and years to find out who killed Ivan. He found out that it had been Dušan Pašić, nicknamed “Luis”. She had last seen her brother about a month and a half before he was killed. On 21 November 1998, she went with her

300 OWCP Indictment KTO no. 3/2018 of 13 July 2018, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents_sr/2019-04/kto_3_18_lat~0.pdf, accessed on 5 December 2019.

301 Transcript of the main hearing held on 19 February 2019.



father to the town of Odžaci to identify the mortal remains of her brother, and they recognised parts of his clothes.³⁰²

Witness Miroslav Marković testified about the circumstances under which Ivan Sivrić had been killed. He said that on the critical day he, a person nicknamed “Buca”, the defendant, and their prisoner Ivan Sivrić, rode in a passenger vehicle to the site of a pre-dug grave. On arriving at their destination, they all alighted from the vehicle. Ivan Sivrić greeted Nebojša Stojanović, who then shot him, emptying the magazine of his pistol into him. The witness claims that only Nebojša Stojanović shot at Ivan Sivrić on the critical occasion, and that the person nicknamed “Buca” then gave him his pistol also in order for Nebojša to “finish him off”. Then the witness and “Buca” covered the body lying in the pre-dug pit with earth. About a month later, they returned to the spot where Ivan Sivrić was buried to dig up the murdered man’s body and make sure that Ivan Sivrić was really dead, as stories were being circulated around the village that it had all been a trick and that Nebojša Stojanović had fired blanks at Ivan Sivrić.³⁰³

Witness Siniša Nedić was around seventeen at the time of the critical event. There was talk in the village that someone had been captured and shot somewhere in the area. Out of curiosity he and his friends Miroslav Marković and Željko Mirković sat on a tractor and rode to the execution site. In fact, his friend Miroslav told them on that occasion that he had been present during the shooting, and he was the one who took them to the place in question. This spot is about two kilometres away from the River Bosna. They started to dig, but then two or three guards arrived and so they stopped. His friend Miroslav had not told them any details, but only that the prisoner had been killed by one Nebojša.³⁰⁴

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Witness Dušan Tošić, nicknamed “Luis”, stated that he knew the person who went by the name of “Neša Četnik”, but could not recognise him among the persons present in the courtroom. Nor did he know any person called Nebojša Stojanović. He explained that he had set off for Bosnia and Herzegovina from Serbia as a volunteer of the Serbian Radical Party. On arriving in Modriča, they reported to the Territorial Defence Headquarters. He remained in the village of Koprivna, where they were billeted at the old post office building. The remainder of his group did not go all the way to Modriča, but remained in the village of Kožuhe. He provided all the necessities for his group, which numbered six men, such as weapons, ammunition and cigarettes. One day, a group of the men who were staying in Kožuhe drove by in a “Pinzgauer”, with a lad in a black Croatian National Guard Corps (ZNG) uniform. The lad was young and skinny and his long hair was tied in a ponytail. Accompanying him were Neša Četnik, Bane a.k.a. Žvaka, Dik and Tuta. He later heard from Neša himself that they had led this young man from café to café for several days, and that eventually Neša had killed him. Neša was around twenty years of age at the time and sported what is known as a “Cherokee” hairstyle, and he was of shorter stature than the witness. He belonged to a group from the Belgrade area, he hailed from Kučevo, and he said that he had been to Vukovar. Later he heard people say that Neša and the young captive had been in Switzerland together before the war and had moved in the same

302 *Ibid.*

303 Transcript of the main hearing held on 16 May 2019.

304 Transcript of the main hearing held on 19 September 2019.



circles. Giving his testimony, the witness said that he knew the defendant from Bubanj Potok, but as Neša Četnik.³⁰⁵

Witness Ivo Senković stated that as an inspector of the Odžaci (Bosnia and Herzegovina) Police Department he had attended the exhumation of the mortal remains of the victim Ivan Sivrić, carried out in 1998. The exhumation was performed in the village of Kožuhe by the Bosnia and Herzegovina Commission on Missing Persons, and the actual location was shown them by a lad who had been ordered to bury the victim. The mortal remains were found in water-logged woods near the Doboј–Modriča road. During the exhumation, the mortal remains were found with a part of a uniform. The family had provided a description of the clothing in which Ivan had last been seen, and it was precisely the jersey which they had described and which was found during the exhumation that had helped identify him. It was a jersey with a distinctive pattern that Ivan's sister recognised immediately. Pathologist Anto Blažanović performed a post-mortem examination and found two penetrating wounds and a fracture of the left lower arm on the mortal remains of the victim. The pathologist established that a male between 20 and 23 years of age and about 184 cm in height was in question, which corresponded to the description given by the victim's family. He also found a bone malformation on a leg joint, and the victim's father stated that the victim had been badly burnt on that part of the leg as a child. Strands of black hair were also recovered, and, on the basis of everything found, the police concluded that these were indeed the mortal remains of Ivan Sivrić.³⁰⁶

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Witness Ante Blažević explained that as a pathologist he had undertaken an autopsy of the mortal remains of the murdered Ivan Sivrić. Examining his bodily remains, he found projectile entry points on the occiput. Two projectiles with an almost parallel trajectory had penetrated the right occipital region. He concluded that the muzzle of the barrel had been perpendicular to the head of the injured party. Death was instantaneous. He was unable to determine the shooting distance, the calibre of the weapon or the position of the body at the time the projectile was expelled. He was working with skeletal remains, on the basis of which he concluded that a young male about 23 years of age and more than 180 cm in height was in question.³⁰⁷

Overview of the proceedings in 2020.

In 2020 five court days were held during which five witnesses and two court experts were examined.

Witnesses Željko Živković and Slobodan Krulj had heard that a prisoner had been brought to the village and that he had been brought there by a person who went by the name of "Neša Četnik" and "his team" who had come to Kožuhe from some place as volunteers. They found out what had happened from witness Miroslav Marković. Namely, that they had taken the prisoner out of the village, dug a hole and that then Nebojša (Neša Četnik) shot him with a pistol killing him. There was talk around the village that after the murder the dead prisoner had been taken somewhere, so that out of curiosity

305 *Ibid.*

306 *Ibid.*

307 Transcript of the main hearing held on 18 October 2019.



the witnesses, together with Miroslav Marković and Siniša Nedić, went to check if the body was in its original place of burial. As they started to dig they saw a body covered with a coat.³⁰⁸

Witness Mira Starčević stated that at the critical time she had been working in a café in the village of Kožuhe, when a soldier came in with a prisoner and threatened to kill him, only to say afterwards that he was joking; then he untied the prisoner so that he could have a drink and smoke a cigarette. This soldier had a distinctive haircut – the sides of his head were clean shaven and there was a strip of hair running through the middle of the top of his head.³⁰⁹

Witness Bogdan Živković stated that the injured party had been brought to Kožuhe and then killed. He saw someone being led around – leading him were a young man who introduced himself as “Neša Četnik” and another two or three persons in his company. This Neša guy had a somewhat strange hairdo, it seemed as if he had a queue on his head.³¹⁰

Witness Slobodan Despotović explained that after the war he was a member of the Commission on Missing Persons. During an exhumation in Modriča, carried out on 12 November 1998, Mijo Matanović, the Croatian representative, proposed to him that an exhumation be performed in Kožuhe as well. Matanović told him that Miroslav Marković from Kožuhe had information about the location of the body to be exhumed. They went to Kožuhe, and together with Marković and two policemen proceeded to the place where the body was. The body was dug up and documents issued in the name of Ivan Sivrić were also recovered on that occasion.³¹¹

Expert witness findings

The court expert, forensic medicine specialist professor Zoran Stanković, Ph.D., established that the injured party had sustained two penetrating wounds to the head, with entry wounds in the occipital region and that the wounds had been fatal. It was a violent death but the distance from which the injured party had been shot or the calibre of the ammunition were impossible to ascertain.³¹²

Court expert and ballistics specialist Milan Kunjadić determined that during the exhumation nothing had been found *in situ* that could indicate the type of weapon with which fatal wounds had been inflicted on the injured party. The location at which the wounds had been inflicted or the position of the injured party at the moment of wounding were not possible to establish either. Depending on the base underneath, he could have been either standing or kneeling. His rear left side had been turned towards the person who inflicted the injuries on him.³¹³

308 Transcript of the main hearing held on 20 February 2020.

309 *Ibid.*

310 *Ibid.*

311 *Ibid.*

312 Transcript of the main hearing held on 22 June 2020.

313 *Ibid.*



First instance judgment

On 15 October 2020, the Higher Court in Belgrade rendered a judgment finding the accused Nebojša Stojanović guilty of a war crime against prisoners of war under Article 144 of the FRY Criminal Code and sentenced him to a term of imprisonment of eight years. Concurrently the measure of confinement to RS territory was imposed on him.

The court found that it had been conclusively established during the proceedings that at the time of the critical event there was an armed conflict, that the accused was a member of the Serbian side in the conflict, and that the injured party was a prisoner of war. The accused denied having committed the criminal offence he was charged with, stating that he had not known the injured party and that he was a victim of mistaken identity. The court did not accept this defence of the accused, assessing it to be aimed at avoiding criminal liability, as the same was at variance with the statements of the examined witnesses. The identity of the accused as well as that at the critical time he was in the village of Kožuhe was established pursuant to the statements of witnesses, Kožuhe locals. The defence of the accused runs counter to the testimonies of Miroslav Marković and Nedeljko Gostić – eyewitnesses – who described in detail the manner in which injured party Ivan Sivrić had been killed. They stated that the accused killed the injured party by shooting him with a pistol, emptying its magazine into him. Witness Dušan Tomić stated that the accused had bragged that he had killed an ustasha. Witnesses Milan Starčević and Bogdan Živković recognized the accused in the photographs shown them. The court lent credence to the statements of the witnesses, as all of them recognized the accused and described him as a person sporting a peculiar hairdo at the critical time, a so called “Cherokee”. Witness Mira Starčević stated that at the critical time the accused came with the injured party to the café where she worked, that he had a funny haircut and that he said that he would kill the injured party. Witness Milan Starčević stated that the accused had ordered him to go and dig a grave where he would kill the “blackshirt”. That the injured party had been captured was established by the court on the basis of both the testimonies of witnesses, Kožuhe villagers, and of the statement of witness Ružica Miloš, the injured party’s sister, who said that Hasan Mujkić told her that he had been captured together with her brother.

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The court found that at the time of the commission of the criminal offence the accused was mentally competent and had acted with direct intent.

In determining the sentence, the court took into consideration his family situation and the absence of a prior criminal record as mitigating circumstances in favour of the accused, and assessed the severity of the criminal offence as an aggravating circumstance.

The court referred the injured party to claim damages in civil action not being able to consider her associated action for damages because it was not quantified.



HLC Findings

Regional cooperation

These proceedings are the result of the cooperation between Serbia and Bosnia and Herzegovina in the prosecution of war crimes, which was intensified after the Office of the War Crimes Prosecutor and the Prosecutor's Office of Bosnia and Herzegovina signed in 2013 the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide. Namely, the confirmed indictment against the accused was transferred by the Prosecutor's Office of Bosnia and Herzegovina, given that the accused, who is a national and resident of the Republic of Serbia, was not accessible to the authorities of Bosnia and Herzegovina.

Excessive anonymisation of the indictment

The Office of the War Crimes Prosecutor's Indictment in this case, which is publicly accessible on the OWCP homepage under "Indictments"³¹⁴, has been anonymised by the publication only of its operative part, with data on the names of the accused and the victims redacted, which is not in accordance with the OWCP Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes.³¹⁵ Namely, the Rulebook provides that OWCP indictments "shall as a rule be published in their entirety on the OWCP webpage, but with data on the basis of which the accused, the injured parties, their legal representatives, witnesses, relatives, persons close to them, neighbours and similar could be identified, substituted or omitted in a consistent manner".³¹⁶ Instead of the entire indictment, only the operative part was posted, making it impossible to ascertain on what evidence the OWCP had based the indictment. Also, the Rulebook envisages anonymisation of the personal particulars of the participants in the proceedings, such as "the names and surnames and nicknames of physical persons, their addresses, dates and places of birth"³¹⁷, but however it also provides that "data on the name, surname and nickname of a physical person who is a participant in the proceedings shall not be subject to anonymisation if the legitimate interest of the public to know prevails over the protection of the identity of the physical person in question".³¹⁸ Since the name of the accused has been anonymised, as indeed has the name of the victim, the OWCP is evidently in breach of a provision of its own Rulebook, in total disregard of the public interest, which is public disclosure of the identity of persons who stand accused of war crimes the commission of which poses a grave danger to society, and equally of the identity of the victims, public reference to whom provides them and their families with a form of redress and is a prerequisite for the recognition of the sufferings they have undergone, primarily on account of their identity.

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314 OWCP Indictment KTO no. 3/2018 of 13 July 2018, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents_sr/2019-04/kto_3_18_lat~0.pdf, accessed on 21 December 2020.

315 Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes of 20 March 2019, available at http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document_sr/2019-05/%D0%9F%D1%80%D0%B0%D0%B2%D0%B8%D0%BB%D0%BD%D0%B8%D0%BA_%D0%9B%D0%B0%D1%82.pdf accessed on 16 January 2020.

316 *Ibid*, Article 1, paragraph 2.

317 *Ibid*, Article 5, paragraph 1.

318 *Ibid*, Article 5, paragraph 2.



Efficient conduct of the proceedings

The trial in this case started in February 2019, and the first instance judgment was rendered in October 2020 despite the interruption of the trial on account of the Covid-19 pandemic. Therefore, these proceedings are an example of an efficient first instance trial.

