



Humanitarian Law Center Foundation

REPORT
ON WAR CRIMES TRIALS
IN SERBIA DURING 2023



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Belgrade, May 2024



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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
GS	Headquarters
JNA	Yugoslav People's Army
KFOR	Kosovo Force
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
RoD	Registry of deaths
RoM	Registry of marriage
IRMCT	International Residual Mechanism for Criminal Tribunals
MoI	Ministry of the Interior
KLA	Kosovo Liberation Army
ES	Elementary School
PJP	Special police units
ORPP	Office of the Republic Public Prosecutor
RS	Republika Srpska
RSK	Republic of Serbian Krajina
SDA	Party of Democratic Action
SDS	Serbian Democratic Party
PS	Police station
SJB	Public Security Station
TO	Territorial Defence
SOS	Serb Defence Forces
UNPROFOR	United Nations Protection Force
(P)OWCP	(Public) Prosecutor's Office for War Crimes
VJ	Yugoslav Army
VMA	Military Medical Academy
VP	Military Post
VRS	Republika Srpska Army
VS	Serbian Armed Forces
VTO	Military-Territorial Detachment
Law on Prosecution of War Crimes	Law on the Organization and Competence of State Authorities in Proceedings Against War Crimes Perpetrators
CPC	Criminal Procedure Code



Introduction and methodology

This is the 12th 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 2023, namely a total of 27 cases conducted before the War Crimes Departments of the Higher Court and the Court of Appeal in Belgrade. The Report provides an overview of the proceedings and 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 the 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 Public Prosecutor's Office for War Crimes (POWCP)¹ and of the courts in those parts of the judicial proceedings open to the public, primarily by analysing the indictments and the judgments 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 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 issued **one** first-instance verdict.² The War Crimes Department of the Court of Appeal in Belgrade issued **five** verdicts that concluded the proceedings with final force and effect³, and **two** decisions that annulled the first-instance verdicts and remanded the cases for retrial.⁴ In the reporting period, the POWCP, as it states, filed **three** indictments against seven persons, **two** of which are still in the examination phase before the competent court.⁵ During 2023, one proceeding was conducted in absentia.⁶ In 2023 also, the verdict of the Court of Bosnia and Herzegovina, dating from 2014, by which Novak Đukić was sentenced to 20 years in prison, was again not executed. As from 2018, when it was determined by the expert that Đukić was not competent to stand trial, the expert opinion has been presented every 12 months, and every time the expert opinion has been the same.⁷

Since it began working in 2003 until the end of 2023, the POWCP brought indictments in 104 war crimes cases, indicting a total of at least 238 persons and encompassing at least 3,544 victims who lost

1 With the Law on Public Prosecution from February 2023, the former Office of the War Crimes Prosecutor changed its name to the Public Prosecutor's Office for War Crimes. In the Report, for easier following, the name Public Office of the War Crimes Prosecutor, or the abbreviation POWCP, will be used.

2 Case: *Zvornik – Standard*.

3 Judgments rendered in the cases: *Sanski Most – Lušci Palanka, Teslić, Kalinovik, Brčko – Logor Rasadnik and Đakovica*.

4 Cases: *Brod na Drini* and *Štrpci*.

5 POWCP Letter PI. no. 1/24 of 5 January 2024.

6 Case: *Zagreb*

7 About the Novak Đukić – Tuzlanska kapija Case, see the Annual Report on War Crimes Trials in Serbia in 2019: https://www.hlc-rdc.org/wp-content/uploads/2020/03/Report_on_war_crimes_trials_2019.pdf



their lives.⁸ Final judgments have been rendered in 68 cases and 21 cases are ongoing. In cases which have been concluded by a final decision, a total of 94 accused have been convicted and 56 acquitted. Also, indictments were dismissed against 30 out of the total number of accused, 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 1,274 victims, whereas the final judgments list 1,048 victims who had lost their lives.

At the time of writing this Report, there are 17 convicts serving prison sentences, while one convict, Rajko Kozlina, is at large.

Before the War Crimes Department of the High Court in Belgrade during 2021, 2022 and 2023, four court decisions were recognised based on requests submitted by BiH referring to four persons.⁹

Preceding the analyses of the cases in the Report is an overview of general findings on war crimes trials in 2023, and of important socio-political developments which have had some bearing on war crimes trials.

8 The exact figures were impossible to ascertain, as not all indictments the POWCP declares having issued in 2022 and 2023 are publicly available.

9 Notification of the Higher Court in Belgrade Su II – 17a no. 291/23 of 23 January 2024.



General findings and the socio-political context

Inefficiency of the POWCP

Small number of indictments

Over the reporting period, the negative trend of a decreasing number of indictments has continued. During 2023, according to the POWCP, three indictments were brought against 7 persons¹⁰, one of which is an indictment with five accused persons, from a transferred case.¹¹ The other two indictments, in which there is one accused each, have not yet been confirmed. Such a small number of indictments is below any standard, and particularly so bearing in mind the capacities of the POWCP. The involvement of the POWCP regarding the indictments that resulted from the transferred cases has been minimal, because the prosecutor's work on the preparation of the indictment was already completed before the assignment – an investigation was conducted, and an indictment was filed and confirmed before the competent foreign court.¹² Therefore, there have been only two indictments which are the result of the POWCP's own investigation, and they have not yet been confirmed. This could be considered unacceptably ineffective work. This is especially the case considering that in 2023, the POWCP had 11 prosecutors, as well as the Chief Public Prosecutor of the Public Prosecutor's Office for War Crimes. In addition, the POWCP had a budget of 220,510,000 dinars¹³ for the year 2023, which included the monthly salary of the Chief Public Prosecutor for War Crimes of 579,029.15 dinars, and that of the other public prosecutors in the range of 378,352.14 – 405,377.30 dinars.¹⁴ With such a budget and income, the POWCP should have justified the results of its work with a far greater number of indictments filed and confirmed. At the same time, owing to the absence of final results of the POWCP's work, which are indictments and court proceedings, any strategy for prosecuting war crimes, regardless of whether it is by the National or the Prosecutor's Office, loses its meaning.

9

The six-year mandate of the Chief Public Prosecutor for War Crimes, Snežana Stanojković, has expired, since she took office on 31 May 2017.¹⁵ The Law on Public Prosecution stipulates that, if the chief public prosecutor ceases to function, the High Council of Prosecutions appoints an acting

10 Indications: KTO 1/23 against Ilija Krčmar, Svetislav Račić, Željko Bajić, Nikola N. Ćuk and Nikola D. Ćuk, while for the other two indications no information is available on the identity of the two accused.

11 Indictment KTO 1/23.

12 The revised prosecutor's strategy for the investigation and prosecution of war crimes in the Republic of Serbia for the period 2022-2026. In 2016, it is foreseen that the cases taken over from the regional prosecutor's offices will have priority in the proceedings, see: Revised Prosecutorial Strategy for the Investigation and Prosecution of War Crimes in the Republic of Serbia (2022-2026), p. 6, available at: <https://www.tuzilastvorz.org.rs/public/documents/2023-11/revirirana%20strategija.pdf>, accessed 21 March 2024.

13 Law on the Budget of the Republic of Serbia for the year 2023, Official Gazette of the RS no. 138/2022-3, 75/2023-3, available at: <https://pravno-informacioni-sistem.rs/eli/rep/sgrs/skupstina/zakon/2022/138/1/reg>, accessed 20 March 2024.

14 Information sheet on the work of the Public Office of the War Crimes Prosecutor, p. 46, <https://informatior.poverenik.rs/informatior?org=xBzYaNoe3v7aP2KWw>, accessed 20 March 2024.

15 "Snežana Stanojković takes office as Serbian War Crimes Prosecutor", POWCP, 31 May 2017, available at: <https://www.tuzilastvorz.org.rs/en/news/sne%C5%BEana-stanojkovi%C4%87-takes-office-serbian-war-crimes-prosecutor-0>, accessed 28 March 2024.



chief public prosecutor until the new supreme public prosecutor takes office, for a maximum of one year, which was the case in May 2023, when Stanojković was appointed as the acting official.¹⁶ It is necessary that the new prosecutor be elected on time in order to avoid the problems that arose in the earlier period, when the Republic of Serbia did not have a prosecutor for war crimes for 17 months. The HLC wrote about the consequences of the drastic delay in the selection of the Prosecutor for War Crimes in the Report on War Crimes Trials in 2017-2018.¹⁷

During the almost seven-year mandate of Snežana Stanojković, despite the strengthening of the POWCP personnel capacities, only 39 indictments were confirmed.¹⁸ Of those 39, 23 were transferred from Bosnia and Herzegovina (which was therefore 59%), whilst only 16 independent indictments for almost seven years of work would seem to constitute no more than 2.28 indictments per year of work. Such statistics indicate the extremely poor results of the POWCP's work, and the need to have a person at its head who will ensure greater work efficiency and effective spending of budget funds.

Excessive and unnecessary anonymisation

During the reporting period, the POWCP continued with the practice of excessive and unnecessary anonymisation of the indictments that it makes available to the public on its website.

The Rulebook of the POWCP on the anonymisation of personal data in indictments¹⁹ stipulates that indictments of the POWCP are "published as a rule in their entirety on the POWCP website, but the data on the basis of which it is possible to identify the accused, injured parties, their legal representatives, witnesses, relatives, close persons, neighbours and the like, are replaced or omitted in a consistent manner".²⁰ However, instead of publishing the indictment as a whole, the POWCP publishes only its disposition, so it is in no way possible to determine on what evidence an indictment is based.

The Rulebook also provides for the anonymisation of personal data of participants in the procedure, such as "name, surname and nickname of a natural person, address, date and place of birth"²¹, but at the same time provides that "anonymisation is not obligatory on data such as the name, surname and nickname of a natural person, participant in the procedure (the accused is a participant in the procedure), in the event where the justified interest of the public to know prevails in relation to the protection of the identity of a natural person". Also, it is explicitly stipulated that data on a participant in the procedure are exempted from anonymisation if it is a person whose data were already available

16 Law on Public Prosecution Service, Article 41.

17 *Report on War Crimes Trials during 2017-2018*, HLC, May 2019, available at: <https://www.hlc-rdc.org/wp-content/uploads/2019/05/Report-on-War-Crimes-Trials-in-Serbia.pdf>.

18 One indictment, after the court sent it back to the Prosecutor's Office for revision, received a new number and was presented as new, so the official statistics present 40 indictments, but in fact it is 39 indictments.

19 Rulebook on the Anonymisation of Personal Data in War Crimes Prosecution Indictments of 20 March 2019, POWCP, available at: https://www.tuzilastvorz.org.rs/public/documents/2021-04/%D0%9A%D0%A2%D0%9E_2_20_%D0%90%D0%BD%D0%BE%D0%BD%D0%B8%D0%BC%D0%B8%D0%B7%D0%BE%D0%B2%D0%B0%D0%BD%D0%BE.pdf, accessed 6 February 2023.

20 *Ibid*, Article 1, Paragraph 2.

21 *Ibid*, Article 5, paragraph 1.



to the public.²² As the names of the accused have been anonymised, it is obvious that the POWCP does not take into account the provisions of its own Rulebook and completely ignores the interest of the public to know the identity of persons charged with a war crime. The Prosecutor's Office itself publishes on its website monthly trial schedules listing the full names and surnames of accused persons, thus it remains unclear why they are omitted from the indictments. The pointlessness of the anonymisation performed by the POWCP is particularly evident when it comes to indictments taken from BiH, where the POWCP anonymises the names of accused and victims, although there is no need for such anonymisation, because data on the identity of the accused were previously available to the public on the portals of the courts of BiH. In addition, the media in BiH report on the indictments filed, and often the domestic media report that the Republic of Serbia has taken over the criminal prosecution, so there are no grounds for anonymisation.

It is obvious that the POWCP anonymises indictments without making any effort to harmonise anonymisation with its own Rulebook, nor does it take into account the need for the process to be transparent and that the public be adequately informed about it. By such anonymisation, the POWCP makes publicly disclosed indictments extremely unclear²³, and the accused invisible to the general public, which is completely contrary to both the National Strategy from 2016²⁴ and the Prosecutorial²⁵ Strategy for the Prosecution of War Crimes in Serbia. Namely, these strategies envisage the improvement of the overall attitude of society towards war crimes trials, primarily through the facilitated availability of information on war crimes proceedings, in order to achieve the ultimate goal, which is improved transparency of war crimes proceedings. In a situation where the general public is not able to find out the names of the accused by reviewing the website of the POWCP, the POWCP sends a clear message that the goals of the strategies are a mere formality, and the victims are irrelevant, and that transparency of trials and the informing of the public about them are not goals that the POWCP strives to achieve.

11

Circumvention of regional cooperation

Regional cooperation is necessary to prosecute war crimes suspects effectively. However, despite the signed Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide, the POWCP does not want to cede prosecution to the judiciary of Bosnia and Herzegovina, although there are conditions for this. At the same time, the POWCP has filed fewer indictments than it has received from colleagues in BiH, given that indictments from BiH account for 59% of all confirmed indictments in the last 7 years.

22 *Ibid*, Article 5, paragraph 2.

23 On all POWCP indictments, the Respondents are designated as A.A. available at: <https://www.tuzilastvorz.org.rs/en/cases/indictments>, accessed on 16 January 2023.

24 National Strategy for War Crimes Prosecution 2021-2026, available at: <https://www.mpravde.gov.rs/files/NATIONAL%20STRATEGY%20FOR%20WAR%20CRIMES%20PROSECUTION%201.pdf>, accessed 16 January 2023.

25 Revised Prosecutorial Strategy for the Investigation and Prosecution of War Crimes in the Republic of Serbia (2022-2026), available at: <https://www.tuzilastvorz.org.rs/public/documents/2023-11/revidirana%20strategija.pdf>, accessed on 21 March 2024.



Regional cooperation implies two-way cooperation and transfer of cases to the BiH judiciary, and not just taking over cases prepared by colleagues from the neighbouring country. The POWCP did not cede the cases of Čelebići, Hrasnica and Rasadnik camp near Brčko, although there were legal conditions for this, because they had indicted citizens of BiH. The Prosecutor's Office also ignored the Protocol in 2016, when it concluded a Plea Agreement with Brano Gojković, a citizen of BiH, immediately after the Prosecutor's Office of BiH sent a request for his extradition due to his participation in the killing of over 1,000 detainees in Srebrenica. Regarding the POWCP procedure and the verdict, the Prosecutor's Office of BiH issued a statement in which it pointed out that justice would have been more efficient if the procedure had been conducted before the Court of BiH.²⁶

At the beginning of December 2022, the POWCP issued an indictment against Miomir Jasikovac, commander of the military police company of the Zvornik Brigade of the VRS. The Prosecutor's Office charged Jasikovac with imprisoning members of the BiH Army and male civilians who were transferred to Orahovac and Ročević, and to the dam in Petkovci, knowing that they would then be killed. According to the indictment, more than 300 people were killed at these locations. The Prosecutor's Office of BiH had issued an indictment against Jasikovac about ten days earlier, on 23 November 2022, for the criminal offence of genocide, for events identical with those for which he was accused by the Serbian POWCP, but with the BiH Prosecutor referring to 2,300 prisoners - a significantly higher number, with the clear explanation that these were events related to Srebrenica.²⁷ Instead of waiting for the case to be ceded if Jasikovac was not available to the BiH judiciary, the POWCP immediately filed an indictment, greatly reducing the number of victims, and avoiding any mention of Srebrenica, and on the same day concluded an agreement with the accused on recognition of a criminal offence with an inadmissibly low prison sentence of five years.²⁸

12

In mid-December 2021, the Prosecutor's Office of BiH issued an indictment against Milenko Živanović, and the Court of BiH confirmed the indictment on 31 December.²⁹ The POWCP filed an indictment against Živanović for similar actions on 21 December 2021, which indicates that adequate cooperation between the two prosecutors' offices was lacking.

So far, only one case has been transferred to the BiH judiciary, in the proceedings initiated against citizen of BiH, Edin Vranje. However, the transfer of cases occurred only after the public intervention of the President of Serbia, which indicates that the transfer of cases occurred in a non-institutional

26 Back in 2010, BiH issued an international arrest warrant for Brano Gojković; "The Prosecutor's Office of BiH is not satisfied with the consensual recognition in the case against Brano Gojković concluded by the Prosecutor's Office in Belgrade", Press Release of the Prosecutor's Office of BiH, 5 February 2016, available at: <https://www.tuzilastvobih.gov.ba/?id=3181&jezik=b>, accessed on 28 March 2024.

27 Indictment of the Prosecutor's Office of BiH number T20 0 KTRZ 0004388 05, available at: https://www.tuzilastvobih.gov.ba/files/docs/Anonimizirana_optuznica_Miomir_Jasikovac.pdf, accessed on 12 December 2023.

28 The analysis of the plea agreements concluded so far shows that the Prosecutor's Office only concluded plea agreements with the defendants Miomir Jasikovac and Brano Gojkovic, whose actions related to Srebrenica and the murders of prisoners were criminalised on the same day that the indictments were filed and agreements reached with the defendants on very low prison sentences. Judgment of the High Court in Belgrade part no. 1/22 of 13 January 2023, which confirmed the plea agreement with Miomir Jasikovac; Judgment of the High Court in Belgrade SPK - Po2 no. 1/2016 of 27 January 2016 confirming the plea agreement with Brano Gojković.

29 Case of the Court of Bosnia and Herzegovina S1 1 K 041813 21 Kro *Milenko Živanović*.



manner, due to political pressure, and not as a result of cooperation between the Prosecutor's Offices of Serbia and BiH.³⁰

Failure of witnesses to appear

During 2023, the trend of witnesses' failure to appear in war crimes proceedings continued. Out of a total of **144** scheduled main hearings, **48** were not held, **21** of which owing to the absence of invited witnesses, i.e. **43.75%** of the non-maintained main hearings were the consequence of the absence of witnesses. One of the reasons for the absence of witnesses lies in the fact that more than thirty years have passed since the crimes were committed and the witnesses and the injured parties are increasingly elderly and in poor health, and therefore find it increasingly difficult to decide to testify. Year after year, the number of witnesses who are able and willing to testify is decreasing. In addition, some are located abroad and it is more difficult to make contact with them, while some no longer want to respond to the summons to testify, which leads to frequent delays in the trials and makes it difficult to conduct the proceedings.

One of the reasons why witnesses do not come to the court is the unpreparedness of the POWCP in cases transferred from BiH. Instead of checking the ability and availability of witnesses before filing its own indictment, as well as whether the data on witnesses, such as the addresses, which may be a decade or more old, correspond to the data contained in the case files, the POWCP only copies them and lists them as its evidentiary proposals. In such a situation, during the preparatory hearing, the court adopts the Prosecutor's proposal to hear those witnesses directly, and only when attempting to summon them is it established that they have not been at these addresses for a long time, or that they are of such a state of health that they are unable to testify, or that they have died in the meantime. This wastes valuable time and unnecessarily delays the process. A special problem has been observed in the Rudice Case, where the POWCP has not been able to ensure the presence of a key prosecution witness for more than two years, and insists on his direct examination. In war crimes proceedings, witnesses are extremely important, and often the only relevant means of proof, so there is a danger that in the future we will increasingly face problems in prosecuting war crimes, because in the absence of witnesses, evidence will not be available. Additionally, as mentioned above, only a small number of war crimes indictments are being filed in Serbia, while the transfer of criminal prosecutions through regional cooperation is slow, so that several years may pass from the moment of confirmation of the indictment in BiH until the case is transferred and the indictment is filed by the POWCP.

13

30 "Vučić urges Serbian judicial authorities to get in touch with BiH colleagues", RSE, 17 September 2021, available at: <https://www.slobodnaevropa.org/a/vucic-hapsenja-ratni-zlocin-edin-vranj/31465789.html>, accessed on 5 April 2023.



Postponement of the trial due to the failure of the High Council of Justice (HCJ) and changes in the composition of the panel of the War Crimes Department

The mandate of the War Crimes Department judge at the High Court in Belgrade, Dejan Terzić, expired on 30 April 2023. In 2014, he was appointed as a judge of the Court of Appeal in Novi Sad by the High Council of Justice to the High Court in Belgrade at the Department for Organised Crime and the War Crimes Department, with a term of six years. After the end of the six-year term in 2020, Judge Dejan Terzić's term of office was extended by the High Council of Justice for one year each year. However, although the President of the High Court in Belgrade submitted a request to the High Council of Justice in March 2023 to extend the mandate of Judge Terzić, this proposal was not decided upon at all, because the then President of the Council, Jasmina Vasović, did not include the request in the agenda of the session. Thus, the Council, the body that should guarantee the independence and autonomy of courts and judges, violated its own Rules of Procedure³¹ and failed to make a reasoned decision and state the reasons why the judge's term of office was not extended. The Council is not an administrative body that can apply the institute of silence in its work, but a body that has to decide on a request one way or another, to make a decision that has to be explained.³² Judge Dejan Terzić was a member or president of the panel in nine war crimes cases (*Srebrenica, Srebrenica II, Jajce, Bosanska Krupa – Donji Dubovik, Rudice, Lovas II, Bratunac II, Višegrad, and Bratunac-Borkovac*), so all these trials, until a new judge was assigned to the position, had to be postponed, after which the main hearing had to start again. In May 2023, by changing the annual schedule of affairs in the High Court in Belgrade, Judge Bojan Mišić was assigned to the War Crimes Department³³ as a replacement for Judge Terzić, and the main hearings in these cases began anew.

14

The consequence of this was the inevitable delay of the main hearing, which could have been avoided. This will negatively affect the further course of the court process, extend the duration of the proceedings, and require additional resources that could have been better used. But above all, such a delay in the procedure destroys the trust of the victims' families, who have perceived it as the Republic of Serbia's lack of interest in obtaining justice before its courts.

Trial in absentia

The Zagreb Case is currently the only trial in absentia being conducted in the War Crimes Department of the Higher Court in Belgrade. The accused, Branko Tunić, is a citizen of the Republic of Croatia, where he resides, and he is not available to the state authorities of the Republic of Serbia. Therefore, the court has decided to try him in absentia, in consideration of the fact that the conditions prescribed by the Criminal Procedure Code are fulfilled for such a trial. Although this type of procedure is provided

31 Rules of Procedure of the High Judicial Council, accessed on 27 March 2024.

32 Article 32 of the Rules of Procedure of the High Council of Justice.

33 Amendments to the annual schedule for 2023, dated 11 May 2023, Higher Court in Belgrade, available at: <https://www.bg.vi.sud.rs/files/IZMENA%20GRP%20SU%20I-2%20-114-23-1.pdf>, accessed 27 March 2024.



for by domestic criminal legislation, the HLC believes that it should not be applied in proceedings for war crimes, but that such cases should be resolved through regional cooperation.

The application of the institute of trial in absentia in Serbia and the region has an extremely negative impact on the process of dealing with the past, and has little chance of bringing perpetrators to justice. It therefore represents an irrational use of resources and a step backwards in the prosecution of these crimes.

Implementation of the 2021-2026 National Strategy for the Prosecution of War Crimes in the Republic of Serbia

On 14 October 2021, the Government of the Republic of Serbia adopted a new National Strategy for the Prosecution of War Crimes, for the period 2021-2026 (National Strategy).³⁴

The objectives of the adopted National Strategy have been defined as: upgrading the efficiency of war crimes proceedings; improving the protection of and support to injured parties and witnesses in war crimes trials; improving mechanisms to determine the fate of missing persons; stepping up cooperation with the International Residual Mechanism for Criminal Tribunals (IRMCT); and promotion of regional and wider international cooperation and of other mechanisms in the service of transitional justice.

Along with the National Strategy, an Action Plan for the implementation of the 2021-2026 National Strategy for the Prosecution of War Crimes (Action Plan) was adopted.³⁵

15

The first National Strategy was adopted by the Government of the Republic of Serbia on 20 February 2016, and referred to the period from 2016 to 2020. It defined a set of activities whose common goal was to improve the processing of war crimes in Serbia.³⁶ The HLC monitored and reported on the implementation of the National Strategy, and an insight into the results of the implementation of the first National Strategy was given in five reports presented by the HLC during the period of implementation of the Strategy.³⁷

34 National Strategy for War Crimes Prosecution, 2021-2026, available at: <https://www.mpravde.gov.rs/files/NATIONAL%20STRATEGY%20FOR%20WAR%20CRIMES%20PROSECUTION%201.pdf>, accessed 28 March 2024.

35 Action Plan for the Implementation of the National Strategy for Prosecuting War Crimes for the period from 2021 to 2026, available at: <https://www.mpravde.gov.rs/files/Action%20Plan%201.pdf>, accessed on 28 March 2024.

36 National Strategy for War Crimes Prosecution in Serbia 2016-2020, available at: <https://www.mpravde.gov.rs/files/NATIONAL%20STRATEGY%20FOR%20WAR%20CRIMES%20PROSECUTION%201.pdf>, accessed 28 March 2024.

37 First Report on the Implementation of the National War Crimes Strategy, HLC, December 2017; Second Report on the Implementation of the National War Crimes Strategy, HLC, June 2018; Third Report on the Implementation of the National War Crimes Strategy, HLC, December 2018; Fourth Report on the Implementation of the National War Crimes Strategy, HLC, June 2019; Fifth Report on the Implementation of the National War Crimes Strategy, HLC December 2019.



The overall conclusion of the HLC in relation to the achieved results of the First National Strategy is that the primary goal – increasing the efficiency of war crimes proceedings before the authorities of the Republic of Serbia – has not been achieved.

The results of the implementation of the new, currently valid National Strategy have been even worse. This is especially evident in relation to the goal of increasing efficiency, given that in 2023, the POWCP did not file any confirmed indictments on the basis of its own investigation, and only three in total, two of which are still unconfirmed and one has been transferred from BiH. That the results of the implementation of the current National Strategy are extremely weak is also evident from the Annual Progress reports of the European Commission for Serbia for 2023³⁸, which states that "the [t]empo of Serbia in the prosecution of war crimes cases has significantly deteriorated in recent years" and that "a genuine commitment to resolving cases, including high-profile suspect cases, should be ensured".³⁹

In order to monitor the implementation of the new National Strategy, a Working Body for Monitoring the Implementation of the National Strategy was established on 9 December 2021, consisting of representatives of all relevant institutions involved in the implementation of the National Strategy. The Working Body on the results of the implementation of the Strategy, reports quarterly to the Government, and the Reports on the Implementation of the Strategy are published on the website of the Ministry of Justice and the POWCP.⁴⁰ By the time of writing this Report, only one Report on the Implementation of the National Strategy for the Prosecution of War Crimes for 2023 has been published, although it was planned to be prepared and published quarterly. It covers the period from 1 January to 31 March 2023.⁴¹

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Reading the Report, it is evident that at the collegium of the Prosecutor's Office on 27 December 2022⁴², the Revised Prosecutorial Strategy for the Investigation and Prosecution of War Crimes was adopted with validity until 2026, and with the accompanying Action Plan.

Furthermore, periodic media conferences organised by the POWCP are also envisaged. However, starting from the last quarter of 2021, no such press conference was held until March 2023.

Such non-transparent work, and the absence of information that should be available to the public, prevents adequate monitoring and analysis of the implementation of the National Strategy by the professional public, and *de facto* excludes the general public from this process.

38 Annual Report of the European Commission on Serbia's Progress in the EU Accession Process for 2023, available at: https://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/ec_report_serbia_2023.pdf, accessed 20 March 2024.

39 *Ibid.*

40 Decision of the Government of the Republic of Serbia 05 no. 02-11325/2021 of 9 December 2021.

41 Report No. 5 on the Implementation of the National War Crimes Strategy available at: <https://www.mpravde.gov.rs/files/R%D0%B5port%20No.%20%205%20on%20the%20Implementation%20of%20the%20National%20Strategy%20for%20the%20Prosecution%20of%20War%20Crimes.docx>, accessed 21 March 2024.

42 *Ibid.*



Although the Reports state that a number of activities are being carried out to improve efficiency in war crimes proceedings, the basic result – which should be the initiation of a larger number of proceedings –, is still absent. The number of independently filed indictments in 2023 – two, against two perpetrators, which have not yet been confirmed at the time of writing this Report –, clearly indicates a downward trend, instead of an increase in the efficiency of the Prosecutor's Office. Therefore, there is a justified fear that during the period of validity of the current National Strategy the goal of increasing the efficiency of the work of the POWCP will not be achieved, but the exact opposite.

Revised Prosecutorial Strategy for the Investigation and Prosecution of War Crimes in the Republic of Serbia (2022-2026)

The Revised Prosecutorial Strategy for the Investigation and Prosecution of War Crimes in the Republic of Serbia for the period 2022-2026 with accompanying Action Plan, were adopted at the collegium of the Prosecutor's Office on 27 December 2022.⁴³

The main goal of the Strategy is to increase the efficiency of the work, with the focus on the seven previously set specific objectives: increasing the efficiency of investigation and prosecution in accordance with the priorities; improving the mechanism of protection and support for witnesses and victims; improving regional cooperation in the prosecution of war crimes; improving cooperation with the Provisional Institutions in Priština, through EULEX; improving cooperation with the IRMCT; making progress in clarifying the fate of missing persons; and improving transparency in the work of the POWCP. The existing criteria for prioritisation have been further specified, to cover cases related to crimes with serious consequences, including a large number of victims and multiple acts of execution; cases with elements of sexual violence; cases in which the perpetrators were persons of higher or high rank in the army, police or civil authorities; cases transferred from regional prosecutors' offices and prosecuted in accordance with the availability of evidence, suspects, witnesses and victims; and cases in which evidence was forwarded by the ICTY/IRMCT. These criteria were elaborated in detail by a special act, but the act is/has not been available to the public. The POWCP has established a Working Group for the selection of cases by priority, whose task will be to process in detail all cases in which investigation and pre-investigation procedures are active. The cases will be grouped into three groups according to the above criteria, and deadlines will be set for each case to be proceeded with. The strategy sets out instruments for the implementation of this task aimed at creating a list of priority war crimes cases. The Action Plan set a deadline for the formation of a list of priority cases during the first two quarters of 2023.⁴⁴

It was also determined that it is necessary to ensure full transparency for the results of the Prosecutorial Strategy's implementation, and to improve dialogue with the civil society organisations and academic

43 Revised Prosecutorial Strategy for the Investigation and Prosecution of War Crimes in the Republic of Serbia (2022-2026), available at: <https://www.tuzilastvorz.org.rs/public/documents/2023-11/revidirana%20strategija.pdf>, accessed on 21 March 2024.

44 Action Plan, activity 1.1.1, p. 2.



community, and increase efficiency in cooperation with the media. It is envisaged that regular public report on the implementation of the Prosecutorial Strategy on a quarterly basis will be published within 15 days of the date of adoption of the report at the prosecutorial collegium.⁴⁵

During the development of this Strategy, there were no consultations with civil society organisations or relevant international organisations, as was noted in the European Commission's Progress Report on Serbia's EU accession process for 2023.⁴⁶

More than a year after the adoption of the Revised Prosecutorial Strategy, by the end of March 2024, there was not a single report on its implementation. The last report on the implementation of the prosecutorial strategy available to the public on the POWCP website, is the Report on the Implementation of the Prosecutorial Strategy for the Investigation and Prosecution of War Crimes for the third and fourth quarters of 2022.⁴⁷ Bearing in mind the results of the work of the POWCP during 2023 – only two own indictments against two persons, which have not yet been confirmed –, there are fears that during the implementation of this Revised Strategy the efficiency of the POWCP's work will be reduced, instead of increased.

Set of new judicial laws

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On 9 February 2023, the National Assembly of the Republic of Serbia adopted a set of judicial laws that implemented changes to the Constitution in the part related to the organisation and regulation of judicial bodies, with the aim of strengthening the rule of law and increasing legal security through an independent judiciary and a more independent public prosecutor's office, in order to fulfil the obligations assumed in the process of European integration. The Law on Judges, the Law on Organisation of Courts, the Law on the High Council of Justice, the Law on the Office of Public Prosecutor and the Law on the High Prosecutorial Council were adopted.

The Law on the Organisation of Courts⁴⁸ regulates the establishment, abolition, types, scope and actual jurisdiction of the court, the internal organisation of the court, judicial administration, court staff, justice administration, the security of the court and means for the work of courts. According to the same law, the former Supreme Court of Cassation, as the highest court in the Republic of Serbia, continued its work as the Supreme Court.

45 *Ibid.*

46 Annual Report of the European Commission on Serbia's Progress in the EU Accession Process for 2023, available at: https://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/ec_report_serbia_2023.pdf, accessed 20 March 2024.

47 Report on the implementation of the prosecutorial strategy for the investigation and prosecution of war crimes for the third and fourth quarters of 2022, available at: <https://www.tuzilastvorz.org.rs/public/documents/2023-11/%D0%98%D0%97%D0%92%D0%95%D0%A8%D0%A2%D0%90%D0%88%203.%20i%204%20%D0%9A%D0%92%D0%90%D0%A0%D0%A2%D0%90%D0%9B%202022..pdf>, accessed 21 March 2024.

48 Law on Arrangement of Courts (*Official Gazette of RS, No. 10/2023*).



The Law on Judges⁴⁹ regulates the position of the judge, issues of incompatibility with the judicial function, evaluation of the work of the judge, the material position of the judge, the conditions and procedure for the election of the judge, the termination of the judicial function, the position of the president of the court, the position of the lay judge and the disciplinary responsibility of the judge. The most important change regarding the election of judges is that judges are no longer elected by the National Assembly, but by the High Council of Justice.

The Law on the High Council of Justice⁵⁰ regulates the position, jurisdiction, organisation and manner of work of the High Council of Justice, the conditions and procedure for the election of an election member of the Council, the duration of the term of office and the termination of office, and the provision of conditions and means for the work of the Council. The Council has 11 members, six of whom are judges elected by judges, four prominent lawyers elected by the National Assembly, and one, the President of the Supreme Court, as a member by position.

The Law on the Office of the Public Prosecutor⁵¹ regulates the organisation and competence of the Office of the Public Prosecutor, the conditions, procedure for the election and termination of office of the holder of the Office of the Public Prosecutor, the rights and duties of the holder of the Office of the Public Prosecutor, the evaluation of the work of the Chief Public Prosecutor and the Public Prosecutor, the disciplinary responsibility of the holder of the Office of the Public Prosecutor, the performance of administrative tasks in the Office of the Public Prosecutor and the judicial administration, the provision of funds for the work of the Office of the Public Prosecutor, and other issues of importance for the work of the Office of the Public Prosecutor.

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The Office of Public Prosecutor of the Republic of Serbia consists of the supreme office of the public prosecutor, appellate offices of the public prosecutor, higher offices of the public prosecutors, basic offices of the public prosecutor and office of the public prosecutor of special competence. Offices of the public prosecutor of special competence are the Office of the Public Prosecutor for Organised Crime and the Office of the Public Prosecutor for War Crimes. The function of the Office of the Public Prosecutor is performed by the Supreme Public Prosecutor, the Chief Public Prosecutor and the Public Prosecutor.⁵² This means that the former Republic Office of the Public Prosecutor is now the Supreme Office of the Public Prosecutor, and the former Republic Public Prosecutor is now the Supreme Public Prosecutor, while the former Public Prosecutors are now the Chief Public Prosecutors, and the former Deputy Prosecutors are now Public Prosecutors.

The most important change is that the Supreme Public Prosecutor is now elected by the National Assembly, at the proposal of the High Council of the Prosecutor's Office, while the General Public Prosecutor and Public Prosecutors are elected by the High Council of the Prosecutor's Office, while previously they were all elected by the National Assembly.

49 Law on Judges (*Official Gazette of RS, No. 10/2023*).

50 Law on the High Council of Justice (*Official Gazette of RS, No. 10/2023*).

51 Law on Public Prosecutor's Office (*Official Gazette of RS, No. 10/2023*).

52 Articles 3 and 4 of the Law on the Public Prosecutor's Office.



The Law on the High Council of the Prosecutor's Office⁵³ regulates the position, jurisdiction, organisation and manner of work of the High Council of the Prosecutor's Office, the conditions and procedure for the election of an election member of the Council, the duration of the term of office and the termination of office and the provision of conditions and means for the work of the Council. The Council has 11 members, five of whom are public prosecutors elected by the holders of the public prosecutorial office, four prominent lawyers elected by the National Assembly, the Supreme Public Prosecutor and the Minister of justice, as members by position.

The adoption of these laws should ensure the establishment of an independent judiciary and an independent prosecutor's office, and remove political control over the election of judges and prosecutors. However, the aforementioned legal solutions were criticized for pointing out that such legal solutions are a compromise between the profession and politics, and that the impact of politics is now only more hidden, i.e. that such an impact is possible through prominent lawyers who have become members of the High Judicial and Prosecutorial Councils, without whose consent it will not be possible to make decisions.⁵⁴

Attitude of state officials, the media and the public towards war crimes

Glorification of persons convicted of war crimes, relativisation of crimes and denial of court-established facts about crimes, once again marked the official policy of remembrance of the wars of the 1990s during 2023, both by state officials and in the reporting of most media.

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In January, *Politika* newspaper gave the opportunity to the former general of the Yugoslav Army, Vladimir Lazarević, who was convicted before the ICTY of aiding and abetting crimes against humanity committed in Kosovo, to openly deny the crimes in Kosovo, as well as the crime at Markale market, Sarajevo, in 1994. In the interview, Lazarević denied the crime committed in Račak and manipulated the reasons why the ICTY trial chamber gave up on presenting evidence about it.⁵⁵ Nikola Šainović, former Deputy Prime Minister of the Government of the Federal Republic of Yugoslavia, who was sentenced by the ICTY to 18 years in prison for crimes against humanity committed in Kosovo, also denied the crime in Račak.⁵⁶

The state commemoration on the occasion of the beginning of the NATO bombing of FR Yugoslavia was held on 24 March in Sombor. In his speech, the President of Serbia denied the crimes committed by Serbian forces against Kosovo Albanians, made cynical use of the term "humanitarian catastrophe"

53 Law on the High Prosecutorial Council (*Official Gazette of RS, No. 10/2023*).

54 "Application will show whether the rule of law or the rule of policy becomes stronger", *Euronews*, Serbia, 7 February 2023, available at: <https://www.euronews.rs/srbija/politika/77146/strucnjaci-o-setu-pravosudnih-zakona-primenace-pokazati-jaca-li-vladavina-prava-ili-vladavina-politike/vest>, accessed 27 March 2024.

55 "General Vladimir Lazarević for *Politika*: The world has already admitted that Racak is a big fraud", *Politika*, 15 January 2023, available at: <https://www.politika.rs/scc/clanak/532730/General-Vladimir-Lazarevic-za-Politiku-Svet-je-vec-priznao-da-je-Racak-velika-prevara>, accessed 27 March 2024.

56 "Farce of Indictments", *Vesti-online*, 17 January 2023, available at: <https://www.vesti-online.com/farsa-od-optuznica/>, accessed 27 March 2024.



in reference to the events in Kosovo in 1999, and also exaggerated the number of victims of the NATO bombing, citing a figure of about 2,500 civilians killed.⁵⁷ In addition to the main commemoration, several smaller events were organised in the presence of former military and political officials who were convicted or suspected of war crimes. Veselin Šljivančanin, a former JNA major convicted by the ICTY of violating the laws or customs of war, was part of the state delegation that laid flowers at the monument to Milica Rakić, a girl killed during the NATO bombing;⁵⁸ Nikola Šainović participated in the commemoration organised by the municipal organisation SPS Vračar; Defence⁵⁹ Minister Miloš Vučević laid a wreath at the memorial to members of the 37th Motorised Brigade of the Yugoslav Army, in the presence of the former commander of that unit, Ljubiša Diković.⁶⁰ About 1,400 Albanian civilians were killed in the zone of responsibility of this brigade, and thousands of them were expelled.⁶¹

The *Danas* daily gave media space to Veselin Šljivančanin, publishing a letter in which he disputed the facts of the verdict by which the ICTY sentenced him to 10 years in prison for violating the laws or customs of war in Vukovar, stating that it "belongs to convictions without a legal basis". Šljivančanin also complained about the treatment of Serbian defendants in The Hague, as well as the fact that even after serving a prison sentence, he is not a free citizen and "would be marked for the rest of his life".⁶²

Nebojša Pavković, former commander of the Third Army of the Yugoslav Army, who was sentenced by the ICTY to 22 years in prison for crimes against humanity and violations of the laws or customs of war in Kosovo, addressed the students of the Elementary School in Kać by video link from prison in Finland at the end of April to give them a class on "Košare – Stories of Heroes", alongside the Mayor of Novi Sad, Milan Đurić.⁶³

In late May, the International Residual Mechanism for Criminal Tribunals (IRMCR) issued its final verdict in war crimes cases during armed conflicts in the former Yugoslavia. Former heads of the State Security Service of the Ministry of the Interior of Serbia, Jovica Stanišić and Franko Simatović, were finally convicted of being members of a joint criminal enterprise responsible for war crimes in several municipalities of Bosnia and Herzegovina, as well as for the murder of Marija Senaši in Dalj Planina

57 "On the occasion of the national commemoration of the anniversary of the NATO bombing", *HLC press release*, 25 March 2023, available at: <http://www.hlc-rdc.org/?p=38701&lang=de>.

58 "An officer of the JNA who wrote three books: Who is Veselin Šljivančanin, a convict from The Hague who is glorified by the government?", *Danas*, 25 March 2023, available at: <https://www.danas.rs/vesti/drustvo/oficir-jna-koji-je-napisao-tri-knjige-ko-je-veselin-sljivancanin-osudjenik-iz-haga-koga-vlast-glorifikuje/>, accessed 20 March 2024.

59 Available on the Instagram profile of SPS Vračar.

60 "Minister Vučević lays wreath to commemorate Remembrance Day for Victims of NATO Aggression", *Ministry of Defence*, March 24, 2023, available at: <https://www.mod.gov.rs/eng/19883/ministar-vucevic-polozio-venac-povodom-dana-secanja-na-zrtve-nato-agresije19883>, accessed on March 26, 2024.

61 "On the occasion of the retirement of Ljubiša Diković, the Chief of General Staff of the Serbian Armed Forces", *HLC press release*, 18 September 2018, available at: <http://www.hlc-rdc.org/?p=35653&lang=de>, accessed on 28 March 2024.

62 "Veselin Šljivančanin: The verdict states that I and my soldiers did not commit crimes", *Danas*, 8 April 2023, available at: <https://www.danas.rs/dijalog/reakcije/veselin-sljivancanin-u-presudi-stoji-da-ja-i-moji-vojnici-nismo-cinili-zlocine/>, accessed 28 March 2024.

63 Press release: "We call on the responsibility of the principal of the school in Kać and the Mayor of Novi Sad for celebrating a war criminal", *YIHR press release*, 16 May 2023, available at: <https://yih.rs/en/pozivamo-da-se-utvrdi-odgovornost-direktorke-skole-u-kacu-i-gradonacelnika-novog-sada-zbog-slavljenja-ratnog-zlocinca/>, accessed 28 March 2024.



in Croatia; the verdict also established Serbia's participation in armed conflicts in BiH and Croatia.⁶⁴ Among state officials, there was no reaction to the verdict or to the court facts established by it, while Tomislav Kovač⁶⁵, former Republika Srpska Minister of the Interior, was often called in the media as an interpreter and analyst of the verdict. The BiH Prosecutor's Office issued an indictment against Kovač charging him with genocide in Srebrenica.

The day of remembrance for the victims of the military-police operation "Storm" was marked this year, on the decision of the President of Serbia and the President of Republika Srpska, with a commemorative gathering in Prijedor, a municipality where Serbian army and police forces killed over 3,000 civilians, mostly Bosniaks, during the armed conflicts.⁶⁶

In June, the Toplica District of the Republic of Serbia awarded the "Emperor Lazar" Vidovdan Charter to retired General Vladimir Lazarević, presenting it as "an example to the younger generations how to fight for and defend their country".⁶⁷ Lazarević, as commander of the Priština Corps, was sentenced before the ICTY to 14 years in prison, for aiding and abetting crimes against humanity committed during the armed conflict in Kosovo. The identical rhetoric of glorifying a convicted war criminal was also to be heard from Serbian President Aleksandar Vučić during his address to MPs in February 2023, extolling General Lazarević as a "great hero" and a "Serbian hero from Kosovo and Metohija".⁶⁸

During October and November, Vladimir Lazarević actively participated in the ceremonies of the Ministry of Labour, Employment, Veteran and Social Affairs, where veteran memorials were awarded to combatants of the armed conflicts of the 1990s as a special state recognition established by the Decree on Veteran Memorials of March 2023.⁶⁹ At the ceremony of awarding veterans' monuments

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64 "HLC's Press Release regarding the Judgment of the IRMCT's Appeals Chamber in the case of Stanišić and Simatović", *HLC*, 31 May 2023, available at: <http://www.hlc-rdc.org/?p=38860&lang=de>.

65 Verdict against Stanišić and Simatović: A New Revenge of The Hague Tribunal on Serbs? Tomo Kovač and Branko Lukić in the Heat of the Day", *Kurir TV*, 1 July 2023, available at: <https://www.kurir.rs/vesti/politika/3720633/presuda-stanisicu-i-simatovicu-da-li-je-ovo-nova-osveta>, accessed 28 March 2024; "What is the background to the verdict against Jovica Stanišić and Franko Simatović?", *K1 TV*, 2 June 2023, available at: https://www.youtube.com/watch?v=HDQL_7ZTX4, accessed 28 March 2024.

66 "Kandić: The decision to mark the Day of Remembrance of the victims of the Operation Storm in Prijedor is politically and civilisationally unacceptable", *Gradski Portal*, 24 July 2023, available at: <http://www.hlc-rdc.org/?p=38987>.

67 "Famous recipients of Vidovdan charters, prestigious 'Tsar Lazar' award to General Lazarević", *Toplica Administrative District of the Republic of Serbia*, 19 June 2023, available at: <https://www.toplicki.okrug.gov.rs/vesti/poznati-dobitnici-vidovdanskih-povelja-prestizno-priznanje-car-lazar-generalu-lazarevicu/>, accessed on 28 March 2024.

68 Stenographic notes – Third special session of the National Assembly of the Republic of Serbia from February 2, 2023, available at: http://www.parlament.gov.rs/upload/archive/files/lat/doc/stenografske_beleske/Treca%20posebna%20sednica%20NSRS,%202.%20februar%202023.%20godine%20LAT.docx

69 "Minister Selaković ceremonially presented Veterans' Memorials in Merošina", *Ministry of Labour, Employment, Veteran and Social Affairs*, 12 October 2023, available at: <https://www.minrzs.gov.rs/sr/foto-i-video/foto-galerije/ministar-selakovic-svecano-urucio-boracke-spomenice-u-merosini>; "Minister Selaković awarded the first group Veterans' Memorials today in Medveđa", *Ministry of Labour, Employment, Veteran and Social Affairs*, 6 October 2023, available at: <https://www.minrzs.gov.rs/sr/foto-i-video/foto-galerije/ministar-selakovic-danas-u-medvedji-dodelio-prve-grupne-boracke-spomenice>; "Selaković presented 53 veterans' memorials to fighters from the municipalities of Bujanovac, Preševo and Targovište", *Ministry of Labour, Employment, Veteran and Social Affairs*, 22 October 2023, available at: <https://www.minrzs.gov.rs/sr/aktuelnosti/vesti/selakovic-urucio-53-boracke-spomenice-borcima-iz-opsstina-bujanovac-presevo-i-trgoviste>.



in Kuršumlja, Lazarević addressed the attendees and stated that "we are looking at the new face of Serbia – a Serbia that is no longer ashamed of its combatants".⁷⁰ In mid-November, Vladimir Lazarević, investigating judge Danica Marinković, PJP commander Goran Radosavljević-Guri and historian Dejan Antić held a panel in the hall of the University of Niš, when they denied the crime against Kosovo Albanians committed in the village of Račak in 1999.⁷¹

In October of the same year, Dragoslav Bokan, founder and commander of the "White Eagles" paramilitary unit, was elected to the Council of the Faculty of Philology of the University of Belgrade.⁷² Against the appointment of Bokan, students of the Faculty of Philology launched a petition stating that he was a person who "has been spreading hate speech for years and promoting bigotry, intolerance and violence".⁷³

At the 66th Belgrade Book Fair, the Ministry of Defence continued to promote its editions "Warrior" and "Witness", as well as the documentary films of the Military Film Centre "Zastava Film", in which the role of the generals and units of the JNA and the Army of Yugoslavia in crimes committed in the wars in the former SFRY is relativised.⁷⁴ Films about the 125th Motorised Brigade of the VJ, the 37th Motorised Brigade of the VJ and the 243rd Motorised Brigade of the VJ, whose members participated in the mass killings of civilians in Kosovo, were shown.⁷⁵ At the book fair, Vojislav Šešelj, the leader of the Serbian Radical Party, who was sentenced before the IRMCT to 10 years in prison for the persecution and deportation of Croats from Vojvodina as a crime against humanity, was, as usual, present at the central stand. At this year's book fair, the Organisation of the Elders of the Army of Republika Srpska was also presented for the first time. The president of this organisation is Slobodan Župljanin, who is currently on trial before the Court of BiH for war crimes in the Kotor-Varoš area.⁷⁶

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70 "Kuršumlja has the most fighters in Serbia, Minister Selaković hands over Veterans' Memorials for two days", *Toplica Vesti*, 3 November 2023, available at: <https://toplickevesti.com/kursumlija-ima-najvise-boraca-u-srbiji-ministar-selakovic-dva-dana-urucuje-boracke-spomenice/>, accessed on 28 March 2024.

71 "Račak Tribune: A tragic example of the attitude of the West towards the Serbian people", *Kosovo Online*, 17 November 2023, available at: <https://www.kosovo-online.com/vesti/politika/tribina-o-racku-tragican-primerodnosa-zapada-prema-srpskom-narodu-17-11-2023>, accessed 28 March 2024.

72 Available on the website of the Faculty of Philology – Council.

73 "Students petition against the appointment of Dragoslav Bokan as a member of the Council of the Faculty of Philology", *Danas*, 18 October 2023, available at: <https://www.danas.rs/vesti/drustvo/studenti-pokrenuli-peticiju-protiv-imenovanja-dragoslava-bokana-za-clana-saveta-filoloskog-fakulteta/>, accessed on 28 March 2024.

74 Programme of the Media Centre Defence, Ministry of Defence of the Republic of Serbia at the 66th International Belgrade Book Fair, October 2023.

75 "Dossier: Ljubiša Diković", HLC, 2012; "Dossier: 125th Motorized Brigade of the Yugoslav Army", HLC, 2013; "Dossier: Rudnica", HLC, 2015.

76 "Indictment Confirmed Against Six Former Bosnian Serb Military Officials for Kotor-Varoš Crimes", *Detektor*, 30 December 2015, available at: <https://detektor.ba/2015/12/30/indictment-confirmed-against-six-former-bosnian-serb-military-officials-for-kotor-varos-crimes/?lang=en>, accessed on 26 March 2024.



In the parliamentary and local elections held on 17 December Vojislav Šešelj, convicted of war crimes before the ICTY, represented the Serbian Radical Party. MP candidates included Vjerica Radeta and Petar Jojić, accused by the IRMCT of contempt of court, whom Serbia persistently refuses to arrest and extradite to the international court. The ruling Serbian Progressive Party participated in the Belgrade and other local elections in coalition with Šešelj's Serbian Radical Party.⁷⁷

In November, the IRMCT issued a new indictment for contempt of court against Vojislav Šešelj and four other SRS officials - Miljan Damjanović, Ljiljana and Ognjen Mihajlović and Miroљub Ignjatović.⁷⁸ Ljiljana Mihajlović and Miljan Damjanović were on the list of candidates for MPs on behalf of the SRS.

At the beginning of December, a video clip of Milivoje Batinica appeared in public, showing him during the match hitting one of the players of the football club he coaches.⁷⁹ Batinica and six other former members of the Jahorina Training Centre of the Special Brigade of the Police of the Republika Srpska MUP are charged before the High Court in Belgrade with participating in the shooting of over 1,300 Bosniaks from Srebrenica in July 1995.⁸⁰

On 13 December a memorial room was opened at the Niš premises of the SPS City Board, a member party of the ruling coalition, to the former president of Serbia and the FRY, Slobodan Milošević, who was indicted before the ICTY for genocide, crimes against humanity and war crimes in Kosovo, Croatia and Bosnia and Herzegovina.⁸¹

The number of examples in which institutions and top state officials, including the President of Serbia, relativise and deny crimes, and promote criminals as heroes, confirms that the official memory policy in Serbia is actively directed towards revisionism and manipulative practices, and that victims, including victims of Serbian nationality, are not shown respect or empathy, but are treated in an unacceptable way, by denying or hindering their exercise of rights, while their suffering is neglected, silenced, relativised or openly denied.

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77 "Šešelj: Radicals in Coalition with SNS in Belgrade and Local Elections", *Danas*, 1 November 2023, available at: <https://www.danas.rs/vesti/politika/seselj-radikali-u-koaliciji-sa-sns-na-beogradskim-i-lokalnim-izborima/>, accessed on 26 March 2024.

78 "New Hague indictment filed against Vojislav Šešelj", *Al Jazeera*, 23 November 2023, available at: <https://balkans.aljazeera.net/news/balkan/2023/11/23/podignuta-nova-haska-optuznica-protiv-vojislava-seselja>, accessed 26 March 2024.

79 "Serbian Coach and War Crimes Defendant Strikes Player, Opposition Seeks Response from Authorities", *RFE*, 1 December 2023, available at: <https://www.slobodnaevropa.org/a/batinica-napad-utakmica-ratni-zlocini/32709948.html>, accessed 27 March 2024.

80 Case: *Srebrenica* (Nedeljko Milidragović et al), available on the HLC website.

81 "In addition to the memorial hall, the Nis socialists are building a monument to Milošević, and they are also looking for a boulevard", *Južne vesti*, 13 December 2023, available at: <https://www.juznevesti.com/Drushtvo/Uz-spomen-salu-niski-socijalisti-Milosevic-prave-i-spomenik-a-traze-i-bulevar.sr.html>, accessed on 26 March 2024.



CASES BEFORE THE HIGHER COURT IN 2023

I. The *Bosanski Novi Case*⁸²

CASE FACTS	
Current stage of the proceedings: first-instance proceedings	
Date of indictment: 30 December 2021	
Trial commencement date: 12 September 2022	
Prosecutor: Ivan Marković	
Defendants: Milenko Karlica and Željko Novaković	
Criminal offence: war crime against the civilian population under Article 142 of the FRY Criminal Code	
<p>Case transferred from BiH</p> <p><i>This procedure is the result of cooperation between Serbia and BiH in the prosecution of war crimes, which was intensified after the OWCP and the Prosecutor's Office of BiH signed the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide in 2013. The confirmed indictment against the defendants was transferred by the Prosecutor's Office of Bosnia and Herzegovina, since the defendants, who are citizens of the Republic of Serbia and residing in Serbia, were not available to the authorities of BiH.</i></p>	
Trial Chamber	<p>Judge Snežana Nikolić-Garotić (Chairperson)</p> <p>Judge Vinka Beraha-Nikićević</p> <p>Judge Vladimir Duruz</p>
<p>Number of defendants: 2</p> <p>Defendants' rank: low rank</p> <p>Number of victims: 27</p> <p>Total number of witnesses heard: 6</p>	<p>Number of scheduled court days in the reporting period: 7</p> <p>Number of court days in the reporting period: 3</p> <p>Number of witnesses heard in the reporting period: 3</p> <p>Total number of experts witnesses heard: 0</p>
<p>Key developments in the reporting period:</p> <p>Main hearing</p>	

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⁸² *Bosanski Novi Case*, trial reports and case documentation available at: <http://www.hlc-rdc.org/Transkripti/bosanski-novi.html>, accessed on 13 February 2024.