Inadequate informing of injured parties

The first instance judgment referred the injured party to civil action for her associated action for damages. The reason the court gave for not being able to decide on the associated action for damages in the context of the criminal proceedings was that the injured party had not quantified her damage claim, i.e. specified the amount claimed. Namely, for the court to be able to decide upon an associated action for damages as part of the criminal proceedings, the damage claim must be quantified.³¹⁹ This demonstrates the lack of adequate support to injured parties during the proceedings. It is the obligation of both the Office of the War Crimes Prosecutor and the Witness and Injured Parties Assistance and Support Unit to inform injured parties not only that they are entitled to damages, but also that their claims must be quantified, i.e. the exact sum specified by the end of the proceedings. Because of the inactivity of the competent bodies in this case, rather than exercise her right during the criminal proceedings, the injured party is compelled to venture another lawsuit in pursuit of her entitlement, whereby she is being additionally exhausted and victimised.

319 CPC, Article 253.



III. The Ključ – Velagići Case³²⁰

CASE OVERVIEW	
Current stage of the proceedings: appeal proceedings	
Date of indictment: 27 November 2018	
Trial commencement date: 8 March 2019	
Prosecutor: Ognjen Đukić	
Defendant: Željko Maričić	
Criminal offence charged: war crime against the civilian population under Article 142 of the FRY Criminal Code	
Chamber	Judge Vinka Beraha-Nikićević (Chairperson) Judge Vera Vukotić Judge Vladimir Duruz
Number of defendants: 1	Number of court days in the reporting period: 5 Number of witnesses heard in the reporting period: 3 Number of expert witnesses heard: 0
Defendant's rank: no rank	
Number of victims: 6	
Number of witnesses heard: 9	
Key developments in the reporting period: First instance judgment	

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³²⁰ The *Ključ-Velagići* case, trial reports and case file documentation available at <http://www.hlc-rdc.org/Transkripti/kljuc-velagici.html>, accessed on 2 December 2020.



The course of the proceedings

Proceedings overview up to 2020

Indictment

The accused Željko Maričić is charged with having, as a member of the Army of Republika Srpska, after his arrival towards the end of March 1992 at the “Nikola Mačkić” Elementary School where a large number of Bosniak male civilians from the villages of Velagići, Pudín Han, Sanica and Krasulje and several villages in the Ključ Municipality area were detained, among them Mirsad Dervišević, Latif Salihović, Mujaga Selman, Senad Draganović, Hamdija Kumalić and Rifet Kalabić, physically maltreated the detainees, punching them and kicking them with his military boots, hitting them with a stick and other objects all over the body, putting a knife to Senad Draganović’s throat with threats to slit it, which caused Mirsad Dervišević and Hamdija Kumalić to faint repeatedly, and continuing to maltreat them in a similar way when they regained consciousness. When, having been maltreated all day long, the civilians were then put on buses which set off towards a camp, the defendant approached Mirsad Dervišević and continued beating him all over the body with a stick, and when Mirsad Dervišević sought cover under a bus seat, he produced a knife and stabbed him in the back.³²¹

Defence of the accused

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The defendant partially confessed to the commission of the criminal offence he was charged with, stating that he had beaten the injured parties but not to such an extent as alleged in the indictment. He felt very sorry for these people and sincerely regretted having treated them in such a way, which he had done solely because he had been under the influence of alcohol. He drank heavily in the period in question, especially when his one-and-a-half-year-old son was diagnosed with epilepsy and autism. He had quite a few Muslim friends in Ključ, there was no bad blood between him and anyone, and he had had no reason whatsoever to maltreat the incarcerated civilians, but he did so because he was drunk and not in control of his actions. He wore an olive drab uniform and carried an automatic rifle, but did not have a knife or a baton. He was unable to explain why he had gone to the “Nikola Mačkić” elementary school, as he had been drinking in a bar before arriving at the school. On entering the school, he went into the gym where about 200 men were detained. He punched and kicked the detained civilians, but he did not have anything in his hands and he did not carry a knife. His blows were not so hard as to make them faint. He is positive that he did not board the bus which took the civilian prisoners to the camp at Manjača. He was outside the gym when the people were being led out towards the buses, and then he hit several of them with some kind of a stick. He knew some of the injured parties - Mirsad Dervišević and Mujaga Selman, whom he had hit. He could not explain why the injured party Dervišević alleged that he had stabbed him with a knife because they “had been on good terms”.³²²

321 OWCP Indictment KTO no. 8/2018 of 27 November 2018, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2019-04/%D0%9A%D1%82%D0%BE_8_18_%D0%9B%D0%B0%D1%82~2.pdf, accessed on 21 December 2020.

322 Transcript of the main hearing held on 8 March 2019.



Witnesses in the proceedings

In 2019 five witnesses/injured parties were examined who incriminated the defendant in their statements.

Thus, witness and injured party Mujaga Selman stated that in late May 1992 he had been arrested as a civilian and brought to Ključ, to the gym of the “Nikola Mačkić elementary school. They were subjected to physical abuse in the gym, but he did not see the accused, whom he knew, on that occasion. He explained that while in the gym he had to keep his head bowed and was therefore unable to see who exactly was there. They took them out of the gym and led them to some buses which were parked outside the school. A gauntlet had been formed leading from the school building to the buses and he saw the defendant in it. The defendant swung at him with a wooden pole intending to whack him on the back, but the witness cushioned the blow with his arm. After that blow, he had problems with his arm for a long time. He saw five or six buses in which they were waiting for them. He did not see the accused in the bus on which he was travelling, but he noticed him when they reached the village of Sitnica, where they were placed in the school gym. There he again saw the accused, threatening a colleague of his. From Sitnica they were transported to the camp at Manjača. He does not know whether the defendant drank habitually before the war nor whether he was drunk on the relevant day.³²³

Witness and injured party Mirsad Dervišević was also taken to the gym of the “Nikola Mačkić” elementary school. There were many people in the gym who, like the witness, had been brought there and were beaten. The witness was beaten so viciously that he lost consciousness several times. The accused beat him the most, but others beat him as well. He could see the accused clearly, and he knew him from before. He is certain that he attacked him in the gym - in fact, he kicked him, because the strong blows knocked him down to the floor and he could then clearly see who had delivered the kick. He beat others too on that occasion. They were ushered out of the gym and loaded into buses, and the accused boarded the bus on which the witness was and continued to beat him. He is positive that it was precisely the accused who stabbed him with a knife, as before that he had been beating him and swearing at him. He thinks that he stabbed him with an army knife, as he wore one on the hip. Trying to shield himself from the blows he sought shelter under a bus seat, and then the accused stabbed him in the kidney. Presently they reached the village of Sitnica, where they were taken off the buses and led into the school gym. While they were in the gym the accused entered and said: “Just so you know who beat you, my name is Željko Maričić, son of father Miloš and mother Mara”. Some soldiers ushered the accused out of the gym in Sitnica, while the witness was transported together with other male prisoners to the Manjača camp. His stab wound bled profusely, and he was not fully alive to the goings on over the following several days. The accused was an alcoholic, he said.³²⁴

Witness and injured party Senad Draganović stated that he knew the accused and, as he worked as a waiter in a restaurant frequented by the defendant, knew that he drank. He explained that he had been

323 Transcript of the main hearing held on 11 April 2019.

324 Transcript of the main hearing held on 22 May 2019.



incarcerated in the gym of the elementary school in Ključ, together with a large number of Bosniak men. He saw the defendant in the gym in Ključ and in Sitnica, where he introduced himself stating his name and even the names of his parents for the sole reason that “they would know who beat them”. During his detention in the gym, the defendant had twice put a knife to his throat and asked him at which hour he wished to be slaughtered. He supposes that the defendant was drunk at the time. He saw Mirsad Dervišević only in the gym in Sitnica, he was all covered in blood and disoriented.³²⁵

Witness and injured party Latif Salihović stated that he knew the defendant from before, and that the latter had beaten him on the critical day in the bus transporting the witness and other detained Bosniak civilians from the elementary school in Ključ to the camp at Manjača.³²⁶

Witness and injured party Safet Kabrić stated that he had been detained in the gym of the “Nikola Mačkić” elementary school in Ključ together with a large number of Bosniak men. The detainees would be beaten up both in the gym and later as they were being transported by buses to the camp at Manjača. The witness was also beaten, but he does not know who beat him. He saw injured party Mirsad Dervišević covered in blood, and heard that the defendant had beaten him and stabbed him with a knife.³²⁷

Overview of the proceedings in 2020

In 2020 five court days were held during which three witnesses were examined.

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Witness Rifet Kalabić stated that he did not know the defendant, while witness Hamdija Kumalić stated that he had not seen who beat him in the gym of the “Nikola Mačkić” elementary school in Ključ, but that later a neighbour of his and his brother told him that he had been beaten by the accused.³²⁸

Defence witness Ljiljana Maričić, the defendant’s wife, stated that after they had learned that their son had a grave disease, the accused simply “hit the bottle” and that things only got worse during the war. She also said that the accused had told her that he had maltreated some Muslim men in the gym, but that he did not recall the incident in the bus, of which he also stands accused.³²⁹

First instance judgment

On 7 July 2020, the Higher Court in Belgrade rendered a judgment pronouncing the accused Željko Maričić guilty of a war crime against the civilian population and sentenced him to a term of imprisonment of two years.³³⁰

325 *Ibid.*

326 Transcript of the main hearing held on 4 November 2019.

327 *Ibid.*

328 Transcript of the main hearing held on 22 January 2020.

329 Transcript of the main hearing held on 18 February 2020

330 Judgment of the Higher Court in Belgrade K. Po2 10/2018 of 7 July 2020.



The Chamber established that the accused Željko Maričić arrived towards the end of March 1992 as a member of the Army of Republika Srpska at the “Nikola Mačkić” Elementary School in Ključ where a large number of Bosniak male civilians from villages in the Ključ Municipality were detained, among them Mirsad Dervišević, Latif Salihović, Mujaga Selman, Senad Draganović, Hamdija Kumalić and Rifet Kalabić. He physically maltreated them, punching them and kicking them with his military boots, hitting them with a stick and other objects all over the body, putting a knife to Senad Draganović’s throat with threats to slit it, which caused Mirsad Dervišević and Hamdija Kumalić to faint repeatedly, and continuing to maltreat them in a similar way when they regained consciousness. When, having been maltreated all day long, the civilians were then put on buses which set off towards a camp, the defendant approached Mirsad Dervišević and continued beating him all over the body with a stick, and when Mirsad Dervišević sought cover under a bus seat, he produced a knife and stabbed him in the back. It was conclusively established during the proceedings that there had been an armed conflict, that the accused had been a member of the Army of Republika Srpska as one of the sides to the conflict and that the injured parties had been civilians.

The defendant partially confessed to the commission of the criminal offence, stating that he had physically hurt some of the injured parties, but denying that he had worn army boots or carried a knife.

Due to the lack of evidence that the accused had inflicted bodily harm on Latif Salihović, this injured party was omitted from the operative part of the judgment.

The court determined that at the time of the commission of the criminal offence the accused had acted with direct intent.

In determining the sentence, the court assessed the absence of a prior criminal record, his family situation and the fact that he was the father of two children, one of whom was sick, as mitigating circumstances in favour of the accused. In this context the court took into consideration all of them, found that the existence of special mitigating circumstances satisfied the requirement for leniency, and sentenced the accused to a term of imprisonment of two years.³³¹

HLC Findings

Regional cooperation

These proceedings are the result of the cooperation between Serbia and Bosnia and Herzegovina in the prosecution of war crimes, which was intensified after the Office of the War Crimes Prosecutor and the Prosecutor’s Office of Bosnia and Herzegovina signed in 2013 the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide. Namely, the confirmed indictment against the accused was transferred by the Prosecutor’s Office of Bosnia and Herzegovina, given that the accused, who is a national and resident of the Republic of Serbia, was not accessible to the authorities of Bosnia and Herzegovina.

331 *Ibid.*



Excessive anonymisation of the indictment

The Office of the War Crimes Prosecutor's Indictment in this case, which is publicly accessible on the OWCP homepage under "Indictments"³³², has been anonymised by the publication only of its operative part, with data on the names of the accused and the victims redacted, which is not in accordance with the OWCP Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes.³³³ Namely, the Rulebook provides that OWCP indictments "shall as a rule be published in their entirety on the OWCP webpage, but with data on the basis of which the accused, the injured parties, their legal representatives, witnesses, relatives, persons close to them, neighbours and similar could be identified, substituted or omitted in a consistent manner".³³⁴ Instead of the entire indictment, only the operative part was posted, making it impossible to ascertain on what evidence the OWCP had based the indictment. Also, the Rulebook envisages anonymisation of the personal particulars of the participants in the proceedings, such as "the names and surnames and nicknames of physical persons, their addresses, dates and places of birth"³³⁵, but however it also provides that "data on the name, surname and nickname of a physical person who is a participant in the proceedings shall not be subject to anonymisation if the legitimate interest of the public to know prevails over the protection of the identity of the physical person in question".³³⁶ Since the name of the accused has been anonymised, as indeed has the name of the victim, the OWCP is evidently in breach of a provision of its own Rulebook, in total disregard of the public interest, which is public disclosure of the identity of persons who stand accused of war crimes the commission of which poses a grave danger to society, and equally of the identity of the victims, public reference to whom provides them and their families with a form of redress and is a prerequisite for the recognition of the sufferings they have undergone, primarily on account of their identity.

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Efficient conduct of the proceedings

The trial in this case started in March 2019 and the first instance judgment was rendered already in July 2020. That is why this case too is an example of efficient first instance proceedings, in particular bearing in mind the standstill on account of the Covid-19 pandemic.

332 OWCP Indictment KTO no. 8/2018 of 27 November 2018, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2019-04/%D0%9A%D1%82%D0%BE_8_18_%D0%9B%D0%B0%D1%82~2.pdf, accessed in December 2020.

333 Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes of 20 March 2019, available at http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document__sr/2019-05/%D0%9F%D1%80%D0%B0%D0%B2%D0%B8%D0%BB%D0%BD%D0%B8%D0%BA_%D0%9B%D0%B0%D1%82.pdf accessed on 26 December 2020.

334 *Ibid.*, Article 1, paragraph 2.

335 *Ibid.*, Article 5, paragraph 1.

336 *Ibid.*, Article 5, paragraph 2.



IV. The Hrasnica Case³³⁷

CASE OVERVIEW	
Current stage of the proceedings: appeal proceedings	
Date of indictment: 24 December 2018	
Trial commencement date: 22 March 2019	
Prosecutor: Miodjub Vitorović	
Defendant: Husein Mujanović	
Criminal offence charged: war crime against the civilian population under Article 142 of the FRY Criminal Code.	
Chamber	Judge Dejan Terzić (Chairperson) Judge Mirjana Ilić Judge Zorana Trajković
Number of defendants: 1	Number of court days in the reporting period: 5 Number of witnesses heard in the reporting period: 0 Number of expert witnesses heard: 0
Defendant's rank: low-ranking	
Number of victims: 8	
Number of witnesses heard: 11	
Key developments in the reporting period: First instance judgment	

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³³⁷ Predmet *Hrasnica*, trial reports and case file documentation available at <http://www.hlc-rdc.org/Transkripti/hrasnica.html>, accessed on 25 December 2020.



The course of the proceedings

Proceedings overview up to 2020

Indictment

The accused Husein Mujanović is charged with detaining, in the period from 8 July to 15 October 1992, as a member of the Army of Bosnia and Herzegovina and the warden of the military prison in Hrasnica (Ilidža municipality, Bosnia and Herzegovina), about 30 Serbian civilians who had been unlawfully deprived of liberty, and treating them inhumanely, failing to provide a bare minimum standard of accommodation conditions, and keeping them in rooms without water or a lavatory. He would issue orders for the prisoners to be beaten up, and six prisoners died from their injuries. He himself took part in the infliction of bodily injuries on the prisoners, beating, for example, the prisoner Mirko Vuković in his office, and the prisoner Savo Pejić in the atomic shelter.³³⁸

The accused Husein Mujanović, a Bosnia and Herzegovina national, was arrested on 30 July 2018 at the Priboj – Uvac border crossing between Serbia and Bosnia and Herzegovina, and has been in detention since.

Defence of the accused

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Presenting his defence, the defendant denied having committed the offence he stands accused of. He explained that military police, whose commander was Munir Hodžić, would bring persons to the prison and order him to guard them. The orders were issued by the brigade commander. As stated in the orders, they were being apprehended because of treason, draft evasion or some other reason, but always in connection with the war. Serbs were brought there because they were fit for military service. He never checked the identity of the persons brought in. There had been women as well, brought there on account of collaboration with the enemy. There had also been Croats and Muslims among the incarcerated. No one left the prison unless a warrant was issued. It was difficult to run the prison because everything was in very short supply. There was no electricity or water in Hrasnica, and food was scarce too. He had not beaten anyone, and witness Vuković had not mentioned him in his previous statement. He noted that none of the witnesses had recognised him in 1994 and 1995, but that then in 2018 everybody recognised him. He had not done any of the acts he is charged with in the indictment.³³⁹

Witnesses in the proceedings

Injured party Savo Pejić stated that he had been arrested on 18 August 1992 and put in a prison set up in some garages that had been partitioned with brick into smaller cells. It was totally dark in the

338 OWCP Indictment KTO no. 10/2018 of 24 December 2018, available at http://www.hlc-rdc.org/wp-content/uploads/2019/11/Optuznica_24.12.2018._-_Husein_Mujanovic.pdf, accessed on 25 December 2019.

339 Transcript of the main hearing held on 22 March 2019.



cells, he lay on the bare concrete and there was just one blanket that he and the prisoner Radovan Unković shared to cover themselves. Not even a minimum of sanitary conditions existed, for drinking water they had to fill a bottle, and they relieved themselves inside the cells using some cans. After his imprisonment, it was not until November that he had his first bath, when they were taken out for forced labour to build a bridge over the River Železnica. At the witness's request, the guard allowed him to wash himself in the river. Food in the prison was insufficient and very poor in quality, and meals were dispensed only once a day. During his time in prison he was beaten up once, in September 1992. A guard, Senad Gadžo, took him out of the cell and beat him up outside the cell door, and when he fell to the floor, another guard, Zaim, kicked him in the kidney area. The defendant, whom he recognised by his voice, was also present and kept saying "Hit the Chetnik! Hit him! Let him have it!"³⁴⁰

Witnesses and injured parties Dušan Stanić and Mirko Vuković also confirmed in their testimonies that not even a minimum of decent accommodation conditions had existed in the prison. They also confirmed that the prisoners had been physically mistreated; witness and injured party Mirko Vuković stated that the accused had personally beaten him.³⁴¹

Injured party Ljeposava Stojanović, whose husband died from the injuries he sustained in prison, and Branislav Nikolić and Zoran Stjepanović, whose fathers also died after having been beaten up in the prison, had no first-hand knowledge of the critical events.³⁴²

Overview of the proceedings in 2020

In 2020 four court days were held during which written exhibits in the case file were examined in the evidentiary proceedings and the parties gave their closing arguments.

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First instance judgment

On 6 July 2020, the Higher Court in Belgrade rendered a judgment pronouncing the accused Husein Mujanović guilty of a war crime against the civilian population and sentenced him to a term of imprisonment of 10 years.³⁴³

The Court found that the accused had imprisoned people unlawfully, treated the imprisoned civilians inhumanely, issued orders that bodily injuries be inflicted on them and that he himself also did so. The conduct of the accused features all the statutory elements of the criminal offence of a war crime against the civilian population under Article 142 of the FRY Criminal Code, such as: the existence of an armed conflict, serious violations of the rules of international humanitarian law, a nexus between the actions of the accused and the armed conflict and the commission of the criminal offence against persons who did not actively participate in hostilities, i.e. against persons protected under the Geneva Conventions. At the time of the commission of the criminal offence the accused was a prison

340 Transcript of the main hearing held on 6 May 2019.

341 Transcript of the main hearing held on 10 June 2019.

342 *Ibid.*

343 Judgment of the Higher Court in Belgrade K. Po2 11/18 of 6 July 2020.



warden, as attested to by the witnesses in their statements, as e.g. Dušan Stanić, and the case file also contains written documents to that effect. These are official memoranda and an order relieving the defendant of his post of prison warden. In the relevant period about 30 Serb civilians had been incarcerated solely on account of their ethnicity. None had been issued any detention warrants, nor did such decisions exist. Decisions on leaving the detention unit to go out for labour are not proof that decisions to detain them had also existed, but only served to the defendant as a security measure because he was responsible for the head count of the prisoners. The poor conditions in detention were testified to by all the witnesses who had been held there. All of them said that food and water had been insufficient, that the food had been of poor quality and the meals meager. The court lent credence to the witnesses who stated in their testimonies that no adequate medical care had been provided during their detention either. Notwithstanding the fact that conditions in Hrasnica had been poor, it had been the duty of the accused to provide better conditions for the detainees. The poor conditions that obtained, coupled with the fact that the accused himself inflicted bodily injuries on the detainees, speaks of his attitude towards them. The statements of the witnesses are along the same lines and they say that the conditions improved when the new warden assumed duty. Witness Obrad Milović in particular described how poor the conditions were, stating that one of the detainees was so hungry that he ate his own caked blood. The court lent credence to the witnesses who faithfully described what they knew about the incidents when bodily injuries were inflicted on the inmates. The Court did not accept the defendant's defence that at the critical time he had not been the prison warden as it was refuted by the statements of many witnesses: Vuković, Stanić, Medić and others. Witness Savo Pejić described in detail how he had been taken out and beaten and how the accused had behaved in those moments. As no evidence was presented that could call in question the statements of the witnesses, the court based its finding of guilty on them.³⁴⁴

HLC Findings

Circumvention of regional cooperation in the prosecution of war crimes

Although under the Law on Organisation and Jurisdiction of State Authorities in Prosecuting War Crimes the state authorities of the Republic of Serbia shall have jurisdiction in proceedings for war crimes committed on the territory of the former Socialist Federal Republic of Yugoslavia, regardless of the citizenship of the perpetrator or the victim (the principle of universal jurisdiction)³⁴⁵, the HLC maintains that the accused Mujanović should have been extradited to Bosnia and Herzegovina, of which he is a national, for criminal proceedings to be conducted against him there.³⁴⁶ This seems even more appropriate in view of the fact that proceedings are already being conducted against him

³⁴⁴ *Ibid.*

³⁴⁵ Law on Organisation and Jurisdiction of State Authorities in Prosecuting War Crimes (Official Gazette of the Republic of Serbia nos. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011- state law and 6/2015), Articles 2 and 3.

³⁴⁶ In 2018 the request of the Bosnia and Herzegovina Ministry for extraditing the accused Husein Mujanović was refused.



in Bosnia and Herzegovina for an offence of the same type, as the accused himself confirmed.³⁴⁷ Every state formed following the break-up of the former Yugoslavia should first and foremost prosecute those of its own citizens who have committed war crimes, as that would send the message that all of these states are prepared to confront and prosecute the crimes committed by their nationals, but equally that they are eager to establish and maintain good relations across the region. The application of the principle of universal jurisdiction reflects the mistrust that obtains between prosecutorial offices prosecuting war crimes, which are reneging on their professed readiness for regional cooperation; it also encumbers relations between countries and the competent prosecutorial offices, as in the case of Veljko Marić, which has plagued relations between Serbia and Croatia for a long time.³⁴⁸

Excessive Anonymisation of the indictment

The Office of the War Crimes Prosecutor's Indictment in this case, which is publicly accessible on the OWCP homepage under "Indictments"³⁴⁹, has been anonymised by the publication only of its operative part, with data on the names of the accused and the victims redacted, which is not in accordance with the OWCP Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes.³⁵⁰ Namely, the Rulebook provides that OWCP indictments "shall as a rule be published in their entirety on the OWCP webpage, but with data on the basis of which the accused, the injured parties, their legal representatives, witnesses, relatives, persons close to them, neighbours and similar could be identified, substituted or omitted in a consistent manner".³⁵¹ Instead of the entire indictment, only the operative part was posted, making it impossible to ascertain on what evidence the OWCP had based the indictment. Also, the Rulebook envisages anonymisation of the personal particulars of the participants in the proceedings, such as "the names and surnames and nicknames of physical persons, their addresses, dates and places of birth"³⁵², but however it also provides that "data on the name, surname and nickname of a physical person who is a participant in the proceedings shall not be subject to anonymisation if the legitimate interest of the public to know prevails over the protection of the identity of the physical person in question".³⁵³ Since the name of the accused has been anonymised, as indeed has the name of the victim, the OWCP is evidently in breach of a provision of its own Rulebook, in total disregard of the public interest. This is even more the case, in that the identity of the accused had been publicly known even before the indictment was filed, i.e. from the moment of

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347 Transcript of the main hearing held on 22 March 2019.

348 Veljko Marić is a former member of the Croatian Armed Forces, a national of Croatia, who was arrested in Serbia in 2010 and finally sentenced to 12 years of imprisonment for the criminal offence of a war crime against the civilian population by Judgment K.Po2 47/2010 of 23 September 2011 of the Higher Court in Belgrade, which was upheld by Judgment Kž1 Po2 10/11 of 5 March 2019 of the Court of Appeal in Belgrade.

349 OWCP Indictment KTO no. 6/2018 of 22 October 2018, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2019-12/%D0%9A%D0%A2%D0%9E_6_18_%D0%9B.pdf, accessed on 27 December 2020.

350 Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes of 20 March 2019, available at http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document__sr/2019-05/%D0%9F%D1%80%D0%B0%D0%B2%D0%B8%D0%BB%D0%BD%D0%B8%D0%BA_%D0%9B%D0%B0%D1%82.pdf accessed on 26 December 2020.

351 *Ibid*, Article 1, paragraph 2.

352 Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes, Article 5, paragraph 1.

353 *Ibid*, Article 5, paragraph 2.



his arrest, which was reported in the media³⁵⁴, as was the issuance of the indictment immediately afterwards.³⁵⁵ In the public interest, the indictment should have been posted on the OWCP website also, without anonymising the data regarding the defendant's name, in order to disclose publicly all the allegations contained in it.

Efficient conduct of the proceedings

This is yet another efficiently conducted and concluded case before the court of first instance. Namely, the main hearing in this case commenced in March 2019, and the first instance judgment was rendered already in July 2020, despite the standstill on account of the Covid-19 pandemic.

Adequate sentence

The imposed sentence of 10 years of imprisonment can be considered appropriate given the large number of injured parties and the fact that six of the detained civilians succumbed to their injuries.