Course of the proceedings

Indictment

The accused are charged with having organised and launched, on 22 June 1992, with over 20 other armed persons, an attack on the villages of Maslovare, Alići and Ekići in the area of the Bosanski Novi municipality (BiH), which were inhabited by Bosniak civilians. En route to those villages, they took one civilian off a tractor and killed him; on arrival at a village they forced civilians out of their houses, killing another three civilians in the process; they took all the captured inhabitants to the Orthodox cemetery where they beat the men, while the women and children were transported aboard tractors to the settlement of Urije. The women and children having been driven away, they took the men to the Muslim cemetery where the accused Karlica ordered them to dig a collective grave, and then ordered the accused Novaković and the other armed persons present to shoot at the civilians, which they and he himself did, killing 24 Bosniak civilians on that occasion. They covered their bodies with earth, and in the second half of 1996 dug up most of the bodies and transported them to the confluence of the Japra and Sana Rivers, where they dumped them.⁸³

Defence of the accused

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Presenting his defence, the accused Milenko Karlica denied having committed the criminal offence he is charged with. He stated that during the armed conflict he was neither a serviceman nor a military officer, and that he had not organised anything – he only had to do compulsory work service. A military officer of the Serb forces had been killed prior to the event in Alići and Ekići. When his body was brought, tensions mounted, because the villagers of Jošava were saddened and enraged by his death. Dragan Balaban, Milan Balaban and Milenko Babić organised the people in the village of Jošava, telling them that the inhabitants of Alići and Ekići, Bosniaks, were armed, and that they had to go to those villages and disarm them. The accused attended the funeral with his wife, and on their way back they were stopped by Milan and Dragan Balaban, who told them that they had organised the entire village, that they had to go to Alići and Ekići, and that they would be setting off in an hour or two. He arrived at the rallying point in his car, where he was told to go to Ekići to a Bosniak acquaintance of his. They then called him to go to the Kozjak household, namely to drive Milenko Brčín to his relative Stojko. They remained there for about half an hour; on their way back, on the road to Alići, the accused saw lots of people, and Milenko Babić told him that they should all be killed. This statement astounded him, and he asked him how he could say something like that, after which he was told: "Here, you can have them. You can take them wherever you please". They took them by tractors to the locality of Šuća where the checkpoint was, left them there and went back. On the way to Alići, they came across Dragan Balaban and Džemal Alić, and Dragan told him to drive Milan Balaban to Džemal's house, because the latter had lots of weapons. When they got to Džemal's house, the others went out, while the accused remained by the car. He heard shots, and soon afterwards Milan came

83 Indictment TRZ KTO 7/21 dated 30 December 2021, available at: <https://www.tuzilastvorz.org.rs/en/cases/indictments/%D0%BA%D1%82%D0%BE-721>, accessed on 13 February 2024.



and told him that he had killed Džemal in self-defence. Later they drove to Ekići, and later Milan Balaban told him they had killed those people. He heard that they had wanted to pin Džemal Alić's killing on him, even though everybody knew who killed him. Branka Karlica, Milan Balaban's sister, also told him that. He himself did not see anyone getting killed, nor did he know where the accused Željko Novaković had been at that time.⁸⁴

Presenting his defence, the accused Željko Novaković denied having committed the criminal offence he is charged with. He stated that he had set out on foot from Dvor na Uni to visit his mother, as in that period there was no public transportation, and that he had dropped in on his sister Stana Karlica in Maslovare. As his brother-in-law was giving him a ride to his mother's village, they were stopped on the way by a man who told them to go "up there somewhere" and transport some women and children aboard the tractor. The accused does not know the area, and is therefore unable to explain where they took them. After they had driven the women and children away, they returned to Maslovare; on the following day the accused went to his mother's house on foot. He noted that he had served the JNA and that he was a signaller at the Bihać military airfield; and also that he did not have any weapons at the time.⁸⁵

Witnesses in the proceedings

Witness for the prosecution Miroslav Žujić stated that during the war he had been a policeman in Bosanski Novi, working as the patrol sector leader. He had heard stories that some Muslims had been killed in Maslovare, but he did not know anything about the relocation of bodies. He knew the accused Milenko Karlica.⁸⁶

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Witness for the prosecution Rajko Radenović stated that during the war he had worked as a policeman in Bosanski Novi. As his patrol was passing through the villages of Ekići and Alići they heard stories about the killing of civilians from the locals and relayed them to their superior. He told them not to investigate it until further notice, because the VRS was quite nasty at the time. In fact, if the police brought in any VRS member, a large group of his fellow fighters, armed, would immediately show up and insist that the apprehended be immediately released, menacingly brandishing their rifles. He had also heard that some bodies had been relocated, but did not know any details. He explained that the man who had a rifle at the time "had everything". The Serbs were all armed, while the Muslims' weapons had been seized from them. Prior to the critical event, many people had moved out from villages having a Muslim majority. Only the elderly, women and children had remained in Ekići.⁸⁷

Witness for the prosecution Zoran Kenjalo stated that he stood by his statements given on 24 December 2015 and 6 June 2016 before the Prosecutor's Office of BiH. He explained that when giving those statements he was extremely stressed out, that he was threatened with long imprisonment, that he was interrogated as an accused, and that he struck a plea bargain with the BiH Prosecutor's Office

84 Transcript from the main hearing of 12 September 2022.

85 *Ibid.*

86 Transcript from the main hearing of 25 October 2022.

87 *Ibid.*



for the same kind of criminal offence in exchange for a five-year prison sentence. On being shown the records of his interrogations he confirmed that they bore his signatures. He underlined that he had to say something at the time, but that the allegations implicating the accused were not true. While giving his statement, he kept apologising to the accused Milenko Karlica for having implicated him in the crime in his statements. He explained that Dragan Balaban, who had also concluded a plea bargain with the BiH Prosecutor's Office, had suggested to him what to say. In Maslovare and Ekići, 26 Muslims were killed in June 1992. He could not see who opened fire at them because it was night. Balaban suggested to him to say that the accused Karlica had ordered them to form a line and shoot at the Muslims. The accused Novaković was not present when the civilians were killed.⁸⁸

Before the killing of the Muslims, they had been at a funeral. The accused were there with their wives and children – they were following that convoy. He admitted that he had lied when he stated before the Prosecutor's Office of BiH that the accused Karlica issued orders, for he in fact could not do it, nor did he seize the civilians' valuables or shoot at them. The accused Željko Novaković arrived aboard a tractor together with his brother-in-law, and he was sure that he did not shoot at the civilians. He had no first-hand knowledge about the relocation of the bodies of the killed people, he had only heard some rumours; but he had never heard anyone refer to Karlica. He knew that Milan Balaban had killed Džemal Alić in self-defence. He explained that after the funeral he went home, but that later his brother arrived and told him that they were to set out for Ekići and Alići, and so he took up his weapon and set off. In the evening the Muslims were brought aboard two or three tractors. There were 26 of them, and they were taken to the cemetery and killed there. In the group which shot them there had been some drunken, dangerous men, who threatened to shoot anyone who refused to shoot at the Muslims. Ljuban Balaban was one of those men.⁸⁹

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Course of the proceedings in 2023

During 2023, seven court days were scheduled, of which three were held. Twice the main hearings were cancelled for reasons unknown to the public, and twice they were postponed because the invited witnesses did not appear before the court. Three witnesses for the prosecution were interviewed.

The witness for the prosecution, the injured party Šefika Selmić, had no immediate knowledge of the critical event in which her son was killed, since she was in Zagreb at that time. She heard that the crime was committed by the defendant Milenko Karlica, whom she knew from before. She also heard that the victims were beaten and had their money taken.⁹⁰

Witness for the prosecution, Neida Alić, stated that after the funeral of the deceased Serbian soldier, about 30 soldiers came to her village and shot at the villagers and cursed them. They harassed civilians, and separated the women and children and took them to Bosanski Novi. The accused Milenko Karlica was at her house that day and took her son-in-law away. Neighbours killed the civilians.⁹¹

88 *Ibid.*

89 *Ibid.*

90 Transcript from the main hearing of 22 March 2023.

91 *Ibid.*



Witness for the prosecution, Uroš Galić, was a member of the VRS during the armed conflict in BiH. The deceased Radenko Baltić was his nephew. He attended his funeral, but could not remember the exact date of the funeral – he thinks it was on 22 or 23 June 1992. The army brought the body of the deceased, who was only 23 years old at the time; the body was in the house during the night, and the next day there was a funeral. That evening, when the body was brought in, Milan Balaban said, "Tomorrow the villagers of Ekići will burst", which the witness understood to mean they would no longer exist. There were a lot of people at the funeral, and everyone was appalled and disgusted, because the deceased was young and much loved, and before the murder he had been tortured. He confirmed he knew the accused Milenko Karlica, but did not see him at the funeral; he did not know the accused Željko Novaković. After the funeral, he stayed in the house and did not hear any shooting. After a few days, he heard the story that the women from Ekići were brought to Urija, and that the men stayed in the village. He said he was not aware of what really happened, because he was not there, nor did he have any knowledge of who participated in that event.

For the statement which he gave in Sarajevo, the witness claimed that it was edited, after the copying of his signature from the original witness statement given in Banja Luka, at the Prosecutor's Office of BiH, which wrote the statement later. He noticed this because the statement, allegedly made in Sarajevo, contained allegations about which he had not commented. He testified twice before the Court of BiH, and he testified about that falsified statement at the trial held on 13 December 2017. The witness also claimed that the Prosecutor from Sarajevo went to Sanski Most and took money from people in exchange for advice on how to testify. Milan Balaban, aka "Brezik", bragged that he had killed Džemal Alić in Ekići in self-defence. Allegedly, Džemal was walking towards him with a rifle, so he shot him for that reason. As the witness said, the accused Milenko Karlica could not have gathered people who would go with him somewhere, because he had neither the position nor the power. Also, the witness stated that during his testimony in Sarajevo, none of the defendants had mentioned Milenko Karlica. The witness also stated that he had heard a story that the people from Ekići were killed by men from Rudnica, and that Nikola Majkić had brought out all the valuable items from Džemal's house to his home, and that he also took 20,000 DM.⁹²

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HLC Findings

Unnecessary anonymisation of the indictment

On its website, the OWCP published an indictment filed against Milenko Karlica and Željko Novaković anonymised, so that instead of the names of the accused, it stated that they were A.A. and B.B.⁹³ Such anonymisation was completely unnecessary, because the information on the indictment, with the full names of the accused, was previously published. Before the OWCP issued the indictment, the

⁹² Transcript from the main hearing of 13 September 2023.

⁹³ Indictment OWCP KTO 7/21 dated 30 December 2021, available at: <https://www.tuzilastvorz.org.rs/en/cases/indictments/%D0%BA%D1%82%D0%BE-721>, accessed on 13 February 2024.



accused were in the media of BiH, where they were mentioned by name and surname.⁹⁴ Data on the accused were also published on the website of the Court of BiH.⁹⁵ By such anonymisation of publicly announced indictments, the OWCP makes the indictments extremely unclear⁹⁶, and the accused completely invisible to the general public, which is in total contradiction with both the 2016 National Strategy⁹⁷ and the Prosecutorial⁹⁸ Strategy for the Prosecution of War Crimes in Serbia.

94 "Crimes in Bosanski Novi: Joint Proceedings against Unavailable Novaković and Karlica, Detektor", available at: <https://detektor.ba/2021/03/02/zlocini-u-bosanskom-novom-spojenu-postupci-protiv-nedostupnih-optuzenih/>, accessed on 13 February 2024.

95 Case of the Court of BiH S1 1 K 032575 19 Kro Željko Novaković. Case of the Court of BiH S1 1K 020491 15 Kro *Milenko Karlica*.

96 On all OWCP indictments, the Respondents are designated as A.A. – available at: <https://www.tuzilastvorz.org.rs/en/cases/indictments>, accessed on 13 February 2024.

97 National Strategy for War Crimes Prosecution 2021-2026, available at: <https://www.mpravde.gov.rs/files/NATIONAL%20STRATEGY%20FOR%20WAR%20CRIMES%20PROSECUTION%201.pdf>, accessed on 16 January 2023.

98 Prosecutorial Strategy for War Crimes Prosecution 2018-2023, available at: <https://www.tuzilastvorz.org.rs/public/files/pages/2021-06/%D0%A2%D0%A3%D0%96%D0%98%D0%9B%D0%90%D0%A7%D0%9A%D0%90%20%D0%A1%D0%A2%D0%A0%D0%90%D0%A2%D0%95%D0%93%D0%98%D0%88%D0%90.pdf>, accessed on 13 February 2024.



II. The *Bratunac-Suha* Case⁹⁹

CASE FACTS	
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: war crime against the civilian population under Article 142 of the FRY CC	
<p>Case transferred from BiH</p> <p><i>This procedure is the result of cooperation between Serbia and BiH in the prosecution of war crimes, which was intensified after the OWCP and the Prosecutor's Office of BiH signed the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide in 2013. Namely, the confirmed indictment against the defendant was transferred by the Prosecutor's Office of Bosnia and Herzegovina, given that the defendant, who is a citizen of the Republic of Serbia and residing in Serbia, was not available to the authorities of BiH.</i></p>	
Trial Chamber	<p>Judge Vladimir Duruz (Chairperson)</p> <p>Judge Snežana Nikolić - Garotić</p> <p>Judge Vinka Beraha-Nikićević</p>
<p>Number of defendants: 1</p> <p>Defendant's rank: no rank</p> <p>Number of victims: 300</p> <p>Total number of witnesses heard: 7</p>	<p>Number of scheduled court days in the reporting period: 6</p> <p>Number of court days in the reporting period: 3</p> <p>Number of witnesses heard in the reporting period: 4</p> <p>Total number of experts witnesses heard: 2</p>
<p>Key developments in the reporting period:</p> <p>Main hearing</p>	

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⁹⁹ *Case Bratunac-Suha*, trial reports and case documentation available at: <http://www.hlc-rdc.org/Transkripti/bratunac-suha.html>, accessed on 5 March 2024.



Course of the proceedings

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, BiH), among them women and children, by ordering, during an attack on the village, Bosniak civilians out of their houses, participating in their displacement and threatening to kill individual civilians unless they found and brought out 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; the women, children and elderly people were then deported aboard buses to Kladanj, while men fit for military service were escorted to and detained at the "Vuk Karadžić" Primary School in Bratunac.¹⁰⁰

Defence of the accused

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 militarily fit 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 was now living in the USA, and the other in the vicinity of Tuzla. To his knowledge, members of the "White Eagles" and "Šešelji's men" were in Bratunac then, and had come there to plunder.¹⁰¹

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.¹⁰²

Witnesses in the proceedings

Witness for the prosecution Rodoljub Đukanović explained that, following multiparty elections, he was appointed president of the Bratunac Municipality Executive Board, and was also a member of the Crisis Staff. He remembers that on 10 May 1992, as he was passing through the town together with Miroslav Deronjić, president of the Crisis Staff, he saw over a hundred Muslim men lined up standing and facing a number of armed men. The men were armed with long-barrelled firearms, were in motley

100 Indictment OWCP KTO no. 6/2018 of 22 October 2018, available at: <https://www.tuzilastvorz.org.rs/en/cases/indictments/kto-618>, accessed on 5 March 2024.

101 *Ibid.*

102 Transcript from the main hearing of 21 February 2020.



garb and had come from other places - from Croatia, from the front, people said. People called them "volunteers", "Chetniks" and "White Eagles". They did not address one another by name but only by nickname, such as "Rambo", "Crnogorac" [the Montenegrin], "Makedonac" [the Macedonian] and similar. There was nothing the witness or other representatives of the civilian authorities could do about it - actually, they steered clear of them. In fact, the Serb civilians feared them as much as the Muslims did. He was sure that he had not seen a single Serb man from Bratunac among the armed men. With Deronjić, the witness went to the police station and reported the case to the station commander, Milutin Milošević. Milošević reacted by saying, in reference to the police, that "we will not and may not do these things". The witness remarked that prior to this particular instance, dead bodies had on occasion been found, and houses deserted and looted in Bratunac. Among the group of Muslims he saw near the playground, there were villagers from Suha, as well as from other villages. He did not know who was moving the Suha villagers out. He said he knew the accused, but did not know if he belonged to any armed formations during the war, nor, if so, which ones.¹⁰³

Witness for the prosecution Živko Radić stated that on 10 May 1992 he was a civilian, and was sitting in a cafe from which he could see about 407 Muslim men, citizens of Bratunac, being deported. It was hard for him to watch this, and so he went to the Municipal Hall, where he found Miroslav Deronjić, Rodoljub Đukanović and Mile aka "Pop", and told them that he could not bear to watch people being expelled and for them to do something to stop it. He also told them that he was positive that Serbia and President Milošević knew nothing about this, and that unless it was stopped, he would go to Belgrade the following day. Within half an hour buses and trucks had pulled up and all the people were transferred to Visoko, as he later heard. Prior to their expulsion, they had been held in the gym of the "Vuk Karadžić" Primary School. Volunteers from Serbia were in Bratunac at the time and they ruled the roost. He did not know who carried out the cleansing of the village of Suha, but he did know that "all kinds of things happened" during these actions.¹⁰⁴

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Protected witness M1 stated that at the time of the critical event he lived in the village of Suha near Bratunac, and that between 10 a.m. and 2 p.m. on 10 May 1992, civilians were being expelled. Driving them out were members of the Bratunac Territorial Defence, among whom was the accused, whom he knew well. Allegedly they were taking them away in order to save them, because some military units were torching the neighbouring villages.

The witness set out from his home, because other people were doing so and he was afraid to stay – in fact, they were forced out. Indeed, they saw armed men telling them to start moving and get going, and they did so, because they were scared, although nobody held him at gunpoint then. He saw the accused standing in the centre of the village at the junction, as he addressed the villagers moving in that direction, with the words: "We are going down there". On that occasion, the accused wore a drab olive uniform, and carried a Motorola and a pistol, on the basis of which the witnesses concluded that he held some commanding post. He saw several other soldiers near the accused, and recognised one

¹⁰³ Transcript from the main hearing of 27 September 2021.

¹⁰⁴ *Ibid.*



of them as Perica, aka "Crnogorac". A large number of Suha villagers left their homes and proceeded in a group all the way to the stadium, where some unfamiliar soldiers awaited them and robbed them of all their money and valuables.¹⁰⁵

Course of the proceedings in 2023

In the reporting period, six court days were scheduled, of which three were held; a total of four witnesses were heard. Three times the trials were not adjourned because the invited witnesses did not appear before the court.

Before the outbreak of armed conflicts in the territory of BiH, the witness for the prosecution, Sreten Vuksić, was a member of the police, and when the Serbian Ministry of the Interior was formed, he worked on defence preparation and material resources. In the critical period – on a Saturday or Sunday, he believes, since he was at home and not at work -, he saw, at a distance of about 70 meters, a group of several dozen people. He noticed that they were civilians, who were later "dispatched" from that place. At that time, owing to his work, he was connected with the police in Bratunac and he did not want to know anything else. He knows that one day in May 1992 there was a "cleansing". People, Muslims, were detained for signing some kind of loyalty document, and the arrest was carried out by certain military formations. In the area of the municipality of Bratunac, and also in the area of Suha, there were about 60% Muslims and about 40% Serbs. After that cleansing, he did not meet the Muslim population.

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In Bratunac, in the premises of the "Vuk Karadžić" Primary School, there was a centre to which Muslims were brought. They were also in the school playground, from where they were further transported somewhere. He heard from his neighbour Hrusto that there were Muslims from Suha at the school. Since the witness's house is about 200 meters away from the school as the crow flies, he heard "some sounds" from the school. He heard that people who were imprisoned at the school were being forced to sing "some songs". The witness's cousin Milutin was also imprisoned at the school, and later told him that he, as well as others imprisoned there, had been beaten. He knew the defendant well, as well as his entire family. He heard that the defendant was a commander of a detachment from Selište, but he did not see him the day that he saw the group of people in Suha who were later taken somewhere else.¹⁰⁶

The prosecution witness Džemal Bećirović stated that he did not know the accused, and that he had no immediate knowledge of the events that were the subject of the indictment. Before the beginning of the armed conflicts, he worked in Bratunac as a secretary at the Secretariat for National Defence, but in mid-April 1992 he left Bratunac and went home to Konjević Polje. He heard all about the events in Bratunac and Suha from Mehmed Mahmutović, who had fled from the Rakovac local community, and stayed with the witness for several months at his house. He told him that in the period from 9 to 13 May 1992, Serbian armed formations expelled the Muslim civilian population from the area of the

¹⁰⁵ Transcript from the main hearing of 30 August 2022.

¹⁰⁶ Transcript from the main hearing of 28 March 2023.



municipality of Bratunac. The women and children were sent to Kladanj and Tuzla, while the men were taken first to Bratunac and then to Pale, where they were exchanged for Serbs from the vicinity of Visoko. He explained that according to the 1991 census, there were about 33,000 inhabitants in the area of the municipality of Bratunac, 64% of whom were Muslims. At the end of May 1992, there were almost no Muslims in the area. The vast majority of them had been expelled, and the few who remained by hiding in the vicinity of their houses were later killed. He heard from Mehmed that expulsions of the Muslim population began on 9 May from Glogova, and on 10 May 1992 from Suha, and that he had managed to escape and reach Konjević Polje by crossing Mount Glogova.¹⁰⁷

Two witnesses who requested protection measures were interviewed via a videoconference link with the Court of BiH, so the public was excluded during their questioning.¹⁰⁸

HLC Findings

Excessive and unnecessary anonymisation of the indictment

The OWCP indictment in this case, which is publicly accessible on the OWCP homepage under "Indictments"¹⁰⁹, has been anonymised by publishing only its operative part, with data on the names of the accused and the victims redacted. This is not in accordance with the OWCP Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes.¹¹⁰ 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".¹¹¹ Instead of publishing the indictment as a whole, only its operative part was published, so it was not possible to determine in any way on which 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, the address, date and place of birth"¹¹²; 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".¹¹³ 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

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107 Transcript from the main hearing of 11 September 2023.

108 Transcript from the main hearing of 13 November 2023.

109 Indictment OWCP KTO no. 6/2018 of 22 October 2018, available at: <https://www.tuzilastvorz.org.rs/en/cases/indictments/kto-618>, accessed on 5 March 2023.

110 Rulebook on the Anonymization of Personal Data in War Crimes Prosecution Indictments of 20 March 2019, available at: https://www.tuzilastvorz.org.rs/public/documents/2021-04/%D0%9A%D0%A2%D0%9E_2_20_%D0%90%D0%BD%D0%BE%D0%BD%D0%B8%D0%BC%D0%B8%D0%B7%D0%BE%D0%B2%D0%B0%D0%BD%D0%BE.pdf, accessed on 5 March 2024.

111 *Ibid*, Article 1, paragraph 2.

112 *Ibid*, Article 5, paragraph 1

113 *Ibid*, Article 5, paragraph 2.



interest, which is public disclosure of the identity of a person who stands accused of a war crime. What is more, data on the first and last names of the accused had been published in the BiH media several years before the OWCP brought an indictment against him¹¹⁴, as well as on the website of the BiH Court¹¹⁵, so there was no need whatsoever for the anonymisation.

Failure of witnesses to appear

During 2023, the trend of witnesses not turning up at trials the prosecution. The poor response of the witnesses in the previous years was largely attributable to the continued. In fact, in 2020 and 2021, only one court day was held, and the main hearings were postponed four times owing to the absence of witnesses; in 2022, the trial was postponed four times, also owing to the absence of witnesses, and in 2023 three times. This delayed the proceedings, since over a period of four years the court had managed to examine only seven witnesses for for the prosecution. The poor response of witnesses in the previous years was largely attributable to the Covid-19 pandemic, but has also been due to the fact that thirty years have elapsed since the critical event, and both witnesses and injured parties are now of advanced age and deteriorating health and consequently increasingly reluctant to testify.

114 "Indictment against Jovan Novaković", *BN*, available at: <https://www.rtvbn.com/339062/Optuznica-protiv-Jovana-Novakovica>, accessed on 5 March 2024.

115 Court of Bosnia and Herzegovina, Case S1 1 K 018607 15 Kro Jovan Novaković, available at: <https://sudbih.gov.ba/Court/Case/976>, accessed on 5 March 2024.



III. The *Bratunac II* Case¹¹⁶

CASE FACTS	
Current stage of the proceedings: first-instance proceedings	
Date of indictment: 18 September 2020	
Trial commencement date: 29 January 2021	
Prosecutor: Ljubica Veselinović	
Defendant: Novak Stjepanović	
Criminal offence: war crime against the civilian population under Article 142 of the FRY CC	
<p>Case transferred from BiH</p> <p><i>This procedure is the result of cooperation between Serbia and BiH in the prosecution of war crimes, which was intensified after the OWCP and the Prosecutor's Office of BiH signed the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide in 2013. Namely, both confirmed indictments against the defendant were transferred by the Prosecutor's Office of Bosnia and Herzegovina, given that the defendant, who is a citizen of the Republic of Serbia and residing in Serbia, was not available to the authorities of BiH.</i></p>	
Trial Chamber	<p>Judge Bojan Mišić (Chairperson)</p> <p>Judge Mirjana Ilić</p> <p>Judge Zorana Trajković</p>
<p>Number of defendants: 1</p> <p>Defendant's rank: no rank</p> <p>Number of victims: 15</p> <p>Total number of witnesses heard: 11</p>	<p>Number of scheduled court days in the reporting period: 7</p> <p>Number of court days in the reporting period: 2</p> <p>Number of witnesses heard in the reporting period: 2</p> <p>Total number of experts witnesses heard: 0</p>
<p>Key developments in the reporting period:</p> <p>Main hearing</p>	

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¹¹⁶ *Case Bratunac II*, trial reports and case documentation available at: <http://www.hlc-rdc.org/Transkripti/bratunacII.html>, accessed on 25 February 2024.



Course of the proceedings

Indictment

The accused, Novak Stjepanović, at the time a member of the VRS /Army of Republika Srpska/ Bratunac unit – Military Post 7042, is charged with having raped on an unspecified date at the beginning of June 1992, in an abandoned house in Bratunac, a Bosniak women who had been brought to that house by armed soldiers unknown to her from the Sase Mine facilities in Sase, where she had been detained together with members of her family and other Bosniak civilians.¹¹⁷

Defence of the accused

The accused denied having committed the criminal offence he is charged with. He stated that it was true that during the armed conflicts in BiH he was a VRS member and that he was in the village of Sase, as he comes from Sase, but that he did not rape the injured party.¹¹⁸

Witnesses in the proceedings

Witness Nurfiya Omić stated that she knew the accused by his nickname "Krke". At the time of the critical event, she was 17 years of age. She said that it was true that the accused had taken away three girls, Edina, Raza and Ramiza from the administration building of the Sase Mine where Bosniak civilians were detained. The accused was in the company of some other fighters on that occasion, and he had said they would be taking them to Bratunac, allegedly to do some cleaning and tidying up there. When they were returned on the following day, one of the girls said that she had been raped, but the witness was not sure whether she had said that to her or to her sister Nurvina. She requested the Trial Chamber not to call her again to testify, but to call her sister, who "knows all about it better".¹¹⁹

Witness Milija Perić stated that he did not remember giving a statement before the competent authorities of BiH on 9 February 2017. After the Chairperson showed him the statement, particularly the section in which he had said that the accused, a.k.a. "Krke", had been close to Saša Cvetković, he confirmed that he had personally signed that statement. He did not see the accused during the war, because as a member of the VRS he was at the Sase Mine for only a short while, and had spent the rest of the time on the front line. He could not recall whether, while he was there, civilians were detained in the Sase Mine, but he did remember whether his neighbour Gordana Omić and her two children were brought there.¹²⁰

Witness Petko Rankić had given statements before the competent authorities of BiH in 2014, 2016 and 2017. In his statement given in 2016, he had said that the accused had at his disposal a house in

117 Indictment OWCP KTO no. 4/20 of 18 September 2020, available at: <https://www.tuzilastvorz.org.rs/en/cases/indictments/%D0%BA%D1%82%D0%BE-420>, accessed on 25 February 2024.

118 Transcript from the main hearing of 29 January 2021.

119 Transcript from the main hearing of 13 September 2021.

120 *Ibid.*



Bratunac to which he brought young females who were detained in the administration building of the Sase Mine. In his testimony in the instant case he denied those allegations, contending that he knew the accused because they were neighbours, and that during the war, i.e. until the end of 1992, they had been in the same unit. He confirmed that he had given and signed a statement in 2016, but said that while he was giving it there "had been pressures", and that he could not say "what it was that they wrote down there", because he had not been given the statement to read before signing it. The accused had not taken women out of the administration building of the mine, but volunteers had.¹²¹

Witness Dragan Đoković stated that there had been "inhumane treatment" associated with the Sase Mine administration building. Women and girls would be taken from there to some houses in Bratunac. The accused had seized the house of Jusa Efendić in Bratunac, and young women and girls were taken to that house and raped. He could not say who exactly he had heard that story from, but it was told him by Serb women.¹²²

Witness Nenad Milovanović stated that he knew the accused, and that he knew that he went to Bratunac during the war and that he took possession of a house there. He had heard that women and girls were brought to that house.¹²³

Witness for the prosecution Begajeta Mujić stated that she knew the accused Novak Stjepanović from before, as they had been neighbours and on good terms. On 27 or 28 May 1992, together with other Bosniak civilians, the witness was locked up in the administration building of the Sase Mine. The twin sisters Raza and Ramiza Dugonjić were also detained there. Todorović and Saša Cvetković took them out, telling the other detainees that they were being taken to Bratunac to do some house-cleaning. The witness could not recall whether the accused had been among those who had taken Raza and Ramiza out. When they came back, they said nothing; but everybody knew what had happened, because Ramiza was in tears. The witness's brother-in-law, who was sent to negotiate, i.e. to convey a message to the Bosniak side, was also taken out and threatened that his daughter, Edina Karić, who was also among the detained, would be shot dead if he did not return. He did not come back, and Edina and the witness said their goodbyes and cried all night long, as their captors had said that Edina would be executed. The next morning, they heard a commotion outside the door, which the guard then opened; among the soldiers, the witness saw Miroљjub Todorović and the accused, who was standing by the door. The soldiers took her relative Edina out, along with Šemso Alić. Soon afterwards, she heard six shots and thought that they had killed Edina. When later, following a prisoner exchange, she and Edina met in Tuzla, Edina told her that, after she was taken out of the hall in Sase, she was taken to Bratunac and repeatedly raped. But she did not tell her who had raped her or which girls had been with her then.¹²⁴

121 *Ibid.*

122 *Ibid.*

123 *Ibid.*

124 Transcript from the main hearing of 28 February 2022.



Prosecution witness Fatima Demirović stated that she had no first-hand knowledge of the critical event, but that she was told about it all by her sister Raza after the war. She explained that in April 1992 she was already married, like her sister Fata, and that their parents, brother Muhamed and sisters Raza and Ramiza, who were young girls at the time, all lived together in an apartment. One day, Saša Cvetković came to their door accompanied by several Serb soldiers, and told her father when he opened the door that they were looking for Muhamed. When Muhamed heard that they were looking for him, he managed to escape from the flat by jumping out of the window and fleeing towards the forest. Saša and the soldiers led them all out of the flat and took them to the Sase Mine, to a room in the administrative building of the mine. Many civilians were detained there. After several days, some soldiers took a number of the civilians away aboard a truck, including the witness's parents, allegedly for an exchange. All trace has been lost of them since. Among the soldiers who took them away, Raza recognised her neighbour Predrag. A soldier entered the room in which the witness's sisters Raza and Ramiza were detained, and asked for volunteers to go to Bratunac to tidy up and clean some houses. When none of the girls volunteered, he selected the two of them and another girl by the name of Edina, and took them away. They were taken to a house in Bratunac in which there were already other girls. Accompanied by several soldiers, the accused arrived there too, and ordered her sister Raza to go upstairs, took her to a room, ordered her to undress and had his way with her. As a matter of fact, the witness knew the accused by sight from before the war, as he used to come to their neighbourhood and keep company with some fellows there.¹²⁵

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Defence witnesses Rade and Spasoje Milovanović stated that they had known the accused from childhood, and that they had been neighbours in Sase. During the war in BiH, the witnesses went to Bratunac to visit family members. Once, when they were there in Bratunac, they saw the accused trying to protect two girls from Zvonko Đokanović, who was being rude to them. A conflict ensued between the accused and Zvonko, and the accused drew his pistol, which accidentally discharged, killing Zvonko. They seemed to remember that later they heard from someone that one of those girls was a relative of the accused. They had never heard that the accused had ever assaulted a woman, only that he had defended them, for he was a very correct and decent man.¹²⁶

Course of the proceedings in 2023

During the reporting period, **seven** court days were scheduled, of which **two** were held, during which two witnesses for the prosecution were examined. Once the main trial was cancelled, once the accused did not appear, whilst twice the main trial could not be held because the accused's defence attorney did not appear before the court. Given that the accused cancelled the power of attorney of the chosen defence attorney, the new defence attorney, who was appointed ex officio by the court, requested the postponement of one of the hearings so that he could examine the case.

¹²⁵ Transcript from the main hearing of 14 April 2022.

¹²⁶ Transcript from the main hearing of 13 September 2022.



During the interrogation of the prosecution witness Edina Karić, the public was excluded, whilst the prosecution witness Mustafa Ibišević had no immediate knowledge of the critical event.¹²⁷

In May 2023, there was a change in the Chairperson, which caused the main hearing to start again from the beginning.¹²⁸

On 23 November 2022, a new indictment was filed against the accused, charging him that on 20 May 1992, in the village of Borkovac, in the municipality of Bratunac, together with four other members of the VRS, he had participated in the search and arrest of a group of 14 Bosniak civilians who were hiding in an abandoned quarry near the village. They took the captured civilians to a house, where a civilian was killed by a rifle shot. The accused punched and kicked civilians on all parts of the body, took their money and valuables, and cursed them on ethnic and religious grounds. After the abuse, a group of civilians was taken to a nearby stream, where they were shot at, and on that occasion seven civilians were killed.¹²⁹ The proceedings on this indictment began as a separate proceeding before the same panel, so the POWCP proposed that, for reasons of economy, the proceedings should be combined. Consequently, on 26 June 2023, the court issued a decision to merge the proceedings.¹³⁰

Thus, a single procedure was continued against the accused Novak Stjepanović on both indictments.¹³¹

HLC Findings

Small number of court days

The trial in this case began on 29 January 2021, but only three hearings were held and as many as four postponed in that year, whilst in 2022, of the seven scheduled court days, only three were actually held. During 2023, out of the seven scheduled, only two were held.

Unnecessary anonymisation of the indictment

The OWCP posted on its website the indictment it had raised against Novak Stjepanović, anonymised in such a way as to indicate that instead of the accused, in question was the person A.A.¹³² Such anonymisation was completely unnecessary, as data on the indictment, including the full name of the defendant, had already been posted on the website of the BIH Court.¹³³ Also, prior to the start of the

127 Transcript from the main hearing of 26 January 2023.

128 At the end of April 2023, the mandate of the Judge of the Appellate Court in Novi Sad, Dejan Terzić, in the War Crimes Department, expired, and so instead of him, the president of the panel became Judge Bojan Mišić.

129 Indictment OWCP, KTO no. 9/22 of 23 November 2022, available at: <https://www.tuzilastvorz.org.rs/en/cases/indictments/kto-922>, accessed on 25 February 2024

130 Transcript from the main hearing of 26 June 2023.

131 *Ibid.*

132 Indictment OWCP KTO no. 4/20 of 18 September 2020, available at: <https://www.tuzilastvorz.org.rs/en/cases/indictments/%D0%BA%D1%82%D0%BE-420>, and Indictment no. 9/22 of 23 November 2022, available at: <https://www.tuzilastvorz.org.rs/en/cases/indictments/kto-922>, accessed 25 February 2024.

133 Case of the Court of Bosnia and Herzegovina No. S1 1 K 026153 17 Kro - Stjepanović Novak.



trial in the Republic of Serbia, the case had received media coverage in Bosnia and Herzegovina, with the accused in the two indictments referred to by his full name.¹³⁴ By anonymising publicly posted indictments in this way, the OWCP makes them totally unclear¹³⁵, and the accused totally invisible to the general public, which is entirely contrary to the 2016 and 2021 National Strategies¹³⁶, as well as to the Prosecutorial Strategy¹³⁷ for the Prosecution of War Crimes in Serbia. Namely, the mentioned strategies envisage the promotion of society's heightened overall awareness of the issues of war crimes trials, primarily through facilitated access to information about war crime proceedings, and in pursuit of the ultimate aim – the improved transparency of war crime trials.

134 "Bosnia Asks Serbia to Prosecute Wartime Rape, Murder Suspect", *Detektor*, 22 October 2020, available at: <https://detektor.ba/2020/10/22/od-srbije-zatrzeno-da-preuzme-krivicno-gonjenje-optuzenog-za-zlocine-u-bratuncu/?lang=en>, accessed on 25 February 2024.

135 On all OWCP indictments, the Respondents are designated A.A, available at: <https://www.tuzilastvorz.org.rs/en/cases/indictments>, accessed on 25 February 2024.

136 National Strategy for War Crimes Prosecution 2021-2026, available at: <https://www.mpravde.gov.rs/files/NATIONAL%20STRATEGY%20FOR%20WAR%20CRIMES%20PROSECUTION%201.pdf>, accessed on 25 February 2024.

137 Prosecutorial Strategy for the Investigation and Prosecution of War Crimes in the Republic of Serbia for the period 2018-2023 available at: <https://www.tuzilastvorz.org.rs/public/files/pages/2021-06/%D0%A2%D0%A3%D0%96%D0%98%D0%9B%D0%90%D0%A7%D0%9A%D0%90%20%D0%A1%D0%A2%D0%A0%D0%90%D0%A2%D0%95%D0%93%D0%98%D0%88%D0%90.pdf>, accessed on 25 February 2024.



IV. The *Brod na Drini* Case¹³⁸

CASE FACTS	
Current stage of the proceedings: repeated first-instance proceedings	
Date of indictment: 2 February 2021	
Trial commencement date: 6 June 2021	
Prosecutor: Ognjen Đukić	
Defendant: Danko Vladičić	
Criminal offence: war crime against the civilian population under Article 142 of the FRY CC	
<p>Case transferred from BiH</p> <p><i>This proceeding is the result of cooperation between Serbia and BiH in the prosecution of war crimes, which was intensified after the OWCP and the Prosecutor's Office of BiH signed the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide in 2013. Namely, the confirmed indictment against the defendant was transferred by the Prosecutor's Office of Bosnia and Herzegovina, given that the defendant, who is a citizen of the Republic of Serbia and residing in Serbia, was not available to the authorities of BiH.</i></p>	
Trial Chamber	<p>Judge Mirjana Ilić (Chairperson)</p> <p>Judge Zorana Trajković</p> <p>Judge Bojan Mišić</p>
<p>Number of defendants: 1</p> <p>Defendant's rank: no rank</p> <p>Number of victims: 2</p> <p>Total number of witnesses heard: 12</p>	<p>Number of scheduled court days in the reporting period: 3</p> <p>Number of court days in the reporting period: 1</p> <p>Number of witnesses heard in the reporting period: 0</p> <p>Total number of experts witnesses heard: 0</p>
<p>Key developments in the reporting period:</p> <p>First-instance judgement abolished</p>	

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138 *The Brod na Drini Case*, trial reports and case documentation are available at: <http://www.hlc-rdc.org/Transkripti/brodnadrini.html>, accessed on 14 December 2023.



Course of the proceedings

Indictment

The accused Danko Vladičić is charged with entering the flat of the married couple Ramo and Tima Vranjača in Brod na Drini (Foča municipality, BiH) on the night of 18 August 1992, armed with an army rifle, and his face painted black, and shooting them dead with two rifle shots.¹³⁹

Defence of the accused

Presenting his defence, the accused Danko Vladičić denied having committed the criminal offence he is charged with, claiming that he was in Belgrade in that period. He stated that he had moved from Brod na Drini to Belgrade in 1986, and that, following the outbreak of armed conflicts in BiH, he was in Brod from April to June 1992, trying to persuade his parents to come to Belgrade. During the war he had not belonged to any armed formations. After leaving BiH in June 1992, he did not go back there until 1995. He knew the Vranjača married couple – they were former neighbours of his who lived in an adjacent building, and with whose son Šefik he grew up. Brod na Drini is a suburban blue-collar neighbourhood of Foča, which at that time had a mixed ethnic composition and where everyone knew everyone else. The buildings in which they lived were actually sheds containing four flats each. The Vranjačas's next door neighbour was Miodrag Đajić, called "Pušo". He knew that he was an alcoholic and that he was armed. His parents later told him that "Pušo" had committed suicide. During his stay in Brod in 1992, he would see Šefik Vranjača now and then. There were many paramilitaries in the town, some of them from Montenegro, and the "Guard" [volunteer unit] was also there. They caused problems for the Bosniak population. Tensions ran high, and many Bosniaks had already left the place. He learned of the murder of the Vranjača couple in 1995 in Belgrade. He knew the protected witness; he had never had any conflicts with her and did not know why she was incriminating him.¹⁴⁰

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Witnesses in the proceedings

Witness and injured party, the daughter of Ramo and Tima Vranjača, stated that she knew the accused from the time when she lived in Brod na Drini, which she left in 1983 to relocate to Montenegro. Before the war he was an aggressive person whom everyone feared. He was in the habit of picking a fight, and the whole neighbourhood knew that he was a petty thief and swindler, and "a substance (i.e. drugs)" user. People were saying that he had killed her parents, and that their neighbour "Pušo" had also been involved, and had later taken his own life because he could not bear these facts. About a month before her parents were killed, the witness received indirect word that she had better get them out of where they were, because they were no longer safe. This information had been relayed to her by her next-door neighbour, Mijo Đajić. Her parents would not go, because her father was ill, and they were the only Muslims to remain in the village. Previously, in April 1992, neighbours had helped her

¹³⁹ KTO Indictment 1/21 of 2 February 2021, available at: <https://www.tuzilastvorz.org.rs/public/indictments/2021-08/%D0%9A%D0%A2%D0%9E%201%201%20engleski.pdf>, accessed on 14 December 2023.

¹⁴⁰ Transcript from the main hearing of 3 June 2021.



brother Šefik leave the place and come and stay with her in Risan. Being an able-bodied Muslim man, he feared for his life, because there were members of different paramilitary units in the village. No one dared go near the witness's parents because people were afraid. This she was told by neighbours whose names she is unwilling to disclose in front of the accused for the sake of their safety. She heard about the death of her parents from a woman friend, who came to tell her the news in person. To this day, none of the neighbours have been willing to tell her the truth about the killing of her parents for fear of the accused.¹⁴¹

Witness for the prosecution Aleksandar Vasiljević did not have first-hand knowledge of the critical event, but he was aware that there was talk that the accused had killed the married couple Vranjača.¹⁴²

Protected witness S1 was also heard. His examination was barred to the public.¹⁴³

Witnesses Munever Kukara, Predrag Đajić, Milutin Pantelić and Zorica Dubovina had no immediate knowledge of the critical event. They heard from the stories that the spouses of Ramo and Tima Vranjača were killed in their apartment, but did not know who was the perpetrator of that murder.¹⁴⁴

Defence witnesses Nebojša Karalić and Miroslav Živković stated that they knew the accused as a neighbour from Belgrade. During the critical period, they socialised intensively - they were selling fuel together.¹⁴⁵

Defence witness Dobrivoje Stojković stated that he had known the accused since the late 1980s as a neighbour in Dorćol, Belgrade. During 1991, 1992 and 1993, he sold gasoline and cigarettes, and it is known to him that the defendant did the same – in fact, they saw each other on a daily basis, and were later they engaged in house-painting together.¹⁴⁶ Defence witnesses Zoran Tomić and Nedeljko Milović also stated that they often saw the defendant in Belgrade during the critical period.¹⁴⁷

Defence witness Živadin Popović stated that he worked in the Stari Grad Police Station in the Department for Suppression of General Crime during the critical period, and that he was an agent in the field. During 1991 and 1992, he had noticed the accused in Dorćol – he was engaged in the resale of gasoline on the street, and was arrested on several occasions. About a year ago, the witness had met Nebojša Karalić, who asked him if he wanted to testify, since he believed that the accused was not guilty and that "[we] should help him". He was aware that Karalić and the accused socialised at a critical period – he thinks that they were selling fuel together at that time.¹⁴⁸

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141 *Ibid.*

142 Transcript from the main hearing of 8 October 2021.

143 *Ibid.*

144 Transcript from the main hearing of 10 March 2022.

145 Transcript from the main hearing of 4 April 2022.

146 Transcript from the main hearing of 20 May 2022.

147 Transcript from the main hearing of 20 May 2022.

148 Transcript from the main hearing of 12 July 2022.



First-instance judgment

On 16 November 2022, the Higher Court in Belgrade¹⁴⁹ rendered a judgment finding the accused Danko Vladičić guilty of a war crime against the civilian population and sentenced him to a term of imprisonment of nine years.¹⁵⁰ The Trial Chamber established that, during a non-international armed conflict in BiH between organised armed groups of the forces of the Army of Republika Srpska on one side and the BiH Army and the Croatian Defence Council on the other side, which lasted from the first half of April 1992 to the end of November 1995 at the latest, the accused, on the night of 18 August 1992, armed with an army rifle and his face painted black, entered the flat of the married couple Ramo and Tima Vranjača in Brod na Drini (Foča municipality, BiH) and shot them dead with two rifle shots.

That a non-international armed conflict had been in existence in BiH at the time of the critical event, that the injured parties had been Bosniak civilians, that the defendant was of Serb ethnicity and that he had not belonged to any armed formations remained indisputable during the proceedings. The court based its decision on the statements of witnesses and witnesses/injured parties. Thus, protected witness S1 described in detail how, at the critical time, she was living in Brod na Drini together with her mother, near the shed in which the married couple Vranjača lived; on 18 August 1992, at night, she had heard two shots; shortly afterwards, the accused Danko Vladičić came to their door armed with a rifle and said that he had killed the Vranjača couple so as to avenge his relative Dragomir Krnojelac, aka “Krnjo”, who had been killed at the frontline as a member of the VRS on 8 August 1992. She also stated that at a place called “Radio Bagrem”, where the locals used to gather, the accused had bragged that he had killed the married couple Vranjača. Witness Koviljka Kosović, a Brod na Drini inhabitant, also confirmed that there had been talk around the village that the Vranjača couple had been killed by the accused.

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Witnesses Zorica Dubovina and Milutin Đajić, locals, also stated that no other names, except for the accused, had been mentioned in connection with the murder of the Vranjača couple. Witness Zekira Vranjača, the daughter of the murdered couple, stated that her brother had informed her that their parents had been killed and that people said that the accused had done it.

The Court did not accept the defendant’s allegations that members of paramilitary units had also been present in Brod na Drini at the critical time, assessing them as being calculated at avoiding criminal responsibility.

Witness Matija Osković stated that her neighbour Đajić, aka “Pušo”, had told her that the accused had threatened to kill her because she was a Croat, and that, together with another neighbour, he had seen her off to Foča to save her. This fact, in the finding of the Court, refuted the defendant’s claim that he was of a pro-Yugoslav orientation and that he did not make any distinctions between the different ethnicities. The Court did not lend credence to the defence witnesses who claimed that at the time of the critical event the accused was selling smuggled gasoline in Belgrade, because none of them could

149 Composition of the Judicial Council: Judge Mirjana Ilić, President of the Chamber, Judges Zorana Trajković and Dejan Terzić, members of the Chamber.

150 Judgment of the High Court in Belgrade K. Po2 1/21 of 16 November 2022.



confirm that they saw him in Belgrade on 16, 17 and 18 August. None of them had any knowledge about the personal life circumstances of the accused, while witness Živadin Popović had stated that he had met witness Nebojša Karalić who had asked him if he wanted to testify, as he believed that the accused was not guilty, and that "[we] should help him". The Court assessed the statement of the defence witnesses as unconvincing and given in order to help the accused. The Court determined that the murdered persons, the Vranjača married couple, had been the only Bosniak civilians to remain in Brod na Drini, that they were old, that Ramo was sick and non-ambulatory and that they believed that nobody would hurt them.

Even though the accused had not belonged to any armed formation in the conflict, the Court established that he could have perpetrated the criminal offence of a war crime against the civilian population under Article 142 of the FRY Criminal Code, because perpetration of the same did not require membership of any armed unit, since a nexus between the armed conflict and the committed crime will suffice. The existence of a nexus between the crime and the armed conflict was found by the Court in the fact that the defendant's motive for killing the married couple Vranjača had been to avenge the death of a relative of his who had died in a clash with BiH Army soldiers, and that the victims were the only Bosniaks who had remained in the village. It also determined that the accused had acted with intent.

In weighing the sentences, the Court assessed as mitigating circumstances in favour of the accused the lapse of time since the commission of the offence and the absence of a criminal record, and as aggravating circumstances the gravity of the committed crime and the fact that the killed had been defenceless civilians.¹⁵¹

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The HLC has not been able to conduct a more detailed analysis of the first-instance judgment, because the Higher Court in Belgrade refuses to submit judgments and decisions from proceedings that have not been finalised.

Course of the proceedings in 2023

Second instance decision

On 2 June 2023, the Court of Appeal in Belgrade issued a decision accepting the appeal of all the defendant's defence attorneys, quashed the first-instance judgment and returned the case to the first-instance court for retrial. The Court of Appeal found that during the first-instance proceedings, the factual situation was not fully established, which led to significant violations of the provisions of the criminal procedure, which was reflected in the lack of reasons on the facts that are the subject of proof.¹⁵²

¹⁵¹ Transcript of the publication of the judgment of 16 November 2022.

¹⁵² Decision of the Court of Appeal in Belgrade Kž1 Po2 2/23 of 2 June 2023.



A more detailed analysis of the Court of Appeal decision by the HLC was not possible, because the Court refuses to submit judgments and decisions from proceedings that have not been finalised.

Retrial

The repeated procedure began on 13 September 2023, before the amended trial chamber.¹⁵³ By the end of the reporting period, three court days were scheduled, of which only one was held, while the trials were postponed twice – once, because the accused did not feel well and could not follow the course of the proceedings¹⁵⁴, and the other time because the witnesses summoned did not appear before the court.¹⁵⁵

The accused fully stood by the previously presented defence.

HLC Findings

Mitigating circumstances

Even though the first-instance judgment in this case has been quashed by a decision of the Court of Appeal, the HLC considers it of overriding importance to draw attention to the misapplication of the law in the first-instance judgment. In weighing the sentence, the Court assessed the lapse of time since the commission of the crime as a mitigating circumstance in favour of the accused. The HLC maintains that the lapse of time should not be considered as a mitigating circumstance in weighing sentences for this type of criminal offence. That the lapse of time is not a circumstance to be considered in weighing penalties 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 circumstance¹⁵⁶ – as well as to contemporary jurisprudence.¹⁵⁷

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Lack of transparency

By the decision of the Court of Appeal in Belgrade of 2 June 2023, the first-instance judgment was quashed and the case was returned to the first-instance court for retrial. However, the public is denied access to this decision of the Court of Appeal, because the court refuses to submit judgments and decisions from proceedings that have not been finalised. This denies the public the opportunity to

153 Composition of the Judicial Council: Judge Mirjana Ilić, Chairperson, Judges Zorana Trajković and Bojan Mišić, members of the panel.

154 Transcript from the main hearing of 13 September 2023.

155 Transcript from the main hearing of 19 December 2023.

156 ICTY judgment *Dragan Nikolić* – para. 273.

157 BGH, 2 StR 538/01, Judgment of 21 February 2002 – The Federal Supreme Court of Germany, in one murder case, mentioned that the length of time from criminal conduct to conviction was a possible mitigating factor, but stressed that, given the gravity of the offence committed in 1943-44 during World War II by the accused, today 90 years old, these circumstances could not be taken into account.



fully monitor the course of the proceedings, and prevents transparent monitoring and analysis of trials by the professional public.



V. The *Ćuška/Qyshk* Case¹⁵⁸

CASE FACTS	
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, Siniša Mišić, Slaviša Kastratović, Boban Bogičević, Veljko Korićanin, Vladan Krstović, Lazar Pavlović, Milan Ivanović and Predrag Vuković	
Criminal offence: war crime against the civilian population under Article 142 of the FRY CC	
Trial Chamber	Judge Vladimir Duruz (Chairperson) Judge Vinka Beraha-Nikićević Judge Snežana Nikolić-Garotić
Number of defendants: 10 Defendant's rank: low and middle Number of victims: 141 Number of witnesses interviewed: 116	Number of scheduled court days in the reporting period: 8 Number of court days in the reporting period: 5 Number of witnesses heard in the reporting period: 4 Total number of experts witnesses heard: 2
Key developments in the reporting period: Main hearing	

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¹⁵⁸ *Case Ćuška/Qyshk*, trial reports and case documents available at: <http://www.hlc-rdc.org/Transkripti/cuska.html>, accessed on 6 February 2024.



Course of the proceedings

Indictment

The OWCP issued the first indictment for the crime in Čuška/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.¹⁵⁹

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 Čuška/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.¹⁶⁰

The OWCP issued indictments for the same crime against Zoran Obradović¹⁶¹, Milojko Nikolić¹⁶², Ranko Momić¹⁶³, Siniša Mišić¹⁶⁴ and Dejan Bulatović¹⁶⁵, 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 in the village of Čuška/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 expelled the civilians.¹⁶⁶

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

159 Indictment KTRZ 4/10 of 10 September 2010, available at: https://www.tuzilastvorz.org.rs/public/indictments/ktrz_4_10.pdf, accessed on 6 February 2024.

160 *Ibid.*

161 Indictment KTRZ 4/10 of 1 April 2011.

162 Indictment KTRZ 07/11 of 27 April 2011.

163 Indictment KTRZ 9/11 dated 31 May 2011, available at: https://www.tuzilastvorz.org.rs/public/indictments/ktrz_9_11.pdf, accessed on 6 February 2024.

164 Indictment KTRZ 19/11 of 7 November 2011.

165 Indictment KTO no. 5/2012 of 26 September 2018.

166 Indictment KTRZ 4/10 of 27 September 2012.



Popović, Slaviša Kastratović, Boban Bogičević, Radoslav Brnović, Vidoje Korićanin, Veljko Korićanin, Abdulah Sokić, Zoran Obradović, Miloško Nikolić, Ranko Momić, Siniša Mišić and Dejan Bulatović.¹⁶⁷

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 by 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 October¹⁶⁸, 16 October¹⁶⁹ and 5 December 2013¹⁷⁰), 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 Belgrade¹⁷¹ 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.¹⁷²

52 The court found the accused Toplica Miladinović, Commander of the 177th Peć VTO, guilty of having 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 Ćuška/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 Ćuška/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 their lives in the attack on the village of Zahać/Zahaq on 14 May 1999. The attacks on all these villages were attended by large-scale destruction and looting of property.