354 RTS, 31 July 2018 "Husein Mujanović in Custody for Crimes against Serbs", available at <http://www.rts.rs/page/stories/sr/story/11/region/3216550/pritvor-za-huseina-mujanovica-zbog-zlocina-nad-srbima.html>, accessed on 26 December 2020; The *Telegraf*, 31 July 2018, "Former Warden of a Sarajevo War Camp Arrested at Border Crossing: Charged with Crimes against Serb Civilians", available at <https://www.telegraf.rs/vesti/jugosfera/2979617-na-granicnom-prelazu-uhapsen-nekadasnji-upravnik-ratnog-logora-u-sarajevu-tereti-se-za-zlocine-prema-srpskim-civilima>, accessed on 26 December 2020.

355 RTS, 20 January 2019 "New Indictments for Crimes Committed against Serbs", available at <http://www.rts.rs/page/stories/sr/story/135/hronika/3402508/nove-optuznice-zbog-zlocina-nad-srbima.html>, accessed on 26 December 2020.



V. The Bogdanovci Case³⁵⁶

CASE OVERVIEW	
Current stage of the proceedings: appeal proceedings	
Date of indictment: 24 December 2018	
Trial commencement date: 16 January 2020	
Prosecutor: Dušan Knežević	
Defendant: Boško Soldatović	
Criminal offence charged: war crime against the civilian population under Article 142 of the FRY Criminal Code.	
Chamber	Judge Dejan Terzić (Chairperson) Judge Mirjana Ilić Judge Zorana Trajković
Number of defendants: 1	Number of court days in the reporting period: 6 Number of witnesses heard in the reporting period: 5 Number of expert witnesses heard: 0
Defendant's rank: low-ranking	
Number of victims: 9	
Number of witnesses heard: 5	
Key developments in the reporting period: First instance judgment	

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³⁵⁶ The *Bogdanovci* case, trial reports and case file documentation available at <http://www.hlc-rdc.org/Transkripti/bogdanovci.html> accessed on 25 December 2020.



The course of the proceedings

Proceedings overview up to 2020

Indictment

The accused Boško Soldatović is charged with having, around noon on 11 November 1991, in the village of Bogdanovci in the Republic of Croatia, as a member of a military police company comprised within the 2nd Proletarian Guards Mechanised Brigade of the Yugoslav People's Army, of his own accord and without anyone's orders or approval, taken out from the local community hall civilians Ljulje Barlecaj, Vera Barlecaj, Krista Lešaj, Manika Lešaj, Mrika Barlecaj, Đulja Barlecaj, Pren Krasnići, Zef Paljušaj and Nikola Paljušaj, leading them behind the said building, lining them up against the wall and killing them all with bursts fired from an automatic weapon.³⁵⁷

Defence of the accused

Presenting his defence, the accused staunchly denied having committed the criminal offence that he is charged with. He stated that at the relevant time he had been in Bogdanovci as a member of the military police of a Valjevo unit of the Yugoslav People's Army, that he wore an olive drab uniform and was armed with an automatic rifle and a pistol. However, at the time of the murder of the civilians he was not at the local community hall, but at a different location altogether. During his stay in Bogdanovci he had had no contact with civilians. He could not recall the name of a single member of his unit. The names Lazar Aleksić, Gojko Lazić and Dušan Vukajlović rang no bells at all.³⁵⁸

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Witnesses in the proceedings

Witness for the prosecution Gojko Lazić stated that on 31 October 1991 he had been mobilized by the military police of the Valjevo Brigade and that the accused had also been a military police member. They went to Croatia, the area of the village of Marinci, and then some 8 to 9 days prior to the fall of Vukovar were dispatched to Bogdanovci, where fighting was going on. They spent the first night in a house across from which there was a post office – a storeyed building. About 10:00 hours the next morning he was summoned together with other soldiers to go and help 2nd Lieutenant Lazić, who was blocked, together with several soldiers, in a building about 100 metres away from the spot where the post office and a small shop were. When he returned after two hours he saw the bodies of murdered civilians on a clearing by the store. There were several bodies, but he could not recall how many exactly. Among them he noticed an old woman and a very short man. He later heard, there was talk among the soldiers, that the civilians had been killed by the defendant.³⁵⁹

357 OWCP Indictment KTO 1/18 of 21 December 2018, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents_sr/2019-09/kto_1_19_lat.pdf, accessed on 25 December 2020.

358 Transcript of the main hearing held on 16 January 2020.

359 Transcript of the main hearing held on 9 February 2020.



Witness for the prosecution Dušan Vukajlović stated that on 4 November 1991 in Valjevo he had been mobilized by the military police of the 2nd Proletarian Guards Mechanised Brigade whose commander was Dušan Lončar. They arrived in the area of the village of Petrovci in Croatia on 8 November 1991. The next day they were told that there would be an attack on the village of Bogdanovci, a strategically important point. They were told that the village would be putting up a defence and that the objective was to capture it in order to cut off supplies to Vukovar. The attack started around 08:00 hours on 10 November 1991. That day they advanced as far as the village centre and remained there over the night. On the following day, 11 November 1991, they assembled in the center of the village by a building which the witness thought was the local community hall and which was on the Bršadin – Petrovci junction. They were issued the task to go through the houses to check whether there still were any enemy soldiers in them, and someone requested that civilians be brought to the centre of the village so as not come to harm during possible military operations. Between 10 and 11 a.m. a group of civilians was brought numbering between seven and nine persons, mostly elderly – more men than women. He was positive that they had been civilians, which he concluded on the basis of their clothes and conduct. Namely, they had been calm and had accepted to go to the centre of the village without any objections. One of the civilians, an Albanian man, which he concluded from his accent, was in a Croatian police shirt, but said that the shirt belonged to his son. The civilians were in a group by the local community office, within the witness's field of vision, standing sort of half-left, and he was some 10 metres away from them. He heard the sound of a weapon being repeated and immediately afterwards a burst of fire. He first saw a group of persons teetering and falling down and then also a man wielding an automatic rifle – he saw the person who had shot the civilians. This person was not in a standard uniform but wore a brown jacket and was about 30 years old. He did not see him again that day. At the time of this incident there were some fifty soldiers near the building as they were waiting for relief troops and to go back to Petrovci. Among them were soldiers Miodrag Marković and Lazar Aleksić. He then asked what had happened and one of the soldiers told him that the person who had shot the civilians was one "Sole". The soldiers talked about it. Immediately after the shooting no one approached the civilians nor was there any reaction in terms of intervening against the perpetrator. The next time he met the person who had shot the civilians was a couple of days later, in the military police company. Someone from the company told him that his last name was Soldatović. The witness ruled out the possibility that someone else and not the defendant had shot the civilians. The witness was shown two photo arrays with the photographs of a number of persons, and the witness recognized the accused in both.³⁶⁰

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Witness for the prosecution Lazar Aleksić explained that he had been mobilized into the Yugoslav People's Army on 8 November 1991 when he reported to the Valjevo garrison; from there he was dispatched to Croatia, to the village of Petrovci. There he was assigned to the military police company comprised within the Valjevo Brigade. On the morning of 10 November 1991 his unit took part in an attack on the village of Bogdanovci. The fighting went on all day long, so that they spent the night in Bogdanovci as well. On the following morning the fighting stopped and the villagers of Bogdanovci started to come out of their houses while the soldiers apprehended them. They took them to the local

³⁶⁰ Transcript of the main hearing held on 2 June 2020.



community office building. He heard the accused shout at civilians in rooms on the upper floor of the community hall – he was asking them how many soldiers there were in the village and was threatening to kill them. The accused took a group of civilians behind the building. There were women in that group as well – one of them was quite young, and he also noticed a very short man. He had the feeling that “what happened would happen”, and turned his head the other way because he did not want that image to be etched in his memory. At that moment there were no other soldiers around the accused. He heard the accused order the civilians to go into a corner and kneel and then he heard a burst of fire. At the time of this event, witness Dušan Vukajlović was also in the immediate vicinity. The soldiers talked about this event later – the story was that the accused had killed the civilians in Bogdanovci. No one else was mentioned as the perpetrator.³⁶¹

Witnesses/injured parties did not have first-hand knowledge about the ordeal of their family members. Thus witness and injured party Atler Antonio Paljušaj stated that he had not been in Bogdanovci when his father Nikola Paljušaj and his brother Zef Paljušaj came to grief. He was present during the exhumation of the mortal remains of victims from the mass grave in Bogdanovci, and he saw the body of his brother Zef, as well as his identity card which was found in the grave.³⁶²

Witness/injured party Mreco Barlecaj stated that his mother Mrika Barlecaj and his paternal grandmother Đulja Barlecaj had been killed in Bogdanovci. He was present during the exhumation of the mortal remains of victims from the mass grave in Bogdanovci, among whom were found his mother and his grandmother.³⁶³

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In the evidentiary proceedings the court had the statement of witness Miodrag Marković³⁶⁴ read out; in it the witness stated that he had been a member of the Valjevo Brigade Military Police Company and that he had been in the village of Bogdanovci in the first half of November 1991. He saw soldiers, among whom the accused Soldatović, interrogating a group of civilians comprising women and a very short man. The civilians were being threatened with death unless they said whether there were members of the Croatian armed forces in the village. He was not present when these civilians were killed, but there was talk among the troops that it had been done by the accused.³⁶⁵

First instance judgment

On 7 December 2020, the Higher Court in Belgrade rendered a judgment pronouncing the accused Boško Soldatović guilty of a war crime against the civilian population and sentenced him to a term of imprisonment of 15 years.³⁶⁶

361 *Ibid.*

362 Transcript of the main hearing held on 22 September 2020.

363 *Ibid.*

364 Witness Miodrag Marković is abroad, and was unable to appear in court due to the nature of his work and the Covid-19 pandemic.

365 *Ibid.*

366 Judgment of the Higher Court in Belgrade KP02 3/14 of 2020.



Pursuant to the evidence presented during the proceedings, the court established that the accused on 11 November 1991 in the village of Bogdanovci in the Republic of Croatia, as a member of the Military Police Company of the 2nd Proletarian Guards Mechanised Brigade of the Yugoslav People's Army, sometime around noon, of his own accord and without anyone's orders or approval, took out nine civilians from the local community hall building and killed them all with a burst of fire from an automatic weapon.

The court lent credence to the statements of the witnesses, the defendant's fellow combatants, as apart from those who actually were eye witnesses to the incident, other witnesses too confirmed that there had been talk among the soldiers that the accused had killed the civilians, and that no other names had been referred to in connection with their murder.

The court did not accept the defence of the accused, having assessed it to be contrary to all the presented evidence.

In determining the sentence the court considered his personal and family situation as mitigating circumstances in favour of the accused Boško Soldatović and assessed as aggravating the circumstances in which the crime had been committed, his ruthlessness in committing the offence and his prior criminal record.³⁶⁷

HLC Findings

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Efficient conduct of the proceedings

The case against Boško Soldatović was also conducted and concluded before the court of first instance very efficiently. Namely, the trial in this case started in January and the first instance judgment was rendered already in the beginning of December 2020, despite the interruptions in the trial on account of the Covid-19 pandemic.

Adequate sentence

The HLC considers the sentence of 15 years of imprisonment imposed on Boško Soldatović to be appropriate to the severity of the committed crime, taking into account the fact that nine civilians were killed, five of whom were women.

³⁶⁷ *Ibid.*



Non-prosecution of high-ranking Yugoslav People's Army members

For the crime committed in Bogdanovci, the OWCP prosecuted only the direct perpetrator, Boško Soldatović, although in July 2019 the HLC filed a criminal complaint against his brigade commander Dušan Lončar, for failing to do anything to find out who had killed the civilians even though he was physically present in Bogdanovci on the day of the murder.

This is the second criminal complaint filed by the HLC against Dušan Lončar. Namely, in 2016 a criminal complaint was filed over the crime committed in the Croatian village of Lovas in October 1991 when Dušan Lončar, as the commander of the 2nd Proletarian Guards Mechanised Brigade of the Yugoslav People's Army, issued a written order, ordering, among other things, that the village of Lovas be "cleansed of hostile population".

By the end of 2020, the OWCP had not launched an investigation against Dušan Lončar for either of these two crimes, thereby continuing the practice of non-prosecution of high-ranking army and police officers.



Final Judgments in cases before the War Crimes Departments

I. The Bratunac Case³⁶⁸

CASE OVERVIEW	
Current stage of the proceedings: final judgment rendered	
Date of indictment: 14 April 2016	
Trial commencement date: 29 June 2016	
Prosecutor: Bruno Vekarić	
Defendant: Dalibor Maksimović	
Criminal offence charged: war crime against the civilian population under Article 142 of the FRY Criminal Code	
Chamber	Judge Rastko Popović (Chairperson) Judge Omer Hadžiomerović Judge Miodrag Majić, Ph.D. Judge Nada Hadži – Perić Judge Aleksandar Vujičić
Number of defendants: 1 Defendant's rank: low-ranking Number of victims: 5 Number of witnesses heard: 20	Number of court days in the reporting period: 1 Number of witnesses heard in the reporting period: 0 Number of expert witnesses heard in the reporting period: 0
Key developments in the reporting period: Final judgment rendered	

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³⁶⁸ The *Bratunac* case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/bratunac.html>, accessed on 21 December 2020.



The course of the proceedings

Overview of the proceedings up to 2020

Indictment

The OWCP indictment of 14 April 2016 charges that the accused Dalibor Maksimović, on 9 May 1992, in the villages of Repovac and Glogova (Bratunac municipality, Bosnia and Herzegovina) as a member of the Army of Republika Srpska /VRS/, together with unidentified VRS members, killed four Bosniak civilians – Huso Salkić, Omer Salkić, Nezir Salkić and Mujo Šaćirović, and unlawfully held two Bosniak women, protected witnesses VS1 and VS2 and repeatedly raped VS1.³⁶⁹

Defence of the accused

The accused Dalibor Maksimović denied having committed the crime of which he stands accused, stating that at the critical time he was at another location. When told by the Chairperson that in her statement protected witness VS1 gave a detailed description of the family home of the accused in Bratunac (alleging that she was raped in it) and of the household members, and that her description largely coincided with that of the accused, the latter was unable to account for that fact.³⁷⁰

Medical expertise

Prior to her testimony, injured party and protected witness VS1 underwent psychiatric assessment of her capacity to testify which established that the witness was fit to testify in the trial. However, the court declined the motion of the OWCP for a parallel evaluation to be undertaken to ascertain the degree of the mental anguish and pain the injured party had suffered and whether the traumatic event had triggered a post-traumatic stress syndrome, as well as the causal relationship between the harmful act and her resulting mental condition, which was now interfering with her normal life.³⁷¹ The motion was rejected because, as the court expert explained, such evaluation would require time, namely that he was not able to undertake it immediately; and the court referred to the provisions of Article 252 of the Criminal Procedure Code (under which associated action for damages shall be addressed within the criminal proceedings unless that delayed the proceedings), as well as to other provisions specifying that criminal procedure is urgent. The position of the court was that such a decision did not mean that the injured party would not be able to claim damages at a future point in time, and “accordingly, possibly undergo such evaluation in some other proceedings”.³⁷²

369 OWCP Indictment KTO no. 4/16 of 14 April 2016, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents_sr/2016-05/o_2016_04_14_lat.pdf, accessed on 21 December 2020. This case was transferred to the OWCP by the Bosnia and Herzegovina Court, pursuant to the provisions of the Law on International Legal Assistance in Criminal Matters, in view of the fact that Dalibor Maksimović is a national and resident of the Republic of Serbia.

370 Transcript of the main hearing held on 29 June 2016.

371 Transcript of the main hearing held on 9 September 2016.

372 *Ibid.*



During the proceedings, the representative of protected injured party and protected witness VS1 also proposed that this protected witness be medically assessed in order to establish the level of mental anguish she had suffered during the critical event as well as the resulting consequences, in view of the injured party's intention to raise an associated action for damages, which she had to quantify and which, under the provisions of the CPC, she had to substantiate with evidence.³⁷³

As the court did not grant the motion for a medical assessment of the injured party and protected witness VS1 to be undertaken, the injured party, in order to be able to file with the court a quantified claim for damages substantiated by evidence, had to recruit experts on her own. The quantified and evidence-based claim for damages of the injured party was filed with the court on 7 September 2017.

Witnesses in the proceedings

Injured party and protected witness VS1 described in detail how Huso Salkić, the village khoja, Nezir Salkić and Omer Salkić had been killed in Repovac. They were killed by the accused who shot at them, and who also slit Huso Salkić's throat afterwards.³⁷⁴ She did not know him at the time but she had heard other soldiers address him as "Dača". He was young, of medium stature, wore fatigues and a head band. Later a bus pulled up to transport them to Kladanj, but the injured party and injured party VS2 were stopped by Dača and another unidentified soldier and ordered to get in a passenger vehicle with them and then they set off following the bus. When the bus reached the village of Glogova and stopped to allow a man and a woman with children to board, the defendant got off the vehicle and killed the man, whose name was Mujo Šaćirović. Then they continued their journey.³⁷⁵ About halfway between Milići and Vlasenica they swerved off the main road into a forest where they stopped and ordered her and injured party VS2 to get out of the vehicle. The soldier who was with the defendant led her relative VS2 into the woods while Dača raped her at that spot. Then they continued the ride through the forest until at a certain point the vehicle got stuck. Then they separated, namely the other soldier went with VS2 in an unknown direction, and she with Dača in the direction of Milići. He told her that they were going to his house.³⁷⁶

She described the defendant's house as a two-storey structure built of hollow blocks, where on arrival she saw two men, two boys and the defendant's mother. He took her to a room upstairs and warned her not to leave the room without his approval. During the night he raped her two more times and in the morning he told her to go to the bus station where there was a bus for Bratunac.³⁷⁷

When giving her statement before the competent authorities of Bosnia and Herzegovina, the injured party identified the defendant in the photographs displayed to her.³⁷⁸

373 Transcript of the main hearing held on 15 December 2016.

374 *Ibid.*

375 *Ibid.*

376 *Ibid.*

377 *Ibid.*

378 *Ibid.*



Describing the critical event, protected witness VS3, the wife of the murdered Mujo Šaćirović, said that as she, her husband and three children were going down the road towards Glogova a bus caught up with them and there was a passenger car driving behind it. The bus stopped and the passenger vehicle behind it as well and a man of medium height wearing fatigues and a head band got out of the car and told her to get on the bus with the children but for her husband to stay. When her husband also tried to board the bus, the man killed him. She thinks that in the vehicle there were another man and a woman whom she recognized as her neighbour, and who appears in these proceedings as witness VS1.³⁷⁹

The killing of Huso Salkić, Omer Salkić and Nezir Salkić was described by witnesses Zuhra and Zumra Salkić, who eyewitnessed it. In the photographs shown them they pinpointed the accused as the perpetrator.³⁸⁰

Witnesses Mensur Salkić, the son of the murdered Omer Salkić, Amir Salkić³⁸¹, and Nermin Salkić³⁸² described the murder and the perpetrator identically as witnesses Zumra and Zuhra Salkić.³⁸³

Defence witnesses, Aleksandar Cvetković, Jovica Tešanović, Mile Lalić³⁸⁴ and Ranko Đukanović³⁸⁵, fellow-combatants and close friends of the defendant, testified that at the time of the critical event it had not at all been possible to go from Milići to Bratunac and the surrounding villages, as that territory was under the control of Bosniak forces.

Dismissal of the indictment and resumption of the proceedings

On 1 November 2017, the Trial Chamber ruled to dismiss the indictment on the grounds that it had not been issued by an authorised prosecutor.³⁸⁶ Namely, in the period from 1 January 2016 until 31 May 2017 there was no war crimes prosecutor nor an acting prosecutor, and the said indictment was filed in precisely that period, namely on 14 April 2016.³⁸⁷ On 12 January 2018, upon the request of the authorised prosecutor (the newly elected War Crimes Prosecutor, the Trial Chamber ruled that the criminal proceedings continue.³⁸⁸

379 Transcript of the main hearing held on 5 October 2016.

380 Transcript of the main hearing held on 15 December 2016.

381 Transcript of the main hearing held on 20 January 2017.

382 Transcript of the main hearing held on 9 March 2017.

383 Transcript of the main hearing held on 20 January 2017.

384 Transcript of the main hearing held on 21 April 2017.

385 Transcript of the main hearing held on 31 May 2017.

386 CPC, Article 416, para 1, item 2.

387 Transcript of the main hearing held on 1 November 2017.

388 Transcript of the main hearing held on 12 January 2018.



First-instance judgment

On 23 September 2019, the Higher Court in Belgrade³⁸⁹ handed down the first instance judgment pronouncing the accused Dalibor Maksimović guilty, and sentenced him to a term of imprisonment of 15 years whilst it referred the injured parties to civil action in order to exercise their right to damages.³⁹⁰

The Court established that the accused Dalibor Maksimović, as a member of the Army of Republika Srpska, Military Post 7296 Milići, on 9 May 1992 in the village of Repovac, together with several unidentified members of the Army of Republika Srpska, separated Huso, Nezir and Omer Salkić from a group of captured civilians, took them behind a parked truck and deprived them of their lives by shooting at them from an automatic rifle, after which he walked up to Huso Salkić and slaughtered him. That same day, driving in a passenger vehicle behind a bus which stopped in order to take on board the witness VS3, her husband Mujo Šaćirović and their three children, he descended from the vehicle and murdered Mujo Šaćirović with an automatic rifle.

The court also established that on the same day, in Repovac, together with an unidentified member of the Army of Republika Srpska, the accused ordered injured parties VS1 and VS2 to enter their passenger vehicle. They drove to a forest above Milići, where he raped injured party VS1, and then took her to his house in Milići, locked her up in a room and raped her again during the night; the following day he let her go in the direction of the Milići bus station.

The accused had acted with intent and his definitive decision to deprive of life was confirmed by his slaughtering of Huso Salkić.

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In deliberating on the sentence the court considered as mitigating circumstances in favour of the accused that he is a family man and the father of two children, and that at the time of the commission of the offence he was barely 20 years old, whereas it assessed as aggravating circumstances the number of victims who lost their lives, the ruthlessness with which the offences were committed, manifested particularly in the slaughter of Huso Salkić, and his persistence in raping injured party VS1.

The court lent credence to the testimony of injured party VS1 because, *inter alia*, when shown the site, she recognized the house of the accused from a panoramic perspective, observing that earlier it had bare brick walls and at the moment of identification a pink facade. The court assessed the testimonies of witnesses as having a number of discrepancies and inconsistencies in respect of some facts and the description of the accused, but took into particular account the fact that witnesses Zumra and Zuhra Salkić recognized him in the photographs shown them at the trial. This is of particular importance because the court had had a new photo array compiled with a changed order of photographs compared to the earlier one. Therefore, the statements of the witnesses, even though different in parts, substantially satisfied the court that the accused had committed the offences that he is charged with.

389 Composition of the Chamber: Judge Vladimir Duruz, Chairperson, Judges Vinka Beraha Nikićević and Vera Vukotić, members.

390 Judgment of the Higher Court in Belgrade K. Po2 8/2017 of 23 September 2019.



In providing the reasons for referring the injured party to civil action in order to claim damages, the court concluded “that the facts of the criminal proceedings failed to provide dependable grounds for either a partial or a total award”³⁹¹

Overview of the proceedings in 2020

Second instance decision

On 17 September 2020, the Court of Appeal in Belgrade³⁹² handed down its judgment rejecting as unfounded the appeal of the defence counsel for the accused Dalibor Maksimović and upholding the first instance judgment by which he was pronounced guilty and sentenced to a term of imprisonment of 15 years.³⁹³

By the same judgment the appeal of the legal representative of the injured party lodged on the grounds of failure to consider the associated action for damages was dismissed as inadmissible.

Constitutional complaint filed by the injured party

On 5 February 2020, the legal representative of the injured party filed a constitutional complaint on her behalf stating that the judgment of the Higher Court in Belgrade by which she was referred to civil action for the associated action for damages, violated her right to a fair trial as provided for under Article 32 of the Constitution of the RS /Republic of Serbia/ (Article 6 of the ECHR), her right to an effective remedy under Article 36 of the RS Constitution (Article 13 of the ECHR), her right to respect for human dignity and the right to respect for private and family under Article 8 of the ECHR.³⁹⁴

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HLC Findings

Regional cooperation

This case is a good example of the cooperation between Serbia and Bosnia and Herzegovina in prosecuting war crimes, which intensified after the OWCP and the Prosecutor’s Office of Bosnia and Herzegovina signed in 2013 the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide. Namely, the Prosecutor’s Office of Bosnia and Herzegovina transferred this case to the OWCP, since the accused, who is a national and resident of the Republic of Serbia, was not available to the authorities of Bosnia and Herzegovina.

391 *Ibid*, p.74.

392 Composition of the Chamber: Judge Rastko Popović, Chairperson, Judges Omer Hadžiomerović, Miodrag Majić, Ph.D., Nada Hadži Perić and Aleksandar Vujičić, members.

393 Judgment of the Court of Appeal in Belgrade Kž1 Po2 4/20 of 17 September 2020.

394 Constitutional complaint Už – 1915/2020 of 5 February 2020



Adequate sentence

The court imposed on the accused Dalibor Maksimović a prison sentence of 15 years' duration, which the HLC considers just and appropriate to the seriousness of the criminal offence committed.

Associated action for damages of the victim of sexual violence

In the opinion of the HLC, the court was incorrect in not deciding upon the associated action for damages of injured party VS1 in these criminal proceedings. In war crimes proceedings so far, the court has never decided upon injured parties' associated actions for damages, although they have been claimed, but has always referred them to civil action³⁹⁵, generally by maintaining that addressing that issue would lead to a "delay in the proceedings"³⁹⁶ or by a blanket reference to articles of the CPC regulating associated action for damages, without providing a rationale for their decision. Although under the Criminal Procedure Code damage claims are to be considered by the court "unless that would significantly delay the proceedings"³⁹⁷, which clearly indicates that hearing them should be the rule rather than a possible exception, the court did exactly the opposite. In these proceedings, pending receipt of documentation from Bosnia and Herzegovina from the procedure conducted to declare dead the victims who had lost their lives, in fact documentation which was not essential to decision-making in this legal matter, scheduled main hearings were postponed eight times in the period from 7 May 2018 to 12 June 2019.³⁹⁸ Over this period there was more than ample time for all the particulars of the quantified and substantiated damage claim of the injured party, protected witness VS1, to be reviewed in detail, as the claim had been filed with the court on 7 September 2017. Evidently, the court had had the time but had not deemed it necessary to handle the associated action for damages as well.

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The more so as, rather than provide reasons for its decision to refer the injured party, a victim of rape, to civil action in order to claim damages, although the claim was quantified and substantiated, the court completely arbitrarily concluded, as a matter of fact in regard of all the injured parties, that "the facts of the criminal proceedings failed to provide dependable grounds for either a partial or a total award".

Such a decision of the court is perilous for the injured party because in question is a victim of sexual violence placed under a protection measure. i.e. with hidden identity in the criminal proceedings, and the Civil Procedure Code does not allow for the possibility of proceedings being conducted without disclosing the parties' identities. Therefore, by referring the injured party to civil litigation, the Court is actually placing the victim before an impossible choice – personal protection or the compensation she is entitled to.