167 Amended single indictment KTRZ 4/10 of 17 December 2012.

168 Amended indictment KTRZ 4/10 of 2 October 2013.

169 Transcript from the main hearing of 16 October 2018.

170 Amended indictment KTRZ 4/10 of 5 December 2013.

171 Composition of the panel: Snežana Nikolić-Garotić, Chairperson, Judges Vinka Beraha-Nikićević and Rastko Popović, members of the panel.

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



Second-instance decision

On 26 February 2015, the Court of Appeal in Belgrade¹⁷³ 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.¹⁷⁴

Retrial

The retrial started before a new Chamber¹⁷⁵ 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 conducted 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 1999.¹⁷⁶

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; whilst, on the other hand, 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.¹⁷⁷

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.¹⁷⁸

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173 The composition of the panel: Judge Sonja Manojlović, Chairperson, Judges Nada Hadži-Perić, Vučko Mirčić, Bojana Paunović and Jasmina Vasović, members of the panel.

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

175 Composition of the panel: Judge Vladimir Duruz, Chairperson, Judges Vinka Beraha-Nikićević and Vera Vukotić, members of the panel.

176 Indictment KTO 8/13 of 7 April 2014, available at:

https://www.tuzilastvorz.org.rs/public/indictments/%D0%9A%D0%A2o_8_13.pdf, accessed on 6 February 2024.

177 Transcript from the main hearing of 23 November 2015.

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



The criminal proceedings in respect of the defendant Dejan Bulatović were severed on 25 January 2016, because he was deemed unfit to follow the proceedings on account of ill health.¹⁷⁹

During the evidentiary procedure, two defence witnesses for 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.¹⁸⁰ Witnesses who had already taken the stand earlier were also examined.¹⁸¹

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

New indictment

In July 2019, the OWCP issued an indictment also against Predrag Vuković¹⁸², a former member of the 177th Peć VTO, for the criminal offence of a war crime against the civilian population committed in the villages of Ljubenić/Lubeniq and Čuška/Qyshk.¹⁸³

He was 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 murder of civilian men, by shooting, together with other VTO members, at the group of men they had separated from the crowd, killing 42 and wounding 11 of them 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 Milojko Nikolić and Ranko Momić forced a group of 12 civilians into the house of Azem Gaši. They then opened fire on them from automatic weapons, killing 11 of them and wounding one, and setting the house with the dead bodies 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 there shot them dead with his firearm.

179 Transcript from the main hearing of 25 January 2016.

180 *Ibid.*

181 Transcript of the main hearing of 15 March 2019; Transcript of the main hearing of 17 May 2019; Transcript of the main hearing of 27 June 2019.

182 Predrag Vuković was also included as a suspect in the request for conducting the investigation of KTRZ 4/2010 of 13 March 2010, but he was on the run. He was arrested in 2018 in Montenegro and extradited to Serbia.

183 Indictment OWCP, KTO 3/19 of 3 July 2019.



At the main hearing held on 22 November 2019, the Chamber adopted a Decision on Joinder, consolidating the current proceedings with the proceedings being conducted against the accused Predrag Vuković.¹⁸⁴

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.¹⁸⁵

Witness for the prosecution Zoran Rašković, who had already taken the stand a number of times during these proceedings, testified only in relation to the accused Predrag Vuković. He stated that he knew that the same had the nickname "Madžo", and that he had come to the unit after the events in the village of Ljubenić. Vuković, together with the other members of the unit, had been at Čuška, in the group comprising Ranko Momić and Milojko Nikolić, aka "Šumadija" (the nickname evokes a region of southern Serbia). The three of them escorted a group of between 10 and 15 civilians into a house and shot them dead. After they had entered the house with the civilians, he heard bursts of fire and saw them coming out of the house. He explained that the accused Srećko Popović "killed for Serbia", and also that he would not let younger fighters kill, telling them: "Don't do it yourselves, lest you sully your souls". He also said that the accused Popović had not looted or touched women or killed children. In respect of the events in the village of Ljubenić, he had omitted to say before that General Balić had told "Mrtvi" (the Dead) that it had been a very good tactical move, because the banished Albanians passed through other Albanian villages, prompting others to move out of Kosovo too. The witness requested protective measures, at least for the duration of the proceedings, as he had received threats. The accused Ranko Momić (at large) had sent him a message that his testimony this day in court would be the last chance for him to retract all of his earlier statements, or else his whole family would be killed by him. He explained that as soon as the court had found his whereabouts, so did Momić, and so he assumed that there was an "insider" in the court. He was now scared, and had kept quite a few things to himself, because "wise men" had told him that the times were different now and to be very careful.¹⁸⁶

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Defence of the accused Predrag Vuković

The accused Predrag Vuković, who chose to remain silent in the earlier stage of the proceedings, presented his defence. He stated that he had not participated in a single armed conflict taking place in the territory of the former Yugoslavia. He had never been in the village of Ljubenić. Before the bombing, in late March 1999, he arrived in the village of Dolovo near Klina as a reserve forces policeman. After his stint in Dolovo, he returned to Peć in mid-May 1999 and reported to the Military Department, which dispatched him to the VTO, where he was issued with a standard olive drab uniform and an automatic rifle. There he found "Mrtvi" (Radoslav Minić), Boban Bogičević, Zoran Obradović and Ranko Momić. Ranko Momić and "Mrtvi" had Motorolas. The detachment's activities were helping the elderly. The first action was in the village of Čuška, from which his best friend Čeku

184 Transcript from the main hearing of 22 November 2019.

185 *Ibid.*

186 Transcript from the main hearing of 8 July 2022.



comes. He learned that they would be going on a mission the evening before, in a café, when someone from the group told him. On the day of the mission, someone picked him up in a car at his house and they drove to the headquarters. "Mrtvi" was in charge then, and it was he would have the last word. Several passenger vehicles with members of the unit drove to Čuška, and the accused rode in the last vehicle. There were already tractors in place in the village, with women and children aboard them. He entered a house where he found a girl in tears. He escorted her to the tractors. He heard shots around the village, but he could not see who was doing the shooting. When he got to the centre of the village, he saw men being separated from the women and children, but he did not see what happened with the men. He sat in the shade and remained sitting there with the women present for an hour or an hour and a half, and then went back to Peć; in other words, he did not go to the villages of Pavljan and Zahać. Zoran Obradović's allegations that he had killed a man were untrue. He was appalled at the harassment of the women and children in Čuška, and at their expulsion, and he knew that money was demanded from people, but could not recall who demanded the money and from whom. At Čuška, he saw Zoran Obradović, whom he knew from an earlier period, and who, he claimed, was "not sane" – he was with Zoran Rašković, and they were running in and out of the yard "like mongooses". He also saw Miloško Nikolić. He knew the accused Toplica Miladinović from before only by sight – in fact, he had seen him only once, when reporting to the Military Department.¹⁸⁷

Course of the proceedings in 2023

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During the reporting period, eight court days were scheduled, of which five were held, during which four witnesses and two experts were heard. Once the main hearing was rescheduled; and once it was postponed owing to the absence of one of the accused, and another time owing to the failure of the witnesses for the prosecution to appear before the court.

The criminal proceedings were suspended in relation to the accused Srećko Popović, who had died in the meantime.¹⁸⁸

Zoran Obradović testified. He was a former defendant who had entered into a witness agreement with the POWCP and had previously testified under the pseudonym A1; he gave up all protection measures except for the exclusion of the public when testifying.¹⁸⁹

Three witnesses for the defence of the accused Milan Ivanović were heard. His wife Danica Čamilović stated that she had lived with him in the area of Kosovska Mitrovica from 2005 to 2012, and that they often went to Peć, Dečani and Priština. During this period, her husband Milan owned a car parts store and cooperated with both Albanians and Serbs. He was imprisoned several times for stealing a car. She does not know if any proceedings were conducted against him at the time for some other criminal offence. She had overheard during 2012, when Milan had already moved away from Kosovska Mitrovica, something related to the war crime proceedings. Milan's father, who died in

187 Transcript from the main hearing of 27 December 2022.

188 Decision of the High Court in Belgrade K. Po2 13/22 of 10 April 2023.

189 Transcript from the main hearing of 20 March 2023.



2010, was called “Mićko”, but so was Milan’s late brother Milovan; and some of defendant’s friends called him Mićko also.¹⁹⁰

Witness Tijana Vasić, to whom the accused Milan Ivanović was brother-in-law, stated that she lived in an apartment in Peć with her husband Milovan before the bombing, in union with his parents, father Mićko, mother, sister and brother Milan. Her husband was called up to the army in late February or early March 1999, and went to front. He came home two or three times during the month of March. She remembers that he came on 1 April 1999, when he spent several days in the apartment. He was unrecognisable, as if he had had some kind of nervous breakdown, and she had never seen him like that before. He would not go out of the house, and he told his father that he wanted to leave the forces. During the bombing, her brother-in-law Milan, who was in town, was also called up to the army, and he would come home to sleep over every night. During 2001, when they all went to Andrijevića in Montenegro, some people came looking for her husband Milovan. He came out, but she did not know what they were discussing with him at the time. She was pregnant with her second child at the time, so he did not want to tell her what it was about, but she noticed that he was nervous and lost. She assumed that it was something related to the war. Her husband died in an accident in June 2001, and the witness came to live in Kragujevac in 2002.¹⁹¹

Witness Veselin Bešović, worked for the father of the accused Milan Ivanović and knew his family. He explained that the accused Ivanović Milan was “little Mićko” for him, and that Milan’s father and brother were also called Mićko. All three were called Mićko, because all three were repairmen, car mechanics. He saw the defendant in Peć/Peja after the bombing, and they were frequently in one another’s company. It was not known to him whether the defendant Ivanović was mobilised into army tasks during the NATO bombing.¹⁹²

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Court experts, Dr Branko Mandić, a neuropsychiatrist, and Ana Najman, a psychologist, performed a psychiatric examination of the accused Milan Ivanović on the circumstance of his sanity at the time of the commission of the criminal offence. The expert examination established that the defendant Milan Ivanović was significantly less accountable at the time of the commission of the criminal offence, if the critical event occurred as described by the witnesses. According to the witness, owing to the behaviour of Radoslav Minić, who put a gun to the defendant’s head and threatened to kill him if he did not shoot the gathered Albanian civilians, the defendant was in a state of elevated emotional tension with the psychological content of high intensity affective fear. As a result, his ability to understand the significance of the act and to manage his actions was significantly reduced.¹⁹³

190 Transcript from the main hearing of 3 July 2023.

191 *Ibid.*

192 *Ibid.*

193 Transcript from the main hearing of 18 October 2023.



HLC Findings

Protracted proceedings

This trial has been going on for 13 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, 2019, and 2022 each, and not a single court day in either 2020 or 2021. In 2023, eight court days were scheduled, of which five were held. During the proceedings, one of the defendants became inaccessible to the state authorities, so in relation to him the criminal proceedings were separated¹⁹⁴; against another of the defendants the indictments were dismissed because he had become permanently incapacitated¹⁹⁵; whilst three of the defendants had died.¹⁹⁶

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 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 addressed during the actual trial, thereby delaying the proceedings and subjecting the victims to additional traumatising, since they do not know when the proceedings will finally end or whether they will see justice served.

58

Incomplete OWCP indictment

The extensive evidence which has been presented since the commencement of this trial points also 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 addressed this matter when pronouncing the first trial judgment in February 2014; she stressed 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, with the statement, "...It has not been determined at what level all this had been organised, nor is that the subject of these proceedings..."¹⁹⁷

194 Defendant Ranko Momić.

195 Defendant Dejan Bulatović.

196 Defendants Radoslav Brnović, Miloško Nikolić and Srećko Popović.

197 Transcript of the announcement of the judgment of 11 February 2014.



There seemed to be some progress towards establishing the responsibility as well of some senior military personnel in connection with the crimes charged in the indictment for the *Ćuška/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, and it remains 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.¹⁹⁸

Unclarified 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. A number of witnesses spoke about the role of the police forces, as did some of the defendants in presenting their defences.¹⁹⁹ 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 registered that two MUP companies had been attached to the 177th VTO. Furthermore, several injured parties, and indeed 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 with the pronouncement 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..."²⁰⁰ 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 look adequately into all allegations of crimes committed.

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Witness protection

The testimony of witness Zoran Rašković has been counted 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 was particularly important for highlighting one of the major problems plaguing all war crimes trials in Serbia, that of 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 and 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.²⁰¹ Giving evidence in the retrial, he stressed that these

198 See more in: *Report on War Crimes Trials in Serbia 9* (Belgrade, HLC, 2019), pp. 23-25.

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

200 Transcript of the announcement of the judgment of 11 February 2014.

201 Transcript from the main hearing of 25 January 2012.



problems had continued, and stated that he was unable to obtain an identity card, which made it impossible for him to live a normal life.²⁰² The HLC has analysed this problem comprehensively in its *Report on War Crimes Trials in Serbia in 2011*²⁰³ and *Analysis of the Prosecution of War Crimes in Serbia*.²⁰⁴

202 Transcript from the main hearing of 23 November 2015.

203 See in more detail: *Report on War Crimes Trials in Serbia in 2011*, (Belgrade: HLC, 2012), pp. 99, 100 and 101.

204 *Analysis of war crimes prosecution in Serbia in the period from 2004 to 2013*.



VI. The *Jajce* Case²⁰⁵

CASE FACTS	
Current stage of the proceedings: first-instance proceedings	
Date of indictment: 28 March 2022	
Trial commencement date: 14 October 2022	
Prosecutor: Snežana Pavlović-Pejić	
Defendants: Jovo Jandrić and Slobodan Pekez	
Criminal offence: war crime against the civilian population under Article 142 of the FRY CC	
<p>Case transferred from BiH</p> <p><i>This proceeding is the result of cooperation between Serbia and BiH in the prosecution of war crimes, which was intensified after the OWCP and the Prosecutor's Office of BiH signed the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide in 2013. Namely, on 16 November 2021, the Court of Bosnia and Herzegovina sent a Request for International Legal Assistance (transferring the prosecution of the accused Jovo Jandrić and Slobodan Pekez) to the competent authority in the Republic of Serbia, since the accused, who are citizens of the Republic of Serbia and residing in Serbia, were not available to the authorities of BiH. The OWCP took over the prosecution of the accused.</i></p>	
Trial Chamber	<p>Judge Bojan Mišić (Chairperson)</p> <p>judge Mirjana Ilić</p> <p>Judge Zorana Trajković</p>
<p>Number of defendants: 2</p> <p>Defendant's rank: low</p> <p>Number of victims: 27</p> <p>Total number of witnesses heard: 8</p>	<p>Number of scheduled court days in the reporting period: 7</p> <p>Number of court days in the reporting period: 5</p> <p>Number of witnesses heard in the reporting period: 6</p> <p>Total number of experts witnesses heard: 1</p>
<p>Key developments in the reporting period:</p> <p>Main hearing</p>	

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²⁰⁵ *Jajce* Case trial reports and case documentation available at: <http://www.hlc-rdc.org/Transkripti/jajce.html>, accessed on 12 February 2024.



Course of the proceedings

Indictment

The accused are charged with having committed in co-perpetration the criminal offence of a war crime against the civilian population, namely, that during the state of war in BiH, as members of the VRS and the reserve police force, on 10 September 1992, after the funeral of their fallen fellow fighter Rade Savić, they arrived as a group of ten men organised by Slobodan Pekez at the villages of Ljoljići and Čerkazovići in Jajce municipality, forced Bosniak civilians out of their homes and led them to a locality called "Draganovac", where they stopped them and seized their gold, watches and money, and then led them to a locality called "Tisovac", where they had them line up above a precipice and executed them by bursts of fire, killing on that occasion Nežib Mutić (1936), Šećo Malkoč (1933), Irhad Bajramović (1971), Adnan Zobić (1979), Fikret Zobić (1956), Fahra Balešić (1928), Faza Balešić (1918), Derviša Mutić (1933), Mujo Bajramović (1927), Latif Bajramović (1959), Senad Karahodžić (1968), Ibrahim Karahodžić (1933), Asmer Zobić (1977), Adis Zobić (1983), Zarifa Karahodžić (1927), Đula Zobić (1924), Ramiz Mutić (1936), Fikreta Zobić (1957), Fatima Mutić (1963), Ekrem Bajramović (1939), Mustafa Bajramović (1946), Mustafa Balešić (1950) and Sabahudin Bajramović (1979), while Zejna Bajramović, Nuriya Zobić, Omer Karahodžić and Mustafa Bajramović survived the execution.²⁰⁶

Defence of the accused

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The accused Jovo Jandrić denied having committed the criminal offence he is charged with. He could not recall any details preceding the killing of the civilians, nor could he recall any other participants in the critical event, or his own statement given in the investigation before the BiH court, citing the passage of time. What he was certain about was that most of the men who had returned from Rade Savić's funeral were under the influence of alcohol, as well as that their objective in rounding up the civilians from Čerkazovići and Ljoljići had been to relocate them to Travnik, to territory under the control of the BiH Army. He did not know how it happened that the civilians were executed, although he did participate in escorting them.²⁰⁷

The accused Slobodan Pekez denied having committed the criminal offence he is charged with, claiming that after the funeral of Rade Savić he went straight home, as he had been assigned to compulsory work service at Elektrodistribucija (Electric Power Company). On the following day, he heard about the execution from his neighbours and participated in the burial of the bodies with some of them.²⁰⁸

206 Indictment OWCP KTO 4/22 dated 28 March 2022 available at: <https://www.tuzilastvorz.org.rs/public/indictments/2022-10/ENG.KTO-4-22.pdf>, accessed on 12 February 2024.

207 Transcript from the main hearing of 14 October 2022.

208 *Ibid.*



Witnesses in the proceedings

Witness for the prosecution Dragan Ždrnja was the security officer of the 30th VRS Brigade at the time of the critical event. He was dispatched on behalf of the brigade to see what had happened concerning the killing of Bosniak civilians after the funeral of the combatant Savić. On arriving at the scene, he saw four persons by the side of the road who were injured. There was a woman whose name was Zejna with a gunshot wound to her stomach, a man with a wounded leg and two persons who had minor wounds. They immediately took them to be medically attended to. He talked to Nurija Zobić, who told him that he had lost his wife and two children there. The witness had heard that the killings had been perpetrated by the accused, Jovo Jandrić. On arrival at the scene of the event he saw bodies, and it was a harrowing sight. A Muslim forces offensive was under way at the time, and many VRS fighters had been killed. In the group reported to have killed the Bosniak civilians there were two persons by the name of Mirko Pekez, and one Savić. When he returned from the field, he reported his findings to Pero Jakovljević from the division command.²⁰⁹

Witness for the prosecution Borko Oparica explained that, as a police officer of the Jezero police station regular police force he was dispatched by his commander Nedeljko Jandrić to secure the scene of the event until the on-site investigation team arrived. On the way to the place where the Bosniak civilians had been killed, he met Omer Karahodžić who was wounded in the leg. Fahrija Murtić, who had also sustained wounds in this massacre, told him that the Bosniak civilians had been killed by the accused Jovo Jandrić, two persons by the name of Mirko Pekez, and another by the name of Savić. On arrival at the scene, he saw that it was some sort of a gully and he saw lots of blood. The sight was extremely distressing, and he did not look to see if he knew any of the dead. In the villages of Ljoljići and Čerkazovići, the police conducted a roll call of the Bosniaks, in order to prevent anyone from passing behind VRS battle lines and endangering the fighters.²¹⁰

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Course of the proceedings in 2023

During 2023, seven court days were scheduled, of which five were held. One main hearing was not held because the mandate of the judge, the Chairperson in this case, who had been assigned to the Higher Court in Belgrade – the War Crimes Department –, had expired. The second time the main hearing was not held was for technical reasons. Namely, the video link with the Kingdom of Sweden was supposed to be used for the examination of the witness/injured party, but no response was received from Sweden to the request sent by the court until the main hearing. During the hearings, six witnesses and one court expert were heard.

Witness for the prosecution Miroljub Perlaš stated that during the war he was a member of the active units of the police in Jajce, a police station in Bravnice. With his mother and brother, he came by car to Ljoljići from Šipovo to Rade Savić's funeral. After the ceremony, he went home with his brother, and Mirko Pekez came with them. After a few kilometres, they ran out of fuel, so Mirko said he was

²⁰⁹ Transcript from the main hearing of 28 November 2022.

²¹⁰ *Ibid.*



going to his house to bring fuel. The next day, at around 5 a.m., Mirko Pekez's brother brought him some fuel. That day, at around noon in Šipovo, he saw the accused Jovo Jandrić, Milorad Savić and Mirko Pekez armed, and he drove all three of them to the police station in Bravnice, because they were part of the police reserve forces. At the police station, he heard that some Muslims had been killed in Ljoljići. The policemen would not leave their automatic rifles at the police station - each was carrying their own weapon when they went home.²¹¹

The witness for the prosecution Subhudin Zobić, also an injured party, stated that he had lived in Čerkazovići until the war, and that he knew both the accused from before. He had no immediate knowledge of the critical event. The locals of Čerkazovići and Ljoljići almost all knew one another, and many were relatives. The witness left Čerkazovići on 2 June 1992 and went to Jezero, and then to Jajce. The shooting of the locals of Čerkazovići and Ljoljići took place on 10 September 1992. His mother Đula and his son Adnan, who was 13 years old, were both killed. He heard about the event the day after from radio amateurs. Later, Omer Karahodžić, who was wounded on that occasion, told him all about the people being taken away and shot.²¹²

64 Witness for prosecution Fahrija Mutić lived in the village of Ljoljići. He testified that after the death of Rado Savić near Jajce, Serbian combatants returned drunk from his funeral. The accused Jovo Jandrić came to Ljoljići, together with Zoran Marić and Mirko Pekez and other combatants. They took them out of the houses and told them they are going for an exchange of war prisoners. Other Serbian combatants brought along locals from Čerkazovići, and the two groups were taken to a place called Draganovac, to a small meadow near which there is a precipice of three to four metres. When they were brought to the precipice, all their valuables and money were confiscated, after which they were shot. The witness fell into the pit and stayed there until midnight. He heard Mujo Bajramović swearing at Jovo Jandrić because he had broken his neck, and begged someone to put him out of his misery by killing him. Mutić got up from the precipice and came back home to Ljoljići by the same way. Then he saw that he was covered in blood. Soon afterwards, he saw the accused Jandrić going around the houses, so he ran into the woods. He contacted the Serb neighbours who took him into their house. In the meantime, Serbian police came to the village, and he told them what had happened. He slept at a neighbour's house for one night. The police then took him, first to Jezero, and then again back to the village. He was exchanged in February 1993. The accused Jandrić robbed and killed, he said, and "there was nothing he did not do". The witness did not see the accused Slobodan Pekez in Ljoljići, but he said his neighbour, who was wounded, mentioned him. He could not recognise all the soldiers who came with Jovo Jandrić, because some of them had socks on their heads. He saw the accused Jandrić at the home of Omer Karahodžić. He had an automatic rifle. When they were being shot at, the accused Jandrić was there, and he was in charge. The witness knew all the victims, and some of them were his relatives.²¹³

211 Transcript from the main hearing of 24 January 2023.

212 Transcript from the main hearing of 13 March 2023.

213 *Ibid.*



Defence witness Zorica Pekez, wife of the accused Slobodan Pekez, stated that she did not know anything about the suffering of civilians from Ljoljići and Čerkazovići. Her husband had a work obligation at the time. She was not at the funeral of the late Rade Savić because her children were young. In the house, besides her, there were her father-in-law, sister-in-law and children. Her husband and mother-in-law went to the funeral and came home together. By the time they returned, it was dusk. That night, her husband did not leave the house, and the next day he went to work.²¹⁴

The defence witness Slobodanka Pekez, sister of the accused Slobodan Pekez, stated that the accused, their mother and she herself were at the funeral of the late Rade Savić. She helped the wife of the deceased with the preparation of the funeral repast. After the funeral, her brother Slobodan went to the house of the deceased, and then, shortly before the witness, went home with their mother. When she herself returned home, she found her parents, brothers, sister-in-law and children there.²¹⁵

In 1999, court expert Dr Hamza Žujo, a specialist in forensic medicine, performed the autopsy of exhumed bodies in the municipality of Jajce, and made a report. When examining the remains of Asmer Zobić, he did not find injuries on the bones, and due to the passage of time, there were no soft tissues. The cause of death has not been stated, but the expert did not rule out the possibility that the death occurred due to soft tissue injury. During the preparation of his report, the expert did not have other documentation at his disposal, such as the minutes of the investigation and the findings and opinions of the specialist on the external examination of the corpses of 12 September 1992.²¹⁶

The injured party, Hamida Đukla, the daughter of the killed Nedžib and Ramiza Mutić, stated that she had no immediate knowledge of the suffering of her parents, Ramiza and Nedžib Mutić. She was aware that the accused Jovo Jandrić came to her parents' house and humiliated and harassed them, and she heard about their killing from the locals who had survived the shooting.²¹⁷

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HLC Findings

Unnecessary anonymisation of the indictment

The OWCP posted on its website the indictment it had brought against Jovo Jandrić and Slobodan Pekez anonymised in such a way as to indicate that instead of the accused, in question were persons A.A. and B.B.²¹⁸ Such anonymisation was unnecessary, as data on the indictment, including the full names of the defendants, had already been posted on the website of the BiH Court.²¹⁹ Also, as of 2008, prior to the start of the trial in the Republic of Serbia, the case had received media coverage in BiH,

214 Transcript from the main hearing of 28 September 2023.

215 *Ibid.*

216 Transcript from the main hearing of 17 November 2023.

217 *Ibid.*

218 Indictment OWCP KTO 4/22 dated 28 March 2022, available at: <https://www.tuzilastvorz.org.rs/public/indictments/2022-10/ENG.KTO-4-22.pdf>, accessed on 12 February 2024.

219 Case of the Court of Bosnia and Herzegovina number S1 1 K 002841 08 Kro (X-KR-05/96) *Jovo Jandrić et al.*



with the defendants referred to by their full names.²²⁰ Anonymising publicly posted indictments in this way, the OWCP makes them totally unclear²²¹, and the accused totally invisible to the general public, which is entirely contrary both to the 2016 National Strategy²²² and the Prosecutorial Strategy for the Investigation and Prosecution of War Crimes in Serbia.²²³ In a situation where the general public is in practice unable to find out even the names of the accused by visiting the OWCP website, the OWCP is clearly sending the message that as far as they are concerned, the objectives of the Strategies are mere formality.

There was no need to anonymise the names of the victims either, as it is already publicly available data that is in question. Namely, the names of all the victims are listed in the 2009 BiH Court final judgment convicting Zoran Marić (one of the co-perpetrators), which was posted on the Court's website.²²⁴ The full names of all the victims are also inscribed on the memorial tomb ("túrbe") in Čerkazovići, so that it is most inhumane to have their names anonymised in an indictment which was issued many years later.

220 "Confirmed Indictment for Crimes in Jajce", *Detektor*, 28 November 2007, available at: <https://detektor.ba/2007/11/28/potvrđena-optuznica-za-zlocine-pocinjene-u-jajcu/>, accessed on 12 February 2024.

221 On all OWCP indictments, the Respondents are designated as A.A. – available at: <https://www.tuzilastvorz.org.rs/en/cases/indictments>, accessed on 12 February 2024.

222 National Strategy for War Crimes Prosecution 2021-2026, available at: [https://www.mpravde.gov.rs/files/Usvojeni%20tekst%20Strategije%20processing%20za%20war%20zlo%C4%8Dina%20\(OOfficial%20Gazette%20voice%2097%2021\)%20222.pdf](https://www.mpravde.gov.rs/files/Usvojeni%20tekst%20Strategije%20processing%20za%20war%20zlo%C4%8Dina%20(OOfficial%20Gazette%20voice%2097%2021)%20222.pdf), accessed on 12 February 2024.

223 Prosecutorial Strategy for the Investigation and Prosecution of War Crimes in Serbia 2018-2023, available at: https://www.tuzilastvorz.org.rs/public/documents/2021-06/strategija_trz_eng.pdf, accessed on 12 February 2024.

224 Judgment of the Court of BiH number: X-KR-05/96-3 of 29 October 2009.



VII. The *Petrovačka cesta* Case²²⁵

CASE FACTS	
Current stage of the proceedings: first-instance proceedings	
Date of indictment: 18 February 2022	
Trial commencement date: 26 December 2022	
Prosecutor: Dušan Knežević	
Defendants: Vladimir Mikac, Zdenko Radulj, Željko Jelenić and Danijel Borović	
Criminal offence: war crime against the civilian population under Article 142 of the FRY CC	
Trial Chamber	Judge Vladimir Duruz (Chairperson) Judge Snežana Nikolić-Garotić Judge Vinka Beraha-Nikićević
Number of defendants: 4	Number of scheduled court days in the reporting period: 0
Defendant's rank: high/senior	Number of court days in the reporting period: 0
Number of victims: 37	Number of witnesses heard in the reporting period: 0
Total number of witnesses heard: 0	Total number of experts witnesses heard: 0
Key developments in the reporting period:	
Main hearing	

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²²⁵ *Petrovačka cesta* Case, trial reports and case documentation available at: [http://www.hlc-rdc.org/Transkripti/ petrovačka_cesta.html](http://www.hlc-rdc.org/Transkripti/petrovačka_cesta.html), accessed on 7 February 2024.



Course of the proceedings

Indictment

The accused are charged with having ordered in the period from 5 to 8 August 1995, as members of the Croatian Air Force, aerial strikes on the civilian population in two instances, in pursuit of the dual objective of defeating the RKS [Republic of Serbian Krajina] and taking control of that part of the RKS, and forcing the Serb civilian population to permanently abandon the territory where they had lived up to that time; namely, by bombarding, on 7 August 1995, at the locality of Kapljuh (Bosanski Petrovac municipality, BiH) a refugee column moving along the Bosanski Petrovac - Ključ road, which resulted in the death of 10 civilians and the wounding of at least 15, and bombarding, on 8 August 1995, a refugee column at the locality of Svodna (Bosanski Novi municipality, BiH), killing three and wounding at least 9 civilians.²²⁶

68 The only main hearing scheduled during the reporting period was not held because the requirements for holding it had not been met. The judges sitting in chambers had not taken a decision on the OWCP's proposal for the accused to be tried in absentia, as they lacked all the necessary elements for such a decision. Namely, summonses to appear at the main hearing were sent to the accused, nationals of the Republic of Croatia, who are inaccessible to the domestic judiciary, through the Ministry of Justice of the Republic of Serbia, which addressed letters rogatory to the responsible ministry of the Republic of Croatia in charge of legal aid, requesting that the summons to appear at the trial be served on the accused. On three occasions the Court requested from the Ministry of Justice of the Republic of Serbia answers to the questions as to when the Ministry of Justice had sent letters rogatory to the responsible ministry of the Republic of Croatia, when the responsible ministry of the Republic of Croatia had received it, and whether it had replied. All that the Ministry of Justice of the Republic of Serbia informed the Court was when it had sent the request to the Republic of Croatia, and that there had been no reply. As the Court did not have information whether and when the responsible ministry of the Republic of Croatia had received the letters rogatory, it lacked sufficient elements for a decision.

Attorney-at-law Dušan Bratić, the legal representative of the injured parties, stated that the Ministry of Justice of the Republic of Serbia had sent the letters rogatory on 2 September 2022, and that postal tracking showed that it reached the addressee on 6 September 2022. The Deputy War Crimes Prosecutor seized from the case submitted to the court a communiqué from the government of Republic of Croatia, taken from the government's official website, that they would not act upon the received letters rogatory. He assessed this to be credible proof that the letters rogatory had indeed been received, and that all the required elements existed for adopting a decision to conduct a trial in absentia, and proposed that the Court rule accordingly.

226 Indictment OWCP KTO 2/2022, which, at the moment of writing the report, was not on the OWCP website, as a result of which the data published in the media have been listed.



The Court maintained that the authenticity of the document submitted by the OWCP needed to be verified, and postponed the main hearing; the date of the next hearing will be scheduled in due course.²²⁷

Course of the proceedings in 2023

During 2023, no main hearing was scheduled in this case. The reason for not scheduling trial days is the fact that the Court has not yet received the documentation requested from other state authorities, i.e. the information from the Ministry of Justice of the Republic of Serbia on whether and when the competent Ministry of the Republic of Croatia received the request of the summons for the main trial to the defendants.²²⁸

HLC Findings

Trial *in absentia*

In the *Petrovačka cesta* Case, the POWCP proposed that the accused, who are foreign nationals (nationals of the Republic of Croatia) and out of reach of the state authorities of the Republic of Serbia, be tried *in absentia*, although the Court has not yet adopted such a decision. Namely, in the specific instance, the court could rule that the accused be tried *in absentia* if they have been summoned to appear at the main hearing and failed to respond. As the Court had no information as to whether the accused had been served the summons, nor authentic proof that the competent authorities of the Republic of Croatia had declined to act upon their letters rogatory and serve the summons, it assessed that no conditions existed yet for deciding on a trial *in absentia*.

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Although this type of proceedings has been provided for under national criminal legislation, the HLC is of the view that it should not be used in war crime cases, but that cases like these should be addressed through regional cooperation. This is particularly so because such trials are abused for purposes of everyday politicking and only serve to escalate tensions between states, which should instead be focussing on promoting regional cooperation instead.

Failure to post the indictment on the OWCP website

The OWCP had been quite remiss in failing to post on its official website the indictment it had issued against the accused on 18 February 2022, especially as the same has received extensive media coverage both in the country and in the region. Due to the unavailability of the indictment, from which one could have clearly seen what exactly the accused are being charged with and in what capacity, i.e. what type of responsibility is in question, the public obtains its information from the media, which state

²²⁷ Transcript from the main hearing of 26 December 2022.

²²⁸ Notice of the High Court in Belgrade Su II – 17 a no. 18/24 of 7 February 2024.



that the accused "bombed a column of Serb refugees"²²⁹ and also that "they are charged on account of command responsibility", or that they "ordered the bombardment of a column of refugees"²³⁰, which creates unnecessary confusion. This is even more the case in view of the fact that the indictment has been accessible to a number of the media; for instance, TV N1 Zagreb is reported to have aired it in its entirety.²³¹ If the indictment is accessible to the media, there is certainly no justification for not posting it on the official OWCP site immediately upon confirmation.

229 "Trial of Croatian pilots for rocketing column on Petrovačka cesta awaits a decision for trial *in absentia*", *Radio Television of Vojvodina*, available at: https://www.rtv.rs/sr_lat/region/sudjenje-hrvatskim-pilotima-za-raketiranje-kolone-na-petrovackoj-cesti-ceka-odluku-za-sudjenje-u-odsustvu_1403243.html, accessed on February 7, 2024.

230 "Trial of Croatian pilots in Belgrade postponed until further notice, the judge did not even schedule a new hearing", *Jutarnji list*, available at: <https://www.jutarnji.hr/vijesti/hrvatska/sudjenje-hrvatskim-pilotima-u-beogradu-odgodeno-do-daljnjeg-sudac-nije-zakazao-ni-novo-rociste-15289746>, accessed on February 7, 2024.

231 "Published details of the indictment against four Croatian pilots", available at: <https://www.blic.rs/vesti/politika/objavljeni-detalji-optuznice-protiv-cetiri-hrvatska-pilota/2bjldqs>, accessed on 7 February 2024.



VIII. The *Rogatica* Case²³²

CASE FACTS	
Current stage of the proceedings: first-instance proceedings	
Date of indictment: 9 October 2020	
Trial commencement date: 12 March 2021	
Prosecutor: Ivan Marković	
Defendant: Rajko Kušić	
Criminal offence: war crime against the civilian population under Article 142 of the FRY CC	
<p>Case transferred from BiH</p> <p><i>This proceeding is the result of cooperation between Serbia and BiH in the prosecution of war crimes, which was intensified after the OWCP and the Prosecutor's Office of BiH signed the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide in 2013. Namely, the confirmed indictment against the defendant was transferred by the Prosecutor's Office of Bosnia and Herzegovina, given that the defendant, who is a citizen of the Republic of Serbia and residing in Serbia, was not available to the authorities of BiH.</i></p>	
Trial Chamber	<p>Judge Vinka Beraha-Nikićević (Chairperson)</p> <p>Judge Snežana Nikolić-Garotić</p> <p>Judge Vladimir Duruz</p>
<p>Number of defendants: 1</p> <p>Defendant's rank: high rank</p> <p>Number of victims: 210</p> <p>Total number of witnesses heard: 10</p>	<p>Number of scheduled court days in the reporting period: 5</p> <p>Number of court days in the reporting period: 3</p> <p>Number of witnesses heard in the reporting period: 8</p> <p>Total number of experts witnesses heard: 0</p>
<p>Key developments in the reporting period:</p> <p>Main hearing</p>	

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²³² *Rogatica* Case trial reports and case documentation available at: <http://www.hlc-rdc.org/Transkripti/Rogatica.html>, accessed on 13 February 2024.



Course of the proceedings

Indictment

The accused Rajko Kušić is charged with having ordered, in the period from the end of May 1992 until the end of July 1995, in the area of Rogatica municipality, initially while discharging the duty of Commander of the Territorial Defence of Rogatica municipality, and subsequently as Commander of the Rogatica Brigade and Commander of the 1st Podrinje Light Infantry Brigade, attacks on civilians and settlements, and himself participated in the attacks, which resulted in deaths, as well as having ordered the killing, torture, inhumane treatment, inflicted suffering and bodily injury, displacement and forcible transfer and unlawful detention of non-Serbs. Through his subordinates, members of the Territorial Defence and later the Rogatica Brigade and the 1st Podrinje Light Infantry Brigade, in cooperation with the police of the Public Security Station of the Serbian Municipality of Rogatica, he organised the unlawful detention of non-Serbs in detention facilities in the Rogatica municipality area, where he went in person and interrogated the detainees, and also personally led attacks on non-Serbs, who were killed, unlawfully detained and beaten up in detention facilities, taken out for forced labour, taken in an unknown direction and listed as missing, with the detained women and girls being raped, the property and places of worship of non-Serbs destroyed. He is also charged with coordinating the activities of military and police forces in the Rogatica municipality area, which resulted in the entire non-Serb population of that municipality being forcibly relocated outside the territory of the Serbian Republic of Bosnia and Herzegovina, namely that:

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1. Between the end of May and the beginning of June 1992, members of the Territorial Defence of the Serb Municipality of Rogatica, after having, on the orders of the accused, seized their legally owned weapons from the villagers of the Muslim-inhabited villages of Pašića Kula, Bijelogorice and Godimilje in Rogatica municipality, mounted an infantry attack on the mentioned villages, and, by shooting from automatic weapons and activating hand grenades, killed civilians AB, AV, AG, AD, AĐ, AE and AŽ, whose bodies were exhumed early in September 1998; they also set many family homes on fire;
2. On the morning of 3 June 1992, members of the Rogatica Brigade carried out an infantry attack on the undefended Muslim village of Seljani in Rogatica municipality, on which occasion they separated the men from the women and children, and then took civilians AZ, AI, AJ, AK, AL, ALJ, AM, AN, ANJ, AO, AP, AR, AS and AT, to the Piješevac locality in Rogatica municipality, where they deprived them of life by shooting them with firearms; their bodies were exhumed in September 2004 at the Dizdareva njiva locality in Rogatica municipality; the women and children of the same village were deprived of liberty without any legal grounds and locked up in rooms of the "Veljko Vlahović" Secondary School Centre in Rogatica, and several days later transported to Hreša in the Sarajevo municipality of Stari Grad;
3. On 8 June 1992, members of the Rogatica Brigade and of the Public Security Station of the Serb Municipality of Rogatica carried out an infantry attack on non-Serb civilians who were hiding



in a residential building at number 6, Maršala Tita Street in Rogatica, shooting from automatic weapons and throwing hand grenades at the building, killing the civilian AĆ; they then ordered the civilians to get out of their flats, and when they had done so, ordered AU, AF, AH, AC, AČ, ADŽ, AŠ, BA, BV, BG, BD, BĐ, BE, BŽ, BZ, BI and the minor BJ to lie down on the asphalt, while they then took some fifty women, children and elderly men to the "Veljko Vlahović" Secondary School Centre in Rogatica and confined them to a classroom, without any legal grounds; after which, they led civilians AU, AF, AH, AC, AČ, ADŽ, AŠ, BA, BV, BG, BD, BĐ, BE, BŽ, BZ, BI and the minor BJ in a column to the mentioned Secondary School Centre, had them line up in two rows, blindfolded them and tied their hands; the accused then reviewed them and ordered that minors BJ and BI be taken to the Secondary School Centre in Rogatica and the lined-up men bussed towards the Karanfil Mahala quarter; when they arrived in this part of town, he ordered that detainee AŠ be taken back to the Secondary School Centre, after which civilians AU, AF, AH, AC, BD, BE, AČ, ADŽ, BA, BV, BG, BĐ and BŽ were taken in an unknown direction; their bodies were found and exhumed in the year 2000 in the "Paklenik" pit near the village of Kalimanići in Sokolac municipality;

4. In June 1992, members of the Ladevine Company, Gučevo Company, Plješevica Company, Kozići Company and the Intervention Platoon, which were comprised within the Rogatica Brigade, on oral orders of the accused, ordered the villagers of the villages of Kukavice, Kujundžijevići and Mesići to hand over their weapons, and when they had done so, on or about 9, 10 and 11 July 1992, at the command of the accused, communicated via radio link by the convicted BB to the commander of the Ladevine Company, attacked these undefended villages first by artillery and then by infantry, killing on that occasion a large number of civilians, among whom BK, BL, BLJ, BM, BN, BNJ, BO, BP, BR, BS, BT, BČ, BU, BF, BC and BH, whose bodies were exhumed in the village of Kukavice at the beginning of October 1998, although all trace was lost of BČ; a large number of Muslim houses in the mentioned villages were torched;
5. On 15 June 1992, at the "Paklenik" pit near the village of Kalimanići in Sokolac municipality, which was in the zone of responsibility of the Rogatica Brigade, VV and another two members of the Rogatica Brigade, together with several members of the Višegrad Brigade and policemen of the Public Security Station of the Serbian municipality of Višegrad, deprived of life by fire from automatic weapons and activation of hand grenades civilians BDŽ, BŠ, VA, VB, VG, VD, VĐ, VE, VŽ, VZ, VI, VJ, VK, VL, VLj, VM, VN, VNj, VO, VP, VR, VS, VT, VĆ, VU, VE, VH, VC, VČ, VDŽ, VŠ, GA, GB, GV, GD, GĐ, GE, GŽ, GZ, GI, GJ, GK, GL, GLJ, GM, GN, GNJ and GO, whom they had taken by bus earlier that day, with their hands tied, from the "Rasadnik-Sladara" malting plant compound in Rogatica to the "Paklenik" pit, while GP managed to escape the execution; the bodies of the slain were exhumed in 2000 in this same "Paklenik" pit near the village of Kalimanići in Sokolac municipality;
6. On 19 June 1992, members of the Rogatica Brigade, policemen of the Public Security Station of the Serbian municipality of Rogatica and the "Beli orlovi" [White Eagles] paramilitary unit mounted an infantry attack on the undefended Muslim village of Gračanica in Rogatica municipality,



ordered the people out of their houses and, after they had come out, killed by fire from automatic weapons civilians GP, GR, GS, GT, GĆ, GU, GF, GH, GC, GČ, GDŽ, GŠ, DA, DB, DV, DG, DĐ, DE, DŽ, DZ, DI, DJ, DK, DL, DLj, DM, DN, DNJ, DO, DP, DR, OS, DT, DĆ, DU, DF, DH, DC, DČ, DDž, DŠ, ĐA, ĐB, ĐV, ĐG, ĐE, ĐD, ĐŽ, ĐZ, ĐI, ĐJ, ĐK, ĐL, ĐLJ, ĐM, ĐN, ĐNJ, ĐO, ĐP, ĐR, ĐS, ĐT, ĐĆ, ĐU, ĐF, ĐH and others, and then, without any legal grounds, took the women and children and elderly men to the Parish House in Rogatica and detained them there, shooting into the air from automatic weapons all the while; suspect AA went to the parish house and interrogated the detainees; women detainees ĐH, ĐC, ĐČ, ĐDž, ĐŠ, EA and others were taken to an adjacent building in the settlement of Tekija, where members of the Rogatica Brigade raped them; on the following day women detainees EB, EV, EG, ED, EĐ, EŽ, EZ, EI, EJ, EK, EL, ELJ, EM and EN, blindfolded and their hands tied, were taken by bus in an unknown direction, and nothing is known of their fate since; two or three days later, the imprisoned women, children and elderly men were transferred to the "Veljko Vlahović" Secondary School Centre in Rogatica;

7. On 19 June 1992, members of the Rogatica Brigade and policemen of the Public Security Station of the Serbian municipality of Rogatica carried out an infantry attack on civilians in the Muslim village of Živaljevina, Rogatica municipality, ordering them out of their houses and, after they had come out, torched the houses of ENj, EO and others, and then, without any legal grounds, deprived of liberty and took civilians EP, ER, ES, ET and others to a gas station, where suspect AA ordered that the men separate from the women and children, and that able-bodied male civilians EĆ, EU, EF, EP, ES, ET, ER and the minor EH be taken towards the "Rasadnik-Sladara" malting plant, all trace of whom had afterwards been lost until the year 2000, when their bodies were exhumed in the "Paklenik" pit near the village of Kalimanići in Sokolac municipality; suspect AA separated "EC"" from the group of women and children and took her to the "Rasadnik-Sladara" malting plant in Rogatica for interrogation, and the women and children were taken to and detained at the "Veljko Vlahović" Secondary School Centre in Rogatica;
8. In early August 1992, members of the 1st Podrinje Light Infantry Brigade attacked the undefended Muslim village of Rakitnica, in Rogatica municipality, first carrying out an artillery and then also an infantry attack and killing with automatic weapons civilians EĆ, EDž, EŠ, ŽA, ŽB, ŽV and ŽG, whose bodies were recovered and exhumed at the beginning of September 1998, and also killing ŽD, ŽĐ, ŽE, ŽZ, ŽI, ŽJ, ŽK and ŽL, whose bodies have not been found to date;
9. On the morning of 2 August 1992, members of the 1st Podrinje Light Infantry Brigade attacked the undefended Muslim village of Kozarde in Rogatica municipality, first executing an artillery and then also an infantry attack, killing with automatic weapons civilians ŽLJ, ŽM, ŽN and ŽNJ, whose bodies were recovered and exhumed at the beginning of September 1998, and also killing ŽO, ŽP, ŽR, ŽS and his daughter and ŽT, whose bodies have not been found to date, and wounding civilians ŽĆ, ŽU, ŽF, ŽH, whilst civilians ŽC, ŽČ, ŽDž, ŽŠ, ZA, ZB, ZV, VG, BD, ZĐ, ZE, ZŽ and ZŠ were deprived of liberty without any legal grounds and detained in the sheds of the "Rasadnik-Sladara" malting plant in Rogatica;



10. In the early morning hours of 2 August 1992, members of the 1st Podrinje Light Infantry Brigade attacked the undefended Muslim village of Kramer in Rogatica municipality from the direction of Stijenice, Burati and Zakomo villages, first executing an artillery and then also an infantry attack, killing with automatic weapons civilians ZT, ZJ, ZK, ZL, ZLJ, ZM and ZN and setting a number of houses on fire; then, without any legal grounds, they deprived of liberty over 150 Bosniak civilians and took them to the primary school in the village of Han Stijenice, with the accused shouting all the while at the imprisoned civilians through an open window of a "Golf" passenger vehicle: "Come on you balijas [derogatory term for Muslims], get a move on, I curse your balija mothers, and I'll shoot anyone who tries to escape!", and then ordering that able-bodied male civilians ZNj, ZO, ZP, ZR, ZS, ZT, ZĆ, ZU, ZF, ZH, ZC, ZDž, IA, IB, IV, TG, ID, IĐ, TE, be separated and taken behind the school, where members of the Rogatica Brigade killed them with firearms; their bodies were found and exhumed in May 2011 at the Ivan Polje locality in Rogatica municipality; he then ordered one of his men to have the women, children and elderly men confined to the premises of the mentioned primary school, and from there they were taken by bus to Hreša in the Sarajevo area during the night;
11. On or about 14 August 1992, in the village of Kosova in Rogatica municipality, together with the convicted BB and several members of the 1st Podrinje Light Infantry Brigade, suspect AA took part in the unlawful detention of civilians IŽ, IZ, IJ and JK in a garage which was the property of IL, where the convicted BB and one GG, in the presence of the accused, physically abused and humiliated IZ, punching him in the head, putting a knife to his throat and forcing him to ingest 7.62 mm bullets; they punched IŽ in the head and kicked him on the body, causing him to lose consciousness; they also punched IJ in the head, and inflicted intense physical pain and suffering on all of them; after this, IJ was taken out of the garage and all trace has been lost of him since;
12. On 15 August 1992, members of the 1st Podrinje Light Infantry Brigade drove twenty-seven detained Bosniak civilians from the "Rasadnik-Sladara" malting plant in Rogatica to the Jačen elevation point, near the village of Duljevac, in Rogatica municipality, where they were used as human shields in front of Serb soldiers during the attack on the Jačen elevation point, and where the convicted OD, a member of the Rogatica Brigade, shot dead with an automatic rifle civilian detainees ILj, IM, IN, INj, IO, IP, IR, IS, IT, IĆ, IU, IF, IH, IC, IČ, IDž, IŠ, JA, JB, JV, JG, JO, JĐ, JE, JŽ and JZ, whose bodies were exhumed in September 1998 in the village of Duljevac, Rogatica municipality, whilst JI, JK and JL managed to escape the execution;
13. In the period from 8 June 1992 to mid-August 1992, members of the 1st Podrinje Light Infantry Brigade, together with policemen of the Public Security Station of the Serbian municipality of Rogatica and civilian authorities of the Serbian municipality of Rogatica, participated in the setting up of a detention facility at the "Veljko Vlahović" Secondary School Centre in Rogatica and unlawfully incarcerated Muslims in it, who were guarded by members of the Rogatica Brigade (later the Rogatica 1st Podrinje Light Infantry Brigade), and held captive, between three hundred and fifty and a thousand, Muslim civilians from the area of Rogatica municipality, in inadequate conditions without proper accommodation, with meagre daily rations and subject



to daily physical and psychological maltreatment at the hands of the soldiers and police; suspect AA came there, and interrogated and discharged some of the detainees, who were transported on buses and trucks to the villages of Mangurići and Kaljina in Olovo municipality and the village of Stoborani near Žepa; while held captive in the above-mentioned Secondary School Centre, women detainees JLj, JM, JN, JNj, JO, JP, JR, JS and others were raped, and male detainees were sent out to dig trenches, carry ammunition for the needs of Serb soldiers and set up machine-gun positions with sandbags;

14. In mid-September 1992, members of the Rogatica 1st Podrinje Light Infantry brigade mounted an infantry attack on the undefended Muslim villages of Vragolovi and Karačići in Rogatica municipality, on which occasion they killed by firearms JT, JČ, JU, JE, JH, whose bodies were exhumed in 2000 in a stable in the village of Karačići, and JČ, JDž, JŠ and KA, whose bodies have not been found to date;
15. In the period from mid-June 1992 to the end of 1994, members of the Rogatica Brigade, later the Rogatica 1st Podrinje Light Infantry Brigade, together with policemen of the Public Security Station of the Serbian municipality of Rogatica and civilian authorities of the Serbian municipality of Rogatica, participated in the setting up of a detention facility at the "Rasadnik-Sladara" malting plant in Rogatica in which to unlawfully incarcerate Muslims, who were guarded by members of the Rogatica Brigade, later the Rogatica 1st Podrinje Light Infantry Brigade, and held captive approximately three hundred and fifty Muslim civilians from the area of Rogatica municipality, in inadequate conditions without proper accommodation, with meagre daily rations and subjected to daily physical and psychological maltreatment at the hands of the soldiers and police, in which the accused also participated, punching and kicking detainees KB, KV and KG; they were then transported by buses and trucks to the village of Mangurići in Olovo municipality and the Sušica camp in Vlasenica and the Batković camp in Bijeljina; whilst held captive in the above-mentioned malting plant, women detainees "KD" and others were raped, men detainees were taken out to clean city streets and dig trenches, while KĐ, KE, KŽ, KZ, KB, KV and KG were killed, their bodies being exhumed in the vicinity of the "Rasadnik-Sladara" malting plant in November 1998 and in the "Paklenik" pit near the village of Kalimanići, Sokolac municipality, in the year 2000;
16. Between the end of June and the end of August 1992, members of the Rogatica Brigade, later the 1st Podrinje Light Infantry Brigade, without military necessity and with the intention of obliterating the traces of the existence of Muslims in the area of Rogatica municipality, demolished by tank shells the Arnautovića Mosque built in 1558 and the Čaršijska Mosque built in the 17th century, and blew up the mosques in Kramer Selo, Šljedovići, Kukavice, Mahala, Rakitnica and other villages inhabited by Muslims;
17. In the period from the end of June 1992 to the end of July 1995, members of the Rogatica Brigade, later the 1st Podrinje Light Infantry Brigade, carried out artillery attacks from the Borike locality in Rogatica municipality on the civilian population of Žepa in Rogatica municipality, inhabited by Muslims, which had been declared a safe area under United Nations Security Council Resolution



number 824 (1993), at session no. 3,208 on 6 May 1993, and killed a number of civilians, including KI, KJ, KL, KLJ, KM, KN, KNJ, KO, KP, KR, KS, KT, and others.²³³

Defence of the accused

At this stage of the proceedings the accused exercised his right to remain silent.²³⁴

Witnesses in the proceedings

Witness for the prosecution Mladen Sikirić was a member of the VRS during the armed conflict in BiH as a driver at the Vardište Barracks in Višegrad. On 14 or 15 June 1992, his commander Željko Šimšić sent the witness and his co-worker, Ranko Knežević, also a driver, to report with their trucks to the Red Cross and help transport civilians from Višegrad to a locality near Olovo. On arrival at the Red Cross, he saw a convoy of seven or eight vehicles – trucks and buses. Most of the buses belonged to the company "Višegradtrans". The transported were mainly women, children and the elderly. There were some twenty civilians in the witness's truck. The convoy set off without a military escort. En route the convoy was never stopped nor was there any shooting. The only stops were made for technical reasons, when the road was too narrow for larger buses to negotiate the road curves; but the witness had not seen any civilians being taken off the vehicles on the way. On arrival at their destination, which was in fact a meadow, the vehicles stopped for the civilians to disembark and then made a U-turn and went back. He saw the civilians proceed through the meadow on foot in the direction of Olovo, and that no civilians had been left in the vehicles. The vehicle convoy returned to Sokolac, where they spent the night, and on the following day they went back to Višegrad. No one from the Rogatica Brigade stopped the convoy en route or issued any orders. In the period from 1992 to 1995, the witness did not enter the Rogatica municipality area.²³⁵

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When armed conflicts broke out in BiH, witness for the prosecution Ferid Spahić was living in the village of Bosanska Jagodina, Višegrad municipality. Buses arrived in the village from Višegrad, which were to transport the Bosniak inhabitants to the area around Olovo, which was under the control of the BiH Army. When the bus convoy got to Višegrad, more buses joined, and they had armed escorts. An incident occurred because Milan Lukić wanted to separate one of the men from the convoy.