395 Judgment of the Higher Court in Belgrade in the *Sotin* case, K. Po2 2/14 of 26 June 2015; Judgment of the Higher Court in Belgrade in the *Podujevo* case, K. Po2 44/2010 of 22 September 2010; Judgment of the Higher Court in Belgrade in the *Zvornik II* case, K. Po2 28/2010, of 22 November 2010.

396 *Ibid.*

397 CPC, Article 252, paragraph 1.

398 Transcripts of main hearings scheduled for: 7 May 2018, 22 June 2018, 3 September 2018, 22 October 2018, 3 December 2018, 14 January 2019, 25 February 2019, 10 April 2019.



Referring injured parties testifying under the protection measure of hidden identity to civil action in order to exercise their right to damages, meaning that in such a case they would have to reveal their identity, constitutes a violation of their right to a fair trial³⁹⁹, the right to an effective legal remedy⁴⁰⁰, the right to respect for human dignity⁴⁰¹, and the right to respect for private and family life.⁴⁰²

In contrast to domestic jurisprudence, Bosnia and Herzegovina has acknowledged the problems faced by victims of sexual violence in war seeking to exercise their right to claim damages outside criminal proceedings, and has amended its jurisprudence and started to award them compensation in associated actions for damage within criminal proceedings.⁴⁰³

Past jurisprudence, namely avoidance of awarding compensations in associated actions for damages within criminal proceedings, by not only the War Crimes Department of the Higher Court in Belgrade, but by criminal courts in Serbia in general, has shown itself to be insensitive to victims. Such practice is at the same time at variance with ratified international treaties and accepted international standards and consequently, recognizing the need to change it, in August 2019 the Supreme Court of Cassation of Serbia adopted the Guidelines for the Improvement of Jurisprudence in Proceedings for Compensation of Damage to Victims of Serious Criminal Offences in Criminal Proceedings.⁴⁰⁴ The HLC therefore hopes and expects that the jurisprudence regarding the handling of claims for damages will be changed in the nearest future, particularly in respect of victims of sexual violence and victims participating in proceedings under protection measures.

399 RS Constitution, Article 32.

400 *Ibid*, Article 36.

401 *Ibid*, Article 23.

402 European Convention, Article 8.

403 First instance judgment of the Court of Bosnia and Herzegovina S1 1 K 012024 14 Kri in the *Ostoja and Bosiljko Marković* case; First instance judgment of the Court of Bosnia and Herzegovina S1 1 K 019771 15 Kri in the *Krsto Dostić* case; Second instance judgment of the Court of Bosnia and Herzegovina S1 1 K 017213 14 Krž in the *Slavko Savić* case.

404 *Guidelines for the Improvement of Jurisprudence in Proceedings for the Compensation of Damage to Victims of Serious Criminal Offences in Criminal Proceedings*, available at <https://www.podrskazrtvama.rs/media/domaci/Smernice.pdf>, accessed on 1 November 2019.



II. The Brčko Case⁴⁰⁵

CASE OVERVIEW	
Current stage of the proceedings: final judgment rendered	
Date of indictment: 12 September 2018	
Trial commencement date: 3 December 2018	
Prosecutor: Svetislav Rabrenović	
Defendant: Nikola Vida Lujčić	
Criminal offence charged: war crime against the civilian population under Article 142 of the FRY Criminal Code	
Chamber	Judge Miodrag Majić, Ph.D.(Chairperson) Judge Omer Hadžiomerović Judge Nada Hadži Perić Judge Aleksandar Vujičić Judge Rastko Popović
Number of defendants: 1	Number of court days in the reporting period: 1 Number of witnesses heard in the reporting period: 0 Number of expert witnesses heard: 0
Defendant's rank: no rank	
Number of victims: 1	
Number of witnesses heard: 12	
Key developments in the reporting period: Final judgment rendered	

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⁴⁰⁵ The *Brčko* case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/brcko2.html>, accessed on 16 October 2019.



The course of the proceedings

Proceedings overview up to 2020

Indictment

The accused Nikola Vida Lujić was charged that, on 20 June 1992 in Brčko (Bosnia and Herzegovina), as a member of the “Red Berets” unit, uniformed and armed and together with another two unidentified soldiers he came to the family home of the victim, a woman of Bosniak nationality, and ordered her under threat of arms to hand over her gold and money and then raped her several times afterwards.⁴⁰⁶

Defence of the accused

Presenting his defence, the accused denied having committed the offence of which he stands accused. He stated that during the war in Bosnia and Herzegovina he had not been a member of any armed unit, that he did not know the injured party and that he had never been to her house.

Witnesses in the proceedings

In 2019, 12 witnesses were heard, among whom the injured party, whose examination was barred to the public. The injured party’s husband stated that on 20 June 1992 a group of Serbian soldiers came to his house in Brčko and took him away to be interrogated. He recognized the accused, who was in uniform and who at the time had been a member of the so-called Red Berets unit. When he returned, a woman neighbour told him that his wife had been raped in the meantime.

Witness Joca Rakić stated that on the critical day, as a member of the police, he had been called by an acquaintance of his, Zeir nicknamed Željko, who asked him to come to the injured party’s house. On arrival, he found this acquaintance, the injured party and her husband there, and they told him that members of the “Red Berets” had been there and that the injured party had been raped.⁴⁰⁷ Witnesses Radojica Božović, Dragoslav Popović and Goran Pantić stated that in the critical period they had been members of the “Red Berets” unit which was stationed at the Brčko customs house and that the accused had been a fellow fighter.⁴⁰⁸ Witness Zeir Salihović stated that on the critical day, as he was having coffee at his neighbour Zvonko Katanić’s home, Zvonko’s wife told him that there was a military van outside his house. He went out to see what was going on, and amongst the soldiers who were present there he recognized the accused who told him to get in the van and he did so. Then one of the men asked why the witness was in the van when his name was Željko, after which he was told to get out. Then he went to the injured party’s house to see what was happening with her brother. While he was at her house, three uniformed men came in, among whom the accused, who told him to leave, and he went home. An hour later he returned to the injured party’s house and then saw the accused

406 OWCP Indictment KTO no. 4/2018 of 12 September 2018, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents_sr/2018-10/redigovana_optuznica_kto_4_18_lat.pdf, accessed on 20 December 2020.

407 Transcript of the main hearing held on 25 March 2019.

408 Transcript of the main hearing held on 27 May 2019.



leaving her yard. The accused noticed him and shooed him away and the witness then went back home. Shortly after that the injured party came to his house and told him that she had been molested and raped by “Vida’s son”. She was very upset and was weeping. Then Joca, a reserve policeman, came by and he told him what had happened and Joca called the police who arrived soon afterwards. A police inspector named Dragiša then took statements from all the persons who were present.⁴⁰⁹

First instance judgment

On 10 September 2019, the Higher Court in Belgrade⁴¹⁰ handed down a judgment pronouncing the accused Nikola Vida Lujčić guilty and sentenced him to a term of imprisonment of eight years.⁴¹¹

The court established that the accused had committed the criminal offence that he is charged with, in the manner set out in the indictment. Namely, all the essential elements of a criminal offence of war crime against the civilian population have been met, namely that there was an armed conflict in the incriminated period, that in this specific case there was a serious violation of the rules of international humanitarian law, that there was a nexus between the actions of the accused and the armed conflict, i.e. that the accused used the armed conflict as a pretext to commit the offence, and that the criminal offence was committed against a person who did not actively participate in hostilities, i.e. against a person protected under the provisions of international humanitarian law. The existence of an armed conflict enabled the accused to wear a uniform and bear weapons, which fellow-combatants of the accused, witnesses Radojica Božović and Goran Panić, confirmed in their statements, and which the accused took advantage of to assert his dominance over the injured parties. In the specific instance there exists a serious violation of the provisions of international humanitarian law, as the accused is charged with a war crime against the civilian population under Article 142 of the FRY Criminal Code, stemming from Article 3 of the Geneva Conventions, which explicitly lists rape as an action in perpetration of this criminal offence. Exerting physical force on the victim is not a requirement for rape to exist, and in the specific instance it was proven that the victim had been under psychological duress, as in order to intimidate her the accused had loaded his gun in front of her.

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The court accepted the statement of the injured party in its entirety. Immediately after the act had been committed, despite the fact that a small and patriarchal community was in question, she mustered up the courage to tell everyone she came across within the first hours after the incident what had happened to her. She reported it to witness Zeir Salihović, to her husband, to her neighbour, to policeman Joca Rakić who had been the first to arrive at the scene, as well as to inspector Dragiša Tešić. Finally, she also mustered up the strength to undergo a medical examination. Her statement was corroborated by the statements of witnesses Salihović and Rakić, as well as that of the injured party’s husband. The accused was recognised *in situ* by witness Salihović, who described him as the person that had entered the house of the injured party and who identified him as Vida’s son. The injured party’s husband also identified the accused as Vida’s son, the one who had taken him from the

409 *Ibid.*

410 Chamber composition: Judge Dejan Terzić, Chairperson, Judges Mirjana Ilić and Zorana Trajković, members.

411 Judgment of the Higher Court in Belgrade K. Po2 5/18 of 19 September 2019.



house for interrogation prior to the critical incident. The injured party also identified the accused in a way, when at the trial she noticed a detail distinguishing the accused from other persons, namely a certain facial tic, “a blinking eye”. Witness Radojica Božić confirmed these words of the injured party, stating that one side of the accused man’s face looked stiff.

In determining the sentence, the court found that there were no mitigating circumstances in favour of the accused, while it assessed as aggravating circumstances his prior conviction for a criminal offence of the same type, the consequences suffered by the injured party as well as the ruthlessness with which the accused had committed the crime. Namely, after raping the injured party, the accused winked at the other soldier signalling to him to do the same, which the latter refused. The court held that this act of the accused was particularly humiliating for the injured party and that its sole objective had been outrage upon her personal dignity.

Course of the proceedings in 2020

On 31 January 2020, the Court of Appeal in Belgrade rendered a judgment rejecting as unfounded the appeals of the accused and of his defence counsel and upholding the first instance judgments.⁴¹²

HLC Findings

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Regional cooperation

This case is the result of cooperation between Serbia and Bosnia and Herzegovina in prosecuting war crimes, which intensified after the OWCP and the Prosecutor’s Office of Bosnia and Herzegovina signed in 2013 the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide. Namely, this case was transferred by the District Court in Doboј, since the accused, who is a national and resident of the Republic of Serbia, was not available to the authorities of Bosnia and Herzegovina.

Prosecution of sexual violence

This is only the second indictment filed exclusively for sexual violence committed in armed conflicts. In the case law of the domestic judiciary so far sexual violence has seldom been prosecuted, most frequently as a war crime associated with murder and other forms of physical violence.⁴¹³ Before this case, only one indictment was issued exclusively in relation to sexual violence – rape, in the *Bijeljina II* case.⁴¹⁴

412 Judgment of the Court of Appeal in Belgrade Kž1 Po2 7/19 of 31 January 2020.

413 See the *Lekaj, Skočić, Čuška, Bratunac* etc. cases.

414 OWCP Indictment of 4 June 2014 against Miodrag Živković, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents_sr/2016-05/o_2014_06_04_lat.pdf, accessed on 5 January 2019.



Efficient conduct of the proceedings

This is one of the most expeditiously concluded cases before the War Crimes Department of the Higher Court. The trial commenced on 3 December 2018 and the first instance judgment was handed down on 19 September 2019. With 12 witnesses examined and two main hearings postponed due to the absence of witnesses, the first instance proceedings were completed in nine months. Account being taken of the fact that the final judgment was rendered in January 2020, these proceedings can be considered to be among the most expeditiously completed. In the case law of the Higher and Court of Appeal to date, proceedings were concluded over a shorter period only in the *Čelebići* case.⁴¹⁵

Adequate protection of the injured party during her testimony

During the testimony of the injured party, mindful of the sensitivity of the witness, the chairperson of the Trial Chamber panel was strongly resolved to prevent her from being additionally retraumatized and disallowed the accused and his defence counsel to ask questions which might have that effect. Such a way of protecting injured parties should become routine practice but that has not been the case in some earlier proceedings.

Adequate sentence

The court of first instance imposed a prison sentence of eight years on the accused which is just and appropriate. This sentence, and in particular the assessment of the mitigating and aggravating circumstances reflects the court's position as to how this type of criminal offences must be punished.

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⁴¹⁵ The *Čelebići* case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/celebic.html>, accessed on 16 October 2019.



III. The Lovas Case⁴¹⁶

CASE OVERVIEW	
Current stage of the proceedings: final judgment rendered	
Date of indictment: 28 November 2007	
Trial commencement date: 17 April 2008	
Prosecutor: Dušan Knežević	
Defendants: Milan Devčić, Željko Krnjajić, Darko Perić, Radovan Vlajković, Radisav Josipović, Jovan Dimitrijević, Saša Stojanović and Zoran Kosijer	
Criminal offence charged: war crime against the civilian population under Article 142 of the FRY Criminal Code	
Chamber	Judge Aleksandar Vujičić, Chairperson Judge Rastko Popović Judge Omer Hadžiomerović Judge Miodrag Majić, PhD Judge Nada Hadži Perić
Number of defendants: 8	Number of court days in the reporting period: 3 Number of witnesses heard in the reporting period: 0
Defendants' rank: low- and middle-ranking	
Number of victims: 70	
Number of witnesses heard: 195	
Key developments in the reporting period: Final judgment rendered	

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⁴¹⁶ Higher Court in Belgrade, the *Lovas Case*, K.Po2 1/14, available at <http://www.hlc-rdc.org/Transkripti/lovas.html>, accessed on 26 January 2021.