Just outside Rogatica, the bus was stopped. Soldiers in camouflage uniforms separated the women and children from the men, declaring that the men would be exchanged. After the separation, the bus continued to Sokolac, and those on board spent the night there. The next day, they arrived in Rogatica and reached the silo in Rasadnik. As the soldiers were taking people off the bus, they tied and beat them, and seized their money and valuables. The men were taken to a grove and executed. When the witness saw that they were executing people, he took advantage of the fact that he was at the end of the line, near the forest, and fled together with another man. He saw Slaviša Vukojičić by the pit where

233 KTO Indictment 5/20 dated 9 October 2020, available at: <https://www.tuzilastvorz.org.rs/public/indictments/2021-10/KTO%205-20%20prevod..pdf>, accessed on 13 February 2024.

234 Transcript from the main hearing of 12 March 2021.

235 Transcript from the main hearing of 27 May 2021.



the executions were taking place; he later heard that he had been the right-hand man of the accused. He did not know the accused.²³⁶

Witness for the prosecution Armin Baždar stated that at the time of the critical event he was 14 years of age and lived with his father, mother and sister in the village of Seljani, near Rogatica. His village was attacked on 3 June 1992, when healthy and able-bodied men were killed. On 4 August 1992, VRS soldiers arrived in the village claiming that they were there to protect them, i.e. place them in the Secondary School Centre; they took the women, children and the elderly there by minivan. This Secondary School Centre, to the understanding of the witness, was actually a camp, from which women and girls would be taken out in the evening. He later learned that they were raped. On the morning following the arrival of the VRS soldiers, they separated the women and the elderly – among whom were his mother, his sister and his father. They took him with his uncle and another ten to fifteen men to the "Rasadnik", where he was detained until the day of the execution – 15 August. They took him from the "Rasadnik" to do forced labour on multiple occasions. In the afternoon of 15 August 1992, Radisav Ljubinac, aka "Pjano" arrived and told them that they would be going to do some kind of work, and they were taken to the village of Duljevac, where about 30 VRS soldiers with automatic weapons awaited them. As they alighted from the minivan, their hands were tied behind their backs by the soldiers, and then a soldier took two captives and led them in front of him, shooting at a narrow pass at the same time. Then they brought those two men back and ordered them to join the others. He stood next to his uncle, who told him that they would kill them all. He saw Dragoje Paunović aka "Špiro" join the soldiers. One of the soldiers started killing the captives one by one, and then Špiro killed the others with bursts of fire. The witness was hit in the left upper arm, and turned around by 180 degrees and fell prostrate, and was then hit in the right upper arm also. After the shooting there was a lull, and the witness heard somebody ask Špiro via a radio communication link who was doing the shooting. Špiro answered with the question, "And who is asking?", and the person replied, "Rajko Kušić is asking", to which Špiro answered that he was doing the shooting. The witness then somehow managed to escape to the nearby woods and save himself. He could not recall that in an earlier statement he had said that the action had been carried out on the orders of the accused Kušić, but, when asked again, said that he probably had. He stated that in some of his earlier statements he had made no mention of a Motorola, because his statement depended on the time and manner in which it was taken. He could not say whether he had seen the accused during the critical events, as he did not know him.²³⁷

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Course of the proceedings in 2023

During 2023, five court days were scheduled, of which three were held, during which eight prosecution witnesses were interviewed. On one occasion, the main hearing was cancelled for reasons unknown to the public, and once it was postponed because the witnesses invited did not appear before the court.

²³⁶ Transcript from the main hearing of 19 October 2021.

²³⁷ Transcript from the main hearing of 1 September 2022.



Witness for the prosecution Jasmin Muftić stated that he lived in Rogatica during the critical period; there were shootings around the city, and bombs were thrown. The army came to the witness's house and took his father and brother, and that was the last time he saw them. Of the soldiers who took them away, he only knows that one of them had the surname Lubarda. Everyone would have said that the defendant appeared to be in charge.²³⁸

Witness for the prosecution Selim Omeragić was in a village near Rogatica at the critical time. He had no immediate knowledge of the events covered by the indictment. He learned about the crimes committed by the Serbian army in Rogatica from the civilians who fled from Rogatica to the village. They said that there were murders and mass imprisonments of Bosniak civilians. The people who fled from Rogatica organised themselves in a military manner, and the witness became a battalion commander in his village; he did not want to answer the question of whether his battalion participated in the attacks on Serbian villages.²³⁹

Witness for the prosecution Mehmed Bojić, at the time of the critical events, lived in a village near Rogatica. The army came to the village, and he was taken away with a group of locals, and they were questioned and beaten by the soldiers. His brother went missing during the war. He knew the defendant and knew that he was the "commander-in-chief", although he had not mentioned him in his previous statements. During May 1992, the army and the JNA came to the village. There were members of the Bosniak police and members of the BiH Army in the neighbouring villages.²⁴⁰

During the war, witness for the prosecution Senahid Čakić was not in the area of the municipality of Rogatica, so he had no direct knowledge of his father's murder, nor did he know the defendant. The only thing he knew was that his father died in a human shield. He had known Ismet Čakić; he had heard that he and his wife had been killed. The witness did not know the other Čakićs, who are listed in the indictment as victims. His father's body was found in a pit in Goražde and he was buried as a 'shahid' (holy martyr).²⁴¹

Witness for the prosecution Manda Bečić lived before the war in a village near Rogatica with her parents, sister and two brothers. The attack on her family home was carried out on 15 June 1992, when her father and brother were killed. Her brother was a member of the police reserve forces and had a long rifle that he did not want to hand over. Her neighbour Mina Bičić told her that Slobodan Mandžić said that the rifle must be surrendered or they would kill them, and that Rajko Kušić had ordered that those who had guns be caught alive or dead. When the attack on their house began, shots were heard, so everyone went out to see where the shots were being fired from, whereupon her brother and father were killed, and her mother wounded. She left the house on the same day, with her younger brother and sister. They went from village to village, and as soon as armed men would have started shooting near the village where they were, they would leave it and go to the next one. And so it was that they

238 Transcript from the main hearing of 28 February 2023.

239 *Ibid.*

240 *Ibid.*

241 Transcript from the main hearing of 20 April 2023.



came to Rogatica on 31 July 1992, and then went further on to Visoko. She had her brother's gun on her all the time, which she handed over to the Army of BiH upon her arrival to Visoko. The witness did not know the defendant, nor had she heard anything bad about him after the war.²⁴²

Witness for the prosecution Emina Hodžić lived at the beginning of the war in Rogatica in the settlement of Rudo, with her husband and two sons. They stayed in the house of Safet Hadžibulić during all three attacks on Rogatica. There were no armed men in the house to defend them. During the last attack on Rogatica, the Serbian army took them out of Safet's house and led them to a house where they lined them up to shoot them. The man whose house it was would not allow shootings in front of his house, so they were taken to the Secondary School Centre, where they were imprisoned with other civilians brought there. She thinks that about 400 civilians were imprisoned there at that time. When she was taken to the Secondary School Centre, she saw her husband and sons, as well as a military transporter that had come to take them away somewhere. They were enclosed for ten days in the Secondary School Centre, and on the eleventh day they were taken to the village of Mangulići, where they were told they could go wherever they wanted. They went to Olovo, then to Visoko, and then to Dobrinja, where they lived for almost two years. She knew the defendant from a shop in Borike where he had worked before the war. She heard that the defendant was in Rogatica, and that it was he who ordered who would be captured, killed or raped.²⁴³

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Witness/injured party Pemba Muhić lived in the suburbs of Rogatica, in the settlement of Živaljevina, in a family house with her husband Alija and three sons. With the beginning of the armed conflicts in BiH and the deterioration of the security situation in Rogatica, the director and lawyer of the company where she worked called all the employees together and said that work would be suspended "until the situation is resolved". From that day she no longer went to work, but stayed in her house, although the electricity and water were soon cut off. The situation was tense after the Serb Milivoje Vuković was killed in her settlement. She did not know who killed him or why. On 19 June 1991, she was in the house when she heard sporadic gunfire and saw soldiers entering the settlement. Two soldiers came to the door of her house and ordered them all to get out. The witness's son Faruk then jumped out of the window of the house and ran towards the forest. Among the soldiers surrounding the house, she recognised Zoran and Milan Janković, because they were her neighbours from the settlement. Together with other Bosniak neighbours, the soldiers took them to a gas station in Rogatica, where they were told that the men would be taken and questioned. Then her husband Alia and son Sevdalija were taken away, and she never saw them again. Their remains were found in a mass grave. All the time, accompanying the women and children who had been brought in, there was a soldier by name of Milan Janković, who wore the uniform of the former JNA. She did not notice that he had any means of communication. At one point, the defendant appeared there, whom she had not known before; but Samka Smajić and Munira Aganović, who were standing near her, told her that it was Rajko Kušić, and that they knew that he had organised a unit of his own. He was about five metres away from the witness, so she saw that he had a Motorola. The witness's youngest son, who stayed beside her, was

242 *Ibid.*

243 *Ibid.*



crying out that he was thirsty. The defendant then took him to a house nearby to get a drink of water, returned him to his mother and gave him a chocolate bar. They were later taken to the premises of the Secondary School Centre, where they spent about ten days, and then they were transferred to the territory under the control of the Army of BiH. During their stay at the Secondary School Centre, they were not harassed.²⁴⁴

The witness/injured party Faruk Muhić was 20 years old at the time of the critical event on 19 June 1992. He said that he lived in the settlement of Živaljevina near Rogatica, in a family house with his parents, mother Pemba and father Alija, and two brothers. That morning there was gunfire, and when soldiers came to the door of their house, he jumped out of the window and fled in the direction of the forest. He learned about the death of his father and his brother Sevdalija later, from his mother.²⁴⁵

HLC Findings

Legal qualification

The indictment that the Prosecutor's Office of Bosnia and Herzegovina issued against the accused and the BIH Court confirmed, was for the criminal offence of a crime against humanity, and the case was transferred to the Republic of Serbia with such a statement regarding the offence. However, the OWCP changed this qualification and issued an indictment for the criminal offence of a war crime against the civilian population. The OWCP explained its position that this crime could not be characterised as a crime against humanity, by the fact that no such criminal offence had existed in the domestic judiciary at the time it was committed. The HLC believes that this position is legally unfounded and that there are no legal obstacles to prosecuting this offence with the qualification of crime against humanity, with regard to the principle of the primacy of international over national law, because the crime against humanity existed as a separate criminal offence in international law at the time of the commission of this crime. Namely, the crime against humanity was first envisaged as a criminal offence in the 1946 Charter of the International Military Tribunal. Since during the investigation in BiH evidence had been collected for one criminal offence, and the OWCP had later filed an indictment for another criminal offence, it remains to be seen to what extent this may affect the proceedings.

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Unnecessary anonymisation of the indictment

The OWCP posted on its website the indictment it had raised against Rajko Kušić anonymised, namely, as being against person A.A., instead of naming the accused. Such anonymisation was entirely unnecessary, as data on the indictment, including the full name of the defendant, had already been posted on the website of the BIH Court.²⁴⁶ Also, prior to the start of the trial in the Republic of Serbia,

²⁴⁴ Transcript from the main hearing of 15 November 2023.

²⁴⁵ *Ibid.*

²⁴⁶ Case of the Court of Bosnia and Herzegovina No. S1 1 K 017608 14 Kro.



namely, already in 2015, the case had received media coverage in Bosnia and Herzegovina, with the defendant referred to by his full name.²⁴⁷ Anonymising publicly posted indictments in this way, the OWCP makes them unclear²⁴⁸, and the accused invisible to the general public, which is entirely contrary to the 2016 and 2021 National Strategies²⁴⁹, as well as to the Prosecutorial Strategy²⁵⁰ for the Prosecution of War Crimes in Serbia. Namely, the mentioned strategies envisage the heightening of society's overall awareness of the issue of war crimes trials, primarily through facilitated access to information about war crime proceedings, in pursuit of the ultimate aim – the improved transparency of war crime trials. Apart from the names of the accused, the names of the victims have also been anonymised in the indictment. When an indictment with multiple counts and a large number of victims is in question, the names of the victims can be heard only in the eventuality that it is read out at the trial. However, given the large numbers of victims, trial monitors are unable to record all the victims' names, which greatly hinders the monitoring of proceedings.

Prosecution of senior army personnel

The accused in this trial is Rajko Kušić, indicted as a high-ranking officer who, during the course of the critical events, discharged the duty of Commander of the Territorial Defence of Rogatica Municipality, and later, that of Commander of the Rogatica Brigade and Commander of the 1st Podrinje Light Infantry Brigade. While the prosecution of senior army personnel is definitely a positive thing, one must bear in mind the fact that this indictment was not the result of the OWCP's work, but was a confirmed indictment transferred from BIH – namely, that the charges against this senior officer are the result of the work of the Prosecutor's Office of Bosnia and Herzegovina.

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247 "Indictment against Rajko Kusic Confirmed", *Detektor*, 3 April 2015, available at: <https://detektor.ba/2015/04/03/potvrdena-optuznica-protiv-rajka-kusica/>, accessed on 13 February 2024.

248 On all OWCP indictments, the First Respondents are designated as A.A. available at: <https://www.tuzilastvorz.org.rs/en/cases/indictments>, accessed on 3 December 2022.

249 National Strategy for War Crimes Prosecution, available at: <https://www.mpravde.gov.rs/files/National%20Strategy%20for%20the%20Prosecution%20of%20War%20Crimes.pdf>, accessed on 13 February 2024; National Strategy for War Crimes Prosecution 2021-2026, available at: <https://www.mpravde.gov.rs/files/NATIONAL%20STRATEGY%20FOR%20WAR%20CRIMES%20PROSECUTION%201.pdf>, accessed on 13 February 2024.

250 Prosecutorial Strategy for the Investigation and Prosecution of War Crimes in Serbia 2018-2023, available at: https://www.tuzilastvorz.org.rs/public/documents/2021-06/strategija_trz_eng.pdf, accessed on 13 February 2024.



IX. The *Rudice Case*²⁵¹

CASE FACTS	
Current stage of the proceedings: first-instance proceedings	
Date of indictment: 6 December 2020	
Trial commencement date: 22 April 2021	
Prosecutor: Vasilije Seratlić	
Defendant: Nezir Mehmetaj	
Criminal offence: war crime against the civilian population under Article 142 of the FRY CC	
Trial Chamber	Judge Zorana Trajković (Chairperson) Judge Mirjana Ilić Judge Bojan Mišić
Number of defendants: 1 Defendant's rank: no rank Number of victims: 9 Total number of witnesses heard: 7	Number of scheduled court days in the reporting period: 10 Number of court days in the reporting period: 4 Number of witnesses heard in the reporting period: 0 Total number of experts witnesses heard: 2
Key developments in the reporting period: Main hearing	

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²⁵¹ The *Rudice Case*, trial reports and case documentation available at: <http://www.hlc-rdc.org/Transkripti/Rudice.html>, accessed on 26 February 2024.



Course of the proceedings

Indictment

The accused Nezir Mehmetaj is charged with having, in June and July 1999, in the area of the village of Rudice, Klina municipality, as a member of the OVK/KLA -Kosovo Liberation Army/, together with a number of members of the same formation, participated in the killing, abduction, forcible removal and physical abuse of non-Albanian civilians, plunder of their property and torching of their houses, namely that:

1. As of 15 June 1999, as the leader of a group of KLA members, he came to the family home of Ramadan Jelaj in the village of Rudice, who was known to be on good terms with Serbs from the village of Rudice, and asked him to go to the houses of the Dašić family and to persuade them to hand over their weapons, with assurances that nothing would happen to them, which he did; trusting Jelaj, the Dašić family surrendered their weapons; a couple of days later, the accused and a number of unidentified persons, KLA members, arrived at the Dašić family home, on which occasion Mihailo, Jovanka, Dragan and Dragutin Dašić were forced into a van and taken away to a location so far unknown, where they were deprived of life in a still undetermined manner, with their mortal remains as yet unfound;
2. In late June 1999, as the leader of a group of KLA members, together with several unidentified members of the group, having found out that Ramadan Jelaj had come back home from Montenegro, where he had fled in fear for his life because he had heard that the accused was looking for him and inquiring about his whereabouts, Nezir Mehmetaj intercepted him in the street and forced him into a shop in the village of Rudice, where he was maltreated and interrogated, cursed at, accused of being a Serbian spy and of informing them of KLA positions, and then said this to him, "You are sorry because we killed the Dašić family"; after that, grabbing him roughly by the arms, he and his associates briefly took him to his family home in the village of Rudice and then forced him into a vehicle, after saying to one of his daughters before he entered the vehicle, "This is the last time that you will see him, there won't be another time", and before setting off towards Zalac, where Ramadan Jelaj was deprived of his life in an undetermined manner, his mortal remains not having been found to date;
3. Between the end of June and beginning of July 1999, in the village of Rudice, as the leader of a group of KLA members, together with several unidentified members of the group, he took Zorka Šiljaković out of her house, after which she was deprived of life in an undetermined manner, her mortal remains not being found to date;
4. Towards the end of June and in July 1999, in the village of Rudice, as the leader of a group of KLA members, together with several unidentified members of the group, the accused repeatedly in the daytime entered six houses belonging to Serbs, Roma and Egyptians who had been threatened and had fled, and seized valuables from these houses; at night, he went there with a jerrycan and torched the houses, and also set fire to the houses of another four families;



5. Towards the end of June and in July 1999, in the village of Rudice, as the leader of a group of KLA members, together with several unidentified members of the group, the accused repeatedly maltreated and abused a number of non-Albanian inhabitants, Roma and Egyptians; on one occasion, he and his associates took four persons out of their houses and beat them up, kicking and hitting them and then throwing them out of a vehicle; all the mentioned persons sustained bruises on their backs, their heads were covered in blood and they were unable to walk; on another occasion, he forcibly brought six or seven Roma and Egyptian minors to his house in the village of Rudice and forced them to dig a pit for an hour, and then, swearing at them, "Your goose is cooked now! For you Gypsies and Roma living here, this will be Albanian only!", he opened fire in their direction, with the terrified young men taking to their heels and two days later leaving the village of Rudice for good.²⁵²

Defence of the accused

Presenting his defence, the accused denied having committed the criminal offence he is charged with. He explained that he hailed from the village of Rudice, and that in 1987 he had gone to Switzerland and had worked there until 2021, when he retired. His parents, brothers and sisters remained in the village. He got married in Switzerland, fathered three children and worked for ten or more hours a day in order to earn enough to support his family. Throughout the duration of the armed conflicts in Kosovo he was in Switzerland, as can be seen from his pay slips, because the amounts he received are evidence that he had not taken a single day off on leave or sick leave until August 1999. In September 1999, he went to Albania, where his mother and sisters had sought refuge; he purchased a vehicle in Durres and travelled with his mother and sister to his native village of Rudice. He had heard about some occurrences during the armed conflicts from Ahmet Amhadekaj. On arrival in Rudice, he looked for his father who was in prison at the time, and found out that he was in Sremska Mitrovica. He remained in Rudice for three months, and returned to Switzerland at the end of November 1999. He had heard nothing about the Dašić family, nor did he know them from an earlier period. He had met some persons from that family only in 2018 or 2019, when they returned to the village. He did not know Zorka Šiljaković, and he had not heard what happened to her. He knew Izet Ahmadekaj, and they had known each other since childhood – in fact, it was him whom he had first asked about his father. Izet had once told him that Ramadan Jelaj had been taken away. He had never ever worn a uniform. He had heard that there was another person in the village of Zablać also named Nezir Mehmetaj, but he did not know that person.²⁵³

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Witnesses in the proceedings

Witness and injured party Ljubiša Dašić stated that he and his family had lived in the village of Rudice until 15 or 16 June 1999, when, after KLA members entered the village, he left the village with a part of his family for reasons of safety. When they were leaving the village, their Albanian and Roma

252 KTO Indictment 2/20 dated 16 December 2020, available at: <https://www.tuzilastvorz.org.rs/public/indictments/2021-09/%D0%9A%D0%A2%D0%9E-2-20%20eng-.pdf>, accessed on 26 February 2024.

253 Transcript from the main hearing of 22 April 2021.



neighbours, who were sad because they were leaving, saw them off. He returned to the village only several years later, as part of an organised return of displaced persons. He saw all of their houses had been demolished and burnt down. At the local store, run by the Ahmađekaj family, the father and the sons expressed their condolences. Some villagers, whose names he wished to withhold for the sake of their safety as they were still living in the village of Rudice, told him what had happened to his father Mihailo, his brother Dragutin, his cousins and his sister-in-law Jovanka. After KLA members had entered the village, his neighbour Ramadan Jelaj had come to the houses of his family and offered to help them exit the village and go to Rožaje. However, the Dašić family was taken captive by Albanians; people said that the men had been tortured and then killed, whilst his sister-in-law Jovanka and neighbour Zorka Šiljaković had been tortured longer and killed several days later. The locals pointed to Mustafa, Sefa, Džafer and Nezir Mehmetaj, as well as several members of the Barjaktari family, as the organisers of the torture and killing of the Dašić family members. Reportedly, a woman neighbour had asked the accused why they had not put Jovanka out of her misery instead of torturing her for so long. After killing the Dašić family, the group responsible for their killing also went looking for Ramadan Jelaj, fearing that he might inform on them, and killed him too. The mortal remains of his father Mihailo and brother Dragutin have still not been found.²⁵⁴

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Witness and injured party Milutin Dašić stated that he did not know the accused. He had heard that after these proceedings were initiated, a petition was being circulated for signatures in the village of Rudice, stating that the accused was not responsible for the killing of the Dašić family members, and that Albanians were exerting pressures on the witness's relatives in the village to sign the petition also. When the bombing ceased in June 1999, the witness left Rudice in fear of KLA members. He first heard about the killing of his father and brother from his 'kum' (his child's godfather and/or witness at his wedding), Vukota Petković, who remained in the village for some 10 or 15 days after he had left. When he returned to the village several years later, the Ahmađekaj family expressed their condolences for the loss of his father Mihailo. Locals told him that the Dašić family members, his father Mihailo, his brother Dragutin, his cousins and his sister-in-law Jovanka, had been taken from the village in a van on 17 or 18 June 1999, and that there was a makeshift prison for them in the house of Vlada Šiljković set up by Rudice locals who were KLA members. All the Dašić houses were demolished and burned down. The villagers of Kruševo told him that the Dašić family had been killed on the bridge and their bodies thrown into the Beli Drim River. He heard from a woman neighbour, Ajša Jelaj, that the accused Nezir Mehmetaj had been the person in charge in the group that had tortured and killed the members of his family. People said that the Dašić men were killed on 18 June 1999, and Jovanka and woman neighbour Zorka Šiljaković about two weeks later. He would not disclose the identity of the other persons who had told him about the ordeal of his family members, because he feared for their safety, since they were still living in Rudice.²⁵⁵

Witness and injured party Slavica Vratnica, the daughter of the killed Zorka Šiljaković, stated that her mother Zorka had lived in Rudice as a pensioner and that she had learned of her fate in October

²⁵⁴ Transcript from the main hearing of 26 May 2021.

²⁵⁵ *Ibid.*



1999. She had called their neighbour Ajša Jelaj on the telephone, who told her that her mother had been hiding in her house for three days before KLA members led her away. She heard that they had killed her mother on 25 or 26 June 1999, and looted and burned the house and the estate, as well as all Serbian houses in the village. She heard that the accused had been the man in charge of the KLA members who had been involved. She did not wish to name the persons who told her about the killing of her mother, for they too would be killed, since they were still living in the village. She noted that her relatives who remained living in Rudice were being forced by their Albanian neighbours to sign a petition requesting the acquittal of the accused.²⁵⁶

Defence witness Milija Arsović did not have first-hand knowledge of the critical event. As a priest, he was passing at the relevant time in a KFOR personnel carrier through the surrounding villages, and through the aperture noticed five bodies at the entrance to the village of Rudice, of persons who he supposed had met a violent death, but he did not recognise them nor tell their sex. He did not recognise the accused and he did not associate him with the killings.²⁵⁷

Witness for the prosecution Dževad Jelaj did not have first-hand knowledge of the critical event. He had heard from members of his family, his sisters and their husbands, that in the summer of 1999 KLA members had led away Mihailo, Jovanka, Dragan and Dragutin Dašić from the Dašić family house in the village of Rudice and later killed them. He had also heard that KLA members had led Zorka Šiljaković away from her house and killed her, and also that they had maltreated non-Albanians and plundered the abandoned houses of their Serbian and non-Albanian neighbours. He knows the accused well, as they both hailed from the village of Rudice. However, in the stories that he had heard, no one had mentioned the accused.²⁵⁸

Dejan Ćirković, who is not a permanent court-sworn expert, was examined in respect of the findings and opinion of the National Forensic Centre. He explained that the purpose of the evaluation had been to establish whether the accused was the person in the disputed photograph. To arrive at his findings, he applied the facial morphological features analysis method to establish a match. This method is used following a recommendation of the European Network of Forensic Science Institutes. The analysis established overlapping between the disputed and the undisputed photographs, namely, correspondence establishing a match. A software programme was used to establish a match. The anthropometric method was applied. For the time being, there does not exist more sophisticated software than the one used. The expert is a B.S. in Traffic Engineering, but he had completed a specialised police course, as well as training abroad on the subject of facial recognition. While working, he was not able to establish the authenticity of the photograph at issue, as he was working with a photograph he had received on a disk. The analysis determined the similarity of four morphological features, on the basis of which he concluded that the accused was appeared in the disputed photograph.²⁵⁹

256 *Ibid.*

257 Transcript from the main hearing of 9 July 2021.

258 Transcript from the main hearing of 8 November 2021.

259 Transcript from the main hearing of 16 March 2022.



The defendant's professional consultant, court sworn expert Dr Marija Đurić, contested the expert's findings, stating that the expert evaluation failed to explain what the similarities observed on the four morphological features observed consisted of, and that there existed observable differences which were not mentioned and which showed that the photographs differed. Pursuant to the differences between the disputed and the undisputed photographs which she had noticed, she concluded that similarity was highly improbable, as evident differences were in question.²⁶⁰

Defence witness Kumrije Mališev, daughter of the late Ramadan Jelaj, stated that she knew the accused because they both lived in the village of Rudice. She knew that the accused had worked in Switzerland. In the critical period, she was in the village of Rudice, but she did not see the accused then. There had been KLA members in the village, and they took away her father when he went to the store to buy some food. Her father was taken away by two KLA members, one of whom was Enver Mehmetaj.²⁶¹

Witness for the prosecution, Sali Mustafaj, son of the late Ramadan Jelaj, stated that his motive for testifying, apart from telling the truth about his father, was to disprove the statement of Kumrije Mališeva who had testified in this case three months before, and whose statement, according to the witness, contained many untruths. The witness had been living and working in Germany since 1989, but had regularly kept in touch with his family (his father and his sisters) in Rudice by telephone. His sister Kumrije had lived with her family in the village of Kijevo, from which she moved to Rudice just before the 1999 war broke out, because of the better security situation there. The witness's father, Ramadan Jelaj, wanted to leave Rudice during the 1999 war, but was prevented from doing so by Serbian forces. When in June 1999 the police and military forces of the Republic of Serbia withdrew from the territory of Kosovo and Metohija, the Serbs of Rudice left their farming machinery on Ramadan Jelaj's estate. At the same time, Nezir Mehmetaj seized power in the village together with other KLA members, which the witness had discovered from talking with his sisters, Ajše and Kumrije. Ramadan, Ajše and Kumrije lived some 250 metres away from the house of Zorka Šiljaković and the Dašić family. In June 1999, Nezir Mehmetaj took Ramadan to the KLA Headquarters, where he was beaten up, and released three days later. One day, after Ramadan had returned home, Nezir Mehmetaj came to see him and demanded that he go to the Dašić family and convey to them the message that they were to surrender their weapons. Ramadan did as he was requested, together with another neighbour. Ramadan had known the Dašić family all his life, and they had never quarrelled. As Ajša told the witness, when Ramadan returned from the Dašić home, shots were heard coming from that direction. Immediately after this event, Ramadan Jelaj went by taxi to Rožaje (Montenegro) and called the witness from there, and told him about what had happened in Rudice. The witness remembered a sentence that Ramadan uttered – "I have the Dašić family on my conscience." Several days later, Ramadan's daughter Ajša called him and told him that they remained without food in Rudice, and so Ramadan returned to Rudice in a taxi, bringing flour and other foodstuffs. He left the food in front of the house door, because Kumrija told him that the KLA were looking for him and that he had to leave the village immediately. Ramadan sat in a taxi and set off back to Rožaje, but some 100 metres down

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²⁶⁰ *Ibid.*

²⁶¹ Transcript from the main hearing of 16 September 2022.



the road, Nezir Mehmetaj and Bujar Bajraktari obstructed their passage with a car. The two of them pulled Ramadan out of the taxi and took him to a shop near Ramadan's house, where they beat him up. That same day, Mehmetaj and Bajraktari and a third unidentified person drove Ramadan away somewhere in a black jeep, which Ramadan's daughters, son-in-law and grandson saw. In addition to Ramadan, several other people from Rudice were beaten up, including Ahmet, Kumrije's husband.

The witness first heard what had happened to his father in June 1999, from Ajša and Kumrije. The witness had built a house in Rudice in the 1990's, which was in the same yard as his father's house. He claimed that it was common knowledge that the Dašić family was killed by Mehmetaj and other KLA members, but that people were keeping their mouths shut for fear of revenge; it was also known that Mehmetaj had seized Ramadan Jelaj's property. Throughout the war, Mehmetaj wore a KLA uniform. Mustafaj confirmed that his brothers and sisters had been contacted by members of the Mehmetaj family and offered money to testify in favour of the accused. At a meeting organised in that connection, Kumrije's son Hisen accepted money from the Mehmetaj family, and that was why Kumrije perjured herself. Also, the witness stated that the Mehmetaj family had threatened him on several occasions.²⁶²

Course of the proceedings in 2023

During 2023, **ten** court days were scheduled, of which only **four** were held. On one occasion, the main hearing was postponed owing to the absence of a member of the Trial Chamber, and on another, owing to the fact that the Chairperson of the Trial Chamber's mandate in the War Crimes Department had expired; and it was postponed four times owing to the absence of a protected witness under the pseudonym of "Atar".

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Owing to the change of a member of the Trial Chamber, the main hearing had to begin again from start.²⁶³

HLC Findings

Unnecessary anonymisation of the indictment

The POWCP posted on its website the indictment it had issued against Nezir Mehmetaj anonymised in such a way as to indicate that instead of the accused, in question was person A.A. Such anonymisation was entirely unnecessary, as data on the accused, including his full name, the place he comes from and his address, has already been published in the media since his arrest in early 2020.²⁶⁴

262 Transcript from the main hearing of 20 December 2022.

263 Transcript from the main hearing of 13 June 2023.

264 "Nezir Mehmetaj arrested in Merdare on a warrant from Belgrade", *RTV*, 4 January 2020, available at: https://www.rtv.rs/sr_lat/hronika/nezir-mehmetaj-uhapsen-na-merdaru-po-poternici-iz-beograda_1081586.html, accessed on 26 February 2024.



Delaying proceedings due to omissions of the POWCP

From the very beginning of this procedure, the POWCP has not been able to bring along one of the key witnesses of the prosecution, a protected witness under the pseudonym of "Atar". This witness was previously in the protection programme, which he left of his own accord. He left the POWCP an address where he would allegedly be residing, but did not respond to the summonses of the court which were sent to him at that address. The War Crimes Detection Service has not been able to determine the whereabouts of this witness for a long time. Only in 2023 did the POWCP inform the court that it had come to its knowledge that the protected witness was in Germany, and that its competent authorities would be asked to verify his address. During 2023, the protected witness "Atar" twice informed the witness service of the High Court in Belgrade that he did not want to testify, but the court did not have any evidence that he had duly received the summons. For more than two years, the POWCP has been unable to present this key witness, who obviously does not want to testify and avoids receiving summonses, which is why the proceedings have been unnecessarily delayed. Therefore, the right of the defendant to a trial within a reasonable time is violated, especially bearing in mind that he is in detention.



X. The *Sanski Most II Case*²⁶⁵

CASE FACTS	
Current stage of the proceedings: first-instance proceedings	
Date of indictment: 25 March 2021	
Trial commencement date: 28 June 2021	
Prosecutor: Snežana Pavlović-Pejić	
Defendant: Branko Basara	
Criminal offence: war crime against the civilian population under Article 142 of the FRY CC	
<p>Case transferred from BiH</p> <p><i>This proceeding is the result of cooperation between Serbia and BiH in the prosecution of war crimes, which was intensified after the OWCP and the Prosecutor's Office of BiH signed the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide in 2013. Namely, the confirmed indictment against Branko Basara was transferred by the Prosecutor's Office of Bosnia and Herzegovina, given that the defendant, who is a citizen of the Republic of Serbia and residing in Serbia, was not available to the authorities of BiH.</i></p>	
Trial Chamber	<p>Judge Vladimir Duruz (Chairperson)</p> <p>Judge Vinka Beraha-Nikićević</p> <p>Judge Snežana Nikolić - Garotić</p>
<p>Number of defendants: 2</p> <p>Defendant's rank: high rank</p> <p>Number of victims: 287</p> <p>Total number of witnesses heard: 5</p>	<p>Number of scheduled court days in the reporting period: 8</p> <p>Number of court days in the reporting period: 1</p> <p>Number of witnesses heard in the reporting period: 1</p> <p>Total number of experts witnesses heard: 0</p>
<p>Key developments in the reporting period:</p> <p>Main hearing</p>	

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²⁶⁵ *Sanski Most II Case*, trial reports and case documentation available at: http://www.hlc-rdc.org/Transkripti/sanski_most-II.html, accessed on 26 January 2024.



Course of the proceedings

Indictment

The accused Branko Basara and Nedeljko Aničić are charged with the commission as co-perpetrators of the criminal offence of a war crime against the civilian population, namely, that during the armed conflict in the then Republic of Bosnia and Herzegovina, the accused Branko Basara, as the commander of the 6th VRS Sana Brigade, and Nedeljko Aničić, as the commander of the TO Staff of Sanski Most Municipality, both members of the Crisis Staff of Sanski Most Municipality, violated the rules of international humanitarian law by having their subordinate units participate in armed attacks on non-Serb towns and villages (with the objective of displacing the population), murder, unlawful detention, attacks on civilians and civilian settlements, and bodily injury. The accused were in a state of mental competence, they were aware that the activities of their units could result in the commission of criminal offences, and they concurred in it, and consequently their subordinate units committed the following crimes:

1. Unlawful detention and infliction of bodily injury

On 25 May 1992, in a concerted action with SOS [Serbian Defence Forces] units and other military units of the 6th Sana Brigade, the police began arresting in their homes Muslim and Croat civilians who were municipal officials, SDA political activists and intellectuals from Sanski Most, including AB, AV, AG, AD, AĐ, AE, AŽ, AZ, AI, AJ, AK, AL, ALj, AM, and brought them to the Public Security Station, where they were subjected to interrogation; having arrested A.N., the first president of the Party of Democratic Action, the military took him to the village of Magarica, to the Command of the 6th Sana Brigade, where he was beaten up and then taken to the "Sana" Radio Station, where he was ordered to read out a previously prepared text, in which he "admitted" that officers and men of the Serb armed forces had opened his eyes, and that the insensitive Muslims declining to proffer a hand to the Serb people, who on their part were generously offering theirs, were solely to blame for all the grief and pain brought upon the Muslim people, and called upon the Muslims to surrender to the Serb troops and hand over all illegal and legal weapons to the Serb authorities - as well as not to be taken in by the stories being launched by Muslim and Croat extremists, because that would lead to the massive suffering of innocent people; after reading the text, he was taken to the Public Security Station, where together with other persons he was confined to the detention unit, and some of them were subjected to psychological and physical maltreatment, moved to and held and viciously beaten in the garages called "Betonirka", and then again taken back to the Public Security Station, only to be transferred by August 1992 to the camp at Manjača, except for the religious clerics – AJ and AK – who remained incarcerated at the Public Security Station and were subsequently killed, and whose bodies were exhumed and identified at the "Lugovi – Trnava" location;

2. Attack on civilian population and civilian settlements

On the night of 26 May 1992, after the 6th Sana Brigade artillery units were stationed in the



Magarice, Dabar and Kruhari area, and the 1st and 4th Infantry Battalions blockaded the settlements of Mahala, Otoka and Muhići by taking up positions along the Ključ–Prijedor main road and the right bank of the Sana River, in contravention of international humanitarian law regulations 7, 8, 9, 13 and 14 of the 1907 Hague Regulations annexed to Convention (IV) respecting the Laws and Customs of War on Land, an artillery attack was mounted from the Magarice and Dabar sites against the sealed-off and undefended civilian settlements of Muhići, Otoka and Mahala, which lasted a minimum of 12 hours, setting private houses and other civilian facilities on fire and forcing the civilians to hide in fear for their lives and take shelter in the basements of their houses until the infantry entered;

3. Unlawful detention and infliction of bodily injury

On 27 May 1992, units of the 6th Sana Brigade and "Crni Đorđe" and Serbian Defence Forces (SOS) intervention units entered the settlements of Mahala, Muhići and Otoka and started searching the houses, and, for no reason and unlawfully, driving out the civilians - men, women, children and the elderly - and forcing them at gunpoint to head in the direction of Dašići and Krkojevci, places designated as assembly points, where, guarded by armed soldiers, they were held without food or water all day and then transported to and unlawfully detained at the "Narodni front" Primary School and the Sports Hall, which had been converted into detention facilities; on that occasion, almost the entire population of Mahala, Muhići and Otoka was ejected from their homes and imprisoned, whilst civilians ANJ and AO, who had separated from the column en route to Dašići, were killed, whose bodies have since been exhumed and identified at the "Greda I" mass grave site;

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4. Murder

On 27 May 1992, while conducting searches, forcibly removing the population and taking them away towards collection centres, a group of soldiers killed AP outside the house of (...), and, after finding civilians in a house and driving them out of the shelter, fired shots at them from automatic rifles and killed AR, AS, AT, AČ, AU, AF, AH and his pregnant wife AC, whose bodies have since been exhumed and identified at the "Greda I" mass grave;

5. Murder and unlawful detention

On 27 May 1992, in the settlement of Otoka, a group of armed soldiers unlawfully deprived civilians AČ and AĐ of liberty, brought them to the house of AŠ, and drove all the civilians they found there out of the house, after which one group of soldiers took AŠ, his wife and his daughter-in-law in the direction of Krkojevci, and another group of soldiers led away and killed civilians AČ, AĐ and BA, who have been exhumed and identified at the "Greda I" mass grave;

6. Attack on civilian population and civilian settlements

On 31 May 1992, the artillery of the 6th Sana Brigade, stationed at the Primary School in Kljevci, in contravention of international humanitarian law regulations 7, 8, 9, 13 and 14 of the 1907 Hague Regulations annexed to Convention (IV) respecting the Laws and Customs of War on Land,



started indiscriminately shelling the undefended civilian villages of Vrhpolje and Hrustovo, which were already encircled by armed soldiers poised to attack; on which occasion, a large number of family homes and outbuildings were set fire to and demolished, and civilians in fear for their lives forced to take shelter in their basements and garages, until the infantry entered the villages;

7. Murder

On 31 May 1992, after the troops entered the undefended village of Hrustovo, they threw an explosive device into the garage of the house of (...), where about 37 civilians, mainly women and children, were hiding, which exploded and killed BG, BD, BĐ, BE, BT, the child BZ, BI, BJ, the child BK, BL, BLj, BM, BN, BNj, BO, BP, BR, BS, BT and BĆ, who have since been exhumed and identified at the "Hrustovo I – Kukavice" mass grave;

8. Murder and unlawful detention

On 31 May 1992, having entered the undefended hamlet of Begići, soldiers brought all the civilians they found there outside the house of BU, then locked up the women and children inside the house, and led the men away through a field called "Vinogradine" towards the Vrhpolje Bridge; during which, when they arrived at the slaughterhouse near the bridge over the River Sanica, VV first killed civilians BF and BH, and when they reached the junction at Vrhpolje, then killed civilian BU, after which, on the main road leading to Sanski Most, he killed civilian BC, and when they reached the Vrhpolje Bridge, civilian BĆ, and finally killing, with other soldiers, the remaining civilians on the Vrhpolje bridge, by ordering them to strip and jump off the bridge and then shooting and killing them as they were falling into the water, including BĐ, BŠ, VA, VB, VG, VD, VĐ, VE, VŽ, VZ, VI, VJ, VK and VL, who have since been exhumed and identified at the "Vrhpolje Bridge I and II" mass graves;

9. Murder

On 1 June 1992, after the inhabitants of Hrustovo had gathered at the Keranjsko Cemetery to bury those killed in the garage of the family (...), they came under artillery fire from the 6th Sana Brigade and sought shelter in the nearby house of VLj; they were then surrounded by soldiers, who separated the women from the men in front of the house, brought another 100 or so male villagers there, and took all of them to the Vrhpolje Bridge, where they were divided into groups, after which:

- about 25 of them, including VM, VN, VNj, VO, VP, VR, VS, VT, VĆ, VU, VE, VH, VC, VČ, VD, VŠ, GA, GB, GV, GD, GĐ and GE, were taken in the direction of Tomina and killed, and whose bodies have since been exhumed and identified at the "Tomina – Markovići" mass grave;
- over 20 of them, including GŽ, GZ, GI, GJ and GK, were taken in the direction of Tomina – Gornja Tramošnja and killed, whose bodies have since been exhumed and identified at the "Gornja Tramošnja – Jankov Do" mass grave;



10. Unlawful detention

Over 20 persons were brought in front of the Public Security Station and handed over to the police, who locked them up in a garage by name of "Betonirka", among whom were GL, GLj, GM, GN, GNj, GO, GP, GR, GS, GT, GĆ, GU, GF, GH, GC, GČ, GŽ, GŠ and DA, and where they were beaten up and starved, to be transported in August 1992, together with other detainees from detention facilities in Sanski Most, to the "Manjača" camp at Manjača;

11. Murder, unlawful detention and displacement

On 1 June 1992, in Hrustovo, soldiers drove civilians out of their houses and led them at gunpoint towards Sanski Most, and on reaching the Vrhpolje Bridge, separated the men from the women and children and escorted them to the village of Tomina and then to the "Krings" detention facility in Sanski Most, at which point they expelled them from the territory of the municipality and killed the men, among whom were DB, DV, DG, DĐ, DE, DT and DZ, whose bodies have since been exhumed and identified at the "Vrhpolje bridge – II" mass grave;

12. Murder

On 1 June 1992, in Hrustovo, having been given permission by soldiers who were in the village, DI and DJ and nurse DK were transporting the wounded DL and child DLj in their passenger vehicle to the Health Centre in Sanski Most, taking DK's children along with them; when they reached Vrhpolje Bridge, they were stopped by soldiers, ordered out of the vehicle which was seized, after which the women and children accompanied by the attendant doctor were driven to the Health Centre, while DI and DJ were held and killed, whose bodies have since been exhumed and identified at the "Vrhpolje bridge II" mass grave;

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13. Murder and unlawful detention

In the period from 31 May 1992 to 4 June 1992, in the village of Hrustovo, soldiers continued to search the houses and "cleansethe terrain", drove out the civilians they found in their houses and took a number of them to detention facilities in Sanski Most, and killed more than 50 civilians at various locations in the village, including DM, DN, DNj, DO, DP, BS, DR, BNj, DS, BP, DT, DĆ, DU, DF and BR, whose bodies have since been exhumed and identified at the "Hrustovo – I" mass grave; along with DH, DC, DČ, ZŽ, DŠ, ĐA, ĐB, ĐV, BG, ĐG, BĆ, ĐD, ĐE, ĐT, who have been exhumed from individual graves throughout the village and identified; ĐZ, ĐI, ĐJ, ĐK, ĐL, ĐLj, ĐM, ĐN, ĐNj, ĐO, ĐP, ĐR, ĐS, ĐT, ĐĆ, ĐU, ĐF, ĐH, ĐC and ĐČ, who have since been exhumed and identified at the "Vrhpolje – polje" mass grave;

14. Murder and unlawful detention

After shelling Vrhpolje on 31 May 1992, soldiers entered the village, searched it and expelled at gunpoint from their houses and hiding places all the civilians they found, rounded them up in the centre of the village and ordered them to leave and head in the direction of Tomina; before the column departed, they pulled EŽ, EŠ, GČ, EA, EB, EV and EG off an animal-drawn cart, and immediately started hitting them with rifle butts all over the body, and, after the expelled



inhabitants had left the village, killing them; their bodies have since been exhumed and identified at the "Gornja Tramošnja – Jankov Do" mass grave;

15. Murder

On 31 May 1992, at Vrhpolje Bridge, soldiers stopped the column of civilians moving from the village of Vrhpolje in the direction of the village of Tomina, singled out 7 male civilians, and killed ED, EĐ, ET, EZ and EI, whose bodies have since been found at the "Gornja Tramošnja – Jankov Do" mass grave, along the body of EJ at the " Vrhpolje bridge – III" grave, although so far all trace has been lost of civilian EK;

16. Unlawful detention and displacement

On 31 May 1992, at the orders of the army, civilians found in the village of Vrhpolje were driven out of their houses, and, except for the men separated in the village and on Vrhpolje Bridge, forced, without their luggage, which remained on carts, to head in the direction of the village of Tomina, where they had to stay for about a month, totally disenfranchised; then, on 5 July 1992, they were ejected from Tomina to the "Kring's" Hall detention facility in Sanski Most; from there, they were taken on trucks to Trnopolje in Prijedor and then transported aboard a freight train to Doboj, where they were ordered to continue on foot in the direction of Gračanica, to BIH Army-controlled territory;

17. Murder

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From 31 May 1992 onwards, the military continued to carry out searches and "cleansing" actions in the village of Vrhpolje, and killed the male civilians whom they found and discovered, including VLj, EL, ELj, EM, EN and ENj, whose bodies have since been exhumed and identified in individual graves in the village of Vrhpolje;

18. Murder

On 25 June 1992, following repeated searches and inspection of the Hrustovo and Vrhpolje village areas, soldiers arrived at the hamlet of Kenjare, drove out all the civilians from their houses and rounded them up in the centre of the village, separated the men from the women and children, and then let the women and children go home, taking the men to the house of (...) in Kljevci; on the following day, 26 June 1992, they took them to the Kasapnica locality, confined them within the house of (...), threw hand grenades into the house and opened fire at it, and then set it on fire, killing on that occasion EO, EP, ER, ES, ET, EĆ, EU, EF, EH, EC, EČ, ED, EŠ, TA, TB, TV, TG and TD, although witnesses TĐ and TE managed to escape through the window; ŽE was found by the soldiers and delivered to the Public Security Station, and all trace has been lost of him since;

19. Attack on civilian population and civilian settlements

In the period between 23 July 1992 and 25 July 1992, the artillery of the 6th Sana Brigade, in contravention of international humanitarian law regulations 7, 8, 9, 13 and 14 of the 1907 Hague Regulations annexed to Convention (IV) respecting the Laws and Customs of War on Land,



indiscriminately shelled the undefended villages of Stari Majdan, Stara Rijeka and Briševo, which had been encircled by troops of the 6th Sana Brigade and the 5th Kozara Brigade from Prijedor, setting private houses and other civilian facilities on fire, and forcing civilians, in fear for their lives, to stay in inadequate facilities, until they were flushed out from there by the infantry of the 6th Sana Brigade when they entered the villages;

20. Murder

From 23 July 1992 to 25 July 1992, troops of the 6th Sana Brigade launched an infantry attack on the undefended villages of Briševo, Stara Rijeka and Stari Majdan, on which occasion they torched houses and drove civilians out of their houses, carried out searches and seized personal property, beat up and psychologically and physically maltreated the population and tortured and killed in different ways men and women civilians, including ŽZ, ŽI, ŽJ, ŽK, ŽL, ŽLj, ŽM, ŽN, ŽNj, ŽO, ŽP, ŽR, ŽS, ŽT, ŽĆ, ŽU, ŽF, ŽH, ŽC, ŽČ, TŽ, ŽŠ, ZA, ZB, ZV, ZG, ZD, ZĐ, ZE, ZT, ZI, ZJ, ZK, ZL, ZLj, ZM, ZN, ZNj, ZO, ZP, ZR, ZS, ZT, ZĆ, ZU, ZF, ZH, ZC, ZČ, ZD, ZŠ, IA, IB, IV, IG, ID, IĐ, IE and IŽ, whose bodies have since been exhumed and identified in individual graves in Briševo and Stara Rijeka, as well as IZ, IJ, IK, IL, ILj, IM, IN, INj and IO, since exhumed and identified at the "Stari Majdan – Stara Rijeka" mass grave;

21. Unlawful detention

On 25 July 1992, in the village of Briševo, as soldiers who had entered the village were killing people, torching houses, driving inhabitants out of their houses, and beating up and psychologically and physically maltreating the population, they caught men forced out of their homes or captured in the woods or other places where they had fled in fear for their lives, and took them to the "Kring's" detention facility in Sanski Most, where they remained for about a month on bare concrete and without a minimum of living conditions, and where they were interrogated and beaten, among whom were IP, IR, IS, IT, IĆ, IU, IE, IH, IC, IČ, IDž, IŠ, JA and JB;

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22. Murder

On 1 August 1992, the army continued to search Muslim villages on the left bank of the River Sana, and, on arriving in the village of Lukavice, drove all the civilians found there out of their houses, separated the men from the women and children, and led away 14 male civilians from the family (...) to a spot just outside the village, and killed them, including JV, JG, JD, JĐ, JE, JŽ, JZ, JI, JK, JL, JLj, JM, JN and JNj; whose bodies have since been exhumed and identified at the "Lukavice" mass grave.²⁶⁶

Dismissal of the indictment against the accused Nedeljko Aničić

The Trial Chamber dismissed the indictment against Nedeljko Aničić, on the basis of the statement of court sworn expert Dr Zoran Stanković that the Medical Board had undertaken a medical evaluation

²⁶⁶ KTO Indictment 2/21 dated 25 March 2021, available at: <https://www.tuzilastvorz.org.rs/public/indictments/2021-08/KTO-2-21engl.pdf>, accessed on 26 January 2022.



of the accused Aničić and established that he was unfit to stand trial owing to ill health, and also taking account of the fact that he was 94 years old.²⁶⁷

Presentation of the defence of the accused Branko Basara

The accused Branko Basara denied having committed the criminal offence he is charged with. He explained that in October 1991 the Krajina Corps appointed him Commander of the 6th VRS Sana Brigade. He was a pensioner then and held the rank of colonel. There had been disagreements between him as the brigade commander and the political leadership of Sanski Most. There were no barracks, so the combatants stayed at their homes, and he had to mobilise them for every single task. When, on 3 April 1992, the brigade arrived in the Sanski Most area, it was billeted in Serb villages, and the brigade headquarters was in Lušci Palanka. The brigade was tasked with preventing interethnic conflicts among the population. He visited all the Muslim villages in the area together with Nijaz Halilović, a TO captain at the time, and the villages promised that they would not attack the army, and that was indeed so until a JNA [Yugoslav People's Army] column was attacked in Sarajevo. He then received orders from the Krajina Corps to disarm the populations in Muslim villages. On receiving these orders, he called all the village elders together, informing them of the obligation to disarm, and that they had 10 days to comply, by handing over their weapons to the MUP [Ministry of the Interior] or the nearest military unit. Soon, he was notified by the MUP that practically no one was doing so. He decided to take the initiative in carrying out the disarmament, and this was done without anyone being arrested or taken into custody. The problem lay in the Mahala neighbourhood in Sanski Most. There were "extremists" there who were armed and who had exchanged fire with the SOS (Serb Defence Forces), who had been established earlier, and who were positioned on the opposite bank of the River Sana. Before proceeding with the disarmament, he had all the media announce that women, children and the elderly should take refuge, and get out of the area within three hours. As his unit set out towards Mahala, they came under mortar fire. Mahala was not shelled, because it is a narrow neighbourhood. Fire had been opened from "Osa" and "Zolja" hand-held rocket launchers. Most of the extremists managed to pull out towards the Golaja forest, where the "Green Berets" training centre was. The operation lasted for about an hour and a half, after which the soldiers returned to their sector. No one was arrested or taken into custody by the unit. After the soldiers had withdrawn, the civilian police were to enter the neighbourhood. The accused did not know what happened after his unit withdrew.

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The next mission in which his unit participated was in the village of Hrustovo. The commander of the battalion, which was moving towards Hrustovo, approached the accused with 18 Muslim youths who wished to join the unit. These young men were left in a house with four fighters to keep them safe against paramilitary units. In the meantime, the battalion came under attack and two of its soldiers were killed. Outraged at the killing of their fellow fighters, the soldiers guarding the young men killed 17 of them. It is not true that grenades were thrown at the house, because the combatants had none. The four soldiers who killed these young men were immediately arrested and have since been

²⁶⁷ Transcript from the main hearing of 28 June 2021.



convicted. On the same day, 16 Muslims were taken to Vrhpolje Bridge and ordered to jump off it, and were shot at as they jumped. He did not know who killed them, because by the time the men from the defendant's unit arrived, the perpetrators had fled.

The accused was tasked with disarming the "Green Berets" who were in the Golaja woods. The forest was surrounded during the night. Two drunken fighters from his brigade were captured, and the "Green Berets" called the battalion commander to come and negotiate if he wanted to save them. On that occasion, they had captured the battalion commander too, who had the communications plans, and Captain Avdić indicated that the troops should dismantle, as the action had been finished. It was agreed to allow the "Green Berets" unhindered passage from the area in the direction of Bihać. Another 10 combatants from the defendant's brigade were captured. Avdić came for negotiations on the safe passage of the "Green Berets", and it was demanded of them to hand over their arms before departing for Bihać. A column was formed, and the accused also provided for its security. He called UNPROFOR, which also sent three representatives. The column consisted of 146 "Green Berets", and, escorted by UNPROFOR, they arrived in Bihać safely.

The accused also explained that he had been a peacetime commander, that he had not even had a detention facility for his own men, and that he had never imprisoned anyone. He did his best to do everything he could to prevent crime. He pointed to the fact that the indictment referred to events in places situated on the right bank of the Sana River, whereas his unit had never engaged in disarmament in that area. In that area, it was carried out by certain municipal bodies and SAS members, over whom he had not been entrusted with any authority whatsoever. At the request of SDA leaders, he had relocated his unit to Lušci Palanka. He had also helped everybody move out to a safe distance away from the building housing the Muslim police, as he had received notice that the building would come under attack. All of them had crossed to the opposite bank of the Sana River safely.

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In his assessment, the indictment had been prepared for the Hague Tribunal, in order to prove that genocide had been committed in Sanski Most. To that end, the Muslims had created mass graves by bringing the dead or the killed from other locations and burying them in the mass grave in order to misrepresent it as a civilian mass grave. As the Hague Tribunal did not accept this, they had then sought to pin the responsibility on someone at all costs. He had never cooperated with the accused Aničić - he had "never even had a cup of coffee" with him.

He remarked that he had not been a Crisis Staff member – that this had been devised so as to somehow associate him with the territory and base his alleged responsibility on that. He was not responsible for the territory, he did not receive any orders, and, in point of fact, he could not execute any orders from the Crisis Staff at all. He had not dispatched a single report to the Crisis Staff, but always sent them to his superior unit, the Krajina Corps, and carried out their orders only.

Nijaz Halilović was arrested on the basis of a decision of the Serb political leadership of the municipality. The accused was in Belgrade at the time. Nijaz's father arrived from Austria and brought his passport and money for the trip; he promised him that he would get Nijaz out and send him to



Austria. He interceded with General Talić, and on the basis of his order, got Nijaz and a doctor out of Manjača. The accused set out with them towards Serbia, with Nijaz wearing a police uniform. At the border they would not let the doctor pass, as being a Muslim fit for military service, but he managed to get them across anyhow. He gave Nijaz civilian clothes, as well as the money and the passport his father had left for him, and he went to Austria. He remarks that the indictment charges him with displacement, whereas in fact he had only led these two men out of Bosnia.

Orders for arresting Muslims were issued by the president of the municipality, who was at the same time the president of the Crisis Staff. That was Nedeljko Rašula. The defendant's unit had not carried out any actions with the MUP. The SJB [Public Security Station] could make its own decisions, so the defendant did not know where people were detained or where they were taken. If the SOS and the TD had indeed done something of this kind, they had never informed him about it. His brigade had not participated in any of the actions carried out on the right bank of the Sana River, but rather, it had been the municipality, the TD or the SOS, or some self-styled "specials", who were affiliated to no one.

His brigade had only participated in the fighting at Mahala and Hrustovo, and in the Golaja forest in the Sanski Most area. He knew of the existence of the "Manjača" camp, because he went there to get Nijaz out.²⁶⁸

Witnesses in the proceedings

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Witness for the prosecution Adil Draganović and his family lived in Sanski Most before the outbreak of the armed conflicts, and he was the president of the court. When the armed conflicts broke out, he was dismissed from office and went to stay with his parents. He was very frightened, as he had received death threats, and so he sent his wife and children out of the town. He was arrested by soldiers on 25 May 1992 and sent to the camp at Manjača. He remained at the camp until December 1992. He was once beaten up while in Sanski Most, and he was maltreated during his stay in the camp, since inmates were beaten daily. He knew the accused, and recalled that he came as a volunteer. He was a commander, and the witness occasionally saw him at Peace League gatherings, and had his diary and reports. The accused dismissed and forcibly removed people, and boasted how he had cleansed the place of Muslims. He heard about the killings on the bridge from a survivor. He had conducted an investigation after the war and established that the defendant had commanded the attack on Sanski Most. While incarcerated in Sanski Most, he could hear the shelling in person – his house went up in flames together with the other houses set ablaze in the Mahala neighbourhood. The accused had personally talked on the radio and boasted of his successes. Another detainee had told him that the accused Basara had found an arsenal of weapons in his house. At meetings, the accused would say that there would be no war, but only with the intention of gaining the trust of the Bosniaks, whom he actually deceived. The army was effectively in power in Sanski Most.²⁶⁹

268 *Ibid.*

269 Transcript from the main hearing of 17 September 2021.



Witness for the prosecution Dragan Majkić was the Chief of the Public Security Station in Sanski Most until 1 May 1992. In March 1992, the security situation in the city deteriorated, so he dispatched a letter to the accused as Commander of the 6th Sana Brigade, requesting him to come to the town because an inter-ethnic conflict was inevitable. The brigade arrived on 6 April, but there were no soldiers in the town proper -- they were about 15 kilometres away from the town, and their headquarters was in Lušci Palanka.

On 13 April 1992, he was informed that the Serb Defence Forces (SOS) paramilitary unit were requesting an urgent meeting with the president of the municipality, Nedeljko Rašula, for them to seize power. Incidentally, the SOS was formed immediately after the formation of the SDS [Serb Democratic Party], and its members later joined the VRS. The president of the municipality informed him that the meeting would be held in the parish house at 16.00 hours on the following day. The witness went to Banja Luka to see his chief, Stojan Župljanin, and to inform him of the situation, to which Župljanin replied that he should look after the police if there was shooting. At the time, the SOS had about 20 men, their commander was Dušan Šaović, and 15 complaints had been filed against them for the criminal offence of causing public danger with explosive devices.

When he returned to Sanski Most, the meeting was well under way. The discussion was about setting up a crisis staff, of which Rašula became a member; it was agreed that negotiations be embarked upon with the SDA and the HDZ [Croatian Democratic Union], to discuss a peaceful separation. The negotiations continued over the next two days, and a peaceful parting of the ways was agreed upon, to take place on 17 April 1992. However, that night the witness was summoned to a Crisis Staff meeting, where he was told that on the following day they had to attack the SUP/Secretariat of the Interior, because no agreement could be reached as to whom the SUP building should belong. The witness said that the police should not get involved, and that they must not go to the SUP building. The following day, hardly any Muslims working in the SUP came to work. The witness discussed the situation with commander Enver Hujnić and the accused, and the accused said that he would not allow a conflict. Then the witness told Enver to go home, ostensibly on leave, till next Monday, and, if the SDS did not make another building available to the Muslim police, to come to work on Monday. Enver made a call to the SDA [Party of Democratic Action], and, after the conversation, told him that they had instructed him not to leave the building. All police officers – Serbs, Croats and Muslims – arrived in the police building, and they agreed that whoever wanted to remain could do so. Early in the morning, the Muslims left. On the night between 17 and 18 April 1992, the SDA and HDZ politicians mustered the Croat and Muslim policemen and occupied the municipal hall. The president of the municipality, Rašula, and his delegation arrived at the municipal hall, and said that the HDZ and the SDA had not been able to reach agreement, and gave an ultimatum that unless the municipal building was vacated an attack would ensue. The witness was notified that politicians had left the municipal building, but had not informed the police of it. He then called the Croat and Muslim policemen who were at the municipal hall and told them that the politicians had abandoned them, and they replied that they knew nothing about the ultimatum that had been given. Some fire was exchanged, and shortly afterwards, SAS members reported that they had entered the municipal hall and that no one was hurt. It was only on the following day that the witness received information that a police officer



from the municipal hall had been found nearby, because he had sprained a leg – he was drunk and had fallen asleep there. The witness had a policeman drive him home. Over the next ten days or so, the witness organised checkpoints, and, on 1 May 1992, the Crisis Staff relieved him of duty, and he remained on standby over the following months. While entering the police building he remembered there were no tanks or armoured vehicles, nor any members of the 6th Sana Brigade.

Concerning the events in Mahala, he knew that on 25 May 1992 the 6th Sana Brigade demanded that the Muslim population hand over their weapons, but the response had been weak. During the disarmament in Mahala, the brigade clashed with those who had not surrendered their arms and a skirmish occurred, after which the Muslims left Mahala. He did not know who ordered the shelling of Mahala. At a later date there were conflicts around Vrhpolje as well, with casualties on both sides. A Muslim killed with a light machine-gun three Serb soldiers who were on a disarmament mission there.

The Crisis Staff was effectively in power in Sanski Most. It comprised eight members, one of whom was a SOS representative. They even dismissed company directors. The president of the SDS, namely Rašula, had the main say in the Crisis Staff. As regards the arrests and bringing in of SDA members around 25 May 1992, the witness said he knew that towards the end of May the SDS president read out some kind of a proclamation in which he assumed all the blame. Civilian authorities were established on 4 May 1992 and took over power from the Crisis Staff.

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Later, the 1st Serbian Brigade was formed, and its members arrested Muslims and brought them to the sports hall. They would also be imprisoned on the premises of various companies. These facilities were guarded by police, and by one military policeman for each facility. There was a detention unit in the police building. The detainees were transferred from the town to the military camp at Manjača.²⁷⁰

Witness for the prosecution Mile Dobrijević explained that at the time of the critical events he was an inspector for general crime at the Sanski Most Public Security Station. Following the elections held in 1991, a Serb majority government was established in Sanski Most. In April 1992, power-sharing talks were held between representatives of the SDS, the HDZ and the SDA, which included reference to the police. The division envisaged also entailed a territorial division, where the Serb side received the area along the right bank of the River Sana, and the Muslim side the left bank. The agreement was that the non-Serb segment of the police should form their own station. In the evening of 17 April 1992, they occupied the premises of the Municipal Hall, but later left. A Crisis Staff existed in that period which had its instrumental bodies. To make it possible for the municipal authorities to function, the army, i.e. the 6th Sana Brigade, had to be involved, and it arrived in April 1992. The brigade command was situated in Lušci Palanka, which is some 30 kilometres from Sanski Most, and the brigade commander was the accused Colonel Branko Basara. Members of the 6th Sana Brigade were locals.

The witness did not know whether the accused played any role in the Crisis Staff. He only knew that during the peaceful period, the accused did all he could for everything to transpire without any conflict.

270 Transcript from the main hearing of 1 December 2021.



He was even reproached for that, some claiming that he was "Red", because he would not remove the five-pointed star. In Sanski Most there existed the SOS, namely the Serbian defence forces, and every Serb village had them, just as Muslim villages had the MOS [Muslim Armed Forces], and Croatian villages the HOS [Croatian Defence Forces]. Later, during 1992 and 1993, the SOS was uniformed and armed, but they were not connected with the 6th Sana Brigade – they had more contacts with Colonel Aničić, who was in town all the time, while the accused was at the front.

Sometimes people would be apprehended in town, without it being known who in fact brought them in. Sometimes the military police brought civilians in, and various other police – the the Corps military police, but also regular police from Prijedor, were present in the field. In May and June 1992, the witness interrogated persons who were brought in. The interrogation was conducted in a number of places: at the "Hasan Kikić" Primary School, in the "Betonjerka" company building, at police quarters, but also in Manjača. The witness received his orders from the chief of the Crime Police. Persons taken into custody were questioned about attacks on the army and the possession of weapons. At that time, it was in fact impossible to apprehend uniformed persons, because all were armed civilians. The police did not deprive them of liberty, as they had already been brought in – they only interrogated them. After interrogation, some of these persons were transferred to Manjača.

For a time, Miladin Papić was in charge of the "Betonjerka" building. He noticed that Zikrija Bahtić, who had been brought in, had sustained a bodily injury. The investigation established that Martić, a member of the reserve police force, had beaten him up. He had been apprehended, and proceedings were conducted against Martić on that account. He did not know why Bahtić was brought in. Some of the detained persons were released after interrogation. There are records of all the interrogations, which the witness signed. He did not know who drew up the lists of people to be taken to Manjača, or who decided on that. It was mainly Muslims who were brought in, because of the possession of weapons, and later, Serbs also, who had sold those weapons to them. On 25 May 1992, Redžo Kurbegović, Muhamed Smajlović, a certain captain, and Suad, the former prosecutor, were brought in. These persons were brought in to be questioned about the organising and arming of the Muslim population and the raising of funds for the procurement of weapons, about whose directives they were executing, as well as about the organisation of attacks on the army, of which there had been a number. Aldin Draganović was the president of the Court, namely, the investigating judge. He was brought in for refusing to hand over his weapon (a Scorpion), which he had been issued with as a member of the State Security reserve forces. People were brought in and their weapons seized.

The Muslims were well organised into army units. The Patriotic League was well armed. The witness knew the SDA president from Sanski Most, and knew that he went to Zagreb to procure weapons and explosives. He also knew that it was he who read out the proclamation on Radio Sanski Most. As regards the shelling of Mahala and Muhići, the witness knew that shells fell and that there had been volleys of fire, but reports of shells falling were also coming in from Serb-populated villages. He did not know that civilians were killed in Mahala. He was also unfamiliar with anything related to the shelling of the village of Briševo, as it was not within their jurisdiction and belongs to Prijedor. He heard about the killing of the Alibegović family in the village of Lukavice six months later, but did not know any details. He also knew nothing about the events on the bridge in Vrhpolje.



When a murder somewhere was reported, the police conducted an on-site investigation, and proceedings would be initiated against the perpetrators. Thus, criminal charges were brought against Goran Mrda for killing three Muslims, a crime he committed together with three members of the army. They were prosecuted and convicted. There had been attacks on the army, namely the JNA, in the Sanski Most area. Muslim armed units from Ključ arrived in the Sanski Most municipality area. The villagers of Kamengrad, where they were billeted, had chased them away in order to avoid problems. In that period, most Muslim fighters were in civilian clothes. They would just put down their arms and declare themselves to be civilians. At Manjača, the witness interrogated Eniz Šabanović, a doctor who was with the medical corps of the Muslim units. This was a person who had also caused ethnically based conflicts while under the influence of alcohol before. Official records were drawn up of all interviews with detained people. People were brought for interrogation by policemen who also guarded the buildings with detainees.

Detention facilities in Sanski Most were managed by the police. For a while, Drago Vujanić was in charge, and installed in that position by the Crisis Staff. In the area of Sanski Most municipality were the 6th Sana Brigade and four battalions under Colonel Aničić, the Corps military police, the Sanski Most TO, which was also divided, as well as two TO detachments which were under the command of the Crisis Staff, while the SOS was all over the place. The people were not armed by the 6th Sana Brigade – the weapons they had were army weapons, but they came from the other side, namely, from Banja Luka and Krajina.²⁷¹

Witness for the prosecution Husejin Bašić did not have first-hand knowledge of the critical events, because in that period he was temporarily working abroad. The witness's wife, who was in Sanski Most, had told him that their son and pregnant daughter-in law had been killed in the shelling of Mahala on 25 May 1992. She had not seen that event either, but was told about it by neighbours.²⁷²

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Course of the proceedings in 2023

During 2023, eight court days were scheduled, of which only one was held, during which one witness for the prosecution was heard. Three times the trials were postponed because the witnesses for the prosecution did not appear before the court, and four times the trials were postponed for reasons unknown to the public.

Witness for the prosecution Dušan Railić stated that he did not remember the events during May and June 1992 in Sanski Most. He was a member of the counter-tank platoon of the VI Sana Brigade, and he had heard that the defendant was the commander of the brigade, but he never met him. His unit was stationed in Miljevci, and their meeting-place was in Lušci Palanka. As an artilleryman, he acted only on the battlefield of Gradačac. He knew nothing about the Crisis Staff, nor about the attacks, expulsions and unlawful detention of Muslims in Sanski Most. He had heard about the SOS unit, but

271 Transcript from the main hearing of 24 February 2022.

272 Transcript from the main hearing of 31 August 2022.



he did not know what all that meant, and he had also only heard of the unit called "Crni Đorđe". He knew nothing about the events which are the matter of the indictment.²⁷³

HLC Findings

Legal qualification

The indictment that the Prosecutor's Office of BiH issued against the accused and the BiH Court confirmed, was for the criminal offence of a crime against humanity, and the case was transferred to the Republic of Serbia with such a statement of the offence. However, the OWCP changed this qualification and issued an indictment for the criminal offence of a war crime against the civilian population. The OWCP explained its position that this crime could not be characterised as a crime against humanity, with the fact that no such criminal offence had existed in the domestic judiciary at the time it was committed. The HLC believes that this position is legally unfounded and that there are no legal obstacles to prosecuting this offence with the qualification of crimes against humanity, with regard to the principle of the primacy of international over national law, because the crime against humanity existed as a separate criminal offence in international law at the time of committing this crime. Namely, the crime against humanity was first envisaged as a criminal offence in the 1946 Charter of the International Military Tribunal. Given the fact that during the investigation in BiH evidence was collected for one type of criminal offence and the indictment the OWCP later brought was for another criminal offence, it remains to be seen to what extent this can affect the proceedings. Particularly given the fact that the OWCP indictment actually charges Branko Basara with command responsibility, which it seeks to subsume under the criminal offence of a war crime against the civilian population committed with intent. This crime is committed by either ordering or executing one of a number of alternative acts. The allegations in the indictment that he was responsible together with the accused Aničić as a co-perpetrator because "the units subordinated to them participated in armed attacks on non-Serb villages, with the intention of displacement through murder, unlawful detention, attacks on civilians and civilian settlements [...] and the defendants, being of sound mind, were aware that criminal offences might be committed by the activities of their units and consented to it", do not fit into the qualification of this crime, as evidently the accused is not the direct perpetrator, nor is it alleged in the indictment that the same had ordered the execution of any of the incriminated acts. The accused is basically charged with conduct incriminated under the command responsibility concept, although this is not formally covered, since he is charged as a co-perpetrator; so it remains to be seen how the OWCP will prove the conduct of the accused to have been that of a co-perpetrator, requiring as it does clear proof of the existence of a joint decision to commit the crime, and of a concrete act which the accused carried out with intent and which substantially contributed to the commission of the crime.

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²⁷³ Transcript from the main hearing of 11 September 2023.



Unnecessary anonymisation of the indictment

The OWCP posted on its website the indictment it had raised against Branko Basara and Nedeljko Aničić anonymised, namely, as being against persons A.A. and B.B., instead of naming the accused. Such anonymisation was entirely unnecessary, as data on the indictment, including the full names of the defendants, had already been posted on the website of the BiH Court.²⁷⁴ Also, prior to the start of the trial in the Republic of Serbia, the case had received coverage in BiH media, with the defendants referred to by their full names.²⁷⁵ Anonymising publicly posted indictments in this way, the OWCP makes them unclear²⁷⁶ and the accused totally invisible to the general public, which is entirely contrary to the 2016 and 2021 National Strategies²⁷⁷, as well as to the Prosecutorial Strategy²⁷⁸ for the Prosecution of War Crimes in Serbia and the Revised Prosecutorial Strategy.²⁷⁹ Namely, the mentioned strategies envisage the heightening of society's overall awareness of the issues of war crimes trials, primarily through facilitated access to information about war crime proceedings, in pursuit of the ultimate aim – the improved transparency of war crime trials.

Apart from the names of the accused, the names of the victims have also been anonymised in the indictment. When an indictment with multiple counts and a large number of victims is in question, the names of the victims can be heard only in cases when they are read out at the trial; but given their large numbers, trial monitors are unable to record all the victims' names, which greatly hinders the monitoring of proceedings.

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Prosecution of senior army personnel

Two high-ranking officers of the former JNA stand accused in this case, Branko Basara, as the Commander of the 6th VRS Sana Brigade, then holding the rank of colonel, and Nedeljko Aničić, as the Commander of the TD Staff of Sanski Most municipality, also holding the rank of colonel at the time. While prosecution of senior army personnel is definitely a positive thing, one must bear in mind the fact that this was not the result of the OWCP's work, but a confirmed indictment transferred from

274 Case of the Court of Bosnia and Herzegovina number S1 1 K 016738 14 Kro.

275 "Case assigned to Serbia for crimes in Sanski Most and Prijedor", *Detektor*, March 13, 2020, available at: <https://detektor.ba/2020/03/13/srbiji-ustupljen-predmet-za-zlocine-u-sanskom-mostu-i-prijedoru/>, accessed on January 26, 2024.

276 On all OWCP indictments, the First Respondents are designated A.A, available at: <https://www.tuzilastvorz.org.rs/en/cases/indictments>, accessed on 26 January 2024.

277 National Strategy for War Crimes Prosecution, available at: <https://www.tuzilastvorz.org.rs/public/files/pages/2021-06/%D0%9D%D0%90%D0%A6%D0%98%D0%9E%D0%9D%D0%90%D0%9B%D0%9D%D0%90%20%D0%A1%D0%A2%D0%A0%D0%90%D0%A2%D0%95%D0%93%D0%98%D0%88%D0%95%20%D0%97%D0%90%20%D0%9F%D0%A0%D0%9E%D0%A6%D0%95%D0%A1%D0%A3%D0%98%D0%A0%D0%90%D0%8A%D0%95%20%D0%A0%D0%90%D0%A2%D0%9D%D0%98%D0%A5%20%D0%97%D0%9B%D0%9E%D0%A7%D0%98%D0%9D%D0%90.PDF>, accessed on 15 December 2022;

National Strategy for War Crimes Prosecution 2021-2026, available at: <https://www.mpravde.gov.rs/files/NATIONAL%20STRATEGY%20FOR%20WAR%20CRIMES%20PROSECUTION%201.pdf>, accessed on 26 January 2024.

278 Prosecutorial Strategy for the Investigation and Prosecution of War Crimes in Serbia 2018-2023, available at: https://www.tuzilastvorz.org.rs/public/documents/2021-06/strategija_trz_eng.pdf, accessed on 26 January 2024.

279 Revised Prosecutorial Strategy for the Investigation and Prosecution of War Crimes in the Republic of Serbia (2022-2026), available at: <https://www.tuzilastvorz.org.rs/public/documents/2023-11/revidirana%20strategija.pdf>, accessed on 26 January 2024.



BIH – in other words, that the charges against these high-ranking officers are the result of the work of the Prosecutor's Office of BiH.

Low number of trials held

Since the start of the trial in this case, a total of 20 court days have been scheduled, of which only 6 have been held. Trials were postponed twice due to the absence of a member of the Trial Chamber, another four times because the witnesses for the prosecution did not appear before court, and eight times more without an explanation to the public. Bearing in mind that the defendant is charged with 21 counts of the indictment, and also the number of injured parties, it is almost certain that with the dynamics of the trial so far the proceedings will not be completed within a reasonable time.



XI. The Srebrenica Case²⁸⁰

CASE FACTS	
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, Aleksa Golijanin and Vidosav Vasić	
Criminal offence: war crime against the civilian population under Article 142 of the FRY CC	
<p>Case transferred from BiH</p> <p><i>The Prosecutor's Office of BiH issued an indictment for genocide against Milidragović and Golijanin, which was confirmed by the Court of BiH back in July 2012. However, they could not be tried in BiH, because they live in Serbia. Pursuant to the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide, that the OWCP and the Prosecutor's Office of BiH signed in 2013, the two prosecutorial offices had a very good exchange of information and evidence in this case, which also resulted in proceedings for the crime in Srebrenica being instituted before the domestic judiciary.</i></p>	
Trial Chamber	<p>Judge Mirjana Ilić (Chairperson)</p> <p>Judge Zorana Trajković</p> <p>Judge Bojan Mišić</p>
Number of defendants: 7	Number of scheduled court days in the reporting period: 13
Defendant's rank: low	Number of court days in the reporting period: 8
Number of victims: 1,313	Number of witnesses heard in the reporting period: 1
Number of witnesses heard: 29	Number of expert witnesses heard: 0
<p>Key developments in the reporting period:</p> <p>The main hearing restarted, seven years after the beginning of the trial, owing to a change in a member of the Trial Chamber</p>	

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²⁸⁰ *The Srebrenica-Kravica Case*, trial reports and documents available at: <http://www.hlc-rdc.org/Transkripti/srebrenica.html>, accessed on 28 January 2024.



Course of the proceedings

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, 1,313 Bosniak civilians inside and in the immediate vicinity of an agricultural cooperative warehouse, in the village of Kravica (Bratunac municipality, BiH).²⁸¹

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 hours of 14 July 1995, Nedeljko Milidragović issued an order to Golijanin, Batinica, Dačević, Miletić, Parović and Vasić, as well as to other members of his company, to kill about a hundred civilians who were detained in the 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 civilians who were still showing signs of life.

On the same day, as 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.

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

Defence 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.²⁸² 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; and 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 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

281 Indictment TRZ KTO no. 2/2015 of 21 January 2016, available at: https://www.tuzilastvorz.org.rs/public/indictments/%D0%9A%D0%A2%D0%9E_2_15_%D0%8B%D0%B8%D1%80~0.pdf, accessed on 28 January 2024.

282 *Ibid.*



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 Nedo handed over to a group of soldiers. They continued searching the area all day.²⁸³ 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, but no men. Their task was to guard them, and 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.²⁸⁴

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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 young man 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 a couple of thousands of civilians, 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. Nedo brought a boy of 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 believed that two groups surrendered that day. The accused said further that the boy whom Nedo had brought was with them also the next day, when they deployed to comb the terrain, and that at a certain point Nedo 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 surrendered, and demanded of them that they hand over the money they had on their persons. Afterwards, 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,

283 Transcript from the main hearing of 7 February 2017.

284 Transcript from the main hearing of 13 April 2017.



and told them to shoot them. According to the defendant's words, the guy next to him 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 up 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.²⁸⁵

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, he further said, they waited for the Zvornik Corps and General Mladić. The task was to seize Srebrenica. They reached Bratunac by bus and then walked on to Potočari, but found no one there. The next day they were 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 loudspeaker: "Neighbours, surrender, we will do you 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.

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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 said 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.²⁸⁶

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 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,

285 Transcript from the main hearing of 31 May 2017.

286 *Ibid.*



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 1 p.m or 2 p.m. 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 even heard of the warehouse before.²⁸⁷

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.²⁸⁸ 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.²⁸⁹ Consequently, deputy public prosecutors could not act in that period or file indictments on behalf of the Office.

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.

²⁸⁷ Transcript from the main hearing of 7 February 2017.

²⁸⁸ Decision of the Court of Appeal in Belgrade Kž2 Po2 7/17 of 5 July 2017.

²⁸⁹ Law on the Public Prosecutor's Office, Article 36.



Deciding on the OWCP appeal against the ruling dismissing the indictment, on 19 September 2017, the Court of Appeal ruled²⁹⁰ 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.²⁹¹ 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.

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.²⁹²

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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 a place called Kazani. She went to Potočari, while her husband and son headed in the direction of Tuzla, through a forest. She never saw them again.²⁹³

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.²⁹⁴

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 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 the 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

290 Decision of the Court of Appeal Belgrade of 19 September 2017.

291 CPC, Article 417, paragraph 1, item 1.

292 Transcript from the main hearing of 20 July 2018.

293 Transcript from the main hearing of 25 September 2018.

294 Transcript from the main hearing of 26 September 2018.



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. In his opinion, 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 barn during the shooting. When he came out of the barn, 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 lay by the roadside. He did not know how many people had been killed inside the warehouse, as he did not go inside.²⁹⁵

The 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 stated they had no first-hand knowledge of the events in Kravica, and only heard much later that "something had happened" there.²⁹⁶

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 the bodies onto 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 onto 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 – for example, on the attempted breakthrough line. In fact, 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.²⁹⁷

The 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 Kravica²⁹⁸; 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.²⁹⁹

²⁹⁵ *Ibid.*

²⁹⁶ Transcript from the main hearing of 13 November 2018.

²⁹⁷ Transcript from the main hearing of 19 March 2019.

²⁹⁸ Transcript from the main hearing of 26 February 2019.

²⁹⁹ Transcript from the main hearing of 12 December 2019.



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. So it was that, on one occasion, they drove a personnel carrier to Zvornik and the accused Milidragović and his “kum” [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 at 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.³⁰⁰

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.³⁰¹

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At the time of the critical event, defence witness Duško Jević³⁰² 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 stationed 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 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

300 Transcript from the main hearing of 9 April 2019.

301 Transcript from the main hearing of 16 May 2019.

302 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).



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. At 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 the killing of 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.³⁰³

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 the latter was an expert on 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 that Kravica, in relation to the events related to Srebrenica, was a separate event, and that "an incident occurred" 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 time.³⁰⁴ He had issued an order of this nature to all of his security personnel, and his deputy Popović³⁰⁵ was put in charge of the operation. According to information he had obtained by September 1995, there had been 320 victims in Kravica.³⁰⁶

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

303 Transcript from the main hearing of 20 May 2019.

304 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).

305 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).

306 Transcript from the main hearing of 11 June 2019.



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 Neđo 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.³⁰⁷

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.³⁰⁸

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 knew 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.³⁰⁹

Defence witness Miloš Stupar stated that he knew the accused Nedeljko Milidragović from before the war, as a member of a Special Police unit. He explained that he had been the commander of a Šehovići police detachment up to 15 June 1995, when he went to Kruševac for a vacation and remained there until 13 July 1995, when he returned to Bratunac. On returning to Bratunac, he learned from Ljubiša Borovčanin that his unit was in the vicinity, and so he went to Sandići to see them. He found out that members of his detachment had deployed to Sandići on 12 July 1995, their task being to secure the Bratunac–Konjević Polje road. He saw Bosniaks surrendering to members of the army and police of Republika Srpska then. They were being taken to the cooperative, in the direction of Bratunac. The commander of the Šekovići Police Detachment, Rado Ćuturić, now deceased, reported that someone had been wounded near the cooperative, where a police platoon from Skelani was situated. When the witness arrived at the cooperative at Kravica, he noticed five or six dead bodies and an officer who had burns on both hands, and he drove him to a doctor in Bratunac. The officer explained to him that he got burned trying to wrest away the weapon from a person who had shot and killed Krsto Dragičević from Skelani. Krsto's body was brought soon afterwards, and the detachment from Skelani also arrived. Borovčanin ordered the witness to go to Skelani and make arrangements for Krsto's funeral, and the witness did so. The funeral took place in Skelani on 14 July 1995. After the funeral, summoned by Borovčanin, the witness went to Zvornik and was assigned a detachment from Šehovići, which he then took to the frontline at Baljkovica. From this position, the unit repelled intense attacks by the Muslim army coming from the direction of Srebrenica – members of the 28th BiH Army Division. The witness knows that the Muslims in the Kravica warehouse were killed by members of the Skelani

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307 Transcript from the main hearing of 26 September 2019.

308 Transcript from the main hearing of 31 January 2020.

309 *Ibid.*



platoon. At the time of these events the witness had no knowledge that members of the Jahorina Training Centre were also present in the area.³¹⁰

Defence witness Vitomir Kapuran stated that in the critical period he was a member of the RS MUP as Assistant Commander for Logistics, and that he was quartered at Janja. He knew the accused from an earlier period, as a member of the police who was attached to the Training Centre at Jahorina. He could not remember when exactly during the critical period he had seen the accused Milidragović – he believed that it had been sometime around St. Peter's Day, when the accused had driven some peace force vehicles to Janja.³¹¹

Defence witness Petar Mitrović (finally convicted by a BiH Court of genocide perpetrated by killing prisoners at the Kravica agricultural cooperative) stated that he did not know the defendants. At the time of the critical event, he was a member of the 3rd Skelani Platoon comprised within the 2nd Šekovići Special Police Detachment. The task of his detachment had been to secure the Bratunac – Milići road, as fighting was going on there. They deployed along the road on 12 July 1995; his position was some 800 metres away from the Kravica agricultural cooperative. They left this location on 13 July 1995, because a fellow combatant, Krsto Dragičević, was killed. In fact, one of the prisoners from the warehouse in Kravica had wrested away his rifle and killed him, and then an incident ensued. He saw about 15 dead bodies outside the warehouse. VRS members were also at that location. He did not know which unit replaced them at the positions. He learned about the killings at Kravica from the media after the action.³¹²

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Defence witness Mendeljev Đurić (finally convicted by a BiH Court of genocide perpetrated by killing prisoners at the Kravica agricultural cooperative) stated that he knew the accused Nedeljko Milidragović. He explained that at the time of the critical event he was with a unit of the Jahorina Training Centre as an instructor. There were in total twelve instructors, and not one had ever held the rank of company commander. Units came to the Centre for training with their commanding officers, and for the first time the defendants arrested in Serbia had come as an unorganised group. The accused Milidragović was also an instructor, and none of them held a position of superiority. His unit, about 80 men, deployed to the area of Srebrenica, but the witness did not go to the Kravica area. On the first and second days, they were at Potočari to secure the evacuation of civilians, and in the afternoons they withdrew. He did not know anything about the guarding of the Bratunac - Milići road, or of the Kravica agricultural cooperative. His unit also searched the terrain, an operation which it carried out under the control of the army. While in the field he never relayed any orders to anyone, but led a group of about 15 men as an instructor. The accused Milidragović also had his own group. He had no authority to issue orders, as the unit from Jahorina had no organisational structure. There was no organisational establishment, and this group was not a military formation. There was only an

310 *Ibid.*

311 *Ibid.*

312 Transcript from the main hearing of 29 November 2021.



internal organisation enabling them to function. He had not been aware of the events at the Kravica agricultural cooperative, and had found out about them only during the trial.³¹³

Dismissal of the indictment against the accused Dragoslav Parović

Court sworn expert, professor Dr Ljubica Leposavić, neuropsychiatrist, presented on behalf of the Forensic Psychiatry Board of the Faculty of Medicine in Belgrade the results of the evaluation of the accused Dragoslav Parović. According to the expert findings, the accused was unfit to stand trial, given that his health condition, established during an evaluation undertaken two years before, had considerably deteriorated. Court sworn expert Emilija Erić, psychologist, also stated that the accused Dragoslav Parović was no longer fit to stand trial owing to his impaired health.³¹⁴

The Trial Chamber ruled to dismiss the indictment against the accused Dragoslav Parović on account of his current incapacity to stand trial.

Course of the proceedings in 2023

During 2023, 13 court days were scheduled, eight of which were held. The key event in this period was undoubtedly that, after seven years, the trial had restarted - the main hearing started from the beginning, due to the change of one member of the panel (the former member of the panel, Judge Dejan Terzić, was replaced by Judge Bojan Mišić).

One defence witness was interviewed, and extensive documentation related to the minutes on determining death, death certificates and records on determining the identity of a large number of victims, was inspected. Four times the trials were postponed because one of the defendants would not appear before court, and once the main hearing was cancelled.

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Defence witness Nedo Jovičić stated that he knew Nedeljko Milidragović, who was his neighbour in Zvornik, and also Aleksa Golijanin, but the latter only superficially. He was a member of the Special Police Brigade at the Ministry of the Interior of the Republic of Srpska; he served as the driver and guard of General Ljubiša Borovčanin in the Operation "Krivaja 95". At that time, Borovčanin served as deputy commander of the Special Police Brigade, and the commander was Goran Sarić. At the beginning of July 1995, the witness's unit was on the battlefield in Treskavica, when they were instructed to come to Jahorina to the Training Center, from where they went to the battlefield near Bratunac on 11 July. He drove Borovčanin to the command post Pribićevac, then to Žuti most [Yellow Bridge], and in the evening they returned to Bratunac, where they spent the night. The next day, they went to the Yellow Bridge again, to the hill called Kokarda, where the VRS observation post was. It was there that they learned that a military policeman had been killed because the troop had entered a minefield. They returned to Bratunac to the command of the Bratunac Brigade, because Borovčanin had some meetings. They went to Potočari on 12 or 13 July, where he saw General Ratko

313 *Ibid.*

314 Transcript from the main hearing of 8 February 2021.



Mladić in a house. Ratko Mladić ordered Borovčanin to deploy a part of the Special Police Brigade, that is, the Šekovići detachment, around the village of Kravica, so that the column of soldiers of the BiH Army moving from Srebrenica to Tuzla would not invade Serbian villages. At that time, there were many civilians in Potočari, and so later buses arrived that drove the civilians to the demarcation line. The witness is sure that on 13 July 1995, in the morning hours, they received information that one of their members of the First Company from Zvornik had been killed at the Sandići pass, while several were wounded. They immediately went from Bratunac to the location; the members of the BiH Army began to surrender, so the members of the Šekovići detachment directed them to a meadow. Ratko Mladić also appeared at the Sandići pass. Borovčanin asked him for the army to take over the prisoners, because members of the police squad had other tasks and were not in a position to deal with prisoners. Mladić then probably ordered an officer to take charge of the prisoners and lead them to the warehouse in Kravica. The witness, Borovčanin, and a cameraman called Piroćanac went to Konjević Polje to visit the part of the unit that was there; when they were somewhere near Lolići, they heard a frantic voice over the radio that there had been an incident, that there was a conflict between persons in the agricultural cooperative, and that a member of the Special Brigade had been killed and some wounded. They immediately went to the cooperative, where Piroćanac was filming something, and so the injured officer, who was the commander of the detachment, was taken to the health centre in Bratunac. After that, Borovčanin sent the court witness back to the warehouse to see what was happening there. Upon arrival, the witness parked the vehicle in front of the warehouse, and that's when he saw many corpses. There were about ten, twenty of them. He also saw a man in a jumpsuit and white sneakers, shooting at the opening in the warehouse where the prisoners were. He came to the door and fired, and when he had spent all his ammunition, another one would come and also start shooting. The witness got out of the car and headed towards the warehouse, when five to six people ran out and came towards him. The man he had seen started shooting at them, and the witness almost got shot as well. At that moment there were no police, and only the army was there; as he was told, it was a paramilitary unit from Višegrad. The witness immediately moved away from the warehouse, and stopped a little further on in the village of Kravice with members of the Šekovići detachment. He heard from them how the incident occurred, and this had served as the catalyst for all that happened in the warehouse afterwards. He immediately returned to Bratunac and reported to Borovčanin what had happened. Borovčanin was furious, and he went immediately to the President of the Crisis Staff, Miroslav Deronjić, to tell him that these kinds of things should not be happening. The next day, on 14 July, the witness and Borovčanin went from Bratunac to Konjević Polje, where Goran Sarić came to visit the units. They returned to Bratunac again, and then headed for Zvornik. Before Zvornik, sometime in the late morning or early afternoon, they stopped at the "Vidikovac" Motel, which is about 30 kilometres away from the Kravica warehouse. There were two drunken policemen there who started harassing guests. They were asked who they were, and they answered they were the specialists of Duško Jević, who was an officer in the Jahorina Training Centre. When Borovčanin told them that they could not behave like that, they became insolent, so they overpowered them, tied them up and called the police patrol from Zvornik. Later, he learned from the police officer Božidar Todić, who came with the patrol and whom he knew from before, that these two were Aleksa Golijanin and



a man named Janjić. He did not see the accused Milidragović Nedeljko at all in those days, neither in Potočari nor at the warehouse in Kravica.³¹⁵

HLC Findings

Selective indictment

True to its customary practice, in this case also 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 and are accessible to the state authorities.³¹⁶ The complaint, among others, was against Petar Salapura, at the time 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, who has died in the meantime³¹⁷, 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. Nevertheless, none of these individuals have been indicted so far, nor is it known whether the allegations from the HLC criminal complaint have been investigated. At the beginning of 2018, the Court of Bosnia and Herzegovina confirmed the indictment of the Prosecutor's Office of BiH against Tomislav Kovač, former Commander of the Police Force Staff of the RS Ministry of the Interior and Deputy Minister and Minister of the RS Ministry of the Interior, for genocide in Srebrenica.³¹⁸ Kovač lives in Serbia, he is visible and present in the public domain³¹⁹, and at the trial of Milidragović and others, he even appeared as a witness.

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Protracted proceedings

The main hearing in this case began on 12 December 2016, being seven years since the beginning of the evidentiary procedure stage. 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 either, as the indictment had been dismissed, and also 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. During 2020, due to the epidemiological situation caused by the coronavirus, trials were not held during the state of emergency, and during 2022, only two out of 10 scheduled court days were held.

315 Transcript from the main hearing of 22 March 2023.

316 HLC press release "Criminal Charges for the Genocide in Srebrenica", 16 August 2010, available at <http://www.hlc-rdc.org/?p=13072&lang=de>, accessed on 28 January 2024.

317 RTRS, *Deceased Milorad Pelemiš*, 23 April 2024, available at: <https://lat.rtrs.tv/vijesti/vijest.php?id=429795>, accessed on 13 March 2024.

318 Court of BiH, *Press Release: Confirmed indictment in Tomislav Kovač case*, 30 January 2018, available at: <https://sudbih.gov.ba/Post/Read/20729-potvrđjena-optuznica-u-predmetu-tomislav-kovac>, accessed on 13 March 2024.

319 See, e.g., Tomislav Kovač's appearance on Jutarnji programme TV Happy, 27 February 2024, available at: <https://www.youtube.com/watch?v=nqeeLEHN8E0>, accessed on 13 March 2024.



In cases with a large number of defendants and their defence counsel, there is the realistic possibility of repeated main hearing postponements due to the absence of some of them, which is beyond the control of the Court. However, the reopening of the main hearing seven years after the start of the proceedings, due to changes in the member of the Trial Chamber, raises doubts about the intentions of the judicial authorities of the Republic of Serbia to bring this trial to a conclusion within a reasonable time. Namely, although the Criminal Procedure Code stipulates that the main hearing must begin from the start if the composition of the trial chamber is changed, in this case the circumstances that led to the change of the chamber member are disputed. First of all, the High Council of Justice did not fulfil its obligation to make a reasoned decision on whether the judge's term of office was extended, which resulted in the inevitable change of the member of the Trial Chamber and, consequently, the restart of the main hearing in this case again, after seven years of trial. Namely, the Criminal Procedure Code stipulates that the main hearing must begin again if the composition of the Trial Chamber is changed. However, the circumstances that led to the change of the chamber member are disputed. The mandate of Judge Dejan Terzić expired on 30 April 2023. Although the President of the High Court in Belgrade submitted a timely request to the High Council of Justice (the Council) to extend the mandate of Judge Terzić, the Council never decided on the received request, because the then president of the Council, Jasmina Vasović, did not include the received request in the agenda of the session. Thus, the Council, the independent body that should guarantee the independence and autonomy of courts and judges, violated its own Rules of Procedure and failed to make a reasoned decision and state the reasons why the judge's term of office was not extended. The Council is not an administrative body that can apply the institute of silence regarding the administration in its work, but a body that has to decide on the request in some way or other.

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The consequence of this has been the inevitable delay of the main hearing, which could have been avoided, and which will significantly affect the further course of the court process, and the duration of the proceedings, but above all the families of victims who are waiting for justice.



XII. The *Srebrenica II* Case³²⁰

CASE FACTS	
Current stage of the proceedings: first-instance proceedings	
Date of indictment: 29 December 2021	
Trial commencement date: 30 May 2022	
Prosecutor: Vasilije Seratlić	
Defendant: Milenko Živanović	
Criminal offence: war crime against the civilian population under Article 142 of the FRY CC	
Trial Chamber	Judge Mirjana Ilić (Chairperson) Judge Zorana Trajković Judge Bojan Mišić
Number of defendants: 1 Defendant's rank: high rank Number of victims: unspecified Total number of witnesses heard: 11	Number of scheduled court days in the reporting period: 8 Number of court days in the reporting period: 6 Number of witnesses heard in the reporting period: 11 Total number of experts witnesses heard: 0
Key developments in the reporting period: Main hearing	

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³²⁰ *The Srebrenica II Case*, trial reports and case file documents available at: <http://www.hlc-rdc.org/Transkripti/srebrenica-II.html>, accessed on 27 January 2024.



Course of the proceedings

Indictment

The accused is charged with having ordered, as the commander of the VRS Drina Corps, the forcible transfer of Bosniak civilians from a number of areas belonging to the zone of responsibility of the Drina Corps and of having participated, by virtue of his orders, in the forcible transfer of Bosniak civilians from the safe area of Srebrenica, namely that:

- 1) On 24 November 1992, he issued a decision for continued operations which he dispatched to the Command of the Zvornik Light Infantry Brigade, which, among other contents, reads: "Using main forces and resources and through active combat operations inflict the heaviest possible losses on the enemy, wear the enemy out, rout him and force him to surrender, and force the Muslim population to abandon the areas of Cerska, Žepa, Srebrenica and Goražde."
- 2) On 20 March 1995, he issued the Order for Defence and Active Combat Operations, by which, among other actions, he ordered: "By daily planned and well-thought-out combat operations create an unbearable situation of total insecurity and hopelessness for the further survival and life of the locals in Srebrenica and Žepa."
- 3) On 12 July 1995, he issued an order for the purpose of the evacuation of the civilian population, ordering for buses to be provided for evacuation from the Srebrenica enclave, that traffic control be regulated, and addressing a request to the VRS Main Staff to authorise the provision of fuel for the 50 buses that would be used for this purpose.
- 4) On 13 July 1995, he issued a document – a warning - containing this notice: "An ultimatum has been given to the Muslims in Žepa, that a meeting must be convened by 11 a.m. on 13 July 1995 at the latest; failure to appear or to accept our conditions for moving out, shall result in resumed combat operations."³²¹

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Defence of the accused

Presenting his defence, the accused denied having committed the criminal offence he is charged with. He stated that he was a retired general, and that while in active service he carried out the orders of his superiors, i.e. the JNA General Staff. He explained that when war broke out in BiH he was in Benkovac, holding the post of battalion commander. According to Order 6/98 of 19 May 1992 of the Federal Secretariat for National Defence, he was to immediately report to Sarajevo, where he was met by General Živković with associates from Belgrade. Following the JNA's withdrawal, huge quantities of military materiel had remained in the area. The Secondary Military School, in which were students who were minors and hence not allowed to bear arms, was under blockade. The men in the Pazarić

³²¹ OWCP Indictment KTO 6/21 of 29 December 2021, available at: <https://www.tuzilastvorz.org.rs/public/indictments/2022-03/KTO-6-21%20anonim..pdf>, accessed on 27 January 2024.



barracks were also under blockade. On 30 May 1992, he managed to pull out the secondary military school pupils without any losses and bring them to the barracks in Lukavica. In the ensuing period he was gravely wounded, and barely survived. He was treated at the VMA [Military Hospital] and was discharged at his own insistence, feeling that he would die if he kept receiving reports about the suffering and killing of Serbs. He joined the VRS Main Staff, always with the knowledge and permission of the General Staff from Belgrade, his task being the preservation of critical facilities of importance to Serbia, such as hydroelectric power plants and bridges. He was appointed to the duty of Commander of the Drina Corps on 1 November 1992, always with the knowledge of his immediate superiors.

The Drina Corps was comprised within the VRS. The zone of responsibility of the Drina Corps was the territory of Zvornik, Bratunac, Šekovići, Milići, Sokolac, Višegrad, Rudo, Čajniče and all the way to the outskirts of Goražde, but the Serb population had already been decimated by that time. The Corps actually comprised the Zvornik Brigade, while there was an undermanning problem with all the others. Enemy positions were a stone's throw away from Zvornik. On 11 November 1992, he went to Zvornik, where he found chaos, because all manner of people was there except for regular RS troops. There were some Chetniks, who did all sorts of things, because "if you want your state to lose the war, allow the paramilitaries to multiply". Later, the Bratunac Brigade was formed, but the army had major problems with the political leadership, who wanted to command the army. In the period that followed, other brigades were established as well, the intention being to rally them all under one body, the Corps. Only then were coordination and unity of command established. However, Miroslav Deronjić (he was the leading political figure of the Bosnian Serbs in Bratunac) dismissed the defendant from his duties in May 1995. The former had led paramilitary units, and had killed the Muslim inhabitants of a village.

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The defendant wrote the order referred to under count 1) of the Indictment, pursuant to VRS Main Staff directive number IV, which he had received on 19 November 1992. That directive was actually a wish list of people who did not have the slightest inkling of what the situation in the field was like, as those tasks were absolutely unattainable in practice. In the defendant's view, it was "sky-high demagoguery". In pursuit of that directive he had to draw up his own act. Had he acted according to the directive, everything would have been lost in three days. He had complained about the content of the directive to Ratko Mladić, the commander, who told him to never mind the directive but to defend the people. In his decision, in the first two items of the order, he had to copy parts of the directive, and it was only in the part where he issued orders that he "started using his own head". He explained that a directive "neither sets the troops in motion nor sends them into the trenches, but an order does". He issued orders to the Zvornik Brigade because he knew that at the time it was incapable of even defending itself, because it did not even have a commander then, let alone the capacity to carry out a mission. As they were not strong enough to even defend themselves, he was afraid that they might lose Bratunac too, and he obtained reinforcements for its defence.

According to an order of 28 November 1992, he went to Bratunac to meet the first convoy of humanitarian aid for Srebrenica. There were no protected zones or UNPROFOR at the time, because



the protected zone was established only in April 1993. The people in Bratunac sought to prevent the passage of the convoy, because the situation in Bratunac was very difficult then. The population in Srebrenica was in no danger, they had good connections with their own people - but the supplies of food which they had taken from torched and plundered Serb villages in the area were running low. At the time, 90% of the territory was under Muslim control, practically all the way from Goražde to Tuzla. The areas of Cerska, Žepa, Srebrenica and Goražde had a majority Muslim population. Directive IV instructed that the attack start on 23 November 1992, whereas the defendant issued his own order only a day later, namely, on 24 November 1992. Not a single word in that order referred to an attack. The right response to that directive would have been the defence of Bratunac and of the bridges on the Drina. There had never been any transfer of the Muslim population from those areas in 1992 and 1993 pursuant to his order. The accused noted that he had not treated the Bosniak population unlawfully by any of his orders or actions.³²²

With respect to count 2) of the Indictment, the accused stated that, on 8 March 1995, the VRS Supreme Command sent its directive VII signed by Ratko Mladić. On receiving the directive, he prepared his own document by copying the first two items of the directive, but his document did not contain a single act of commission and was dispatched to subordinate units for information. He had not stated a single incriminated act in his order.

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In March 1995, life for the Muslims was difficult, because their authorities forbade them to go to Tuzla. At the time, Naser Orić was "lord and master" in Srebrenica. In the course of April 1993, more precisely on 18 April, the VRS had been three kilometres away from the centre of Srebrenica, but he then received an order to cease operations, because the Muslims would surrender to UNPROFOR. That order was carried out, and they believed that it was the end of the war as well. However, Srebrenica was not demilitarised, but, rather, a strong military formation was building up in the area. Every convoy which reached the defendant passed through to Srebrenica undamaged. He had not issued a single specific order on the basis of directive number VII. No combat operations of any kind could have been carried out, given the fact that there were UNPROFOR observation posts all around Srebrenica - which, however, permitted armed Muslim units to leave Srebrenica unhindered and inflict harm on the surrounding Serb villages. On 20 March 1995, he requested UNPROFOR to bring those armed units back into the enclave, and the defence moved to tender this document into evidence as exhibit. The Muslim commander Delić issued an order for sabotage missions to be undertaken deep inside Serb territory, and the VRS was unable to cover all the territory, as it did not have enough troops for executing such an action. The key problem was to eliminate the "cancer" of the enclave, where there was a build-up of Muslim troops preparing to take Bratunac and demolish the Bajina Bašta dam. On 15 June 1995, Ratko Mladić called him and told him to prepare to hand over the duty of commander of the Drina Corps. Deronjić, a Serbian Democratic Party member and a leading politician in Bratunac, had persuaded Karadžić to relieve the defendant of duty, and after that date he received no further orders.

³²² Transcript from the main hearing of 12 September 2022.



This decision "gave wings" to Radislav Krstić, who actually received Karadžić when the latter came to the Corps on 29 June 1995. Krstić was given the order then to lead the troops to Srebrenica. Krstić immediately summoned the brigade commanders and took them out in the field for a commanders' reconnaissance. Following this reconnaissance, on 5 June 1995, Krstić informed the VRS Main Staff that the Drina Corps was ready. There was talk that they would be moving on Srebrenica, and the defendant asked the operations officers how they could lead the troops out of their zone of responsibility. The "Krivaja" plan had been drawn up by the defendant, and, according to that plan, Serb troops were not to enter Srebrenica at all, for fear that in that case there would be bloodshed; because in 1995 there were no Serbs in Srebrenica at all, as they had either been killed or expelled in the previous period. According to the "Krivaja" plan, the VRS was to retake the Serb villages and leave Srebrenica and Potočari to the Muslims, and UNPROFOR was to deal with the problem of seized Serb flats in Srebrenica. It was Radislav Krstić who liaised with the Main Staff and subordinate units, and he himself had actually stated before the Hague Tribunal that he had not kept the defendant informed about anything. The defendant only remained to wait for the official handover of the Corps. On 11 July 1995, Ratko Mladić arrived in Vlasenica, where the defendant also was at the time, and he invited him to go to Pribićevec. The attack on Srebrenica began on 6 July 1995, and was led by Krstić. He was the one who reported to Ratko Mladić when they arrived at Pribićevec. Srebrenica was in plain sight from there and he could also see two columns moving out of Srebrenica, one in the direction of Šušnjari and the other towards Potočari. No one opened fire at those columns, although they were within the range of the Bratunac Brigade. On that day he also saw the Serbian flag in Srebrenica; Krstić took them all into town where they "took photographs liberally". The accused went to Srebrenica as Mladić's guest, as he had no command powers at all at the time. After visiting Srebrenica, they returned to Pribićevec, and then to Bratunac.³²³

In respect of count 3) of the Indictment, the accused stated that on 11 July 1995 a meeting was held at the Command of the Bratunac Brigade, which is important because it was attended by Ratko Mladić as well as brigade commanders Pandurević, Andrić and others. There still were no Muslims from the enclave at that time. Ratko Mladić ordered that combat operations towards Žepa continue forthwith and that the units march in that direction. Radislav Krstić also attended this meeting, and Mladić ordered him to draw up a written order to that effect, which Krstić did; that is document 02/04-158-1 of 13 July 1995, i.e. the Order for attack on the Žepa enclave. That is an order to brigade commanders, namely, a command order for the execution of operations. All other documents are documents of little value, because such an order clearly specifies what the army is to do. On 13 July 1995, at the locality of Viogor (Serb village on the Srebrenica – Milići road) the troops were officially told that Krstić was the commander. The accused had not been invited to this meeting or to the dinner after the meeting. The next meeting was held at the Hotel "Fontana" in Bratunac, and no one invited the accused to that meeting either. That meeting was attended by Ratko Mladić, Krstić and representatives of the Serb authorities, as well as representatives of Muslim civilians. It was agreed then who would collect the Muslims and transport them to territories under the control of the BiH Army, and where. The Muslims decided to leave the area, because in 1992 Muslim military units had extinguished all life in

³²³ *Ibid.*



the Serb villages, so they did not "have the guts" to await the arrival of Serb troops. When this meeting was over, Ratko Mladić called General Petar Škrbić, as the only one responsible and competent for the provision of fuel and logistics for the transport of the Muslim civilians. Škrbić then wrote to the ministry in charge of the additional mobilisation of technical resources, and the ministry on its part addressed the relevant territorial departments on that score.

The accused explained that on 11 July 1995, he left Bratunac for Vlasenica, but that he did not sleep at the command, because his "Commander" label had already been taken off. He was in Vlasenica on 12 July 1995, while everybody else was in Bratunac, and he was at Zvonko Bajagić's family Slava feast. After 15 June 1995, he was never issued any orders by Ratko Mladić as the Supreme Commander. Krstić's intercepted conversation is a document from the time when he had just been made general; at 7.30 a.m. on 12 July 1995, Krstić had called the transport desk officer Krsmanović, who was in Vlasenica at the time, and told him that 50 buses from all places should be at the Bratunac stadium at 5 p.m. With this conversation, Krstić violated the chain of command and should have been punished for it. Krsmanović did not see or hear the defendant, and the existing documents incriminate him, whereas the defendant has nothing whatsoever to do with them. It is true that the documents bear the defendant's signature, but how that happened is something that not even Krsmanović was clear about. In respect of the allegations in the indictment that he had requested the VRS Main Staff to authorise the use of fuel for 50 buses, he explained that it was not true, and that 30,000 litres of fuel had been given by Major Ruten from the Dutch Battalion, who actually confirmed that fact when testifying in The Hague.³²⁴

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Presenting his defence in respect of count 4) of the indictment, the accused said that he had nothing whatsoever to do with Žepa, because the units had come to the Žepa sector after 13 July 1995, and had already on 14 July reported to Krstić to receive their orders. His name came to appear on a number of documents only because the personnel organ of the VRS Main Staff had been remiss in promptly performing its job and so his name was given, although he had already handed over command of the Corps to Krstić.³²⁵

Course of the proceedings in 2023

During 2023, eight court days were scheduled, of which six were held, during which 11 defence witnesses were heard. On 7 July 2023, the main trial restarted, due to the change of the president of the Trial Chamber and one member of the Council (the former president of the Trial Chamber was replaced by Judge Mirjana Ilić, and the new member of the Trial Chamber became Judge Bojan Mišić).³²⁶ Trials have been cancelled twice, for reasons unknown to the public.