The course of the proceedings

Proceedings overview up to 2020

Indictment

The original indictment charged 14 accused with having, as members of different military formations, in October and November 1991, in and around the village of Lovas (Republic of Croatia) attacked, inhumanely treated, tortured, inflicted bodily harm on and killed members of the civilian population, which resulted in the death of a total of 69 civilians, and major or minor body injuries to 12 others.

The accused were: Ljuban Devetak, Milan Devčić and Milan Radojčić, as members of a self-appointed local civilian-military authority; Željko Krnjajić, as the commander of the Tovarnik Police Station (PS); Miodrag Dimitrijević, Darko Perić, Radovan Vlajković and Radisav Josipović, as members of the Valjevo Territorial Defence (TD), whose units were resubordinated to the 2nd Proletarian Guards Mechanised Brigade (2nd pgmbr) of the Yugoslav People's Army (JNA); and Petronije Stevanović, Aleksandar Nikolaidis, Dragan Bačić, Zoran Kosijer, Jovan Dimitrijević and Saša Stojanović, as members of the "Dušan Silni" volunteer group.⁴¹⁷

The amended indictment of 28 December 2011 reduced the number of civilians stated to have lost their lives from 69 to 44.⁴¹⁸

First instance judgment

On 26 June 2012, the Higher Court in Belgrade⁴¹⁹ rendered a judgment finding all the accused guilty of a war crime against the civilian population as co-perpetrators, and sentenced them to terms of imprisonment ranging between four and twenty years.⁴²⁰ The HLC provided a detailed analysis of the trial judgment in its *Report on War Crimes Trials in Serbia in 2012*.⁴²¹

Second instance decision

On 9 December 2013, deciding in appellate proceedings, the Court of Appeal in Belgrade⁴²² ruled to overturn the judgment of the Higher Court and remanded the case for retrial and a second decision.⁴²³

417 OWCP Indictment, KTRZ 7/07 of 28 November 2007, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents_sr/2016-05/o_2007_11_28_lat.pdf, accessed on 28 January 2021.

418 OWCP Amended Indictment, KTRZ 7/07 of 28 December 2011.

419 Chamber composition: Judge Olivera Anđelković, Chairperson, Judges Tatjana Vuković and Dragan Mirković, members.

420 Judgment of the Higher Court in Belgrade, K. Po2 22/2010 of 26 June 2012.

421 For a detailed analysis of the trial judgment, see: Humanitarian Law Center, *Report on War Crimes Trials in Serbia in 2012* (Belgrade, HLC, 2013), pp. 53-63.

422 Chamber composition: Judge Sonja Manojlović, Chairperson, Judges Sretko Janković, LL.M., Miodrag Majić, PhD, Omer Hadžiomerović and Vučko Mirčić, members.

423 Ruling of the War Crimes Department of the Court of Appeal in Belgrade, number Kž1 Po2 3/13 of 9 December 2013.



The HLC gave a detailed analysis of the decision of the War Crimes Department of the Court of Appeal in its *Report on War Crimes Trials in Serbia in 2013*.⁴²⁴

Retrial

The retrial⁴²⁵ began on 4 March 2014, before a new Chairperson; actually by the completion of the retrial there had been two more changes of the presiding judge.⁴²⁶ The proceedings were terminated in respect of the accused Ljuban Devetak, Aleksandar Nikolaidis, Petronije Stevanović, Dragan Bačić and Milan Radojčić, who had died in the meantime. The proceedings were severed in respect of the accused Miodrag Dimitrijević for reasons of expediency.

On 5 January and 28 March 2017, the Office of the War Crimes Prosecutor amended the indictment. As the amended indictment reduced the number of indictees, the number of victims was reduced accordingly, with only 27 victims who had lost their lives encompassed. As well, the Office of the War Crimes Prosecutor omitted from the indictment that the attack on the village of Lovas had been carried out on the orders of Dušan Lončar, commander of the 2nd JNA Proletarian Guards Mechanised Brigade, which during the attack also comprised the Tovarnik TD and the “Dušan Silni” volunteer detachment.⁴²⁷

First instance judgment upon retrial

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On 20 June 2019, the Higher Court in Belgrade⁴²⁸ rendered a judgment upon retrial declaring the defendants guilty of a war crime against the civilian population and sentencing them to terms of imprisonment as follows: Milan Devčić to eight years, Saša Stojanović to seven years, Zoran Kosijer, Željko Krnjajić and Jovan Dimitrijević to six years each, Darko Perić and Radovan Vlajković to five years each, and Radisav Josipović to four years.⁴²⁹

The Court established that on 10 October 1991 an attack on Lovas had been carried out on the orders of Dušan Lončar, commander of the 2nd JNA Proletarian Guards Mechanised Brigade since 9 October 1991. During the attack, the defendant Željko Krnjajić commanded an armed group composed of members of the Tovarnik PS, the Tovarnik TD and the “Dušan Silni” volunteer armed group, all of which were comprised within the Brigade establishment. He ordered them to open fire from infantry weapons and to throw grenades at the houses of local Croats, as a result of which the houses of Ivan Ostrun, Vid Krizmanić, Amalija Martinović, Josip Kraljević, Ivan Conjar and Ivica Gračanac went up in flames, and Vid Krizmanić, Ivan Ostrun, Mirko Grgić, Cecilija Badanjak, Danijel Badanjak, Josip Poljak and Pavo Đaković were killed by gunshots. The defendant Krnjajić personally intimidated

424 For a detailed analysis, see: Humanitarian Law Center, *Report on War Crimes Trials in Serbia in 2013* (Belgrade, HLC, 2014), pp. 66-75.

425 Higher Court in Belgrade, the *Lovas* Case, retrial, case number: K. Po2 1/14.

426 The HLC gave a detailed analysis of the procrastination of the proceedings in: HLC, *Report on War Crimes Trials in Serbia* (Belgrade, HLC, 2019) pp. 54-64.

427 OWCP Indictment KT 7/07 of 5 January 2017.

428 Chamber composition: Judge Zorana Trajković, Chairperson, Judges Mirjana Ilić and Dejan Terzić, members.

429 Judgment of the Higher Court in Belgrade K. Po2 1/2014 of 20 June 2019.



civilians of Croatian ethnicity, pointing his rifle at Tomislav Šelebaj and pushing and threatening to kill him, pointing his rifle at Marica Hodak's back and repeatedly kicking Josip Jovanović.

As regards the defendant Milan Devčić, the court established that the same, in the period from 10 October until the end of October 1991, in Lovas, in the capacity of commander of the Lovas police and a representative of the self-appointed civilian-military local authorities, together with the defendant Ljuban Devetak, the commander of the village and the director of the Lovas Agricultural Cooperative, and Milan Radojčić, the commander of the Lovas TD, against whom criminal proceedings were terminated owing to their deaths, had treated the civilian population of Croatian ethnicity in an inhumane manner. He participated in their imprisonment and detention in makeshift, insanitary and cramped prisons set up by the self-appointed local authorities. The bodies of the prisoners Marko Filić, Petar Badanjak, Josip Jovanović, Ivan Vidić, Andrija Devčić, Marko Damjanović, Zoran Krizmanić, Đuro Krizmanić, Alojz Krizmanić, Darko Pavlić, Željko Pavlić, Stipe Dolački and Franjo Panda were found at different sites in Lovas after 18 October 1991.

The accused Milan Devčić treated civilians of Croatian ethnicity in an inhumane manner, among other things, by imposing degrading and discriminatory measures against Branka Balić, Ana Conjar and Josip Luketić, ordering them to mark their houses with white streamers and to wear white armbands. In the premises of the PS in Lovas, he inflicted bodily injuries on the apprehended and imprisoned Petar Vuleta, Marko Gračac and Đuro Antolović, kicking and striking them, hitting them with a rubber baton and a knuckle duster.

The court established that the defendant Darko Perić, in his capacity of commander of the Valjevo TD Anti-sabotage Detachment, had treated civilians inhumanely, by ordering his subordinate commanders, the defendants Radovan Vlajković and Radisav Josipović, to take the civilians who had been imprisoned and tortured the night before on a terrain reconnaissance mission as a human shield on 18 October 1991, actually relaying the orders he had received from Lieutenant-Colonel Miodrag Dimitrijević, the top ranking military commander in Lovas, with respect to whom the proceedings have been severed. Acting on these orders, the defendants Radovan Vlajković and Radisav Josipović treated civilians in an inhumane manner by bringing in approximately fifty members of the Anti-sabotage company and, together with the defendants Zoran Kosijer, Saša Stojanović and Jovan Dimitrijević as members of the "Dušan Silni" detachment, and with other members of the same detachment, forming a column of the imprisoned civilians to go and reconnoitre the terrain in the direction of the "Borovo" factory compound. While the column was moving, one of the armed escorts killed Boško Bođanac, who had previously been seriously injured. On coming to a clover field which was mined, unidentified persons ordered the civilians to turn into the field and to walk across it holding hands and clear a path through the clover with their feet, while the defendants Vlajković, Josipović, Dimitrijević, Kosijer and Stojanović, all armed, moved behind them at a safe distance. After the civilian Ivan Kraljević stumbled over a planted mine which activated, several members of the armed escort opened gunfire at the civilians, killing Marijan Marković, Tomislav Sabljak, Darko Solaković, Ivan Palijan, Zlatko Panjik, Slavko Kuzmić, Ivan Sabljak, Mijo Šalaj, Ivan Kraljević, Petar Badanjak, Zlatko Božić, Antun Panjik, Marko Vidić, Marko Sabljak, Mato Hodak, Ivan Conjar, Slavko



Štrangarević, Josip Turkalj and Luka Balić, and wounding Stjepan Peulić, Stanislav Franjković, Ivan Mujić, Zlatko Toma, Ljubo Solaković, Josip Gerstner, Mato Kraljević, Josip Sabljak, Emanuel Filić, Milko Keser, Milan Radmilović and Marko Filić. After the explosions and the gunfire had abated, the defendant Stojanović ordered the civilians Đuka Radočaj, Tomislav Šelebaj and Dragutin Krizmanić to defuse the remaining unexploded mines and gave them instructions how to do it, even though they lacked the necessary training for that.

The HLC provided a detailed analysis of this judgment in its *Report on War Crimes Trials in Serbia in 2019*.⁴³⁰

Overview of the proceedings in 2020

Second instance judgment

On 20 November 2020, the Court of Appeal in Belgrade, deciding on the appeals of the OWCP, the accused and their defence counsel, ruled to reverse the retrial judgment of the Higher Court in Belgrade, absolved of criminal responsibility defendants Željko Krnjajić and Milan Devčić, and commuted the prison sentences of the other defendants, sentencing them as follows: Darko Perić and Radovan Vlajković to four years each, Radisav Josipović, Jovan Dimitrijević and Zoran Kosijer to three years each, and Saša Stojanović to six years of prison.⁴³¹

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The Court of Appeal held that the indictment had been exceeded in respect of the accused Željko Krnjajić, as the indictment charged him with having issued an order to exclusively the members of his armed group which during the attack moved through specified streets in Lovas, whereas the first instance judgment stated that he had issued the order to the members of all the armed forces that had participated in the attack.

It also maintained that there was not sufficient evidence that it had been precisely the accused Krnjajić that had ordered members of the group to throw grenades and open small arms fire at the houses of Croatian locals and that he personally had applied intimidatory measures against Croatian civilians. The reason given was that it could not be determined on the basis of the presented evidence that the acts the accused Krnjajić was charged with had been so serious and their consequences so grave as to warrant their characterization as intimidatory measures.

The Court of Appeal maintained that the first instance judgment had exceeded the indictment in respect of the accused Milan Devčić as well, because, in contrast to the indictment, the judgment contained the additional statement that the prison had been set up by the self-appointed local authorities of a military-civilian character, and that “the bodies of the persons were found at different sites in the village of Lovas after 18 October 1991”. The Court assessed this to have augmented the criminal content of the factual description of the criminal offence, prejudicially affecting the defendant.

430 For a detailed analysis, see: Humanitarian Law Center, *Report on War Crimes Trials in Serbia 2019* (Belgrade, HLC, 2020), pp. 103-111

431 Judgment of the Court of Appeal in Belgrade Kž1 Po2 2/20 of 20 November 2020.



Apart from that, the Court found that there was no evidence that the accused Devčić had taken part in detaining civilians in makeshift and substandard prisons or that he had treated them inhumanely by ordering denigrating and discriminatory measures to be applied to them, or that he had inflicted bodily injury on the apprehended persons.⁴³²

In respect of the accused Darko Perić, Radovan Vlajković, Radisav Josipović, Saša Stojanović, Jovan Dimitrijević and Zoran Kosijer, the Court of Appeal also found that the first instance judgment had exceeded the indictment, as it was stated in the enacting terms of the judgment that “they led the civilians under armed escort from the agricultural cooperative to the minefield”, whence it follows that the order had been to escort the civilians to and use them as human shields in precisely the mined clover field, which not even the prosecution had claimed, and on account of which the defendants had been found guilty for a criminal activity over and above the charges.

The court found that these defendants had not been aware of the existence of the minefield; neither was there evidence that another task, namely that the civilians be used to clear the minefield, had been issued by an unidentified person, on account of which they had been found guilty of inhumanely treating the civilians by using them as human shields, which constituted a serious outrage upon personal dignity.

The disposition of the judgment omitted the allegations that after the explosion of the mine in the minefield the armed escorts opened small arms fire at the civilians, killing 19 and wounding 12 of them.