324 Transcript from the main hearing of 31 October 2022.

325 *Ibid.*

326 Transcript from the main hearing of 7 July 2023.



Witnesses in the proceedings

Defence witness Petar Škrbić stated that he was a member of the VRS, at the General Staff, and assistant to General Ratko Mladić for mobilisation and personal affairs. He knew nothing about the defendant's activities during the critical period. At the beginning of July 1995, there were stories about replacing the defendant Živanović. General Mladić agreed with Karadžić that the defendant should be replaced as Commander of the Drina Corps by Radislav Krstić, so he told the witness to take the decree to Karadžić for signature on 14 July 1995. He explained that he had been shown the document before the Hague Tribunal, but Krstić had already received the duty from the defendant on 13 July 1995. Regarding the document sent by the witness to the RS Ministry of Defence, he stated that on 11 July 1995 it was communicated to him from the Operations Centre that 50 buses should be mobilised. The mobilisation of vehicles was within the competence of the Ministry of Defence, so he drafted an act or request, and sent it to the Ministry, which mobilised buses from the Secretariats of National Defence in RS. Neither the defendant nor Mladić could order it, but only the Ministry of Defence. He explained that the brigades did not have buses or fuel. No commander could provide such a number of buses. Bus fuel was provided by Karemans (the then commander of the Dutch Battalion in Srebrenica). The army could not interfere in the procurement of buses, because a state of war had not been declared. Already from 15 June 1995, Mladić kept suggesting to the defendant to hand over the duty of Commander of the Drina Corps, and for this reason, Radislav Krstić and his superiors established a command post on Pribićevac on 6 July 1995.³²⁷

Defence witness Mirko Trivić stated that he was Chief of Staff in the Guards Brigade until 15 August 1994, when he assumed command of the Romanija Brigade, which was part of the Drina Corps.

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For the operation "Krivaja 95", the orders were received from the corps commander. He received a call for command reconnaissance from Krstić, who gave them specific orders, because Krstić was the commander of the operation. The defendant was not present at the meeting held on 12 July 1995 in Bratunac. Krstić and Mladić attended. At that meeting, Mladić talked to someone about transporting civilians, and said that they would take over the mobilisation of buses and trucks, if the other side would provide fuel. Krstić commanded the "Krivaja 95" operation from the beginning to the end. The defendant was not in the position of the commander at the time of the action. The witness concluded that the defendant was not part of it for health reasons. The luncheon that was organised on 9 or 20 July 1995 was only a formal send-off of the defendant, and it was then that he saw him for the first time since 11 July 1995, when they met in Srebrenica. The witness concluded that the defendant came to Srebrenica for private reasons, since he was from Srebrenica.

In relation to the act of 13 July 1995, i.e. the warning that issued an ultimatum to Muslims in Žepa, for the issuance of which the defendant is charged, the witness stated that it was made following a certain format. Namely, it would be written on behalf of someone who was still formally on duty, regardless of the factual situation. On that day, the defendant could not have been in a position to decide, because he was not at Žepa, nor was he aware of the situation. The witness came to Krivaja on 13 July 1995

³²⁷ Transcript from the main hearing of 27 March 2023.



and contacted Krstić, because on 14 July 1995 the Operation "Žepa" began. Krstić was the Chief of Staff of the Drina Corps. The witness already referred to Krstić on 12 July 1995, and Mladić ordered him to go to the area of Žepa.³²⁸

Defence witness Vinko Pandurević³²⁹ was the commander of the Zvornik Brigade of the VRS from December 1992 onward. His brigade was part of the Drina Corps. The action "Krivaja 95" was realised from the beginning to the end by General Krstić, and the defendant did not interfere; although he was still formally the commander, he was already replaced by Krstić as the commander of the Drina Corps. On 2 July 1995, Krstić's Preparatory Order came in, and he did not even see the defendant. According to the rules of the service, Krstić should have referred to the defendant, but this was not the case. The witness himself also referred to Krstić.

Srebrenica was declared a protected zone in April 1993, but it still remained a zone in which the 28th Division of the Army of BiH operated. The Directive No. VII of the General Staff of the VRS, he saw for the first time only at the Hague Tribunal. It was issued by the Supreme Commander, and forwarded by the General Staff to the Corps. On the order issued by the defendant, which urged, among other things, that "daily planned and well-thought-out combat operations create an unbearable situation of total insecurity and hopelessness for the further survival and life of the locals in Srebrenica and Žepa", the witness stated that this was transcribed from Directive VII. It can be seen from the order of the brigade that nothing specific was required of the brigades in that sense. He explained that during his trial at the Hague Tribunal, he learned that the former UN Special Envoy to Yugoslavia, Yasushi Akashi, had noted that the fall of Srebrenica was inevitable, but that it was necessary to evacuate the civilian population. He had coordinated UNPROFOR actions on behalf of the UN Secretary-General. The General of the Dutch Battalion sent data, so 30 tons of fuel were approved to carry out the evacuation campaign. The meeting held at the "Fontana" Hotel was a meeting at which the evacuation of the population was agreed. He assessed that it was not a forced resettlement, but an evacuation. About the order related to Žepa, the witness stated that it was unlikely that the defendant had seen it, as he was no longer the Commander of the Drina Corps at that time.³³⁰

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Defence witness Rajko Krsmanović was the head of the traffic service in the Drina Corps during the critical period. General Krstić ordered him to provide 100 buses to transport people. He received this order through the means of communication, and it was a conversation that the Army of BiH intercepted, the transcript of which was used in several proceedings before the Hague Tribunal. According to the witness, it turned out later that this Order had no force. On 12 June 1995, the witness came to Potočari, where the buses began to gather. General Krstić had no jurisdiction over that. He saw that people in Potočari were boarding buses, and most of them were transferred to the territory under the control of the Army of BiH on the same day, and a slightly smaller number were

328 *Ibid.*

329 Before the Hague Tribunal, as Commander of the Zvornik Brigade within the Drina Corps, convicted of crimes against humanity and violations of the laws or customs of war to a prison sentence of 13 years in connection with the events during July 1995 in Srebrenica.

330 *Ibid.*



transferred the next day. Krstić then ordered him to provide means of transport by which members of the VRS could be transferred to Žepa. During this period, the witness had no contact with the defendant. He exclusively informed General Krstić about all actions taken. It was unknown to him whether Krstić was subordinate to the defendant on 12 and 13 July 1995. He explained that the act on the mobilisation of means of transport was not written by the defendant, because that act was never handed over for the coding; the same went for the act on the traffic regulation in Bratunac. These decisions had not been expedited to the recipient because there were no signatures on them. The act of traffic regulation is within the competence of the Logistics. The stamp on the document confirms that it was received by the communication body, but the document could not be sent further without signature. Such an act did not produce any effect, because the defendant also had no right to hire means of transport that were not owned by the unit. The order to mobilise vehicles could only be issued by the Ministry of Defence.³³¹

Defence witness Vladimir Mitrić was in Srebrenica in November 1992 as a war reporter for RTV Novi Sad. The first convoy of humanitarian aid for Srebrenica tried to cross into the territory of Republika Srpska from Bajina Bašta to Skelane. Since members of the BiH Army had previously killed some Serbs in Skelani, the people did not allow the convoy to enter. UNHCR insisted that the convoy be allowed to pass, so it was finally agreed that the convoy would go through Bratunac. Then a large group of civilians gathered in the town, and blocked the convoy. The defendant stood in front of the convoy and managed to get it through Bratunac, convincing people that they should let it pass. That convoy would not have passed if the defendant had not been there to facilitate it. After this, other convoys passed without any problems. Owing to the facilitation of the passage of that convoy, there were a lot of complaints made to Radovan Karadžić against the defendant. The defendant was the Commander of the Drina Corps, but the civil authority was in charge of everything. Thus, Miroslav Deronjić, who was the President of SDS Bratunac, as well as of the Crisis Staff of the municipality of Bratunac, and therefore the main figure in Bratunac, had a very negative opinion of the defendant. Since he had a great influence on Karadžić, he would often complain to him about him. The witness stated that General Philippe Morillon, who was then the commander of UN troops in BiH, told him that Naser Orić was selling goods from humanitarian aid in Srebrenica. Through humanitarian aid convoys, 2 tons of oil were also delivered to Srebrenica, of which Orić took 1.2 tons for himself. If there was starvation in Srebrenica, Orić was to blame, because he did not distribute, but sold humanitarian aid. From General Manojlo Milovanović, chief of the General Staff of the VRS, he learned that the defendant was very unpopular with Deronjić and Karadžić, and that the two of them called him "crazy Živanović". It was known "who is whose general", and the defendant was considered disobedient.³³²

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Defence witness Dragan Golijanin was a member of the Drina Corps until the end of 1995, and he was in the personnel department. He met the defendant in 1992 when he accepted the position of Commander of the Drina Corps, and he was his adjutant and clerk. In Bratunac, there was Miroslav Deronjić, the head of the SDS, who wanted to be in charge and who ultimately participated in the

331 Transcript from the main hearing of 7 July 2023.

332 *Ibid.*



dismissal of the defendant, because he wanted to introduce order and military discipline. The defendant was dismissed, so General Krstić became the commander of the Drina Corps and "did everything in a yo-ho manner". The defendant did not want anything to do with Srebrenica, and claimed that Ratko Mladić was rushing things and was often unaware of what he was doing. Relations between the military and civilian authorities were poor. Mladić wanted to be in charge, so he appointed Krstić as the Commander of the Drina Corps, and the latter deployed all of the defendant's personnel to other positions. At the time of the 1992 decision for which the defendant is charged, the Drina Corps had just been formed – it did not even exist, nor did it have an organised army.

The defendant did not participate in the implementation of Operation "Krivaja". As the Commander of the Drina Corps, he was absent on 12 July 1995. On that day, someone made three decisions with the witness's boss, Radenko Jovičić, because he assessed that they were unenforceable, since they were within the competence of the Ministry of Defence. The Corps could not mobilise vehicles, and UNPROFOR had provided 30 tons of fuel. The third decision, which referred to securing the road, was a decision whose implementation was the responsibility of the regular police, not the military. At the end of June 1995, Karadžić brought in Radislav Krstić, who was officially the Commander of the Drina Corps. The defendant did not interfere in their activities. He has been voluntarily withdrawing since 16 June 1995, and since 29 June 1995, he had had no connection with the Corps. The document on the handover of duties between the defendant and Radislav Krstić never went through the personnel service. There was strong pressure from the President of the State to remove the defendant from the position of commander of the Drina Corps, because he did not want to carry out their orders unquestionably.³³³

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Defence witness Milenko Jevđević had known the defendant since 1992, when he came to the area of Birač. The Drina Corps was formed in November 1992, and at that time the witness was the commander of the liaison battalion. The command post was in Vlasenica, where the liaison command post was also located. The defendant was the Commander of the Drina Corps. The first problem was the understaffing of the command. During this period, their territory was very much intersected, and communications were difficult or impossible. At the beginning of July 1995, Radislav Krstić ordered the witness to go to a forward command post located on Pribićevac and to establish a liaison, which the witness did on 5 July 1995. When he set out, he met the defendant, who asked him if he knew where he was going, and who told him "that this one here" (meaning Krstić) had already "gone crazy", and that "the one above him already thinks he is the power", and "we will all end up in The Hague". He found it strange that the defendant was distancing himself from everything, but at Pribićevac he realised that the defendant was sidelined from commanding Operation "Krivaja". The units received a command to execute the "Krivaja" operation, i.e. the order for going to Žepa, which came from Vlasenica. On 11 July 1995, there was a meeting at the command of the Bratunac Brigade, which included Ratko Mladić, who said that everyone was going to Žepa the following day. On that occasion, he ordered the witness to set up a command post for him in Kravica. Already on 12 July 1995, the witness had established a liaison centre in Kravica. The new operation was called "Stupčanica 95". Ratko Mladić came to Pribićevac on 11 and 12 July 1995.

333 Transcript from the main hearing of 22 September 2023.



During the entire Operation "Krivaja", the defendants and Krstić were not in contact. On 11 July 1995, the accused came to Pribićevec without any means of communication, and the two did not communicate at that time. The witness explained that he had testified before the Hague Tribunal five times, and that he had then seen documents that were not known to him at the time of the event. When the first phase of the operation was carried out, and when the Srebrenica and Žepa protected zones were separated, the Corps entered Srebrenica, although this was not foreseen. Such an order was given by President Radovan Karadžić himself. The 28th Army of BiH had already withdrawn, so the civilians started to retreat towards Potočari. Later, he learned that Karadžić was in the General Staff command and that he had met with Chief of Staff Krstić, who received an order to draw up an action plan. The witness explained the procedure for drafting the order, stating that it was preceded by a directive of the General Staff. Upon receipt of the directive, the commander would call his subordinates and tell them his basic idea of how to perform the operation; and then the plan of operation was drawn up - that is, the elements for the orders were drafted. After that, two variants of the decision would be made and presented to the commander, who would make his decision, and the order would be written by the Assistant Chief of Staff. In the writing of an order, parts of the received directive are used, and only the fourth item of the order is the decision of the commander of the corps. It is the embodiment of his idea, and from that point begins his essential responsibility. The decision must always state what the superior command ordered the Corps, i.e. a part of the obtained directive must be entered. The mobilisation of means could not be carried out by the Corps, but only by the Ministry of Defence. He stated that he had not witnessed any orders against civilians issued by the defendant.³³⁴

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Defence witness Radojka Filipović worked as a curator of the memorial room in Bratunac, and was the president of the Assembly of Associations of Families of the Murdered and Missing in Bratunac. Speaking about the suffering of the Serbian population in the area, she stated that the villages of Blečeva and Gniona were attacked on Đurđevdan in 1992, and that 14 locals were killed in the village of Zagona in June 1992. This was done on Petrovdan [St Peter's Day] by the soldiers of Naser Orić. During 12 June 1992, other villages were attacked, on which occasion 69 locals were killed. The form was always the same when attacking Serbian villages. Soldiers would raid the villages, kill everyone they found, loot property and burn real estate. Hranča and Donji Magašići were attacked on 25 July, and Ježestica on 8 August 1992, when eight locals were killed. The Mladenović family was killed. During World War II, Ljubomir Mladenović's entire family was killed, and on 8 August 1992, his two sons were killed in front of his wife, and the head of their son Anđelko was taken as a gift to Naser Orić. Every day during 1992 and 1993, a Serb was killed. Bratunac was under the control of the VRS, but Serb villages were invaded from Srebrenica and civilians were killed. People from the village of Bjelovac were taken to the camp in Srebrenica. In January 1993, 49 locals were killed in the village of Kravica. In Podrinje, in 150 villages, there is no Serbian house from which someone did not die. No one was held accountable for the crimes in the vicinity of Bratunac. The Serbian people were hungry, because everything was stolen and taken to Srebrenica, and aid was delivered to them by convoys. The

334 *Ibid.*



suffering did not stop even after Srebrenica was declared a protected zone. The disarmament was not carried out, so people came out of Srebrenica and killed Serbian citizens in the surrounding villages.³³⁵

Defence witness Radomir Pavlović had known the defendant from school, and later he saw him after the formation of the Drina Corps. During the war, he was the only doctor in the Skelani area. Witnessing the circumstances of the suffering of Serbs in the period from April 1992 to January 1993, he stated that the Skelani were attacked on 16 January 1993. He followed the information on the attacks on all villages – about 150 villages were burned in the area of Bratunac and Srebrenica. According to the witness, it was an ethnic cleansing and burning that was carried out on major Orthodox holidays. As examples, he stated that on 4 July 1992, a teacher and a priest were killed in the village of Hranići, on 5 August, Klekovići, Blaževići and Kostolomci were attacked, and on 24 September the village of Podravanje, where parts of people's bodies were cut off, and their eyes removed. Over 40 people were killed that day. As a doctor, he had participated at many funerals, and taken statements from survivors that he published in the book "Bol crnih marama Srebrenice" [The Pain of Srebrenica's Black Scarves"].³³⁶

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Defence witness Milomir Nastić testified to the circumstances and on whose orders he acted during June and July 1995, during his stay in the area of Srebrenica and Žepa. At the beginning of April 1995, he assumed the position of commander of the Milići Brigade, and was appointed by the defendant who was the Commander of the Drina Corps. The task of the brigade was to protect the bauxite mines and surrounding Serbian villages. UNPROFOR forces located in the area allowed the smooth circulation of weapons between the protected zones of Srebrenica and Žepa. In June 1995, the then commander of the 28th Division of the Army of BiH, Major Bećirović, issued an order to form diversionary groups acting in the depth of the territory, to destabilise and attack Serbian villages. Attacking Serbian villages, they killed civilians with extreme cruelty, cutting off their heads and impaling them on stakes. Owing to their frequent actions, an attack on Milići was expected. The only way to protect the Serbian population was to cut the connection between Srebrenica and Žepa, so the action "Krivaja 95" was organised. Its task was to separate the protected zones, although they were never within the limits set by the UN Resolution, but significantly larger. Also, they were not demilitarised because, if they had been, people would not have come out of them and attacked the Serbian civilian population. By order of Radislav Krstić, the command of the Milići brigade was taken over by Colonel Milanović, who went for Žepa after Srebrenica. During the action, he did not see the defendant anywhere, even at the stage of preparing the operation. It was generally felt that the operation was being commanded by Radislav Krstić, who also commanded the combat operations. He received his first order from Krstić when they went on a reconnaissance mission on 2 July 1995. Operation "Krivaja 95" was the decision of the defendant, but entrance into Srebrenica was not the intention – that, rather, was Krstić's decision.³³⁷

335 *Ibid.*

336 *Ibid.*

337 Transcript from the main hearing of 31 October 203.



Defence witness Milan Jolović³³⁸ testified to the circumstances of the conversation with the defendant in Vlasenica. At the time of the critical events in the summer of 1995, he was the Commander of the Rapid Response Force within the Drina Corps and received commands directly from the Corps Commander. He was engaged in Operation "Krivaja 95", whose goal was to separate the protected enclaves of Srebrenica and Žepa. He received the order to enter Srebrenica directly from Ratko Mladić. Before the action began, he stopped by the defendant's office, who on that occasion told him, referring to Srebrenica, "Do not touch the wasp's nest". During the action, battles were fought with the 28th Division of the Army of BiH, but when they arrived in Srebrenica, they found about 30,000 civilians. He was transferred from Srebrenica to Žepa. On Petrovdan, 12 July 1995, on his way to Žepa, he stopped in Vlasenica by the house of Zvonko Bajagić, where he found the defendant, to whom he gave his Motorola, with a dedication he carved with a knife. The witness explained the writing of the orders by explaining that commanders write their orders on the basis of commands from a higher level of command. In the first three points of an order, connections with the order of the higher command are made, and only in the fourth is the decision of the commander on the ground stated. That is, the first three points state the opinion of the higher command, and the fourth states what the commander himself has decided. He never received an order from the defendant to attack the civilian population. On 5 July 1995, Radislav Krstić was *de facto* commander of the Drina Corps.³³⁹

HLC Findings

Indictment against a high-ranking officer

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After a long time, the OWCP has finally brought an indictment against a high-ranking member of the VRS which was the result of its own investigation, which is a positive development in their work. Although the OWCP had brought indictments against senior VRS personnel in the previous period, they did not result from its own investigations but were cases transferred from BiH, i.e. cases in which the investigation had been conducted and the indictments brought by the Prosecutor's Office of BiH.³⁴⁰

Lack of regional cooperation

An indictment against the accused Milenko Živanović was brought in the BiH also for the same incriminated acts at almost the same time (the indictment was issued on 13 December 2021), as was confirmed by the BiH Court on 31 December 2021, which indicates a lack of adequate cooperation between the two prosecutorial offices.

338 Milan Jolović, aka "Legend", was the commander of the special unit "Drina Wolves" within the VRS.

339 *Ibid.*

340 Indictments: KTO 2/21 against Branko Basara and Nedeljko Aničić, KTO 5/20 against Rajko Kušić, KTO7/20 against Drago Samardžija.



XIII. The *Štrpci* Case³⁴¹

CASE FACTS	
Current stage of the proceedings: repeated first-instance proceedings	
Date of indictment: 10 May 2018	
Trial commencement date: 29 January 2021	
Prosecutor: Vasilije Seratlić	
Defendants: Gojko Lukić, Jovan Lipovac, Duško Vasiljević, Dragana Đekić	
Criminal offence: war crime against the civilian population under Article 142 of the FRY CC	
Trial Chamber	Judge Rastko Popović (Chairperson) Judge Nada Hadži Perić Judge Olivera Anđelković Judge Miodrag Majić, PhD Judge Dragoljub Albijanić
Number of defendants: 4 Defendants' rank: no rank Number of victims: 20 Number of witnesses heard: 35	Number of scheduled court days in the reporting period: 3 Number of court days in the reporting period: 3 Number of witnesses heard in the reporting period: 0 Total number of experts witnesses heard: 0
Key developments in the reporting period: First-instance verdict, revocation of first-instance verdict	

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³⁴¹ *Štrpci Case* trial reports and case documentation available at: <http://www.hlc-rdc.org/Transkripti/strpci.html>, accessed on 20 January 2024.



Course of the proceedings

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 the 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.

On arriving at 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.

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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 Mušići, 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 victims 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 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.³⁴²

³⁴² OWCP Indictment, KTO 1/15 of 10 May 2018 available at: https://www.tuzilastvorz.org.rs/public/indictments/kto_br_1_15.pdf, accessed on 20 January 2024.



Defence of the accused

Presenting their defence, 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.³⁴³ The accused Ljubiša Vasiljević stated that, while in 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 half able to walk, supporting himself with crutches. After the treatment, he was declared unfit for military service for the next five years.³⁴⁴ 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.³⁴⁵ The accused Jovan Lipovac stated that he had participated in the war in BiH 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.³⁴⁶ 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 had been "subjected to torture at the hands of the state", as they were "implicating her in all the events, from Zvornik to Višegrad". They had been hounding her all these years, but she would only tell it like it was. She had known 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.³⁴⁷

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Witnesses in the proceedings

Witnesses/injured parties Nail Kajević, Selma Čolović, Ragip Ličina³⁴⁸, Alija Kapetanović, Etem Softić, Misin Rastoder, Edin Bakija³⁴⁹, Islam Sinančević³⁵⁰, Đordije Vujović and Izudin Hanić³⁵¹ 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 soldiers took 15-20 male passengers off the train and led them somewhere in the direction of the station building.³⁵²

343 Transcript from the main hearing of 4 March 2019.

344 *Ibid.*

345 *Ibid.*

346 *Ibid.*

347 *Ibid.*

348 Transcript from the main hearing of 3 April 2019.

349 Transcript from the main hearing of 4 April 2019.

350 Transcript from the main hearing of 13 May 2019.

351 Transcript from the main hearing of 14 May 2019.

352 Transcript from the main hearing of 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 replied 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 so he thought that military reservists of Republika Srpska were being taken off the train for mobilisation purposes. The witness also said that he had received specific instructions in his patrol sheet that should the train be stopped, 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.³⁵³

Witnesses Zoran Bogetić, Zoran Pantović³⁵⁴, Ljubiša Radomirović and Nenad Cvetić³⁵⁵ 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 events in question. 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 Mićo 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 threw out the drivers, members of the Goražde Brigade, and continued the journey on their own. He had not talked to the truck drivers about this incident personally, as a brigade security officer had handled the matter. Jakić told him about the incident with the truck only later, because he feared Milan Lukić – he feared for his family.³⁵⁶

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

353 *Ibid.*

354 Transcript from the main hearing of 24 September 2019.

355 Transcript from the main hearing of 28 October 2019.

356 *Ibid.*



a tractor to Mušići, to transport something for the military. When he arrived at Mušići, Krsto Papić, 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 that Dušan Božić, Krsto Papić's driver, was there 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 such orders himself.³⁵⁷

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 Božić's 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 that process 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.³⁵⁸

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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 his uncle came back inside, he told him that Milan Lukić had brought some Muslims. The witness headed for the school on foot, and saw there 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 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. He knew that one of the Vasiljević brothers used 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

³⁵⁷ Transcript from the main hearing of 26 November 2019.

³⁵⁸ *Ibid.*



in Mušići, but did not testify about that at the main hearing, only before the OWCP). He had had numerous contacts with BiH and OWCP prosecutors in connection with this event. The prosecutor from Bosnia and Herzegovina, Džermin Pašalić, had exerted pressure on him, whereas there had not been any pressures exerted on him by the OWCP.³⁵⁹

Witness Nebojša Ranisavljević³⁶⁰, commander of the "Skakavci" [Grasshoppers] platoon, 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 Mićo 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 made 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 with wire behind their backs; the prisoners were then 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.³⁶¹

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The Chamber ordered a forensic expert analysis to ascertain the causes of death of the injured parties whose bodies had been found³⁶², as well as a ballistic analysis.

Witness for the prosecution Mićo Jovičić³⁶³ 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 Okolište. He had met the accused Gojko Lukić, the brothers Vasiljević, and Jovan Lipovac, as well as Milan Lukić, in Višegrad when walking about town in his spare time. He

359 Transcript from the main hearing of 9 December 2019.

360 Nebojša Ranisavljević was finally convicted of the same crime and sentenced to 15 years in prison by the verdict of the High Court in Bijelo Polje, K.br. 5/98 of 9 September 2002, which was confirmed by the judgment of the Supreme Court of the Republic of Montenegro Kž.br. 102/03 of 19 November 2003.

361 Transcript from the main hearing of 10 December 2019.

362 So far, the bodies of victims Halil Zupčević, Rasim Čorić, Jusuf Rastoder and Ilijaz Ličina have been found.

363 Prosecution witness Mićo Jovičić concluded an agreement with the Prosecutor's Office of BiH on pleading guilty to the same crime, and was sentenced to five years in prison, which he now serves in Serbia.



would often go from Okolište to Višegrad, as it was only about a twenty-minute walk to Višegrad. On 27 February 1993, he was at Okolište in the company of Nebojša Ranisavljević, when Milan Lukić and Boban Indić, who was 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 a "150", drab olive 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 recognised the accused Duško and Ljubiša Vasiljević, Jovan Lipovac, Ranko Drekaló, the brothers Obrad and Novak Poluga, as well as two persons known as "Pukovnik" [Colonel] and "Slovenac" [the Slovene]. Indić and Lukić sat in the cabin, 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 push it out of the rut quickly, because otherwise they would be late for the train.

They arrived at the railway station in Štrpci, where he noticed that two passenger cars had been following 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 supposed that they had ordered him to stop the train. When the train stopped, Lukić, Indić, Drekaló 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.

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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 (a 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, and the accused Gojko Lukić walking up to one of the abductees and hitting him with the barrel of his rifle. "Milling around" the gym were Duško Vasiljević and the Poluga brothers; he also saw the accused Jovan Lipovac there. The abducted passengers had taken their clothes off -- on someone's orders, he presumed. 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 piles of things. In the school in Prelovo he noticed a man of small build, whose name he later learned was Glišić, shifting about around the soldiers, one of whom tried to stop him entering 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 aboard, as their hands were tied, and the witness also helped. The truck set off from Prelovo with the witness sitting in the cargo area. The two passenger cars also followed. 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 aka "Chetnik", and the 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 Okolište, while the others returned to Prelovo.³⁶⁴

Witness for the prosecution Mitrašin Glišić³⁶⁵ stated that he knew all the accused. Gojko Lukić and his brother Milan Lukić, a primary schoolmate of his, were from Rujište, as was the accused Jovo Lipovac, whose family he also knew. He knew Duško and Ljubiša Vasiljević, who were from Đurevići, and he had met the accused Dragana Đekić in the company of a certain 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, aka. "Učo", and Duško Božić, Krsto Papić's driver, would stand in for him. He remembered that it was in winter, in the month of February, at 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 recognised 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 to Kosta's place, he saw Krsto Papić and Dušan Božić, Kosta's son-in-law, there. After pulling it back onto the road, they drove the truck to the school. Following the truck were 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 did not know the exact number of civilians, but thought that there might have been some twenty of

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³⁶⁴ Transcript from the main hearing of 27 January 2020.

³⁶⁵ Transcript from the main hearing of 8 July 2020.



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 uttered some foul-mouthed response, and then Milan, Boban and Obrad left the office and went into the gym. The 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, the 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 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 jerrycan with oil and ordered him to take all the things from the gym outside, and burn them. The witness made several round trips taking out clothes and some papers and documents, and burning 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, namely, the valuable items that had been seized from the passengers. Some of the soldiers were dissatisfied - they said that Milan had not given them enough money. Then Milan went upstairs to see Krsto Papić. The witness heard them arguing, and 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 Mitrašinić from Višegrad had words over how Milan Lukić had obtained the truck. When Stanica the cook came to the school on the second day, she told the witness that the news had been broadcast on TV about the people abducted from the train at Štrpci, and that they said 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 "Lada 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 completely because the walls were blood-soaked. When that same day Krsto Papić and the others returned to the school, they laughed over lunch about how Čarkić had thrown up at the sight of the dead 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. They then pushed them with boathooks down the River Drina.³⁶⁶

366 Transcript from the main hearing of 19 October 2020.



The Trial Chamber ordered a neuropsychiatric evaluation of witness Mitrašin Glišić, in order for his mental faculties of memorisation, intelligence and capacity for recall to be established, as well as any probability of confabulation, always having regard to the witness's educational background.³⁶⁷

On 16 August 2021, criminal proceedings were terminated against the accused Ljubiša Vasiljević, who had died.³⁶⁸

Defence witness Boban Indić stated that proceedings for the same crime were being conducted against him before a BiH court, for which reason he did not wish to testify.³⁶⁹ Defence witness Oliver Krsmanović stated that in the critical period he was a member of regular Army of Republika Srpska military formations and that his unit was positioned at Drinsko, a village some thirty kilometres away from Prelovo. They never went to Prelovo. He knew Mića Jovičić, but was not in his unit and saw him only seldom, in town. The name Mitrašin Glišić rang a bell for him, because he testified in proceedings being conducted before the court in Bosnia and Herzegovina for the same criminal offence in which the witness is one of the accused.³⁷⁰

A court-sworn expert, the neuropsychiatrist Dr Ratko Kovačević, chaired the Medical Board which evaluated witness Mitrašin Glišić. He stated that the Medical Board had established that witness Mitrašin Glišić's had a simple personality structure, with an intellectual capacity in the lower average brackets, no educational superstructure and limited social interaction. He was not found to suffer from a mental disease, mental retardation, transient mental disorders or any other serious mental disorders. At the time of the evaluation, the witness's faculties of perception, memorisation and reproduction of memorised content were intact. The evaluation also found that the witness did not suffer from dementia, did not confabulate and was not prone to a pathological fabrication of events. Analysing his state of mind and his ability to testify about the time of the critical event, the experts ascertained that there existed no data or medical documentation that would indicate the existence of a mental disease or any other disease that could impair the witness's perception, memorisation or recall functions.³⁷¹

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Court-sworn expert Zvezdanka Savić, a medical psychology specialist and member of the Board which evaluated witness Mitrašin Glišić, stated that she backed the given findings and opinion, and accepted Dr Kovačević's findings in their entirety.³⁷²

In view of the fact that in the meantime the witness's patient file had been obtained from the Health Centre in Višegrad, the Trial Chamber ordered an additional neuropsychiatric evaluation of witness Mitrašin Glišić. The experts' task was to determine whether the data in his medical record affected their basic findings and opinion.³⁷³

367 Expertise order K.Po2 no. 4/2017 of 23 October 2020.

368 Decision K.Po2 no. 7/14 of 16 August 2021.

369 Transcript from the main hearing of 22 January 2021.

370 *Ibid.*

371 Transcript from the main hearing of 24 May 2021.

372 *Ibid.*

373 Order on supplementary expert examination L.Po2 no. 4/17 of 23 August 2021.



Court-sworn expert Dr Ratko Kovačević stated that, upon examination of witness Mitrašin Glišić's patient file from the Occupational Medicine Ward of the Višegrad Health Centre, the additional expert analysis established that he had been diagnosed with chronic alcoholism, which was entered in his medical record from 11 October 2000 to 3 July 2001, as well as with a duodenal ulcer. There was no record indicating that the said diagnosis had been made by a neuropsychiatrist or of the witness having undergone any psychiatric treatment. In the assessment of the Medical Experts Board, the diagnosis of chronic alcoholism did not affect the Board's basic findings and opinion.³⁷⁴

In response to a remark by counsel that the witness was an alcoholic, since that diagnosis was in his medical file, the expert said that acute alcoholism was a psychiatric disease. In the medical documentation, however, there was no evidence confirming that diagnosis, since there was no evidence of the witness having been referred to a psychiatrist or of any therapy having been prescribed him following such a diagnosis. Neither was there any evidence to support the diagnosis of a duodenal ulcer, as the same had not been diagnosed by a specialist gastroenterologist.

Expounding the findings of the Medical Experts Board in respect of the accused Dragana Đekić, the court sworn experts stated that their conclusion was that her intellectual capacity was average and her personality structure simple. In the period following her return from the battlefield, she had suffered from PTSD and gone through an episode of severe depression, but, following medical treatment, her mental condition stabilised. At the time of the critical incident, the accused was seventeen-and-a-half years old and her conduct was consistent with her age, within normal limits. The capacity of the accused to appreciate the significance of her acts and control them had been diminished at that time, but not substantially.³⁷⁵

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Court-sworn expert Dr Milena Stanković, a psychiatrist, as a member of the Medical Board, wholly adhered to the basic and additional findings. She explained that the medical record of witness Mitrašin Glišić contained only a working diagnosis of alcoholism, but that it had not been made by a psychiatrist. There was no report at all that the patient had undergone psychiatric treatment, as was standard for alcoholics. His alcoholism had not been diagnosed by a psychiatrist, because the existing documentation came from the Occupational Medicine ward, where no psychiatrists worked. The expert evaluation that was performed did not establish that the witness was an alcoholic.³⁷⁶

Court-sworn expert Zvezdanka Savić, a medical psychology specialist, stood by the given findings in their entirety. She explained that witness Mitrašin Glišić had an average personality and a modest intellectual capacity. Testing had shown that his psycho-organic degradation was within normal limits for his age. No dementia was observed, nor was there any indication of alcoholism. The witness was a simple personality with intact social functioning. His attitude towards authority was intact. He was capable of recollecting past events, and his capacity of recounting past events was preserved. He was not impressionable nor was he manipulative.³⁷⁷

374 Transcript from the main hearing of 14 October 2021.

375 *Ibid.*

376 Transcript from the main hearing of 26 November 2021.

377 *Ibid.*



She stated that she had not participated in the drafting of the additional expert findings, because Professor Kovačević had informed her that the medical documentation that had arrived referred to examinee Mitrašin Glišić's physical health, and that there was no need for her, as a psychologist, to take part in the analysis of that documentation. He said that he would sign the additional expertise for her and she agreed. After the basic and the additional findings were presented to her, she confirmed that she had not signed the additional report.³⁷⁸

Defence counsel for the accused requested that the basic and additional expertise findings be extracted from the case file, contending that the specific instance in question was a forgery in both formal and substantive terms.

The Trial Chamber ruled to have both the basic and the additional expertise of witness Mitrašin Glišić extracted from the case file, the additional findings having been found unlawful, and the basic findings and opinion having been rendered suspicious by such conduct on the part of the Chairman of the Medical Board.³⁷⁹

It ordered a new expert evaluation in respect of the same facts.³⁸⁰

Owing to the change of the Trial Chamber Chairperson, the main hearing restarted on 18 April 2022.³⁸¹ Nine court days were scheduled in 2022, of which six were held. The trials were postponed in three instances owing to the poor health of the accused Jovan Lipovac. Four witnesses and five expert witnesses were examined at the trial.

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Court-sworn expert Dr Jelena Sredanović, a psychiatrist representing the Medical Board of the "Dr Laza Lazarević" Psychiatric Hospital, stated that the Board had undertaken an evaluation of witness Mitrašin Glišić in order to establish the witness's mental capacities, memory, intelligence and capacity of retrieval and any possible confabulation bias, bearing in mind his age and educational background. On examination, the witness presented a tremor of the upper extremities, possibly indicating Parkinson's disease. Subcortical and cortical reduction changes of indeterminable onset were also observed. These were irreversible changes which affected basic mental functions, in particular memory, which in the witness was compromised. Memorisation and reproduction of earlier and current events were both compromised. A person giving different accounts of crucial facts can do so in order to fill in memory gaps. The witness's functioning potential was very modest. The witness was illiterate, of modest intellectual capacity, and currently functioning within the framework of slight intellectual disability. Memory, memorisation and recall were all diminished, as were his psychomotor capacities. He had shown a sound knowledge of social rules and norms of behaviour. His was a simple personality structure, with very modest intellectual capacities as currently registered, not only because of his primarily low intellectual capacity, but also owing to a combination of exceptionally unstimulating

378 Transcript from the main hearing of 21 December 2021.

379 Decision K.Po2 no. 4/17 of 21 December 2021.

380 Transcript from the main hearing of 21 December 2021.

381 Former president of the Judicial Council, Judge Vera Vukotić, who retired, was replaced by Judge Snežana Nikolić-Garotić.



conditions of development, as well as to verified organic changes. No neurologist participated in the evaluation, as the Hospital did not have one. The Board of Experts was unable precisely to answer the Court's questions, and therefore proposed that a higher competence body, namely the Forensic Psychiatry Board of the Faculty of Medicine, undertake a more detailed and deeper exploration of the personality of the witness.³⁸²

On 14 September 2022, the Court ordered that witness Mitrašin Glišić be evaluated by a commission with respect to his fitness to testify, and entrusted this task to the Forensic Psychiatry Board of the Faculty of Medicine in Belgrade.³⁸³

Court-sworn expert Zvezdanka Savić, a medical psychology specialist, who evaluated the accused Dragana Đekić, stated that the expert evaluation determined that at the time of the commission of the criminal offence the mental status of the accused was consistent with her calendar age. She explained that rationalisation, suppression and denial of activities deemed by her as bad dominated the defendant's defensive strategy. At the time the offence was committed she was an adolescent, at an age when the personality is still developing and marked by impulsiveness and impressionability. On account of her family situation, she was particularly susceptible, "and it was about an escape and a feeling of belonging and a wish to prove herself". At that age she was unable to clearly assess the true consequences of some of her actions. Her psychological development corresponded to her calendar age.³⁸⁴

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Witness Mićo Jovičić was examined again and he fully adhered to his earlier statements. He explained that in Štrpci, together with other soldiers, the accused Jovan Lipovac and the Vasiljević brothers stood guard by the train standing beside the railway track. When they got to Prelovo, near the school and while outside, the witness saw the accused Gojko Lukić and heard the accused Dragana Đekić. They had not gone to Štrpci. He also saw Krsto Papić, who was quarrelling with Milan Lukić outside the gym. He saw the accused Gojko Lukić right in front of the school door and later also in the gym, where he also saw the accused Dragana Đekić. In the gym, the two of them pushed and hit the abducted passengers, and he saw Dragana hit one of the passengers in the school hallway as well. He also saw the Vasiljević brothers– they too were maltreating the abducted passengers, as was the accused Jovan Lipovac. He was hitting the captives with a rifle butt and kicking them. All of them went to Mušići, in a truck and two passenger vehicles, and he saw the accused Lukić and Đekić there too. The soldiers stood in two lines and brought the captives in twos to Boban Indić and Milan Lukić, who shot them in the back of the head. On arriving at Mušići, he thinks that Boban Indić told them to take up positions so that they formed a gauntlet, in which the accused were also included. They stood behind the captives with their rifles pointed at them. He stated that he knew that all the volunteers in the RS army who were employed in Serbia had their years of service registered in Serbia and received their salaries regularly.³⁸⁵

382 Transcript from the main hearing of 14 September 2022.

383 Decision of the Higher Court in Belgrade K.Po2 no. 4/2017 of 14 September 2022.

384 Transcript from the main hearing of 15 September 2022.

385 *Ibid.*



Witness Krsto Papić, who was also heard again, stood by his earlier statement. He stated that he had remained at the school in Prelovo for about 20 minutes, and that he had not seen any of the present defendants there. He had only seen Milan Lukić, with whom he had a very unpleasant conversation. He had a correct relationship with the Deputy War Crimes Prosecutor, and the same had not suggested anything to him. According to the witness, the accused Gojko Lukić had not participated in the war, but "lived a carefree life in Višegrad".³⁸⁶

Radmila Stevanović, defence witness for the accused Dragana Đekić, stated that in early 1993, after the training she had undergone in Belgrade, where she was trained "to pull out the wounded", she went to Višegrad as a volunteer, taking a train from Belgrade to Užice and then travelling on by bus. On arriving in Višegrad, she was assigned to positions at Okolište. They were accommodated at a former centre for children with disabilities. She could not remember what unit she had been assigned to or who had been her immediate superior. All wore camouflage coveralls and carried automatic rifles. In addition to the accused Dragana Đekić, she also knew Mićo Jovičić, as well as Neša Ranisavljević, while she had seen Milan Lukić only twice. She spent a very brief time at the battlefield, some three to four months, but was unable to connect that period to any particular time, such as New Year's, Christmas or a slava (Patron Saint's Day). From her time at the battlefield, she remembered an event when they had once set out on a mission from Okolište. It was cold and the snow was deep. They travelled in a truck for about two hours and then trudged on through the forest. It seemed as if the mission they had been sent on was "to beat a path through the snow". She remembered that the accused Dragana Đekić fell into deep snow on that occasion. Dragana was with them the whole day. The witness only heard about the abduction on the following day. She did not see the abducted Muslims, and not know what had happened with them, because she did not read the newspapers, she only watched entertainment shows on television. The only thing about it that she knew was that "some group was somewhere and did something". Soon after that event with the snow, the accused Dragana Đekić left that unit and joined the unit of a certain Davor. Describing the accused in that period, she said that she wore camouflage coveralls, military boots and carried a "Heckler" handgun, and that she never wore her hair in a ponytail.³⁸⁷

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As a member of the Forensic Psychiatry Board of the Faculty of Medicine in Belgrade, Prof. Dr Srđan Milovanović stated that an evaluation by a board of experts of witness Mitrašin Glišić had been ordered and entrusted to the Board, in order to assess the witness's competency to be heard. The findings and opinion were reached at the University Clinical Centre of Serbia, following a neurological and psychiatric examination, and a psychological-psychiatric exploration of the witness for the purpose of expert evaluation. The Board established that witness Mitrašin Glišić was a person with a simple personality structure, of basically low intellectual potential, ranging below the average. He was not found to suffer from any severe mental disease, transient or permanent mental disorder or mental retardation that would incapacitate him to understand the nature and purpose of proceedings, or to understand specific procedural measures and their consequences. Currently, the witness is competent

³⁸⁶ *Ibid.*

³⁸⁷ Transcript from the main hearing of 26 October 2022.



i.e. fit to give evidence. He suffers from Parkinson's disease, with deteriorated motor functions as a consequence, and tremor when at rest. That is why he should give evidence sitting down, and for up to 45 minutes at most.

Prof. Dr Srđan Milovanović explained that witness Mitrašin Glišić was examined strictly by the book and that the Board had recruited a top psychologist for the purpose of this evaluation. He had not been aware of the fact that the defence had engaged a professional consultant and that was why the consultant had not been invited to attend the examination. The Board did not base its findings and opinion on earlier findings. To the questions of the defence regarding witness Glišić's alcoholism, he explained that the witness was asked directly whether he consumed alcohol, to which he replied that he used to drink but not to the point of intoxication. With respect to the chronic alcoholism diagnosis stated in the witness's medical record, apart from that statement, there was no other evidence such as, for example, a prescribed therapy -- namely, there was no psychiatric diagnosis of chronic alcoholism. At the same time, the Board did not have unequivocal information that witness Glišić was or was not under the influence of alcohol at the time of the critical event, nor are expert witnesses under the obligation to use the statements of witnesses in their findings. The witness did not present confabulations, which are a psychological disorder – persons with confabulations are unaware that they are replacing memory gaps with them. The Board comprised university professors, but could also engage other experts who were not employed at the Faculty.³⁸⁸

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Prof. Dr Nikola Vojvodić, a neurologist, was a member of the Forensic Psychiatry Board which performed the expert evaluation of witness Mitrašin Glišić. He explained that the witness was found to suffer from Parkinson's disease, but that his procedural competency was wholly intact. Restrictions in giving statements (in respect of their duration, and preference for a sitting position while testifying) referred to the witness's physical capacity. Slightly slower speech and thinking did not affect his competency to be heard. Parkinson's disease is a disease of brain structures responsible for the performance of rapid motor functions, while the mental faculties are entirely preserved. To the defence counsel's remark that the witness himself had said that he began walking and talking late, he explained that brain lesions formed in the early stages of life were not progressive, and that brain development ended only at about the age of 29-30. A child's brain was highly pliable, and functions are easily taken over by parts of the brain not affected by trauma. Such children could exhibit developmental difficulties in childhood which could be overcome with time. When examined, the witness reacted to a joke, and persons capable of adequately reacting to jokes are not suffering from loss of cognitive capacity. A magnetic resonance imaging scan would show any damage to the hypothalamus, which is responsible for filtering information; however, the witness did not have such damage – all of his brain structures affecting memory were preserved. To the questions of the defence counsel whether the Board had based their findings on earlier expert findings, Professor Vojvodić replied that he was the first neurologist to examine the witness. He also said that when examining the witness, the Board was aware of the previous expert findings, but that they were excluded during the examination. In a repeated examination, earlier findings might possibly be taken only as indicators

388 Transcript from the main hearing of 25 November 2022.



that particular attention needed to be devoted to a particular issue. Competency to appear at trial is something understood, and the expert only looks for findings pursuant to which he can conclude that such competency has been impaired. It was not the expert's task to deal with the meaning of patients' statements. He explained that hypomimia was a feature of Parkinson's disease characterised by the loss of facial expressions, giving the patient's face a mask-like appearance. Asked by the defence counsel how alcoholism, which a number of witnesses had referred to, had influenced the witness's memory retention, he answered that the issue of alcoholism was important from two aspects. One was that it causes permanent brain damage, which the witness did not have; and the other was that it can cause chronic epilepsy, which the witness did not have either. Therefore, from the aspect of the witness's competency to testify, there were no chronic consequences of alcoholism. The witness's different statements about the time he did his military service was an issue of the working memory, which can be affected by a variety of factors, such as stress and fatigue, but was not indicative of one's capacity. In undertaking a neurological-psychological assessment, it is very important to take into consideration the educational level of the subject, and witness Glišić was a person with a low educational level, and he did not have a grip on universally known facts. No confabulations were observed in the witness. Asked by the defence expert about the witness possibly suffering from dementia, the professor replied that there were cases of patients with Parkinson's disease having concurrent dementia, but only in the terminal stage of the disease, and the witness was not at that stage. The witness's tremor was not a parameter for determining the stage of the disease, as some patients never have it, while others have it in all stages. The fact that the witness was unable to tell the time in itself meant nothing. The question was whether he had at all been able to tell the time and then forgot it, or had never been able to. Fast loss of the capacity to tell the time would be a sign of rapid dementia, which would have been obvious in the subject, and nothing like that was observed in the witness.³⁸⁹

Court-sworn expert Dr Jasmina Barišić, a medical psychology specialist, fully adhered to the given findings for witness Mitrašin Glišić. Evaluation of the witness comprised three segments – clinical markers, medical documentation, and testing, and the conclusion was derived on the basis of the obtained results. The examinee had functional thinking, which demonstrated that in question was a person who was not mentally retarded. He possessed concrete and functional thinking, which is sufficient for normal functioning. His was a simple personality structure without memory damage. She had read his earlier statements and had not found them to be significantly inconsistent. She concluded that the witness was not a suggestible person. As the witness had been alcohol-free over a protracted period, its consumption had not left observable consequences. His memory, perception and speech were preserved, he was not prone to confabulation, and she had not noticed lies in his statements.

The defence counsel for the accused raised objections. Defence counsel for the accused Jovan Lipovac, attorney-at-law Đorđe Dozet, said that it was obvious that witness Mitrašin Glišić was lying, while defence counsel for the accused Duško Vasiljević, attorney-at-law Nebojša Perović, stated that the findings and opinions given by the expert were evidently tendentious, aimed at justifying the statement

³⁸⁹ *Ibid.*



of the witness, and that such an attitude on the part of the expert required the Trial Chamber to notify this kind of expert evaluation to the Ministry of Justice, which, on its part, should decide on future expert evaluations by this expert witness. At the very least, the court should not accept such findings and opinions.³⁹⁰

Witness for the prosecution Mitrašin Glišić was heard again. He stated that at the time of the critical event he was outside the school in Prelovo, and that he saw a truck that had skidded off the road near the drinking fountain, but that it was soon pulled out by a tractor. The truck and another two passenger vehicles pulled up outside the school; the truck backed up to the school, and civilians were led out of it and into the gym. He heard them moaning and crying. Later they were brought out of the gym, almost naked, in their underwear only, some of them barefoot. After they had exited the gym, Milan Lukić ordered him to clean the gym. He noticed blood in the gym. He picked up the belongings of the civilians who had gone out and set them on fire, but regretted not having saved their personal documents. He knew all the accused. He saw the accused Jovo Lipovac, who was standing by the truck, pushing the civilians, while the accused Dragana Đekić was in the school hallway, somewhere in the middle of the hallway leading towards the gym. She was beating the civilians. He knew the accused Gojko Lukić, as well as his brother Sredoje and Milan. Gojko was in Milan's group, with a uniform and a weapon, and he was hitting the civilians with his rifle butt, as were Obrad and Novak Poluga. He knew Duško Vasiljević as well as his late brother Ljubiša, because they lived in Đurevići until they built a house in Obrenovac. The two of them were Milan Lukić's soldiers also. He saw them beat the civilians. The civilians were beaten the most by Mitar, aka "Četnik". Stevo Vilaret was also present. On the upper floor of the school was an office for signalmen. Krsto Papić went up there and called Damjan Mitrašinović and asked him why he had sent Milan Lukić, to which he replied that Milan had taken the truck himself. All the accused left Prelovo with the civilians, and Boban Indić gave him fuel to burn the belongings of the civilians who had been taken away. The witness assessed that there had been about 50 soldiers near the school in Prelovo, and all of them had left with the civilians.³⁹¹

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Course of the proceedings in 2023

During the reporting period, three court days were held, in which the final words of the parties were presented during the first two days, with the third court day dedicated to the session of the second-instance panel in the Court of Appeal.

First-instance judgment

On 7 February 2023, the High Court in Belgrade³⁹² found the defendants Gojko Lukić, Duško Vasiljević, Jovan Lipovac and Dragana Đekić guilty of the criminal offence of war crime against civilians referred to in Article 142 of the FRY CC in connection with Article 22 of the FRY CC, and sentenced them

390 Transcript from the main hearing of 12 December 2022.

391 *Ibid.*

392 Composition of the chamber: judge Snežana Nikolić Garotić, Chairperson, judges Vinka Beraha Nikićević and Vladimir Duruz, members of the chamber.



as follows: Gojko Lukić, Duško Vasiljević and Jovan Lipovac to 10 years of imprisonment each, and Dragana Đekić to five years of imprisonment.³⁹³

The Court found that the defendants Gojko Lukić, Ljubiša Vasiljević, Duško Vasiljević and Dragana Đekić, as members of the "Avengers" unit, which was actually part of the VRS, and the defendant Jovan Lipovac as a member of the 1st Company of the 1st Battalion of the VRS Višegrad Brigade, on 27 February 1993, treated civilians of non-Serb nationality inhumanely, violated their physical integrity and deprived them of life. Together with other members of the VRS (about 25-30 members), the accused were members of an armed group tasked with abducting passengers of non-Serb nationality from the train number 671 operating on the Belgrade-Bar route. The accused Jovan Lipovac 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, Šečo 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.

On arriving at 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.

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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 Mušići, 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 victims had to run the gauntlet in twos or threes at a time, to the house where two members of the armed group awaited and then killed them, with 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.

When deciding on the sentences, the Court, on the part of the defendant Gojko Lukić, appreciated the family and material circumstances, in the case of Duško Vasiljević, the family circumstances and

393 Judgment of the High Court in Belgrade Kž1 Po2 no. 4/17 of 7 February 2023.



absence of any prior criminal record, on the part of Jovan Lipovac, his health condition and absence of any prior criminal record, and on the part of the defendant Dragana Đekić, the fact that she was underage at the time of the commission of the criminal offence and that her sanity was reduced, but not significantly, as well as absence of any prior criminal record. In relation to all defendants, the court found that there were no aggravating circumstances. Although the defendants Lipovac and Vasiljević participated in the abduction, the court decided to punish them with the same punishment as the defendants who participated only in part of the events at the school and Mušići. This was because, as regards the defendant Jovan Lipovac, the Court had in mind his serious health condition, while as regards the defendant Duško Vasiljević, the Court took into account the fact that his brother had died during the proceedings, which affected him heavily.³⁹⁴

Second-instance decision

On 30 October 2023, the Court of Appeal in Belgrade issued a decision annulling the first-instance verdict for a significant violation of the provisions of the criminal procedure, returning the case to the first instance court for retrial.³⁹⁵

According to the Court of Appeal, a significant violation of the provisions of the criminal procedure consisted in the failure of the first instance court to decide on the defence's proposal to examine Milan Lukić as a witness, which would have been a decisive influence for making a legal and correct decision. This was because, in the view of the first instance court, Milan Lukić was a participant in and witness of all events in the criminal proceedings and a person who stood out at all stages of the commission of the criminal offence. Thus, the first instance court found that Milan Lukić commanded the "Avengers" unit, that he had assembled an armed group that went to Štrpci station on 27 February 1992 and abducted 20 passengers from train number 671, that he had beaten and tortured them in the gym in Prelovo, where the passengers were brought in, that he had ordered the witness Mitrašin Glišić to clean the gym after they took the passengers out, and that he had participated in taking the passengers to Mušići, where he carried out their liquidation.

Therefore, in order to verify the allegations of the prosecution, and the defence of the defendants who denied the commission of the criminal offence, it was necessary to question Milan Lukić as a witness, since he had direct knowledge of all the facts of evidence.

The first instance court also failed to rule on the defence's motion to question two other witnesses.

A significant violation of the provisions of the criminal procedure also existed owing to significant contradiction between the stated reasons for the verdict on the content of the testimony of the witness Krsto Papić and the testimony itself.

³⁹⁴ *Ibid.*

³⁹⁵ Decision of the Court of Appeal in Belgrade Kž1 Po2 5/23 of 30 October 2023.



The Court of Appeal also concluded that the credibility of witnesses Mitrašin Glišić and Mićo Jovičić were disputed by the appeals of the defence attorneys, and so it returned the case to the first instance court for reconsideration and decision.³⁹⁶

HLC Findings

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 Prosecutor's Office of Bosnia and Herzegovina 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, and which resulted in the simultaneous arrest, on 5 December 2014, of five suspects in Serbia and ten suspects in BiH.

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 identified formal deficiencies as stipulated under the Criminal Procedure Code, or because the investigation needed to be expanded. The indictment was finally confirmed only on 24 October 2018.³⁹⁷ Having the indictment repeatedly returned for

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³⁹⁶ *Ibid.*

³⁹⁷ **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 Appeal by its decision (Kž2 Po2 12/17 of 2 October 2017) reversed that decision and dismissed the indictment for its not having been issued by an authorized prosecutor. **The seventh indictment** (KOT No. 1/15 of 26 October 2017) was remanded



rectification of formal deficiencies is a disgrace for any prosecutorial office, and particularly for one of the OWCP's rank.

Failure of the first instance court

Bearing in mind the reasons for the annulment of the first-instance verdict, it is obvious that the first instance court did not act with due diligence during the proceedings, because it did not decide on the defence's proposal to examine three witnesses, including Milan Lukić, who is listed as a key actor in this criminal offence.

In addition, the Court of Appeal found that the reasoning of the first-instance verdict contains contradictions in the part in which it refers to the testimony of the witness Krsto Papić.

It is incomprehensible that the first-instance court should make such cardinal, beginner's mistakes. This action of the first-instance court is unacceptable for a judicial institution, and further hurts the families of victims who have been waiting for justice for an unreasonably long time, and who rightly expected the court to proceed with due diligence.

Duration of the proceedings

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The Office of the War Crimes Prosecutor issued its first indictment in this case 10 years ago, on 3 March 2015. However, as a result of years of unacceptably poor work by the OWCP on this indictment, it was confirmed only after the eleventh attempt, in October 2018, owing to the formal shortcomings of the previous indictments, as well as to additional investigation.

The trial for the crime in Štrpci began in January 2019 and has been going on for more than five years. During the proceedings, the defendant Ljubiša Vasiljević died.

The decision to initiate the procedure again, made in 2023, is a consequence of the fact that the court did not conscientiously and with due diligence conduct the procedure; otherwise it could not have happened that the court did not make any decision, either positive or negative, on the proposal to examine, in its own opinion, the most responsible person.

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.



Initiating the proceedings again implies the retraumatisation and exhaustion of the families of the victims and witnesses, as well as the trivialisation of war crimes trials.

With such actions by judicial institutions, the families of the victims, more than ten years after the indictment in this process, have been left to wait for justice still.



XIV. The Višegrad Case³⁹⁸

CASE FACTS	
Current stage of the proceedings: first-instance proceedings	
Date of indictment: 29 March 2022	
Trial commencement date: 8 November 2022	
Prosecutor: Ivan Marković	
Defendant: Slađan Tasić	
Criminal offence: war crime against the civilian population under Article 142 of the FRY CC	
<p>Case transferred from BiH</p> <p><i>This proceeding is the result of cooperation between Serbia and BiH in the prosecution of war crimes, which was intensified after the OWCP and the Prosecutor's Office of BiH signed the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide in 2013. Namely, the confirmed indictment against the defendant was transferred by the Prosecutor's Office of Bosnia and Herzegovina, given that the defendant, who is a citizen of the Republic of Serbia and residing in Serbia, was not available to the authorities of BiH.</i></p>	
Trial Chamber	<p>Judge Zorana Trajković (Chairperson)</p> <p>Judge Mirjana Ilić</p> <p>Judge Bojan Mišić</p>
<p>Number of defendants: 1</p> <p>Defendant Rank: low</p> <p>Number of victims: 5</p> <p>Total number of witnesses heard: 9</p>	<p>Number of scheduled court days in the reporting period: 8</p> <p>Number of court days in the reporting period: 6</p> <p>Number of witnesses heard in the reporting period: 9</p> <p>Total number of experts witnesses heard: 0</p>
<p>Key developments in the reporting period:</p> <p>Main hearing</p>	

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³⁹⁸ *Višegrad Case*, trial reports and case documentation available at: <http://www.hlc-rdc.org/Transkripti/visegrad.html>, accessed on 13 January 2024.



Course of the proceedings

Indictment

The accused is charged with having participated as a member of the Police of Republika Srpska, together with Momir, Petar and Mirko Tasić, members of the Army and Police of Republika Srpska, proceedings against whom are being conducted before the BiH Court for the same criminal offence, in the unlawful detention of five Bosniak civilians in the afternoon of 16 June 1992, namely, depriving civilians Muharem Dizdarević, Refik Mujkić and Ethem Isić of liberty in the Višegrad municipality settlement of Dobrun, and then depriving Medo Muratović and Jusuf Nezir of liberty in the settlement of Kolone, and taking all of them in the direction of Užice, since when all trace has been lost of the injured parties.³⁹⁹

Defence of the accused

Presenting his defence, the accused denied having committed the criminal offence he is charged with, stating that he was not in Višegrad, BiH, at all at the relevant time, but that in the period from 31 May to 31 July 1992, in response to a call from the recruitment office from Užice, he was in the Užice Barracks for military exercises. The exercise involved training in the handling of new weapons, and during the training they were never deployed into the field nor given any days off. He explained that for a short period of time, from 4 April to 17 May 1992, he was in Višegrad as a policeman of Republika Srpska. He went to Višegrad from his hometown of Užice, in response to a private call from Dragan Tomić, a police commander from Višegrad, to train new police as a military police officer. He went there with the permission of his chief, taking an unpaid leave of absence, and while he served as a policeman there, he received his pay from the police of Republika Srpska. During his stay in Višegrad, he was at the Dobrun checkpoint all the time and also had living quarters there. They did not have any vehicles, and they did not leave the checkpoint to tour private homes. The Užice Corps was in Višegrad at the time, and it withdrew on 19 May 1992, and there were also members of the Republika Srpska Army there. He belonged to the Višegrad Public Security Station. He wore a green camouflage uniform and had an automatic rifle. The police manning the checkpoint slept in a nearby restaurant and they worked in two shifts. He never left the checkpoint to go anywhere – they controlled passengers there, and in parallel with the discharge of this duty, he trained the police. This can be confirmed by policemen Milojko Tasić and Bogdan Milojević who also were at the checkpoint. From Višegrad he returned to Užice upon receiving his call-up papers. The accused stated that he hailed from Dobrun and moved to Užice when he was in the seventh grade of elementary school, and that later he would occasionally go there, but that he could not recall, apart from the Nuhić family, the names of the local Bosniaks whom he knew.⁴⁰⁰

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399 Indictment OWCP KTO 5/22 dated 29 March 2022, available at: https://www.tuzilastvorz.org.rs/public/indictments/2022-08/%D0%9A%D0%A2%D0%9E-5-22%20%D0%B0%D0%BD%D0%BE%D0%BD%D0%B8%D0%BC%D0%B8%D0%B7_0.pdf, accessed on 13 January 2024.

400 Transcript from the main hearing of 8 November 2022.



Course of the proceedings in 2023

During 2023, eight court days were scheduled, of which six were held, during which nine witnesses were heard. Two times the trials were not adjourned, once because the summoned witnesses failed to appear before the court, and the other time because neither the defendant nor the defence counsel nor the summoned witnesses appeared before the court.

Witnesses in the proceedings

Witness for the prosecution, the injured party Ramiz Isić, had no immediate knowledge of the critical event because he had left Dobrun before it occurred. He heard about the disappearance of his father Ethem during June 1992 while he was in Crni Vrh, a village near Višegrad. Then he learned from a group of young men that his father had been taken with several other locals from Dobrun in the direction of Gornji Dobrun, but none of them had mentioned the names of the persons who took them. He reported his father's disappearance to the competent authorities before 2000, but has not received any information about his fate to date. He knew Jusuf Nezir, as well as Redžo Mujić, who had also been taken away, as well as Muharem Dizdarević, but he did not contact their families on that occasion. He knew Momir Tasić, the father of the accused, but he did not know the accused, because he was somewhere in Užice. The witness said that it is possible that Sabahudin Muhić had told him about his father's abduction, but now he could not remember it.⁴⁰¹

Witness for the prosecution Dževad Isić also had no immediate knowledge of the suffering of his father Ethem Isić.⁴⁰²

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When the protected witness "P1" was interviewed, the public was excluded.⁴⁰³

Defence witness Bogdan Miletić stated that he knew the defendant as they were from the same village. When the armed conflicts in BiH began, in early April 1992, as a reserve police officer, the witness received a call to come to the police in Višegrad. There he was given a uniform, weapons and an assignment, and with 15 or 16 other persons, including the defendant, he was sent to a checkpoint at the Dobrun border crossing. Before the beginning of the armed conflicts, the defendant had lived in Užice, but it is not known to the witness when and how he was called to the police in Višegrad. In the period from April to mid-May 1992, they were at a checkpoint, and they slept in a nearby tavern. They were on duty in shifts, and did not leave the checkpoint. They were not arrested or detained. In mid-May 1992, the defendant received an invitation to report to Užice for a military exercise, and the witness was transferred to the Višegrad Brigade. He had no knowledge of the events in Dobrun during June 1992, because he was in the field with the Višegrad Brigade at the time; nor did he know the injured parties.⁴⁰⁴

401 Transcript from the main hearing of 21 April 2023.

402 Transcript from the main hearing of 20 June 2023.

403 Transcript from the main hearing of 12 September 2023.

404 Transcript from the main hearing of 16 November 2023.



Defence witness Milojko Tasić, the defendant's cousin, stated that he had received a call for mobilisation in early April 1992, and that he was assigned to the police forces. He was at the checkpoint in Dobrun, where he and about twenty other police officers from Višegrad, Dobrun and Vardište, checked the vehicles passing by. The defendant was also there. As a member of the military police, he trained others. During their attendance at the checkpoint, they did not participate in any other actions. They were accommodated in a tavern near the checkpoint and were on duty in shifts, but he could not remember how long the shifts were, and most often he was on duty with Dejan Šimšić and Miodrag Zekanović. The defendant, as a member of the police, was with them at the checkpoint until mid-May 1992, when he left for Užice. After that, he saw him only before the Feast of St. Nicholas [*slava*]. He could not remember who the other police officers at the checkpoint were, but he was sure that they were not Momir Tasić, the father of the defendant, or Petar Tasić, the uncle of the defendant. Momir Tasić was engaged in the army and he saw him very occasionally, but the witness could not remember when. He could not explain how the statement that he did not know when he saw his uncle Momir Tasić or how long the shifts at the checkpoint in Dobrun lasted, could tally with his statement that he remembered well when the defendant left the checkpoint.⁴⁰⁵

Defence witness Nikola Marković stated that he had known the defendant since September 1991, when the first mobilisation of the Užice Corps was carried out, given that he was the defendant's commander. When the Užice Corps withdrew from BiH, the defendant was mobilised again, so he was in Užice for a military exercise from 19 May to 31 July 1992. During the military exercise, the defendant was in the Užice Barracks, and did not go to the field. There were no days off during the military exercise.⁴⁰⁶

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Defence witness Milomir Ivanović was the head of security in the Užice Corps, and returned to Užice from the territory of BiH on 19 May 1992. He had been on the battlefield with the Corps since September 1992, when he met the accused as a member of the military police, a driver officer whom they had appointed to perform the duties of a courier. He saw him often, because he came as a courier to the command post. During the military exercise in Užice, he saw the defendant every two to three days when he would officially come to the command post. He remembered him because he continued to keep company with him through family ties.⁴⁰⁷

Defence witness Rade Tasić stated that he was engaged as a member of the police in Višegrad from 4 April to 16 May 1992, and that he was assigned to the checkpoint in Dobrun. At that time, the defendant, whom he knew because they were from the same village, was also at the same checkpoint. They had the task of controlling the vehicles and there were three or four police officers per shift. For health reasons, he left the police on 16 May 1992, and saw the accused only a few days before the feast of St. Nicholas, i.e. in December. He didn't know that some persons from Dobrun disappeared after being brought out of their houses.⁴⁰⁸

405 *Ibid.*

406 *Ibid.*

407 *Ibid.*

408 *Ibid.*



Defence witness Boro Milnović stated that in June 1992 he was the commander of the military police battalion in the Užice Corps. There were about 15% of conscripts in the battalion who belonged to the rear platoon, including the defendant, whom he knew personally. He met him in early June 1992, when he took over the post of battalion commander. The defendant was in the barracks in the quartermaster's warehouse, and he often carried mail, so he saw him constantly. Otherwise, the Užice Corps, by the decision of the Supreme Command, was sent to unblock the hydroelectric power plant in Višegrad, which was a facility of key interest, given that it was threatened that the dam would be blown up, which would lead to the sinking of the cities in the Drina basin, such as Bajina Bašta, Mali Zvornik, and others. After the decision to withdraw the army from the territory of BiH by 19 May 1992, the Corps returned to Serbia. During June 1992, members of the military police were placed in the barracks in Užice, which they did not leave. The witness was not aware that there were cases of self-initiated abandonment of the barracks. Permission to leave the barracks was issued by the Corps Command. At that time, people were assigned to their posts for one month. The tasks of the military police members were different. Some of the members were engaged in finding persons who did not respond to the call for mobilisation, others were engaged in securing a forward command post, while a third group worked on unloading and storing the military equipment that came from other Republics of the then SFRY. Later, when he was demobilised, he saw the defendant in the town occasionally. He knew Nikola Marković, who was the company commander in his battalion. He was also in the barracks during June 1992, and he had the impression that he did not leave the barracks during that period.⁴⁰⁹

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HLC Findings

Unnecessary anonymisation of the indictment

The OWCP posted on its website the anonymised indictment against Slađan Tasić, namely as being against person A.A.⁴¹⁰ instead of naming the accused. Such anonymisation was entirely unnecessary, as data on the indictment, including the full name of the defendant, had already been posted on the website of the BiH Court.⁴¹¹ Also, as of 2008, prior to the start of the trial in the Republic of Serbia, the case had received media coverage in BiH, with the defendant referred to by his full name.⁴¹² By such anonymisation of publicly announced indictments, the OWCP makes the indictments extremely unclear⁴¹³, and the accused completely invisible to the general public, which is in total contradiction

409 Transcript from the main hearing of 26 December 2023.

410 Indictment OWCP KTO 5/22 dated 29 March 2022, available at:

https://www.tuzilastvorz.org.rs/public/indictments/2022-08/%D0%9A%D0%A2%D0%9E-5-22%20%D0%B0%D0%BD%D0%BE%D0%BD%D0%B8%D0%BC%D0%B8%D0%B7_.0.pdf, accessed on 13 January 2024.

411 Case of the Court of Bosnia and Herzegovina No. S1 1 K 027633 18 Kro – *Slađan Tasić*.

412 Detektor, *Tasić et al.: Amended Indictment*, available at: <https://detektor.ba/2018/04/19/tasic-i-ostali-izmijenjena-optuznica/>, accessed on 16 January 2024.

413 On all OWCP indictments, the Respondents are designated as A.A. – available at: <https://www.tuzilastvorz.org.rs/en/cases/indictments>, accessed on 16 January 2024.



with both the 2016 National Strategy⁴¹⁴ and the Prosecutorial⁴¹⁵ Strategy for the Prosecution of War Crimes in Serbia. In a situation where the general public is in practice unable to find out even the names of the accused by visiting the OWCP website, the OWCP is clearly sending the message that as far as they are concerned, the objectives of the Strategies are a mere formality.

414 National Strategy for War Crimes Prosecution 2021-2026, available at: [https://www.mpravde.gov.rs/files/Usvojeni%20tekst%20Strategije%20za%20procesuiranje%20ratnih%20zlo%C4%8Dina%20\(Sl.%20glasnik%2097%2021\)%20222.pdf](https://www.mpravde.gov.rs/files/Usvojeni%20tekst%20Strategije%20za%20procesuiranje%20ratnih%20zlo%C4%8Dina%20(Sl.%20glasnik%2097%2021)%20222.pdf), accessed on 16 January 2024.

415 Prosecutorial strategy for the investigation and prosecution of war crimes in the Republic of Serbia 2018-2023, available at: <https://www.tuzilastvorz.org.rs/public/files/pages/2021-06/%D0%A2%D0%A3%D0%96%D0%98%D0%9B%D0%90%D0%A7%D0%9A%D0%90%20%D0%A1%D0%A2%D0%A0%D0%90%D0%A2%D0%95%D0%93%D0%98%D0%88%D0%90.pdf>, accessed on 16 January 2024.



XV. The *Vlasenica* Case⁴¹⁶

CASE FACTS	
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: war crime against the civilian population under Article 142 of the FRY CC	
<p>Case transferred from BiH</p> <p><i>This proceeding is the result of cooperation between Serbia and BiH in the prosecution of war crimes, which was intensified after the OWCP and the Prosecutor's Office of BiH signed the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide in 2013. Namely, the confirmed indictment against Višnja Aćimović was transferred by the Prosecutor's Office of Bosnia and Herzegovina, given that the defendant, who is a citizen of the Republic of Serbia and residing in Serbia, was not available to the authorities of BiH.</i></p>	
Trial Chamber	<p>Judge Vladimir Duruz (Chairperson)</p> <p>Judge Snežana Nikolić - Garotić</p> <p>Judge Vinka Beraha-Nikićević</p>
<p>Number of defendants: 1</p> <p>Defendant's rank: no rank</p> <p>Number of victims: 37</p> <p>Number of witnesses heard: 8</p>	<p>Number of scheduled court days in the reporting period: 7</p> <p>Number of court days in the reporting period: 3</p> <p>Number of witnesses heard in the reporting period: 3</p> <p>Total number of experts witnesses heard: 0</p>
<p>Key developments in the reporting period:</p> <p>Main hearing</p>	

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⁴¹⁶ *Case Vlasenica*, trial reports and case documentation available at: <http://www.hlc-rdc.org/Transkripti/vlasenica.html>, accessed on 24 January 2024.



Course of the proceedings

Indictment

The accused Višnja Aćimović is charged that, after she joined and was active on the side of the Army of Republika Srpska (VRS), at 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, BiH. 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.⁴¹⁷

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.⁴¹⁸

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Witnesses in the proceedings

Witness and injured party Hadžira Bećirović stated that at the time the armed conflicts broke out she lived in the village of Pomol (Milići municipality, BiH) with her husband Mujaga in their family home. The situation was tense, so that in April 1992 she went to stay with her parents in the area of Srebrenica municipality, taking her baby along. The men from Pomol dared not spend the night at home, but hid in the nearby woods. Her husband remained in the village to take care of his mother, who had a fractured leg. The village of Pomol was attacked and set on fire on 5 May 1992. According to Galib Baćirević, he and the husband of the witness/injured party set out towards the village to see what the situation was like, when three armed soldiers appeared and opened fire at them. Galib Bećirović fled, while the witness's husband was taken prisoner. He was first taken to Milići, and then to Vlasenica, to the Sušica camp. The mortal remains of her husband were found at the cemetery in Rakita and were identified in 2006 or 2007.⁴¹⁹

Witnesses and injured parties Nezir Halilović and Enver Bećirović stated that their brothers had been killed in the critical event, but had no first-hand knowledge of the incident itself.⁴²⁰

417 Indictment OWCP KTO. no.3/20 of 17 September 2020, available at: https://www.tuzilastvorz.org.rs/public/indictments/2021-07/kto_03_20_Cir.pdf, accessed on 23 January 2024.

418 Transcript from the main hearing of 7 December 2020.

419 Transcript from the main hearing of 4 March 2021.

420 Transcript from the main hearing of 6 July 2021.



Witness and injured party Nezira Bekić, the sister of the killed Omer Ahmetović, stated that her brother had lived in the village of Žutica with his family, namely, his wife and children. She learned from her sister-in-law that on 5 May 1992 her brother had been taken away from the house by masked and uniformed persons. He was first taken to Milići and then to Vlasenica, where all trace of him was lost. After the war, when her brother's mortal remains were found, she and other family members went to Tuzla to identify him.⁴²¹

Witness and injured party Amira Ademović, daughter of the killed Omer Ahmetović, was 16 years of age when, on 5 May 1992, her father was taken away from their home by masked soldiers. She had received no news about her father since.⁴²²

Course of the proceedings in 2023

During 2023, seven court days were scheduled, of which three were held, during which three witnesses were heard, while four trials were postponed due to the absence of the witnesses summoned.

During the interrogation of witnesses Goran Reljić⁴²³ and Pero Krstić⁴²⁴, the public was excluded.

Witness for the prosecution, the injured party Nedreta Mlačo, had no immediate knowledge of the murder of her father Salko Šahmanović. Her mother Asja told her that two uniformed and armed soldiers, whom she did not know, had come for his father and that they had taken him to the Sušica camp. She had never found out who killed her father. She was present at the identification of his mortal remains in 2000.⁴²⁵

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HLC Findings

Difficulty monitoring the trial commencement

The beginning of Višnja Aćimović's trial was difficult to monitor, because it had not been publicly disclosed what exactly the OWCP's Indictment had charged the accused with.⁴²⁶

Namely, the indictment against the accused had been read out at the pretrial hearing, which was barred to the public⁴²⁷; so it was not read out at the main hearing, nor was it posted on the OWCP's webpage at that time.

421 Transcript from the main hearing of 29 September 2021.

422 *Ibid.*

423 Transcript from the main hearing of 26 May 2023.

424 Transcript from the main hearing of 16 November 2023.

425 Transcript from the main hearing of 27 December 2023.

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

427 Article 345, paragraph 2 of the CPC.



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.⁴²⁸

Excessive and unnecessary anonymisation of the indictment

The OWCP Indictment in this case, which is publicly accessible on the OWCP homepage under "Indictments"⁴²⁹, 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.⁴³⁰ 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".⁴³¹ Instead of publishing the indictment as a whole, only its operative part was published, so it is not possible to determine in any way on which evidence the OWCP bases the indictment. The Rulebook also stipulates that the data on a participant in the proceedings (the accused is a participant in the proceedings) are exempted from the anonymisation rule in the case of a person whose data are in the proceedings was already available to the public.⁴³² Considering that the data on the first and last name of the accused had been publicly published in the BiH media as early as 2017, i.e. well before the OWCP filed the indictment against them⁴³³, as well as on the website of the BiH Court⁴³⁴, there was no need to anonymise them.

Failure of witnesses to appear

Not a single summoned witness appeared before the court in 2022, an increasingly frequent practice in these proceedings. During 2023, only three witnesses appeared. The reason why witnesses fail to appear is primarily the lapse of time since the critical event, as this event happened 30 years ago, and on account of old age or poor health, many witnesses are no longer able to appear before the court, or have lost interest in testifying altogether. Owing to the frequent absence of witnesses, trials are postponed, which prolongs the duration of the proceedings even more.

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428 OWCP Letter PI. no. 23/30 of 31 December 2020.

429 OWCP Indictment KTO No. 3/20 of 17 September 2020, available at: https://www.tuzilastvorz.org.rs/public/indictments/2021-07/kto_03_20_Cir.pdf, accessed on 23 January 2024.

430 Rulebook on the Anonymization of Personal Data in War Crimes Prosecution Indictments of 20 March 2019, available at: https://www.tuzilastvorz.org.rs/public/documents/2021-04/%D0%9A%D0%A2%D0%9E_2_20_%D0%90%D0%BD%D0%BE%D0%BD%D0%B8%D0%BC%D0%B8%D0%B7%D0%BE%D0%B2%D0%B0%D0%BD%D0%BE.pdf, accessed on 23 January 2024.

431 *Ibid*, Article 1, paragraph 2.

432 *Ibid*, Article 4, paragraph 3, item 1.

433 Balkan Transitional Justice, „Bosnia Charges Serb Woman with Vlasenica Massacre “, available at: <https://balkaninsight.com/2017/01/30/bosnia-charges-serb-woman-with-wartime-massacre-01-30-2017/>, accessed on 23 January 2024.

434 Court of Bosnia and Herzegovina Case S1 1 K 024299 17 Kro Višnja Aćimović, available at: <https://sudbih.gov.ba/Court/Case/1122> accessed on 23 January 2024.



XVI. The Zagreb Case⁴³⁵

CASE FACTS	
Current stage of the proceedings: first-instance proceedings	
Date of indictment: 3 March 2022	
Trial commencement date: 7 October 2022	
Prosecutor: Dušan Knežević	
Defendant: Branko Tunić	
Criminal offence: war crime against prisoners of war under Article 144 of the FRY Criminal Code	
Trial in absentia	
Trial Chamber	Judge Snežana Nikolić-Garotić (Chairperson) Judge Vinka Beraha-Nikićević Judge Vladimir Duruz
Number of defendants: 1 Defendant Rank: low Number of victims: 14 Total number of witnesses heard: 16	Number of scheduled court days in the reporting period: 7 Number of court days in the reporting period: 7 Number of witnesses heard in the reporting period: 12 Total number of experts witnesses heard: 2
Key developments in the reporting period: Main hearing	

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⁴³⁵ *The Zagreb Case*, trial reports and case file documents available at: <http://www.hlc-rdc.org/Transkripti/zagreb.html> accessed on 8 February 2024.



Course of the proceedings

Indictment

The accused⁴³⁶ is charged with having, between 14 September and 1 October 1991, as a member of the National Guard Corps (ZNG), together with a number of unidentified members of the same unit, intimidated, tortured, inflicted bodily harm on and subjected to extreme humiliation prisoners of war – soldiers doing their compulsory military service in the JNA [Yugoslav People's Army], in a ZNG facility in the settlement of Rakitje, Zagreb, where prisoners of war who had previously surrendered had been brought, killing one of them. The accused repeatedly beat the 14 injured parties with rifle butts, hit them and kicked them on the head and body, struck them with a rubber truncheon on the back and the soles of their feet, handcuffed them, forced them to lie down on the floor and then trampled upon them with his booted feet and jumped on them, brandished a knife at them threatening to slit their throats or gouge their eyes out, put a gun barrel in their mouths or to the temple threatening to kill them, and, on 30 September 1991, while beating injured party Marko Utržan, killed him by a pistol shot to the head.⁴³⁷

Witnesses in the proceedings

Witness and injured party Jelena Karanović, sister of the killed Marko Utržan, stated that in March 1991 her brother had gone to Ljubljana to do his compulsory military service in the JNA, and was then, at the end of August, seconded to the Zagreb Rakitje Barracks. She knew that her brother Marko was killed on 30 September 1991, as that is the date indicated in the death certificate issued in Zagreb which accompanied his body when it was delivered to them. She heard from Marko's fellow prisoners of war that they had been tortured. Toplica Mikić told her that they had been locked up in some kind of a cellar, that the guards tortured them, threatened them with firearms and put pistols to their heads. One Albanian, whose war name was Branko, was the worst of all the guards. He beat Marko on the soles of his feet and his forearms. It was Branko who killed Marko, using a pistol – one of the soldiers, a lad from Macedonia, had told them that he had heard a shot. After being exchanged, Goran Trifunović, another soldier who had been taken prisoner, brought Marko's belongings to his parents. He told them that while in captivity they were tortured; they would be transferred from the room in which they were accommodated to another one, where they would be tied and beaten and threatened with firearms. On one occasion, Marko was taken out but did not return. When they asked the guards about his whereabouts, they were told that he had gone home, which sounded suspicious, as his belongings were still in the room; indeed, Goran brought them along with him later, when they were to be exchanged. Marko's comrades told his family that there was practically no guard that did not torture them. "On the day of Marko's funeral, a lad from Macedonia rang us up asking to speak to Marko, and mother replied that he had been killed. He said that he was very sorry, that he had been

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436 The accused is a national of the Republic of Croatia and is out of reach of the state authorities of the Republic of Serbia.

437 Indictment OWCP KTO 3/22 dated 3 March 2022, available at: <https://www.tuzilastvorz.org.rs/public/indictments/2022-09/ENG.3-22%20Anon..pdf>, accessed on 8 February 2024.



in Rakitje then, and that he had heard a shot and someone shouting: "Marko, Marko!" The family got word that some proceedings were being conducted in the Republic of Croatia with regard to Marko's death, but they had not been contacted by any authorities of the Republic of Croatia.⁴³⁸

Witness and injured party Vera Utržan, the mother of killed Marko Utržan, stated that her son Marko was 20 years of age when in 1991 he was doing his compulsory military service in the JNA in Croatia. The army had delivered his body and he was buried on 5 October 1991. Several days after the funeral, she and her husband went to Žagubica to see a comrade of Marko's who had been taken prisoner together with him, and he told them that in September 1991, after they had laid down their arms and surrendered, they were captured and taken to Rakitje. There they separated off the Croats, the Slovenes, the Muslims and the Macedonians, and let them go; the Serbs and the Montenegrins were detained, beaten, tortured and abused. Goran Trifunović had brought Marko's belongings home to them. They had talked with a number of Marko's comrades who had been captured with him, but none of them had told them that they had eye-witnessed Marko's killing. They explained this was because they would be taken individually to another room to be tortured. They were tortured by the guards, who had them remove their tennis shoes in order to beat them on the soles of their bare feet. All of Marko's comrades said that he had been killed by a guard, a certain Albanian, who went by the name of Branko. Following the exhumation and post-mortem examination performed in Belgrade, they learned that Marko had been killed by a shot to the head. Marko had never expressed his ethnic affiliation -- he had always declared himself a Yugoslav, as his father was the child of a mixed marriage. She was aware of some proceedings having been conducted in the Republic of Croatia in connection with Marko's killing, but the family was never contacted by anyone in that regard.⁴³⁹

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Witness and injured party Željko Laketić was doing his compulsory JNA military service in 1991, stationed in the garrison in the village of Prečec in the Republic of Croatia. His units surrendered to the ZNG, after which they were transferred to Rakitje. They were put up in a room on the upper floor of the facility, under armed guard. All the guards had pistols. There were between 30 and 40 men in the room; next to theirs, there was another room, also packed. Initially, they had their meals in the mess hall which was in the building, and everything was normal for the first couple of days. Then the prisoners were separated according to ethnicity, with the Serbs and the Montenegrins placed together in one room and the members of all other ethnicities in another. He recalled that locked up with him in this room were soldiers Predrag Stijelja, Radosav Dragojević, Miroslav Petrović, Dragan Sabo, Goran Stanković, Marko Utržan and others. Soldier Hasan Durić had "snitched on them", i.e. "had told ZNG members that they were Greater Serbia nationalists and that they had sung Chetnik songs", which was not true. After the separation the torture began. They would be taken to "clean the cellar", which meant to be beaten. The witness was once taken there alone, led by four or five guards. Another time he was taken together with Private Nekić, when they were told that orders had been received for them to be beaten up. The guards would take them to the cellar, handcuff them and beat them with bats, and kick them all over the body. He would be all black and blue from the blows, and unable to

438 Transcript from the main hearing of 18 November 2022.

439 *Ibid.*



lie down on returning to the room. The blows had caused his ears to bleed, and he was now hard of hearing as a consequence. Also, they threatened to kill them, waving bayonets across their bodies and faces and saying such things as, "Now I will gouge your eye out!". Among the guards who beat him the most was a certain Albanian, whom the other guards called Branko. He beat almost all the imprisoned soldiers. Branko was of short stature, dark-haired, about 30 years old. A guard named Željko treated the detained soldiers fairly. This guard in fact told them that Marko Utržan had been killed and that Branko had killed him. The guards had at first said that Marko had been taken away by his father, and then that he had tried to wrest away a guard's rifle and got himself killed. They did not believe this story, because everybody's hands were tied when they were taken to the cellar. After Rakitje, they were transferred to Celska, where the conditions of stay were more normal, and even his mother came to visit him there. At Rakitje there had been no visits. The witness spent a total of 58 days in captivity before being exchanged in Bosanski Šamac. Having been shown a photo-array, he recognised the defendant in one of the photographs. He stated that he had no documents attesting to his captivity, and that when he reported to the Recruitment Office, they told him that his unit did not exist.⁴⁴⁰

Witness and injured party Predrag Stijelja stated that in 1991 he was 19 years old and doing his compulsory military service, when he was taken prisoner. Actually, they had surrendered and were then transferred to Rakitje. Their military service records and their health insurance cards were seized from them on that occasion and they were put up in an upper floor room. Later the captured soldiers were separated by ethnicity, with the Serbs and Montenegrins accommodated in one room. He would be taken to the cellar and beaten there by the guards; they would most often be taken there at night, one by one. In the cellar they tied him up and beat him, and he has cervical spine discopathy as a consequence. Once he was taken to the cellar together with Marko Utržan. At the beginning they beat both of them in the same room, and then Marko was taken to another room. He heard cries from that room, and heard them shouting at Marko demanding that he admit that he was a Chetnik. The witness was beaten by one of the guards, until the guard Željko, who treated the prisoners correctly, managed to calm down this guard who was hitting him with a truncheon. On the following day, he heard from the guard Željko that Marko had been killed - that he had been beaten and finally shot in the throat. The guard whom the others called Branko was the most aggressive one: he was evil personified. He was rather short, and, judging by his accent, the witness thought that he hailed from Kosovo. There was no other guard by the name of Branko. When shown a photo-array, the witness was unable to recognise any persons with certainty.⁴⁴¹

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Course of the proceedings in 2023

During 2023, seven court days were scheduled, during which 12 prosecution witnesses and two court experts were heard.

The witness and injured party Saša Aćimović stated that from 15 May 1991, as a nineteen-year-old, he was on regular military service in the barracks in Samobor (Republic of Croatia). Members of

⁴⁴⁰ Transcript from the main hearing of 9 December 2022.

⁴⁴¹ *Ibid.*



Croatian armed formations captured him while he was driving the warrant officer, so he and his fellow captives received a civilian suit and were transferred to Rakitje. They were beaten in the basement - three times, in his case. He was beaten on the soles of his feet, and he could not walk for days. They took him handcuffed and beat him with sticks so hard that he fainted from the beating. While some guards beat him, others stood nearby with automatic rifles. He was beaten by a short, dark-haired guard, and from his speech, he concluded that he was not a Serb. This man was rumoured to be a mercenary and from Kosovo. He heard from the guards that the captured soldier Marko Utržan had been killed. The witness was in captivity for over 50 days, and then exchanged in Bosanski Šamac. After returning home, he sought medical help because it was very difficult time for him.⁴⁴²

The witness and injured party Miroslav Petrović stated that he went on regular military service in the JNA in 1991, being still under 18 years of age. He was in the barracks in Ivanić Grad (Rep. Croatia), where he was later captured. On 14 September 1991 they surrendered, after which they were taken to Rakitje, where they were told that they were prisoners of war and separated on a national basis, the Serbs being placed separately. They were mentally harassed by the guards calling them anything and everything, and putting knives to their throats. He was not beaten because he was "lost"; however, his colleagues were beaten, and would come back bruised and bloody. The guards told them that Marko Utržan had been killed. One short, dark-haired guard, who was called Branko, was the worst, and by his accent they suspected that he was Albanian. Other prisoners talked about how they were beaten, and how this Branko was the worst and beat them the most. Marko Utržan was taken to the basement and never came back - they said that he had been shot by the guard Branko. Toplica Nekić had said that Marko was killed. After returning home, the witness felt very unwell, and went to see a doctor and received therapy for several months.⁴⁴³

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The witness and injured party Toplica Nekić stated that in 1991 he was on regular military service in the JNA in Ivanić Grad (Rep. Croatia), and that he was 19 years old at the time. On 14 September 1991, they surrendered -- they were 33 or 34 soldiers. They were transported to Rakitje, where they were told that they were prisoners of war and separated on a national basis, Serbs being placed separately. He remembered that Dragan Sabo, Predrag Stijelja, Marko Utržan, Aćimović, a certain Željko and Miroslav Petrović were with him. They were psychologically harassed, and often taken to the basement where they were beaten by guards. A guard called Branko constantly harassed them, took out a knife when he entered the room where they were imprisoned, threatening them, and putting a knife to the throats of Miroslav, other prisoners and the witness. When taken to the basement, the guards handcuffed them behind their backs. They beat them with batons and kicked them. He knew that they beat Marko Utržan and Aćimović. On the last occasion, the guards took to the basement the witness, together with Marko Utržan and Željko, whose last name he did not remember exactly, as to whether it was Laketić or Janić. They were led by three guards, Branko, another guard called "the Bosnian", and a tall, big guard with a beard. They were beaten in the basement by all three guards. The guard Branko put out a cigarette on the witness's back, and put a gun to everyone's forehead. On

442 Transcript from the main hearing of 16 January 2023.

443 *Ibid.*



that occasion, no one attacked the guard Branko in the basement, because everyone's hands were tied behind their backs and they could not attack anyone. The guards "beat the living daylight out of them". First they took Željko, and then the witness. Next, he heard a gun shot. He turned around and saw Marko with blood on his face. The wound was between the eye and the nose on the right side. When he returned to the room, he did not say anything about the murder of Marko Utržan at first -- he just lay on the bed and started shaking. One of the guards told him that if he had someone in Croatia, he should immediately call them to ask them to save him, because he was going to be the next one to be killed. He thinks that the prisoner Stijelja cleaned up the mess in the basement. He called his godmother, who lived in Croatia, and she came with her husband the following day; and so the witness got out, together with Miroslav Petrović, who was from the same town. They were transferred to the bus station and went to Bosnia, where they were taken over by the Red Cross and escorted to the bus to Belgrade. Upon returning home, he went to see a doctor, because he had mental problems.⁴⁴⁴

Prosecution witness Berislav Bećirović stated that he was on regular military service in the JNA in the Republic of Croatia when his unit surrendered to the Croatian Armed Forces. They confiscated their military booklets and transferred them to Rakitje, where they were separated on a national basis. The witness was imprisoned in the room together with the Serb soldiers. They were confined to a room on the first floor of the building, where there were six guards keeping an eye on them. The guards changed every three days. The guards would take one or two soldiers out, down to the basement, where they were beaten. Some of these guards wore balaclavas when they were beating them. From the beatings, his right arm was injured to 70%. The guard who beat him was tall and dark-haired. On one of the occasions when they were taken to the basement, the late Marko Utržan was taken together with the witness. One of the guards shot him in the mouth. Later, that same guard threatened him not to mention that to anybody, but to say that Marko had tried to seize the gun from the guard. The guard who killed Marko was Albanian, short, and he said his name was Izet or Ismet. When Marko was killed, there were four of them in the room: the witness, Marko and two guards. The name Toplica Nekić meant nothing to him – such a person was not present when Marko was killed. In the photographs shown to him during his earlier testimony, he recognised the person who killed Marko – the same person who was in the court in Zagreb.⁴⁴⁵

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Prosecution witness Radoslav Dragojević stated that as a soldier on regular military service in the JNA, he was captured when his unit surrendered to members of the ZNG. They then took their military manuals from them and told them they were prisoners of war. They were taken to Rakitje, where they were imprisoned. Representatives of the International Red Cross came and made a list of their names. The guards took them out of the room where they were imprisoned, and down to the basement, where they were beaten. They were beaten with batons and kicked by persons in military boots. He was beaten several times, and believed that his eyesight was weaker later as a result. On one occasion, they took the late Marko to the basement, a shot was heard, and later one of the guards told them that they had killed Marko. One of the guards, who was short and called Branko, beat Laketić, the witness,

⁴⁴⁴ *Ibid.*

⁴⁴⁵ Transcript from the main hearing of 23 March 2023.



and Marko. There were about 15 of them in the room where he was imprisoned. He remembers that the late Marko, Laketić, Goran Stanković, Željko Janić, Predrag Stijelja, Dragan Sabo were there. Bećirović was not with them in that room. He didn't recognise anyone in the photographs provided.⁴⁴⁶

Prosecution witness Goran Stanković was on regular military service in the JNA when his unit surrendered to members of the ZNG. Their military booklets were confiscated and they were taken to Rakitje, where they were separated on a national basis, with Serbs and Montenegrins being imprisoned in one room and the others in another. He remembers that Stijelja, Trifunović, Željko Laketić, Miroslav Petrović, and Georgije Georgijev were with him. He heard from his roommates how Marko Utržan had been killed. The guards who watched them, took them out of the room and took them to the basement, where they were beaten. They handcuffed them, knocked them to the floor and then beat them. The first time, he was taken out into the corridor by a guard who introduced himself as a compatriot from Preševo, who beat him with a baton on his hands and threatened him with a gun; the soldiers called this guard "Shiptar" between themselves. He described him as a person who was about 163 cm tall, adding that that was also his own height. He knew that another of the captured soldiers was with Marko when he was killed, but he could not remember who it was. In the photo album shown to him when giving an earlier testimony, he recognised his compatriot from the vicinity of Preševo, who beat him.⁴⁴⁷

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Prosecution witness Dragan Dodić was on regular military service in the JNA when he was captured in the barracks near Ivanić Grad. They were taken to Rakitje and separated on a national basis. He was beaten by a guard they called Branko -- he was a "target for torture" also because he was from Leskovac, and they were allegedly all Chetniks there. The guards were in uniform and armed. They took them to the basement, handcuffed them behind their backs, and beat them with batons. The guard Branko, whom the soldiers called "Shiptar" because of his accent, threatened to take his eye out with a knife, and put a gun to his temple. That Branko was the main organiser of the beating of soldiers. He was of short stature (between 160 and 170 cm), brown-skinned, with darker hair. Soldier Željko Laketić was beaten a lot -- he was led to the basement together with the witness. The witness was beaten about 10 times, and his arm was injured; but the guard Branko claimed that the witness had suffered from nightmares, and had fallen from the bed and injured his arm as a result. He heard that Marko Utržan had been killed -- this was the story of the soldiers who were taken to wash the blood in the basement after the murder. He remembered that in the room where they were imprisoned were also Bećirović, Saša Aćimović, and a certain Radoslav. During his earlier testimony, he had recognised Branko in the photos, because he was the most abusive; he also recognised him in photos presented to him in the courtroom.⁴⁴⁸

Prosecution witness and injured party Željko Janjić was on regular military service in the JNA in the Republic of Croatia at the time of the critical event, when he was captured and taken to Rakitje, where he was tortured and later exchanged. He and other captured Serb soldiers were beaten and

446 *Ibid.*

447 *Ibid.*

448 *Ibid.*



harassed by members of the ZNG for 18 days. He was present when Marko Utržan was killed. Three members of the ZNG took him (the witness) to the basement, together with Marko and another captured soldier, but the witness did not remember who he was. They were taken to the basement at night, and then the guards started beating them with batons, boots, and fists, and one of the members of the ZNG knocked Marko to the floor; the witness then turned his head away and looked at the wall. Shortly after, a gun shot was heard. They were all in the same room at the time and it all took about five minutes. After that, he and the third soldier were taken out. Later, they had to clean up the blood in the basement. He thinks that "this guard Branko" shot Marko, but he did not see it actually happening. As regards Branko, he stated that he saw him daily, that he was of medium height, and older than him, and that he did not know whether he was a Croat or a "Shiptar", but that he had heard other comrades refer to him by that name.⁴⁴⁹

The witness and injured party Dragan Sabov was on regular military service in the barracks in Kloštar Ivanić near Zagreb, when they were captured by members of the ZNG and taken to the barracks in Rakitje, where they were separated on a national basis, so that in one room Serbs and Montenegrins were imprisoned together. Stijelja Predrag, Trifunović, Berislav Bećirović and the late Marko Utržan were also captured together with the witness. They were guarded by persons in uniforms armed with guns and batons. They were most afraid of a guard who spoke as if he were an Albanian; they later found out he was called Branko. He was the leader of the guards who harassed them. He would enter the room noisily, kicking the doors and beds, cursing and insulting them on a national basis; he hit the witness with a baton, and kicked him. He would take people out of the room where they were imprisoned, after which they returned beaten. They said they had been taken to the basement and beaten there. The late Marko Utržan was often taken to the basement and beaten, and he told the witness that he was mostly beaten by a guard called Branko. The last time Marko was taken out was with two other prisoners, and the witness heard from Predrag Stijelja that he had been killed in the basement. The rumour was that he was killed by the guard Branko. He also heard this from one of the Bosnian guards.⁴⁵⁰

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The witness and injured party Goran Milanović stated that in 1991 he was on regular military service in the JNA at the barracks in Dugo Selo near Zagreb, when he was captured during the handover of the barracks. They were taken to Rakitje Barracks, where he saw soldiers who were captured from other units. They were separated on a national basis, and the Serbs and Montenegrins were held in one dormitory. At first, no one touched or insulted them – the harassment began when the Croats who were at the battlefield returned to the barracks. The witness as well as the late Marko Utržan were taken to the basement. The witness was forced to repeat some of their captors' songs, which he did not know. A guard named Branko hit him and threatened to take his eye out with a bayonet. Other guards told him, "No, Branko, that's enough." After being taken to the basement, Marko did not return. The witness learned from a Croat boy that Marko had been killed and that they were not allowed to talk about it. They found out that Marko had been killed by the guard called Branko.⁴⁵¹

449 Transcript from the main hearing of 12 April 2023.

450 Transcript from the main hearing of 24 May 2023.

451 *Ibid.*



A prosecution witness, who did not want his identity to be disclosed to the public outside the court, stated that he was on regular military service in the barracks in Samobor, when they were captured. They were taken to Rakitje, where there were captured soldiers from other units. Upon arrival in Rakitje, separation was carried out on a national basis, and the Serbs were placed in a dormitory on the first floor. He remembered being together with a soldier named Sabov, the late Marko Utržan and Stijelja. He also remembered a Bosnian guard, whose behaviour was decent, and a guard called Branko, who spoke like an Albanian. There were armed guards in the hallway in front of the bedroom. The guards came in when they wanted, threatening and provoking. One day, this guard Branko came in and attacked the witness for playing Chetnik songs in the barracks, forcing him to stretch out his arms and hitting him with a baton on the palms of his hands. Days before that, drunken Croatian soldiers would come and take the captured soldiers to the basement. He saw people when they were coming back, who said they were beaten on the soles of their feet and backs; they were upset, some were crying. The late Marko was young, and he looked cheerful, and that annoyed the guards. The witness and others heard from the Bosnian guards that Marko had been killed. Rumour had it that it was the Albanian guard who killed him. He described him as short, with brown hair, seven to eight years older than himself (the witness was 20 at the time). Four photo albums were shown to the witness: Rakitje, Rakitje 1, Rakitje 2 and Rakitje 3, and in all he recognised a guard named Branko, who he thought was Albanian.⁴⁵²

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Prosecution witness Zoran Vukašinić stated that he had been in the army since 1987. After graduating from military school in 1991, he was assigned to Samobor, in the Liaison Division unit. He was captured on 15 or 16 September 1991, surrendering because they were surrounded and without any chance of reaching safe territory. After the surrender, they were taken to Rakitje. There were a lot of captured people from different units there. They divided them into officers and non-commissioned officers, Serbs, Yugoslavs and others. He was in the room with officers and non-commissioned officers. One soldier with the rank of captain, a helicopter pilot, was brought in already beaten. The witness bumped into a Croat soldier in the corridor, whom he had known from before, and who at the time was a guard. Often, drunken Croatian soldiers coming back from the battlefield would come to their rooms and threaten them. However, they were not allowed to harass the prisoners. They were often taken to a basement because of an alleged air hazard. He heard from Sergeant Ivica Kumanov that a soldier from Kikinda had been killed. It was rumoured he was killed by a guard who was Albanian. He was short, about 165 cm tall in a camouflage uniform, and he had a gun; he spoke Serbian, but with a strong Albanian accent. According to the witness, he was in his 20s. He threatened to kill them all. After the photo albums were presented to the witness, he recognised the person he described as “the Albanian” in all the photos.⁴⁵³

Permanent court expert, orthopaedic surgeon and traumatologist Dr Kenan Senohradski, stated that in relation to the murdered Marko Utržan, he was an expert witness on the basis of the record of exhumation and autopsy performed by Dr Zoran Stanković. For other injured parties, the expert

452 Transcript from the main hearing of 22 June 2023.

453 *Ibid.*



examination was carried out on the basis of available medical documentation, and in cases where this documentation was not available, on the basis of their testimonies given during the investigation. He assessed that the examination of the injured parties, given the time since the events in Rakitje, would not give any results, so this was a reason not to perform it. Bearing in mind the description of the wounds given by the injured parties, the expert stated that he could not exclude that they had indeed been injured in these ways. The expert witness was presented with the subsequently obtained documentation, namely the Report on the examination (inspection), the Official Record on the examination of the dead body made by Dr Stjepan Glušac, and the Ballistic Expert Report with the findings and opinion presented by the expert Zorica Subotić. Reasoning on the Official Record, the expert stated that the described external injuries to the knee, thigh and arm in the form of blood bruises could have occurred during life, or from blows, or during the fall after Marko Utržan was killed. The Report on the examination determined the position in which the body of the victim was found - that it was in a prone position, specifically, lying on the stomach. Based on the findings of ballistics expert Zorica Subotić, the witness noted that the manner of death was somewhat different from what the court expert ballistics expert Milan Kunjadić had described in his findings. Namely, the finding of the expert witness Zorica Subotić shows a sketch of the shooting in which the head of the victim was thrown backwards, whereby the firing channel would go downward, in which case, the victim would have been in a kneeling position, while the defendant was in a standing position. The attorney for the injured parties, lawyer Dušan Bratić, presented to the expert witness the testimony of witness Janjić, who stated that the late Marko Utržan had been pushed down, and the testimony of witness Bećirović, that Marko's mouth was open before he was shot, as well as the verdict from Zagreb, which contradicted these testimonies, stating that the victim was standing at the time of the murder. The expert witness explained that if both the accused and the victim had stood at the time of the shooting, the traces, i.e. the blood spatter found at the scene, would have been different. At the time of the shot, the mouth of the murdered Marko Utržan had to have been half-open or open, otherwise there would have been more damage to the teeth. The cheek damage described in the Official Record may have been due to the impact of gun-barrel on the cheek, which could have caused the mouth to open.⁴⁵⁴

Court expert in ballistics Milan Kunjadić stated that he was supplementing his earlier findings and opinions, given that he had inspected the documentation he did not have at his disposal when giving the original opinions; namely, the Report on the examination (inspection), the Official Record on the examination of the dead body made by Dr Stjepan Glušac, and the Ballistic Expert Report with the findings and opinion performed by the expert witness Zorica Subotić. Based on these documents, the expert stated that a "crvena zastava" pistol was used during the murder of Marko Utržan, with a calibre of 7.62 mm, which has great penetrative power. Owing to its high speed, the bullet fired from that gun deforms when hitting a hard surface, and in this particular case, it was the mandible and the vertebra. The Report on the examination did not describe the deformation of the projectile, thus the expert was not able to exclude the possibility that the projectile hit a concrete base after passing through the body of the victim. There was gunpowder around the entry wound and gunpowder

⁴⁵⁴ Transcript from the main hearing of 14 November 2023.



particles in the wound, which indicated that the gun was not pressed against the cheek of the victim when the projectile was fired, but was about 5 cm away. If it had been pressed against the cheek, there would have been more skin damage on the victim's cheek. If there was damage on the floor, the victim would have had to be in a lower-than-standing position at the time of the murder, with his head bent backwards. If the victim had stood, a missile trail would have been found on the wall. All of the traces found indicated that the shooter was at a higher altitude than the victim, especially given the bullet mark left in the floor.⁴⁵⁵

HLC Findings

Trial in absentia and lack of regional cooperation

The *Zagreb Case* is the first trial *in absentia* which is being conducted before the War Crimes Department of the Higher Court in Belgrade. Namely, the accused is a national and resident of the Republic of Croatia, and is out of reach of the state authorities of the Republic of Serbia, and, having assessed that the requirements for such a trial under the Criminal Procedure Code had been met, the Court decided to try him in his absence.⁴⁵⁶ Although this type of proceedings has been provided for under national criminal legislation, the HLC is of the view that it should not be used in war crimes cases, but that cases like these should be addressed through regional cooperation.

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The accused Branko Tunić was tried in the Republic of Croatia for the murder of Marko Utržan, which was qualified as a felony murder in excessive use of force in defence. In this proceeding, by the judgment of the Supreme Court, he was acquitted, since the court found that it was a necessary defence.⁴⁵⁷ The OWCP took the position that it is not a decided matter for which he should not be tried again in criminal proceedings under the jurisdiction of the same state for an act for which he had already been finally convicted or acquitted, on the grounds that Article 10 of the Statute of the IRMCT, which is an internationally accepted legal act, stipulates that a person who has been tried before a national court for acts constituting serious violations of international humanitarian law, may be tried afterwards before the International Court of Justice only if the act for which that person has been tried qualifies as an ordinary criminal offence, or if the procedure before the national court was not impartial or independent, or if it was designed to protect the defendant from international criminal liability, or if the criminal procedure was not diligently conducted. The Office of the Prosecutor assessed that this provision, since it is an internationally recognised legal act, can be applied in a specific situation, because it was obvious that the procedure in Republic of Croatia against Branko Tunić was for a standard criminal offence. Also, the OWCP pointed to the practice of the ECtHR, as well as Article 4 of Protocol No. 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. It stipulates that no one may be tried again in criminal

⁴⁵⁵ *Ibid.*

⁴⁵⁶ Article 381 of the Criminal Procedure Code of the Republic of Serbia.

⁴⁵⁷ Judgment of the County Court in Zagreb Reg. No. K-70/97 of 23 December 1997, confirmed by the judgment of the Supreme Court of the Republic of Croatia No. I Kž-167/1998-9 of 10 January 2001.



proceedings within the jurisdiction of the same state for an act for which he has already been finally convicted or acquitted, but that this provision does not prevent the reopening of proceedings if there is evidence of new or newly discovered facts, or if in the previous proceedings there was a significant violation that could have affected its outcome. This is also confirmed by the decisions of the ECtHR *Crombach v. France*, *Boheim v. Italy* as well as *Marguš v. Croatia*. That the Republic of Croatia itself does not consider that this is a decided matter is also evidenced by the proceedings initiated against the defendant for the same offence, i.e. war crime against prisoners of war, immediately after the defendant was arrested in Slovenia by the indictment of the Republic of Serbia.

Considering the fact that the Republic of Croatia has also initiated proceedings against Branko Tunić for war crimes against prisoners of war, the OWCP should have deferred to Croatia to handle this case, especially since the application of trials in absentia in Serbia and the region has a profoundly negative impact on the process of dealing with the past, it has little prospect of bringing the perpetrators to justice and therefore represents an irrational way of using resources and a step backwards in prosecuting these crimes.



FIRST-INSTANCE JUDGMENTS

I. The *Zvornik-Standard Case*⁴⁵⁸

CASE FACTS	
Current stage of the procedure: first-instance judgment	
Date of indictment: 10 May 2019	
Trial commencement date: 27 September 2019	
Prosecutor: Ognjen Đukić	
Defendant: Dalibor Maksimović	
Criminal offence: war crime against the civilian population under Article 142 of the FRY CC	
<p>Case transferred from BiH</p> <p><i>This proceeding is the result of cooperation between Serbia and BiH in the prosecution of war crimes, which was intensified after the OWCP and the Prosecutor's Office of BiH signed the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide in 2013. Namely, the confirmed indictment against the defendant was transferred by the Prosecutor's Office of Bosnia and Herzegovina, given that the defendant, who is a citizen of the Republic of Serbia and residing in Serbia, was not available to the authorities of BiH. This is the second transferred indictment against the same defendant.</i></p>	
Trial Chamber	<p>Judge Vladimir Duruz (Chairperson)</p> <p>Judge Snežana Nikolić - Garotić</p> <p>Judge Vinka Beraha-Nikićević</p>
<p>Number of defendants: 1</p> <p>Defendant's rank: no rank</p> <p>Number of victims: 4</p> <p>Number of witnesses heard: 16</p>	<p>Number of scheduled court days in the reporting period: 4</p> <p>Number of court days in the reporting period: 4</p> <p>Number of witnesses heard in the reporting period: 0</p> <p>Total number of experts witnesses heard: 1</p>
<p>Key developments in the reporting period:</p> <p>First-instance judgment</p>	

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⁴⁵⁸ *The Zvornik-Standard Case*, trial reports and case files available at: <http://www.hlc-rdc.org/Transkripti/zvornik.html>, accessed on 14 January 2024.



Course of the proceedings

Indictment

The accused Dalibor Maksimović⁴⁵⁹ 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, BiH), 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, whilst 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.⁴⁶⁰

Defence of the accused

The accused exercised his right to remain silent.⁴⁶¹

Witnesses in the proceedings

Witnesses and injured parties Fehrija Čirak, whose husband Fadil had been killed, Alija Handžić, whose brothers Iljaz, Nijaz and Nedžad Karaosmanović had been killed, Zilha Karaosmanović, whose husband Iljaz 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.⁴⁶²

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459 The Higher Court in Belgrade sentenced the defendant by final Judgment 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.