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In determining the sentences, the Court of Appeal considered as mitigating circumstances in favour of the accused Darko Perić that he was a family man, married, the father of two children of age and had no prior criminal record, and, as aggravating circumstances, that in the critical period he had held the rank of reserve Captain 1st Class and had been the commander of a detachment and had, as such, been duty-bound to observe the rules of international humanitarian law, and to see to it that his subordinates also observed them. In respect of the accused Radovan Vlajković, the court considered as mitigating circumstances that he was a family man, the father of two children and had no prior criminal record, while assessing as an aggravating circumstance the gravity of the consequence, namely the number of civilians who had suffered serious mental anguish. In respect of the accused Radisav Josipović, the court considered as mitigating circumstances that he was a family man, the father of one child and had no prior criminal record, as well as his health condition, his correct demeanour before the court as well as the fact that during the commission of the offence of which he was convicted on the chain of command basis, there had been another three superior officers above him, and that his role, considering the presence of his company commander, had been slightly above that of an ordinary soldier, while assessing as an aggravating circumstance the gravity of the consequence, namely the number of civilians who had suffered serious mental anguish. In respect of the accused Jovan Dimitrijević, the court considered the fact that he had no prior criminal

432 *Ibid.*



record as a mitigating circumstance, while assessing as an aggravating circumstance the gravity of the consequence, namely the number of civilians who had suffered serious mental anguish. In respect of the accused Saša Stojanović, the court considered as mitigating circumstances that he was a family man, the father of one minor child and had no prior criminal record, while assessing as an aggravating circumstance the gravity of the consequence, namely the number of civilians who had suffered serious mental anguish, as well as his taking of another incriminating action, namely giving instructions to the civilians for defusing unexploded mines. In respect of the accused Zoran Kosijer, the court considered as mitigating circumstances that he was the father of two children of age and had no prior criminal record, while assessing as an aggravating circumstance the gravity of the consequence, namely the number of civilians who had suffered serious mental anguish.

In addition to all the foregoing circumstances, the Court also considered the lapse of time since the commission of the criminal offence and attributed extraordinary weight to the mitigating circumstances in respect of defendants Darko Perić, Radovan Vlajković, Radisav Josipović, Jovan Dimitrijević and Zoran Kosijer, assessing that mitigated sentences could also accomplish the purpose of punishment.⁴³³

HLC Findings

Protracted proceedings

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The trial in the Lovas case lasted 12 years. Namely, the trial opened on 28 April 2008, to end in a final ruling only on 20 November 2020. This case has been among the most complex and most extensive war crimes trials conducted before the domestic judiciary. It involved 14 defendants who had belonged to different armed formations, a number of different events and almost 200 witnesses. Despite the complexity of the case, which in itself entails a lengthy duration, the proceedings had been additionally prolonged by the shortcomings in the work of the OWCP and of the court.

The original OWCP indictment listed 69 victims who had lost their lives, but no sufficient evidence as to how they had come to grief had been secured. Consequently, throughout the course of the main hearing, the court called and examined ex officio a large number of witnesses in order to ascertain the circumstances surrounding the deaths of the individual victims. The OWCP should have elucidated much more clearly the facts and the circumstances surrounding the sufferings of all the victims as well as the responsibility of the defendants, and should have secured evidence to that effect. It was only after more than three years of trial that, in December 2011, the OWCP revised the indictment and reduced the number of victims to 44, thereby formally acknowledging that its work, which it should have completed in the course of the investigation, had actually been done by the court at the trial.

The proceedings were procrastinated unnecessarily also because of the actions of the judge who had presided over the chamber for a time. She applied for her own recusal only five months after having

⁴³³ *Ibid.*



taken over the case, even though the reasons for her recusal had existed already at the time the case had been assigned. Therefore, the case had to be assigned to another chairperson and the main hearing had to start all over again. However, even this chairperson was subsequently replaced, having been moved to another department by the president of the court pursuant to the Annual Court Schedule.

The decision of the president of the court to replace the chairperson of the Chamber in a case that had been going on for eight years and this just before the presentation of the closing arguments in the retrial, can be deemed to constitute irresponsible conduct, given that the Court Rules of Procedure stipulate that in preparing the Annual Court Schedule, the president of the court shall bear in mind “the efficiency and the cost of proceedings”.⁴³⁴

Five of the defendants died during the trial, so that the criminal proceedings were discontinued in their respect⁴³⁵ and were severed in respect of one defendant for reasons of expediency, because owing to his health he was no longer able to participate.⁴³⁶ Since the case was discontinued in respect of the defendants who had died, the OWCP had to remove from the indictment all the victims whose deaths these defendants had been charged with, with the final revised indictment listing only 27 victims who had lost their lives. At the same time, owing to the length of the proceedings, the victims and their families, as well as numerous witnesses from Lovas, lost their confidence in the domestic judiciary already at the outset of the retrial and did not wish to testify.

The case ended in a final ruling without the appeal judgment listing a single victim who had perished, which only reinforced the conviction of the surviving victims and of the families of those who had lost their lives that when it comes to war crimes trials, the judiciary of the Republic of Serbia cannot be trusted.

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Selective indictment

The OWCP never included superior JNA officers in the indictment in this case, although evidence was presented during the trial indicating their responsibility, in particular that of the commander of the 2nd JNA Proletarian Guards Mechanised Brigade, Colonel Dušan Lončar, to whose brigade members of the Anti- sabotage Detachment of the Valjevo TD had been resubordinated, including in respect of the order for the attack on Lovas.

The indictment in this case did not include cases of rape in Lovas, or the expulsion of Croatian civilians, although testimonies about such events have also been heard during the proceedings.

434 The Court Rules of Procedure (Official Gazette of the Republic of Serbia nos. 110/09, 70/11, 19/12 and 89/13), Article 46, paragraph 3.

435 Criminal proceedings were terminated in respect of the accused: Ljuban Devetak, Petronije Stevanović, Dragan Bačić, Milan Radojčić and Aleksandar Nikolaidis.

436 The accused Miodrag Dimitrijević.



The HLC gave a detailed analysis of the selectiveness of the indictment in its *Report on War Crimes Trials in Serbia in 2019*.⁴³⁷

Professional consultant

In the *Lovas* case, the concept of professional consultant, introduced by the new CPC, was applied for the first time in war crimes trials. A professional consultant in the military field was retained by the accused Miodrag Dimitrijević.⁴³⁸ A professional consultant is a person having specialized knowledge in the field in which an expert examination has been ordered. His role is to enable the party which retained him to engage in constructive debate with the expert witness on the latter's findings and opinion and thus assist in his evaluation.

Tendentious conclusions of the Court of Appeal

In the finding of the Court of Appeal, the first instance judgment went beyond the charges relative to the accused Željko Krnjajić and Milan Devčić, because the judgment "augmented the criminal content of the factual description of the offence". Such a conclusion is the result of a tendentious and very rigid interpretation of the trial judgment. The first instance judgment did not exceed the charges because the enacting terms of the judgment remained within the limits of the factual basis of the charges, namely within the bounds of those facts and circumstances on which the indictment had been based.

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The reasons for acquitting the accused Krnjajić and Devčić, in the assessment of the Court of Appeal, were the lack of evidence that they had directly undertaken the underlying acts constituting the criminal offence. Thus, in respect of the accused Krnjajić, the court assessed that there was no evidence that in the specific instance intimidation measures had been in question as a criminal act constituting a war crime against the civilian population. The reason given was that the norms of international humanitarian law must be seriously violated for a criminal offence to exist. To wit, there was no evidence that the acts the defendant had undertaken were of a sufficient degree of seriousness and entailed consequences of such gravity as to warrant their characterization as intimidation measures. The accused Krnjajić had pointed his rifle at the back of injured party Marica Hodak and had asked her where she was hiding the Ustasha, and he had also pointed his rifle at injured party Tomislav Šelebaj, had cursed him and had threatened to kill him. Account being taken of the circumstances surrounding this event, namely that an armed battle was under way in the village, that there was shooting in the streets, that grenades were being thrown at houses, and that prior to all this the village had been shelled - in which situation the injured party had taken shelter in her basement together with her family, and the defendant pointed a rifle at her back telling her to give the child to her husband - such conduct on the part of the accused must have instilled in the injured party high-intensity fear for her life. Injured party Šelebaj must have also experienced high-intensity fear when under the same

437 Humanitarian Law Center (Belgrade, HLC 2020) *Report on War Crimes Trials in Serbia in 2019*, pp. 103-112, available at http://www.hlc-rdc.org/wp-content/uploads/2020/03/Izvestaj_o_sudjenjima_za_ratne_zlocine_u_2019._godini.pdf, accessed on 1 February 2021.

438 CPC, Article 125.



circumstances a rifle had been pointed at him and he threatened with murder. The position taken by the Court of Appeal can therefore be rightly questioned, because the defendant's conduct in the given circumstances can certainly be characterized as intimidation.

Assessment of the mitigating circumstances and sentencing

In determining the sentences, the Court of Appeal considered as mitigating circumstances in favour of the accused Darko Perić, Radovan Vlajković, Radisav Josipović, Jovan Dimitrijević and Zoran Kosijer, their family and personal circumstances, such as: a family man, married, the father of two adult children, no prior criminal record, and also considered the lapse of time as a mitigating circumstance in respect of all of them. Then it attributed to all mitigating circumstances extraordinarily mitigating character, on which basis the court alleviated the sentences.

The HLC maintains that the court's consideration of the time lapse since the commission of the offence in weighing the penalty for the accused is not justified. That the lapse of time is not a factor to be considered in weighing penalties for this type of criminal offence is also implied by the universal provision on the non-applicability of the statute of limitations to this type of criminal offence. This view of the court runs counter to the established jurisprudence of the ICTY – that the length of the time span between the criminal conduct and the subsequent judgment shall not be considered as a mitigating circumstance⁴³⁹, as well as to contemporary jurisprudence.⁴⁴⁰

Neither was it justified to attribute to ordinary mitigating circumstances the significance of extraordinary mitigation. Namely, the term "extraordinary" means that exceptional circumstances are in question, specific in character and distinguishable from ordinary mitigating circumstances, as they invest the committed crime with specific alleviation, which also impacts the sentencing. This term is both logically and linguistically imprecise in the FRY Criminal Code, enabling its quite broad and arbitrary interpretation, which the court indeed made use of in the specific instance.

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At the same time, the court assessed as an aggravating circumstance the number of civilians who had suffered serious mental anguish, of whom, according to the court, there had been 52, of which number 19 had been killed in the minefield and 12 injured. It is precisely this large number and the ultimate consequence – that numerous civilians whom the accused had taken along as a human shield were killed - that is the factor that rules out the possibility of attributing the significance of extraordinary mitigation to ordinary mitigating circumstances. Namely, the Court of Appeal ascertained that the defendants had taken the civilians along as human shields, aware of their action, and hence knew or had reason to know that by using civilians as human shields the latter would be exposed, apart from to enormous mental suffering, also to the danger of losing their lives, which in the end was the case

439 ICTY Judgment *Dragan Nikolić* – item 273.

440 BGH, 2 StR 538/01, Judgment of 21 February 2002 – in a case of murder decided by the German Federal Supreme Court, reference was made to the length of the time span between the criminal conduct and the subsequent judgment as a possible mitigating factor. However, it was emphasised by that court that due to the seriousness of the crimes committed during World War II in 1943-44 by the accused, now 90 years old, extraordinary circumstances mitigating the accused's guilt were not applicable.



for many of them. Reducing the sentences below the statutory minimum was therefore unjustified. By reducing the sentence, the court has given expression to a benevolent societal attitude toward the perpetrator, which in the case of criminal offences of this type is impermissible, in particular when perpetrators who at the time of the commission of the crime were reserve military officers are in question.

Minimising the role of the JNA in the crime by the OWCP and the Court of Appeal

Ever since the beginning of this case, in fact already in the investigation stage, there has existed extensive and incontrovertible evidence pointing to the responsibility of the commander of the 2nd JNA Proletarian Guards Mechanised Brigade, (2nd JNA pgmbr), Colonel Dušan Lončar, who had issued the order for an attack on Lovas, ordering, *inter alia*, that Lovas “be cleansed of hostile population”. On the day of the attack, 22 civilians were killed in Lovas. Nonetheless, to date, the OWCP has not prosecuted either Dušan Lončar or any other JNA member in the chain of command. The Court of Appeal acquitted Željko Krnjajić, whom the retrial judgment at first instance had convicted of ordering, as the attack on Lovas unfolded on the orders of the commander of the 2nd JNA pgmbr, the armed group under his command, which was comprised within that brigade, to attack the civilian population, and himself applying intimidatory measures against Croatian civilians. Thereby the Court of Appeal removed any nexus between the order of the JNA brigade commander ordering that Lovas “be cleansed of hostile population” and the killing of civilians during the attack. As well, the Court of Appeal determined that there was no evidence that Krnjajić had intimidated civilians either. In this way, the court of second instance removed any connection between the JNA and the crime committed in Lovas, namely that the JNA had planned the crime in Lovas beforehand and that there had existed a written order to that effect by a high-ranking JNA officer.

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The prison sentences that the Court of Appeal imposed on the convicted offenders, among whom JNA members Darko Perić, Radovan Vlajković and Radisav Josipović, all of them army reserve officers, as well as on the members of the “Dušan Silni” Volunteer Detachment, Zoran Kosijer and Jovan Dimitrijević, are below the statutory minimum. Thereby the role of JNA members in this crime has been additionally minimized, and the crime itself represented as a minor incident by omitting the number of civilians who had lost their lives while being used as human shields by the convicted offenders.









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