460 OWCP Indictment KTO no. 1/2019 of 10 May 2019, available at: https://tuzilastvorz.org.rs/public/indictments/anonim_maksimovic.pdf, accessed on 14 January 2024.

461 Transcript from the main hearing of 27 September 2019.

462 Transcript from the main hearing of 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. The witness also heard what had happened to her brothers from Zoran Crnogaća, 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.⁴⁶³

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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, were untrue.⁴⁶⁴

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

⁴⁶³ *Ibid.*

⁴⁶⁴ *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 BiH, and that no one had ever exerted any pressure on him in that connection.⁴⁶⁵

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, telling 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, a certain Ostoja from Zvornik told a co-worker of her neighbour's that he had been present in "Standard" when all 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, identified and handed over to the family.⁴⁶⁶

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Witness and injured party Mila Karaosmanović gave an identical statement.⁴⁶⁷

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, with the task of securing 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 the "Standard" company, but their task was to stand guard at various checkpoints around town. On the critical day, a member of their

465 Transcript from the main hearing of 18 December 2019.

466 Transcript from the main hearing of 21 February 2020.

467 *Ibid.*



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" had occurred at "Standard". When he came back 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 believed 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.⁴⁶⁸

Witness for the prosecution Goran Kaldesić explained that at 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, while the 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 of the prisoners had escaped.⁴⁶⁹

Witness for the prosecution Savo Đukanović stated that he had been a member of reserve JNA forces in Milići, and that a group about 50 men strong had been dispatched to Zvornik to secure vital facilities in the city and protect the population. In Zvornik they were put up in rooms of the "Standard" company, in one section of which were stationed the Zvornik police as well. The witness was on guard duty securing the hospital in Zvornik, where he would occasionally spend the night. He headed for "Standard" on hearing the news that a fellow combatant of theirs, a.k.a. "Luta", had been killed. Then he heard that someone had opened fire in the building and killed a man. People said that it had been a member of "Žučić's" unit. He knew the accused; but he had not been a member of their unit, nor had he seen him in Zvornik.⁴⁷⁰

At the time of the critical event, witness for the prosecution Petko Panić was assistant commander of the police in Zvornik. They were quartered in the "Standard" building, where, apart from the regular police, military police as well as army troops were stationed. On the critical day, when he returned from the field to "Standard", in the ground floor corridor he saw three dead men lying in a pool of blood. He recognised the brothers Ilijaz and Nijaz Karaosmanović, and a person who worked as a station manager at the Zvornik bus station. One of the soldiers present told him that they had been killed by someone from the Milići Company, in retaliation for the killing of a fellow fighter.⁴⁷¹

Witness for the prosecution Zoran Obradović worked as a policeman in Zvornik up till his retirement. In April 1992, the newly established Serb police force was stationed in the "Standard" building. Apart from the police, TO members, police reservists and members of paramilitary units were also stationed

468 Transcript from the main hearing of 25 June 2020.

469 Transcript from the main hearing of 7 December 2020.

470 Transcript from the main hearing of 19 January 2021.

471 *Ibid.*



there. He had no first-hand knowledge of the critical event. Fellow police officers had told him that a young man from Milići had been killed in town and that, in retaliation, members of his unit killed the Karaosmanović brothers and Fadil Čirak.⁴⁷²

Witness and injured party Ljiljana Stiner was the wife of the late Nijaz Karaosmanović. She said that on the day of Eid, 4 April 1992, they realised that they had to leave Zvornik temporarily for reasons of security. The entire Karaosmanović family went to Šabac, to stay with the witness's uncle. A couple of days after arriving in Šabac, her husband went to register with the police. Soon after he registered, police officers came and requested that her husband's other two brothers also accompany them, allegedly for interrogation. That was the last time the witness saw them. As they had not come back from the police, the witness and her father went to inquire. The police in Šabac told them that they had been transferred to Zvornik. As she and her father walked towards Zvornik, at Karakaj they came across a truck with soldiers, amongst whom was one Ostoja, an acquaintance of theirs, who told her not to go to Zvornik because it was not safe, and that her husband and both brothers-in-law had been killed. Despite this warning, the witness went to Zvornik. She went to places where she had heard Muslims were being detained, and inquired about her husband. The following week, the witness again went to Zvornik, to her own flat and to her parents' house, where she saw that everything had been ransacked and all valuables gone. She was then told to inquire of a person who went by the name of "Žučá", and who was "a commander of sorts", about the fate of her husband and her brothers-in-law. She did so, and "Žučá" told her that the Karaosmanovićs had done a grave injustice to the Serb people and that she was therefore to expect nothing good. Later the family were told that her husband and his brothers had been killed on 15 April 1992. People said that they had been detained in order to exact ransom from their father, as it was common knowledge that they were a wealthy family. The mortal remains of her husband Nijaz and of his brothers were found after the war at the Kazan Bašča site, and handed over to the family.⁴⁷³

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Court-sworn expert Dr Branko Mandić, a neuropsychiatrist, spoke about the competency of witness Zoran Crnogaća to testify. He explained that at the time he gave his statement, on 27 November 2017, the witness had been fit enough to give evidence. According to available medical records, he was a recovering alcoholic. However, no memorisation or retrieval of memorised content disorders had been registered. The witness had also suffered a brain stroke, but from the existing documents it was impossible to know when, as it was registered in his medical record on 15 November 2017. A brain stroke can affect motor skills, but no psychological deficits were recorded in the 2018 psychiatric findings. Dr Branko said that alcoholism was an addiction and not a mental disease. Memories of past events are preserved in alcoholics.⁴⁷⁴

The court attempted to hear witness for the prosecution Nenad Jović. The hearing was conducted via a video-conferencing link with the court in Germany. Communication with the witness was difficult, and his wife, who had escorted the witness to appear in court, stated that he had a speech impediment,

472 Transcript from the main hearing of 1 March 2021.

473 Transcript from the main hearing of 1 October 2021.

474 Transcript from the main hearing of 27 January 2022.



that he suffered from dementia, that the family had noticed changes in him in the sense of rapid deterioration some three or four years before, and that the witness had been undergoing psychiatric treatment for the last five or six years.⁴⁷⁵

Following this, the Trial Chamber requested that medical records available to the witness be submitted in order to evaluate his capacity to testify, both now and on 13 December 2017, namely, at the time he gave evidence before the competent authorities of BiH.⁴⁷⁶

Course of the proceedings in 2023

During 2023, four trial days were scheduled and held, during which one court expert, a psychiatrist, was interviewed, and an examination of one witness attempted, but without success.

Permanent court expert, psychiatrist Dr Branko Mandić, performed a court-psychiatric expert examination of witness Nenad Jović in order to determine his procedural ability. The expert examination was conducted on the basis of medical documentation submitted for the witness, and the expert also used the testimony of the witness given before the competent authorities of BiH on 13 December 2017, as well as the transcript from the main hearing on 19 May 2022, when witness Jović tried to testify. The expert found that there was no evidence that the witness had suffered a stroke; he assumed that it was a middle cerebral artery infarction, but he had also considered an acute stress reaction caused by psychosocial stresses. The witness statement given on 13 December 2017 was assessed by the expert as meaningful, precise, detailed and without inconsistencies, on the basis of which he concluded that the witness was procedurally capable at that time. He also did not rule out the possibility that the witness would now be capable of testifying.⁴⁷⁷

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A re-examination of the witness Nenad Jović was attempted, but contact could not be established with him⁴⁷⁸, so his testimony given before the competent authorities of BiH on 13 December 2017 was read, at the agreement of the parties.⁴⁷⁹

First-instance judgment

On 6 October 2023, the Higher Court in Belgrade rendered a judgment finding the defendant Dalibor Maksimovića guilty of the criminal offence of war crime against civilians under Article 142 of the FRY Criminal Code and sentenced him to 13 years in prison. Since the defendant had already been sentenced to 15 years in prison⁴⁸⁰, the court took that as the established sentence and sentenced him to a single sentence of 15 years in prison. In the same judgment, the injured parties were referred to litigation for the property claim.

⁴⁷⁵ Transcript from the main hearing of 19 May 2022.

⁴⁷⁶ *Ibid.*

⁴⁷⁷ Transcript from the main hearing of 18 April 2023.

⁴⁷⁸ Transcript from the main hearing of 23 June 2023.

⁴⁷⁹ Transcript from the main hearing of 27 September 2023.

⁴⁸⁰ Judgment of the Higher Court in Belgrade K. Po2 8/2017, of 23 September 2019, confirmed by the judgment of the Court of Appeal in Belgrade Kž1 Po24/20 of 17 September 2020.



The Court found, on the basis of the evidence presented, that the defendant, as a member of the military unit TO Milići VP 7296 Milići, and in a state of diminished sanity, though not significantly so, on 18 April 1992 in the afternoon hours, in the "Standard" facility in Karakaj (Municipality of Zvornik BiH), where the Serbian SJB Zvornik was stationed on the first floor and members of military formations on the ground floor, including the defendant's unit, dressed in a camouflage military uniform and armed with an automatic rifle, in the presence of other members of his unit in the lobby of the ground floor of the facility, after learning that a member of his unit was killed in Zvornik on that day, when from the floor of the premises of the police station detained civilians of Bosniak nationality – brothers Iljaz, Nijaz and Nedžad Karaosmanović, as well as Fadil Čirak – were conducted, shot a burst of fire into the back of these detained civilians, killing on the spot of Fadil Čirak, and Iljaz and Nijaz Karaosmanović. 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.⁴⁸¹

When deciding on the sentence, the court considered as mitigating circumstances on the part of the defendant, and taking into consideration also his family situation, that he committed the offence as a young adult, and that he committed it in a state of diminished sanity, though not significantly so, while as aggravating circumstances the Court appreciated the gravity of the criminal offence and its consequences, i.e. the death of four persons, as well as the recklessness shown.⁴⁸²

HLC Findings

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Excessive and unnecessary anonymisation of the indictment

The OWCP Indictment in this case, which is publicly accessible on the OWCP homepage under "Indictments"⁴⁸³, 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.⁴⁸⁴ Namely, the Rulebook provides that OWCP indictments "shall as a rule be published in their entirety on the OWCP webpage, although with any 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".⁴⁸⁵ Instead of publishing the indictment as a whole, only its operative part was published, so it is not possible to determine in any way on which evidence the OWCP bases the indictment. Also, although the Rulebook envisages anonymisation of the personal particulars of the participants in proceedings, such as "the names and surnames and nicknames of physical persons,

481 Judgment of the Higher Court in Belgrade K.Po2 1/2019 of 6 October 2023.

482 *Ibid.*

483 OWCP Indictment KTO no. 1/2019 of 10 May 2019.

484 Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes of 20 March 2019, available at: https://www.tuzilastvorz.org.rs/public/documents/2021-04/%D0%9A%D0%A2%D0%9E_2_20_%D0%90%D0%BD%D0%BE%D0%BD%D0%B8%D0%BC%D0%B8%D0%B7%D0%BE%D0%B2%D0%B0%D0%BD%D0%BE.pdf, accessed on 30 December 2022.

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



the address, date and place of birth⁴⁸⁶, 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".⁴⁸⁷ 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, which would be 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 interests of the victims, public reference to whom provides a form of redress for them and their families and is a prerequisite for the recognition of the sufferings they have gone through, primarily on account of their identity. At the same time, anonymising the first and last names of the accused was pointless, as his identity had been known to the public even before the OWCP brought the indictment. Namely, he was first indicted in BiH, and the indictment, as well as the proceedings initiated against him, had been repeatedly reported on in BiH already in 2018.⁴⁸⁸

Length of imposed prison sentence

The defendant Dalibor Maksimović was sentenced to a single prison sentence of up to 15 years, because owing to legal restrictions, a different sentence could not be imposed anyway. Namely, Article 48, paragraph 3) of the FRY CC stipulates that the single sentence must be greater than each individually determined sentence, but must not exceed the sum of established sentences, nor exceed 15 years of imprisonment. Consequently, the critical event was proven in this criminal procedure, but the families of the victims could not be provided with adequate satisfaction. They found out how their loved ones were killed and who was responsible for it, but in fact, given the legal restrictions, the defendant Dalibor Maksimović remained unpunished for the murders of four civilians for which he was found responsible in this process.

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Refusal to adjudicate a property claim

When issuing the judgment, the court did not decide on the property claim of the injured party Fehrija Čirak, but instructed her to exercise her right in litigation. The court did not have any valid reason for such a decision, because the injured party specified the property claim and supported it with all the necessary evidence. The provision of Article 252 of the CPC stipulates that a civil claim arising from a criminal offence will be discussed in criminal proceedings at the proposal of an authorised person, if this would not significantly delay the criminal proceedings. The request of the injured party Fehrija Čirak arose due to the commission of a criminal offence, because the defendant was charged with the murder of her husband Fadil Čirak. That the injured party is authorised to assert a property claim has

486 *Ibid*, Article 5, paragraph 1.

487 *Ibid*, Article 5, paragraph 2.

488 Detektor, *Maksimović: confirmed indictment for crimes in Zvornik*, available at: <https://detektor.ba/2018/05/03/maksimovic-potvrđena-optuznica-za-zlocine-u-zvorniku/>, accessed on 14 January 2023; *Court of BiH informed that the proceedings against Dalibor Maksimović will be conducted in Serbia*, available at: <https://detektor.ba/2019/06/14/sud-bih-obavijesten-da-ce-se-postupak-protiv-dalibora-maksimovica-voditi-u-srbiji/>, accessed on 14 January 2023.



been proven by excerpts from the Registry of marriage (RoM) and Registry of deaths (RoD) and by inspection of their ID card when testifying. By deciding on a property claim, the criminal proceedings would not have been delayed at all, because they required the award of financial compensation for the mental anguish suffered due to the death of a close person, where the amount of compensation is not determined by expert testimony, but by the court, to the amount it considers fair. The court should have ruled on the property claim because the "Guidelines for Improving Court Practice in Compensation Proceedings for Victims of Serious Crime in Criminal Proceedings", issued by the Supreme Court, state that the right of victims to compensation for damages is one of the key rights that lead to the establishment of restorative justice, and that there is an obligation of the court to resolve the issue of compensation for damages in criminal proceedings, and that civil proceedings should be the exception, not the rule.⁴⁸⁹

⁴⁸⁹ Guidelines for the Improvement of Case Law in the Proceedings for Compensation of Victims of Serious Crime in Criminal Proceedings, available at: <https://www.osce.org/files/f/documents/d/8/437726.pdf>, accessed on 17 January 2024.



FINAL JUDGMENTS

I. The *Sanski Most–Lušci Palanka Case*⁴⁹⁰

CASE FACTS	
Current stage of the procedure: final judgment rendered	
Date of indictment: 3 April 2017	
Trial commencement date: 12 July 2017	
Prosecutor: Bruno Vekarić	
Defendant: Milorad Jovanović	
Criminal offence: war crime against the civilian population under Article 142 of the FRY CC	
<p>Case transferred from BiH</p> <p><i>This case is a good example of the cooperation between Serbia and BiH in prosecuting war crimes, which intensified after the OWCP and the Prosecutor's Office of BiH and Herzegovina signed the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide in 2013. 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.</i></p>	
Trial Chamber	Judge Rastko Popović (Chairperson) Judge Nada Hadži Perić Judge Olivera Anđelković Judge Miodrag Majić, PhD Judge Duško Maksimović
Number of defendants: 1 Defendants rank: low Number of victims: 15 Number of witnesses heard: 21	Number of scheduled court days in the reporting period: 2 Number of court days in the reporting period: 2 Number of witnesses heard in the reporting period: 0 Total number of experts witnesses heard: 0
Key developments in the reporting period: Final judgment rendered	

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⁴⁹⁰ *The Sanski Most – Lušci Palanka Case*, trial reports and case files available at: http://www.hlc-rdc.org/Transkripti/Sanski_Most_Lusci_Palanka.html, accessed on 12 January 2024.



Course of the proceedings

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 Vuković⁴⁹¹ 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 (BiH). 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 organisation of resistance to the Serbian army, he punched and kicked 15 persons, 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 make the sign of the cross, crawl on the floor and kiss his boots.⁴⁹²

Defence of the accused

Presenting his defence, the accused denied having committed the offence he was 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 detained 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.⁴⁹³

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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.⁴⁹⁴ 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 was considered to have been filed by an unauthorised prosecutor.

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

491 Slavko Vuković died in the meantime.

492 Indictment OWCP KTO 1/17 dated 3 April 2017, available at: https://www.tuzilastvorz.org.rs/public/indictments/kto_1_17_lat.pdf, accessed on 12 January 2024.

493 Transcript from the main hearing of 12 July 2017.

494 Transcript from the main hearing of 27 October 2017.



March 2018. The procedure was resumed from the point where they had been interrupted, namely, by continuing the evidentiary procedure.⁴⁹⁵

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.⁴⁹⁶ 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.⁴⁹⁷ Witness Mesud Avdić also stated that the accused had beaten him while he was being held captive⁴⁹⁸, 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.⁴⁹⁹

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.⁵⁰⁰

Witness Ramiz Ramić, another detainee, stated that the accused had beaten Sadržir Alibegović.⁵⁰¹

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Witnesses Drago Predojević⁵⁰², Duško Grujić⁵⁰³, Željko Marković⁵⁰⁴, Marko Praštalo, Duško Vranješ and Milan Dekić⁵⁰⁵, 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. He had had occasion to see some of the confined persons and 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 they had come to harm.⁵⁰⁶

495 Transcript from the main hearing of 28 March 2018.

496 Transcript from the main hearing of 9 May 2018.

497 Transcript from the main hearing of 28 March 2018.

498 Transcript from the main hearing of 20 September 2018.

499 Transcript from the main hearing of 8 November 2018.

500 Transcript from the main hearing of 18 March 2019.

501 Transcript from the main hearing of 22 May 2019.

502 Transcript from the main hearing of 28 June 2019.

503 *Ibid.*

504 Transcript from the main hearing of 4 November 2019.

505 Transcript from the main hearing of 13 December 2019.

506 Transcript from the main hearing of 17 September 2019.



Witness Boško Petrović was the patrol unit leader at 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 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. 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 and mentioning Dedo. The accused Jovanović was also present on that occasion, and he said that Dedo had left. When he asked him whether Dedo 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 Vuković told him that the accused had beaten up Dedo and that he had died. He knew 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 in by Drago Predojević. He did not know what happened with him later.⁵⁰⁷

First-instance judgment

On 2 February 2021, the Higher Court in Belgrade⁵⁰⁸ rendered a judgment pronouncing the accused Milorad Jovanović guilty of the criminal offence of a war crime against the civilian population, and sentenced him to a term of imprisonment of nine years.⁵⁰⁹

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The court established that in June and July 1992, the accused, as a member of the reserve police force in Lušci Palanka (Sanski Most municipality, BIH), forcibly removed Bosniaks from villages in the Sanski Most area, and then locked them up in the building of the "Simo Miljuš" Memorial Museum in Lušci Palanka. On the premises, as well as when taking them for interrogation to the police station, he had kicked the 11 detained civilians, hit them with a rifle and various other objects, tied them to a chair or a beam in the ceiling and then beaten them viciously, forced them to cross themselves, crawl on the floor and kiss his boots. Dedo Dervišević had died as a result of the beating.

On the basis of the testimonies of the injured parties, the court determined that the accused had maltreated and tortured the detained Bosniaks, and on the basis of the testimony of a witness, a police officer, that Jovanović was also responsible for Dervišević's death.

In determining the sentence, the court, as up to now, assessed as mitigating circumstances Jovanović's family situation, the absence of a criminal record, as well as the fact that he was very young at the time

507 Transcript from the main hearing of 1 September 2020.

508 Composition of the Chamber: judge Vinka Beraha Nikićević, Chairperson, judges Vera Vukotić and Vladimir Duruz, members of the panel.

509 Judgment of the Higher Court in Belgrade K.Po2 7/17 of 2 February 2021.



the criminal offence was perpetrated. The court assessed as aggravating circumstances the gravity of the consequences of the offence and his manifest persistence in committing it.⁵¹⁰

The court omitted from the operative part of the judgment the actions of "unlawful removal and imprisonment" for which the defendant was charged, because it concluded that there was no evidence that the defendant had performed these actions. The court also omitted actions "or in order to extract information about the alleged organisation of resistance to the Serbian army," because it was determined from the testimony of the witnesses and the defendant's defence that civilians who were suspected of possessing weapons were brought in and imprisoned. Also, in the absence of evidence, the actions of the accused in relation to four civilians were excluded.⁵¹¹

Second-instance decision

Deciding on the appeals of the defence counsel for the accused, on 29 October 2021, the Court of Appeal in Belgrade ruled to overturn the first-instance judgment and remanded the case to the court of first-instance for retrial and a second decision.⁵¹²

The Court of Appeal found the trial judgment to be substantially procedurally flawed, and also that it violated the equality of arms in the presentation of evidence to the detriment of the defendant. It therefore enjoined upon the court of first-instance to ensure the presentation of evidence on an equal footing in the retrial, to analyse all the presented evidence, to expound the facts it established in the criminal proceedings and the reasons why it considered them proven or not proven, and, in particular, to assess the credibility of contradictory evidence. It also ordered the court of first-instance to provide a detailed explanation of the reasons it had been guided by in addressing legal issues, and in particular in determining whether the accused had committed a criminal offence.⁵¹³

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Retrial

During the retrial, one defence witness was questioned⁵¹⁴, while another defence witness refused to testify.⁵¹⁵

Defence witness Ranko Divjak, who is son-in-law of the accused, stated that he lived in Skucani Vakuf (Sanski Most municipality) during the war in BiH and that he constantly passed the "Simo Miljuš" Memorial Museum in Luška Palanka, where he owned a store. He knew that the Memorial Museum was used as a detention facility, and around the museum there were always a lot of people, civilians, police officers and the army. He had no knowledge of anyone being abused in custody. During the entire period of the war in BiH, Muslims lived in Skucani Vakuf, and under police protection. During

510 *Ibid.*

511 *Ibid.*

512 Decision of the Court of Appeal in Belgrade Kž1 Po2 2/21 of 29 October 2021.

513 *Ibid.*

514 Transcript from the main hearing of 5 April 2022.

515 Transcript from the main hearing of 14 February 2022.



this period, none of them talked about being abused while detained in Lušca Palanka, nor did anyone ever complain to him about the defendant's actions.⁵¹⁶

First-instance judgment at retrial

On 8 April 2022, the Higher Court in Belgrade⁵¹⁷ rendered an identical judgment at retrial to that of 2 February 2021, finding the accused Milorad Jovanović guilty of the criminal offence of a war crime against the civilian population under Article 142 of the FRY Criminal Code, and again sentenced him to a term of imprisonment of nine years. The court established that in June and July 1992, the accused, as a member of the reserve police force in Lušci Palanka (Sanski Most municipality, BiH), forcibly removed Bosniaks from villages in the Sanski Most area, and then locked them up in the building of the "Simo Miljuš" Memorial Museum in Lušci Palanka. On the premises, as well as when taking them for interrogation to the police station, he kicked detained civilians, 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, forced them to cross themselves, crawl on the floor and kiss his boots, in order to extort the information about the possession of weapons. Dedo Dervišević died as a result of the beating. On the basis of the testimonies of the injured parties, the court determined that the accused had maltreated and tortured the detained Bosniaks, while from the statements of eyewitness Mesud Avdić and of police officer Boško Petrović, it established that Jovanović was also responsible for the death of Dedo Dervišević.

At the retrial, the court bore in mind the objections the Court of Appeal had raised in its ruling, namely, that it was necessary directly to hear witnesses who had given statements before the police and the BiH Prosecutor's Office but had not been examined at the main trial. In fact, the court of first instance was found not to have been diligent enough to secure their direct examination. Despite all its efforts, the court was unable to hear these witnesses in person, as three of the witnesses had died in the meantime, while the court was unable to contact the other two, who were living abroad. However, the court held that there was no reason to doubt their statements, even if not given at the main hearing. That was because other witnesses who had testified at the main hearing also described the defendant's conduct with details identical to the description by these witnesses. In determining the sentence, as previously, the court considered as mitigating circumstances the defendant's family situation, the absence of a criminal record, as well as the fact that he was very young at the time the criminal offence was perpetrated. The court assessed as aggravating circumstances the gravity of the consequences of the offence and his manifest persistence in committing it.

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Course of the proceedings in 2023

Second-instance judgment

On 31 January 2023, the Court of Appeal in Belgrade issued a judgment reversing the judgment of the Higher Court in Belgrade by which it found the defendant Milorad Jovanović guilty of the

⁵¹⁶ Transcript from the main hearing of 5 April 2022.

⁵¹⁷ Composition of the Chamber: judge Vinka Beraha Nikićević, Chairperson, judges Snežana Nikolić Garotić and Vladimir Duruz, members of the chamber.



criminal offence of war crime against civilians referred to in Article 142, paragraph 1 of the FRY CC, and sentenced him to three years in prison.⁵¹⁸ The court found that during June and July 1992, the defendant struck five Bosniak civilians who were brought for questioning to the "Brano Miljuš" Memorial Museum in Luška Palanka, intending to extort information about the possession of weapons, hitting and kicking them with his hands, legs, baton, stick, rifle-barrels and other objects, on all parts of the body, and tying the legs of one of them to the ceiling beam from which he was hung upside-down, and then beating him while tied.⁵¹⁹

When deciding on the sentence, the court assessed as particularly mitigating circumstances the defendant's family situation as a family man, married and father of two adult children, the passage of time since the commission of the criminal offence, and that at the time of execution he was 22 years old and had no convictions, which gave the court the opportunity to impose a sentence below the legal minimum. As aggravating circumstances, the court assessed the gravity of the consequences of the offence, the number of actions, the persistence and determination in the commission of the criminal offence, the extreme rudeness and the demonstrable recklessness towards the victims.

From the factual description, the Court of Appeal omitted the actions committed against the six injured parties in relation to the first-instance verdict, because it assessed that the evidence presented was not of such a quality that a conviction could be based on it.

HLC Findings

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The proceedings were impossible to follow

The main hearings in this case were held in a courtroom that was 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 with headphones to follow the proceedings.

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

Tendentious position of the Court of Appeal

Quashing the first-instance judgment, the Court of Appeal criticised the court of first instance for failing to do enough to secure the direct examination of several witnesses whose statements, given in the investigation stage before the competent BiH authorities, were examined during the proceedings. In the assessment of the Court, the quality of the right to a defence was thus compromised, and thereby the right to a fair trial. That was because if witnesses are not directly heard, cross-examination and testing the witness's credibility by the defendant, or, possibly a confrontation, are impossible.

⁵¹⁸ Judgment of the Court of Appeal Kž1 Po2 1/22 of 31 January 2023.

⁵¹⁹ *Ibid.*



Of late, the Court of Appeal has been known to automatically accept such grounds of appeal by the defence ever more frequently, without considering the actual situation in more detail. First of all, the court of first instance always exerts every effort to secure the direct examination of witnesses, but due to the lapse of time, all trace was lost of many of them, some of who had gone abroad, but more often were unable or unwilling to give statements again owing to ill health. Insisting on repeated attempts at securing the direct examination of these witnesses is a waste of time with the delay in proceedings the only result. On the other hand, it was indeed questionable whether the right to defence of the accused had really been impaired, bearing in mind that all the defendants had been clearly advised of that fact during the investigation conducted against them in BiH, because they had in fact been questioned before the domestic court on the basis of letters rogatory from BiH. On learning that criminal proceedings were being conducted against them in BiH, they could have reported to the competent authority in BiH, could have secured defence counsel, could have directly examined and tested the credibility of all witnesses and proposed the presentation of all evidence they considered favourable to their case. Their invoking the impossibility to directly examine witnesses in the proceedings before the domestic court was in fact abuse of the right to a defence, which the court should have been mindful of.

Inappropriate decision on the sentence in the second-instance judgment

When imposing the sentence on the defendant, the Court of Appeal gave importance to "particularly mitigating circumstances" over the usual mitigating circumstances in their totality, which served as a legal basis for reducing the prison sentence below the legal minimum of five years for the criminal offence in question. At the same time, the court found a number of aggravating circumstances, such as the number of actions, the persistence and determination in the commission of the criminal offence, the extreme rudeness and the demonstrable recklessness towards the victims. With the existence of such aggravating circumstances, the HLC maintains, there was no place to evaluate the usual mitigating circumstances as "particularly" mitigating, nor to apply the institute of sentence reduction to lowering the sentence below the legal minimum. Such a penal policy will hardly achieve all the purposes of punishment -- particularly, that such punishment will influence others not to commit such criminal offences in the future.



II. The *Kalinovik Case*⁵²⁰

CASE FACTS	
Current stage of the procedure: final judgment rendered	
Date of indictment: 26 September 2019	
Trial commencement date: 13 January 2020	
Prosecutor: Ljubica Veselinović	
Defendant: Dalibor Krstović	
Criminal offence: war crime against the civilian population under Article 142 of the FRY CC	
<p>Case transferred from BiH</p> <p><i>This proceeding is the result of cooperation between Serbia and BiH in the prosecution of war crimes, which was intensified after the OWCP and the Prosecutor's Office of BiH signed the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide in 2013. Namely, the confirmed indictment against the defendant was transferred by the Prosecutor's Office of Bosnia and Herzegovina, given that the defendant, who is a citizen of the Republic of Serbia and residing in Serbia, was not available to the authorities of BiH.</i></p>	
Trial Chamber	<p>Judge Rastko Popović (Chairperson)</p> <p>Judge Nada Hadži - Perić, member of the chamber</p> <p>Judge Olivera Anđelković, member of the chamber</p> <p>Judge Miodrag Majić, PhD, member of the chamber</p> <p>Judge Dragoljub Albijanić, member of the chamber</p>
<p>Number of defendants: 1</p> <p>Defendant's rank: no rank</p> <p>Number of victims: 1</p> <p>Number of witnesses heard: 17</p>	<p>Number of scheduled court days in the reporting period: 2</p> <p>Number of court days in the reporting period: 2</p> <p>Number of witnesses heard in the reporting period: 2</p> <p>Total number of experts witnesses heard: 0</p>
<p>Key developments in the reporting period:</p> <p>Final judgment rendered</p>	

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⁵²⁰ *The Kalinovik Case*, trial reports and case files available at: <http://www.hlc-rdc.org/Transkripti/kalinovik.html>, accessed on 11 January 2024.



Course of the proceedings

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 being 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 minor child, a minor, 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 her that she was to tell no one about the rape, because if she did, first her children and then she herself would come to grief. After the rape, the accused ordered her to remain undressed and left the classroom, and immediately afterwards an unidentified fellow combatant went in and raped the injured party.⁵²¹

Defence of the accused

Presenting his defence, the accused denied having committed the criminal offence 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 BiH 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 relatives. 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, because already on the following day he was transferred to the village of Dobro Polje, to the defence line. He was unable to put a face to the name and surname of injured party B1, but could only conclude from her surname that she could be from the neighbourhood of his village.⁵²²

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521 OWCP Indictment KTO 2/19 dated 26 September 2019, available at: https://www.tuzilastvorz.org.rs/public/indictments/%D0%9A%D0%A2%D0%9E_2_19_%D0%8B%D0%B8%D1%80.pdf, accessed on 11 January 2024.

522 Transcript from the main hearing of 13 January 2020.



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.⁵²³

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.⁵²⁴

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.⁵²⁵

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 showed the witness a portion of his statement given before the competent BiH authorities 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, a.k.a. "Ustasha", when the accused Krstović came to the school. Krstović 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.⁵²⁶

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.⁵²⁷

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

523 Transcript from the main hearing of 14 July 2020.

524 Transcript from the main hearing of 6 October 2020.

525 *Ibid.*

526 *Ibid.*

527 Transcript from the main hearing of 3 November 2020.



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.⁵²⁸

The examination of injured party and protected witness B1 was barred to the public. She gave a very detailed and convincing description of how the accused, whom she had known for a long time as the grandson of her former neighbours, raped her.⁵²⁹

During the evidentiary proceedings, the statements were examined of protected witnesses B2, B4 and B6 given before the Prosecutor's Office of BiH, as owing to health reasons these witnesses were unable to appear before the court.⁵³⁰

First-instance judgment

On 13 May 2021, the Higher Court in Belgrade⁵³¹ rendered a judgment pronouncing Dalibor Krstović guilty of the rape of a Bosniak woman, and sentenced him to a term of imprisonment of nine years, and referred injured party B1 to claim damages in civil action.⁵³²

The Trial Chamber established that one evening on an unspecified date in August 1992, the accused, then a member of the Army of Republika Srpska, came to the "Miladin Radojević" Primary School in Kalinovik, entered a classroom in which Bosniak civilians were detained, called injured party "B1" by name and told her to come out of the classroom. When she did so together with her child, a minor, he ordered her to send the child back in. When she refused, he threatened to rape the child, and the injured party returned the child into the classroom and stepped out into the corridor. The accused then took her to an empty classroom; another unidentified VRS member went in with them, and went out shortly afterwards. The accused ordered her to undress, and when the injured party refused, he headed towards the door and threatened that he would take her children, whereupon, in fear for their lives, the injured party undressed. The accused then raped her, ordered her to remain undressed and went out, while the unidentified soldier immediately came in and also raped her. The accused then went into the classroom and threatened the injured party that she was to tell no one about it, for if she did, first her children and then she herself would come to grief.

It was determined from the consistent and detailed statements of witnesses Fadila Hatić, Naza Pervan, Hasnija Ahatović, and witnesses under the pseudonyms "B2" and "B3" who were detained at the "Miladin Radojević" Primary School in Kalinovik together with injured party "B1", which the Court accepted, having assessed them as reliable, how the accused had taken the injured party out of the classroom, what had happened with her children, and what kind of a state the injured party was in after she returned. Their statements were corroborated by the statements of the injured party and

528 *Ibid.*

529 Transcript from the main hearing of 10 December 2020.

530 *Ibid.*

531 Composition of the Chamber: Judge Zorana Trajković, Chairperson, judges Mirjana Ilić and Dejan Terzić, members of the chamber.

532 Judgment of the Higher Court in Belgrade K. Po2 3/2019 of 13 May 2021.



that of witness Duško Mandić, who worked as a school security guard and who stated that the injured party, whom he knew from before, had told him with tears in her eyes that she had been raped the night before by her neighbour Dalibor Krstović.

The Court accepted the account of injured party "B1" as convincing and sincere, as she gave a very detailed description of the way in which the accused, whom she knew from before as the grandchild of some former neighbours of hers, had raped her.

The Court did not accept the defence of the accused that he did not know the injured party at all and that at the relevant time he never even entered the "Miladin Radojević" Primary School in Kalinovik. The court assessed his defence as unconvincing, contrary to the evidence presented and calculated to avoid criminal liability. Particularly so, because it was at variance with the statement of the injured party and the statement of witness "B4", who said that he had been guarding the school and that he remembered when a person who introduced himself as Dado Krstović came to the school and told him that he was there to see a neighbour of his, and that on that occasion he took this neighbour of his into a room on the ground floor of the school, and as he was leaving the school, remarked: "See what a man can do to a lady neighbour!"

During the proceedings, the Court also established that an internal armed conflict was in existence at the time of the commission of this criminal offence, that the accused had been a member of the armed formations of one of the sides to the conflict, that injured party "B1" had been a civilian in a vulnerable position, namely a person who, according to the provisions of international humanitarian law, should have been protected in the armed conflict, and that in the specific case there had existed a nexus between the armed conflict and the underlying acts of the offence committed by the accused. In the specific instance, the accused violated the rules of international law, whereby his conduct featured all the substantive elements of the criminal offence that he stood accused of. The accused had acted with direct intent, as he had been aware of his act and that it was prohibited, but had wanted to commit it.

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In deciding on the sentence, the Court took the defendant's family situation, the absence of a prior criminal record and the fact that he was only 20 years of age at the time of the commission of the offence as mitigating circumstances in his favour, while assessing the level of jeopardy to the injured party in the specific instance, the motives on account of which the crime was committed, and the manifest perseverance in forcing the injured party to sexual intercourse as aggravating circumstances.

The Court referred the injured party to claim damages in civil action, having found that insufficient data had been established during the proceedings to adjudicate on the same. That is because the consequences of the criminal offence charged could not be ascertained from the findings and opinion of court sworn medical expert Dr Omer Čemalović, a neuropsychiatrist. Namely, it was determined from the findings that the injured party had a 45% diminished general vital capacity as a consequence of the post-traumatic stress disorder caused by the circumstances in which the injured party had been whilst in detention together with her children, the conduct of the camp personnel and visitors, the accommodation conditions, the inadequate food and the physical and psychological torture she



had been subjected to as of 25 June 1992, when her husband was taken away. However, the actual percentage with which the act charged exclusively contributed to the diminished vital capacity of the injured party could not be derived from the findings. Neither could it be seen from the findings what the intensity and duration of the fear experienced by the injured party had been. In view of the fact that no reliable parameters existed on the basis of which the Court could decide on the amount of the claim for damages of the injured party, the Court referred her to exercise that right in civil action.⁵³³

Second-instance decision

On 17 December 2021, the Court of Appeal in Belgrade⁵³⁴ ruled to quash the first-instance judgment on account of a substantial violation of criminal procedure, and remanded the case to the court of first instance for retrial.⁵³⁵

The Court of Appeal found that the court of first instance had exceeded the charges, as it had pronounced the defendant guilty of acts undertaken after the injured party was raped, which he had not been charged with in the indictment. Thereby, he was convicted of a larger quantum of crime than that with which he was charged under the indictment. In addition to that, the quality accorded to the accused of the right to a defence was also called into question, and therefore his right to a fair trial. Namely, during the trial the court of first instance presented extensive evidence by displaying the contents of the records of statements of a large number of witnesses given before the Prosecutor's Office of BiH at the investigation stage. As neither the defendant nor his defence counsel had attended these examinations and had had no opportunity to cross-examine the witnesses or to test the credibility of their statements, the accused was brought into an unequal position relative to the prosecutor.

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Retrial

Acting on the order of the Court of Appeals, the court of first instance examined two witnesses, Dragan Cerovina and Miloš Valentić, in the repeated proceedings, and tried to directly examine the witnesses whose testimonies, given during the investigation before the competent authorities of BiH, were read in the previous proceedings. Three witnesses (witnesses B1, B4 and B6) informed the court that they were unable to testify for health reasons.⁵³⁶ Witness Hasnija Ahatović was not duly summoned, because getting in touch with her had been impossible due to her badly impaired hearing; witness Fadila Hatić refused to testify, stating that she was in no condition to testify and refusing to give the court officer her current address; and witness B3 had died in the meantime.⁵³⁷

Witness for the prosecution Dragan Cerovina fully stood by the statement he had given before the competent BiH authorities, and said that in the critical period the "Miladin Radojević" Primary School

533 *Ibid.*

534 Composition of the Chamber: Judge Rastko Popović, Chairperson, judges Olivera Anđelković, Nada Hadži-Perić, Miodrag Majić PhD and Aleksandar Vujičić, members of the chamber.

535 Decision of the Court of Appeal in Belgrade Kž1 Po2 6/21 of 17 December 2021.

536 Transcript from the main hearing of 23 September 2022.

537 Transcript from the main hearing of 6 June 2022.



was secured by police, and that he himself had guarded it on several occasions. Initially, men were detained in the school, and later women and children. He believed that there had been about 185 of them, although no records of detainees were kept. The women had been brought to the school by force. The verbal order given by the Chief Boško Govedarica was that in question were persons who would be exchanged and had to be guarded, and that no one was to be allowed to enter the school. Ranko Krstović, a friend of the witness, came to his home in 2007 and told him that the defendant's aunt and wife had attacked him because he had been saying all kinds of things about the defendant. He then told him that the accused had raped a woman in the school and that this was common knowledge in all of Kalinovik. He stated the full name and surname of the woman, and said that she was the same person that he had talked about in the investigation. However, Krstović later denied this entire conversation, claiming that the witness had made it up. The witness explained that Krstović was "just like that", prone to making things up; asked by the court how come that he had only now remembered that Krstović was like that, he replied, that, well, yes, he had "just now thought of it". Before the conversation with Ranko, someone had told him that Predrag Terzić, now deceased, and Aleksandar Cerovina had been among the security guards. Police officer Danilo Đerem asked the witness how many women he had had while they were at the checkpoint at Ježice, and he said to him that each one of them had had two or three. While the witness was a guard at the school, no one came, except Pero Elez [commander of the Miljevina battalion]. Once, some of "Pero's troops" had attempted to come, entering the hallway armed, and saying that they "wanted to see the Turkish women", but a Serbian girl prevented them from carrying out their intention. The witness did not dare point his rifle towards those soldiers because all of them were armed.⁵³⁸

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Witness for the prosecution Miloš Valentić fully stood by the statements he had given before the competent BiH authorities. He had not known the accused before the latter's marriage. At the critical time, the witness was a policeman securing the "Miladin Radojević" Primary School in Kalinovik. Muslims from Gacko and Kalinovik, men and women, were held at the school. The police stood guard outside the school and would not let anyone in. He heard that some soldiers had entered anyway and "beaten some people who were there". He had not heard that there had been rapes committed at the school, and he could not recall what he had stated earlier.⁵³⁹

Amendment of the indictment

The Office of the War Crimes Prosecutor amended the indictment on 14 November 2022 in such a way that it now explicitly lists all the acts of rape that the accused had committed against the injured party, and that, the accused, only after an unidentified member of the VRS had raped her, entered the classroom where she was raped and threatened not to tell anyone about it because first her children would suffer and then she would.⁵⁴⁰

538 Transcript from the main hearing of 23 September 2022.

539 *Ibid.*

540 Indictment No. 2/19 of 14 November 2022.



The allegations of the indictment thus amended were identical to the sentences of the first-instance judgment rendered by the Higher Court on 13 May 2021.

First-instance judgment at retrial

On 7 February 2023, the Higher Court in Belgrade issued an identical verdict in the retrial, namely, it again found the defendant Dalibor Krstović guilty of rape of the victim B1, and sentenced him to 9 years in prison.

Second-instance judgment

After the hearing, the Court of Appeal in Belgrade⁵⁴¹ issued a verdict on 15 December 2023, partially reversing the judgment of the Higher Court, by finding the defendant Dalibor Krstović guilty of the rape of the injured party B1 at the time, place and manner stated in the original indictment of 26 September 2019 and sentencing him to 5 years in prison, and referring the injured party to litigation for the purpose of pursuing a property claim.⁵⁴²

The Court of Appeal concluded that during the proceedings, evidence was presented on the basis of which it was proven beyond a reasonable doubt that the defendant committed the criminal offence at the time, place and in a manner as charged in the indictment.

However, it also concluded that the first-instance court, passing judgment in the retrial, had exceeded the charge, because it entered into the operative part of the judgment actions not described in the indictment of 29 June 2019. This was because by the previous first-instance verdict of 13 May 2021, by which the defendant was found guilty, only his defence attorney appealed against it, which appeal was granted, inter alia, because the first-instance court had exceeded the charge by including in the operative part of the judgment actions not described in the indictment. During the retrial, the OWCP amended the indictment (by incorporating into it all those acts that were included in the first-instance verdict that had been annulled), which, according to the Court of Appeal, charged the defendant with a more aggravated criminal offence than the original one. In the repeated proceedings, the first-instance court found the defendant guilty by accepting the amended indictment in its entirety. By such a procedure, the first-instance court violated the rule of the prohibition of conversion to the detriment of the defendant. Namely, the CPC stipulates that, in the case where an appeal has been lodged against the judgment only in favour of the defendant, the appeal judgment may not be amended to the detriment of the defendant with regard to the legal qualification of the criminal offence and the criminal sanction⁵⁴³, which rule also applies to the factual situation.

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When deciding on the sentence, the court appreciated as mitigating circumstances the defendant's family circumstances, the absence of a prior criminal record and the fact that during the commission

541 Composition of the Chamber: judge Rastko Popović, Chairperson, judges Nada Hadži – Perić, Olivera Anđelković, Miodrag Majić PhD and Dragoljub Albijanić, members of the Chamber.

542 Judgment of the Court of Appeal in Belgrade Kž1- Po2 3/23 of 15 December 2024.

543 Article 453 of the CPC.



of the offence the defendant was 20 years old, while as aggravating circumstances, it took into consideration the persistence expressed during the coercion to sexual contact with the injured party, as well as the severity of the threats to the injured party on that occasion.

HLC Findings

Inappropriately low sentence

The imposed sentence of imprisonment of only five years, which is also the legal minimum for this criminal offence, is too low, especially given the manner in which the criminal offence was committed -- namely, the fact that the defendant threatened the injured B1 with her children on three occasions, and specifically, that he would rape her child, then that he would take her children, and finally that her children would be killed first, and then she would. He also ordered her not to dress after he raped her in order to make it easier for an unidentified member of the VRS to rape her as well. The degree of cruelty and persistence shown on that occasion required an adequate response in terms of the length of the sentence imposed, and not the legal minimum. Even more so because the Court of Appeal had established the existence of the same mitigating and aggravating circumstances as the first-instance court, which sentenced the defendant to nine years in prison. The Court of Appeal took the stand that the first-instance verdict violated the rule of the prohibition of amendment to the detriment of the defendant, because the charge was exceeded, and therefore he was convicted of an aggravated criminal offence.

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This aggravated criminal offence consisted in specifying the actions related to the manner of committing rape, as well as the threat of the defendant directed at the injured party not to tell anyone what had happened, because otherwise her children and then she would be hurt, which was the threat made to her when she was raped also by an unidentified soldier.

The question is whether in this particular case it was really about exceeding the indictment and an aggravated criminal offence, or whether it was just about matching the description of the enforced action with the established factual situation. Without embarking on such an analysis, it remains undisputed that even in the case of an aggravated criminal offence, these are nuances that in no way justify reducing the prison sentence from nine to only five years.

By imposing a prison sentence at the legal minimum, the permanent consequences suffered by the victim are completely ignored for this criminal offence, which fact the court also had to take into account when deciding on the sentence.

Alignment of the transferred indictment

The indictment that the OWCP issued against Dalibor Krstović is an example of a well-constructed indictment, in particular the rationale describing the facts of the matter based on the results of the investigation, and the detailed presentation of evidence substantiating facts which needed to be proven.



Namely, in the indictment transferred by the BiH Prosecutor's Office⁵⁴⁴, the Prosecutor expounded in detail the elements of the criminal offence of a war crime against the civilian population, but spoke about the concrete evidence which is to confirm the incriminated acts of the accused only in very general terms. Thus, for instance, he stated that "the incriminated act itself, referred to in the operative part of the indictment, is testified to by the victim, the witness under the pseudonym 'B1. In addition to the injured party, witnesses ... shall also testify about the facts surrounding the incriminated act, within the scope of their statements", without specifying the content of and providing an assessment of such statements. At the same time, the presentation of extensive evidence is proposed – of written documentation which does not refer to either the incriminated acts or the incriminated period. It is obvious that the original indictment of the Prosecutor's Office of Bosnia and Herzegovina had been brought for a different criminal offence, namely, for a crime against humanity, and that the BiH Court had not confirmed it, for which reason the Prosecutor simply formally issued the same indictment for a different criminal offence – a war crime against the civilian population, without at all aligning it with the new qualification and the incriminated acts.

Tendentious position of the Court of Appeal

Quashing the first-instance judgment, the Court of Appeal criticised the court of first instance for examining the statements of a number of witnesses who failed to appear and who had given statements in the investigation stage before the competent BiH authorities, without actually hearing them at the main trial. In the assessment of the Court, the quality of the right to a defence was thus compromised and thereby the right to a fair trial. That is because if witnesses are not directly heard, cross-examination and testing of the witness's credibility by the defendant, or possibly a confrontation, are impossible.

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Lately, the Court of Appeal has been known to automatically accept such grounds of appeal by the defence ever more frequently, without considering the actual situation in more detail. Insisting on attempts at securing in whatever way possible the direct examination of these witnesses is a waste of time, with delay to the proceedings the only result. In this specific case, one of the witnesses had died in the meantime, four witnesses refused to testify, and communication was impossible to establish with one witness. The only result of acting upon the decision of the Court of Appeal was the unnecessary waste of time and prolongation of the proceedings, as it became evident that the court of first instance had properly assessed that it was impossible to directly examine the witnesses, not even via video-conferencing. On the other hand, it was indeed questionable whether the right to a defence of the accused had really been impaired, when it is borne in mind that all the defendants had been clearly advised of that fact during the investigation conducted against them in BiH, as they were in fact questioned before the domestic court on the basis of letters rogatory from BiH. On learning that criminal proceedings were being conducted against them in BiH, they could have reported to the competent authority in BiH, could have secured defence counsel, could have directly examined and tested the credibility of all witnesses and proposed the presentation of all evidence they considered

544 Indictment of the Prosecutor's Office of BiH number T20 0 KOWCP 0002825 10 of 20 November 2017.



favourable to their case. Their invoking of the impossibility to directly examine witnesses in the proceedings before the domestic court was in fact an abuse of the right to a defence, which the Court of Appeal should be mindful of.



III. The *Brčko – Rasadnik Camp Case*⁵⁴⁵

CASE FACTS	
Current stage of the procedure: final judgment rendered	
Date of indictment: 21 February 2020	
Trial commencement date: 1 June 2020	
Prosecutor: Dušan Knežević	
Defendant: Osman Osmanović	
Criminal offence: war crime against the civilian population under Article 142 of the FRY CC	
Trial Chamber	Judge Nada Hadži – Perić (President of the Chamber) Judge Rastko Popović Judge Miodrag Majić, PhD Judge Olivera Anđelković Judge Duško Milenković
Number of defendants: 1 Defendant's rank: no rank Number of victims: 4 Number of witnesses heard: 20	Number of scheduled court days in the reporting period: 2 Number of court days in the reporting period: 2 Number of witnesses heard in the reporting period: 1 Total number of experts witnesses heard: 0
Key developments in the reporting period:	
Final judgment rendered	

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⁵⁴⁵ *The Brčko – Rasadnik Camp Case*, trial reports and case files available at: <http://www.hlc-rdc.org/Transkripti/rasadnik.html>, accessed on 27 December 2023.



Course of the proceedings

Indictment

The accused Osman Osmanović is charged with having, in May and June 1992, in a makeshift camp at the "Rasadnik (Plant 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 persons present threatened the injured party that he would be put to the knife should he be found guilty; afterwards, on the following day, the accused unlawfully confined the injured party, who 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 the 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 tortured and beaten, and was as a result all covered in blood, his eyes almost completely shut and his nose, several teeth and one rib 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 a chamber where he was held captive for 31 days, and from which he would be taken out occasionally to clean garbage dumps, or dig up unexploded ordnance from the ground, or for interrogation, at which times he would again be physically and psychologically maltreated.

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- 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.⁵⁴⁶

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, while 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), and 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 knew nothing about his further fate. He had never had any conflict with the injured party. They had met and talked after the war on multiple occasions, and the injured party would ask him to send best wishes to his brother who had moved to America. He was of the view that injured party Pavlović should not have been detained in the detention unit.

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He also knew 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. 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 reported to his superiors about the interviews conducted, and they brought the final decisions, but did not

⁵⁴⁶ OWCP Indictment KTO 1/20 of 21 February 2020, available at: https://tuzilastvorz.org.rs/public/indictments/kto_1_20_cir.pdf, accessed on 27 December 2023.



communicate them. He first received information about the situation in 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, and that they would burst in and maltreat people.

He had no idea why the injured parties were accusing him, but supposed that it had to do with the lawsuit for damages for defamation of character which he had won against the newspaper "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 things, conducted an investigation against the government. At the time, he had investigated 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.⁵⁴⁷

Witnesses in the proceedings

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Injured party Vasiljko Todić stated that he had been detained in Gornji Rahić for 83 days, and 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 recalled that detained with him were Aleksandar Pavlović, Milenko Radušić and Blagoje Vujanović, who had all 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, while others beat him and punctured him with awls, so that he lost consciousness a number of times. During his stay at 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.⁵⁴⁸

Witness Mara Vukmirović, the daughter of injured party Aleksandar Pavlović (now deceased), learned about the critical event from her father's accounts. She knew that he had been issued no decision whatsoever on detention or anything else in connection with his detention at 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

⁵⁴⁷ Transcript from the main hearing of 1 June 2020.

⁵⁴⁸ Transcript from the main hearing of 27 July 2020.



her father called this metal container "the cold room". 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 and to leave town, 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 the 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.⁵⁴⁹

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 the scars on his body. From his words she learned that the conditions in Rahić had been poor, that they slept on the floor, and that they did not have water or enough food. When her brother returned home he was very thin, and felt the consequences of the beating for quite 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.⁵⁵⁰

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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, never to be 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 at 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.⁵⁵¹

Witness for the prosecution Arman Jašarević stated that in the critical period he had been a military police platoon leader, and that they had 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 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 itself. 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

549 Transcript from the main hearing of 1 July 2020.

550 *Ibid.*

551 Transcript from the main hearing of 29 September 2020.



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, and 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 hands and closed fists, and with rods, and kicked them.⁵⁵²

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 on 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.⁵⁵³

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Defence witnesses Hazim Mujkić and Novalija Fazlović had no knowledge that the accused had maltreated detained civilians.⁵⁵⁴

Defence witness Ferid Fazlović testified, as the leader of the State Security Operations Group in the critical period, about who issued orders to the members of the group and about the circumstances surrounding the setting up of the detention unit at Okrajci. He knew that the accused and Senad Jašarević had interviewed Milenko Radušić. As at that time work had not been systematically organised, the witness does not know what exactly the role of the defendant had been in the first 10 to 15 days.⁵⁵⁵

Defence witnesses Esad Bando, Hadžaga Hodžić and Niko Salatović had no knowledge that the accused had mistreated prisoners.⁵⁵⁶

552 Transcript from the main hearing of 27 July 2020.

553 Transcript from the main hearing of 23 November 2020.

554 Transcript from the main hearing of 17 December 2020.

555 Transcript from the main hearing of 5 March 2021.

556 *Ibid.*



Defence witness Zekerija Mujkanović stated that he knew the accused, but that he had not known him or seen him in the period covered by the indictment, namely in May – June 1992.⁵⁵⁷

Defence witness Hajrudin Jusufović, one of the organisers of the defence of Brčko, was called to testify in respect of the place and role of the accused Osman Osmanović in the period from 4 to 8 May 1992. He stated that he had been the commander of the Territorial Defence Crisis Staff of the Klanac local commune, and that the accused had been a member of his unit in that period. He was discharged before the MUP departed for Gornji Rahić, where he was to report on 8 May 1992. After he joined the MUP, he did not see the accused in May or June 1992.⁵⁵⁸

Defence witness Šefko Kaloper stated that he knew the accused from before the war, as he had been a member of the police – the State Security Service. In the period from 3 May to the end of June 1992 he was in Gornji Rahić, and had on occasion come across the accused in the street. He knew that in that period the accused had been tasked with interviewing the first group of twenty-odd persons who had been exchanged from the Luka Camp. He had no official contacts with the accused.⁵⁵⁹

Defence witness Momir Zec stated that he did not know the accused⁵⁶⁰, and witness Amir Sudar stated that he had never seen him at Okrajci, where he had been detained for a while.⁵⁶¹

Defence witness Halil Tahto stated that he knew the accused, and that he knew that the same had been in the police force in May and June 1992. On 19 May 1992, the witness became a member of the Commission for Gathering Data on War Crimes, given the fact that he used to work for the former State Security (Service). In June 1992, the witness was appointed Deputy Chief of Staff of the Intelligence Service of the 108th HVO (Croatian Defence Council) Brigade. A state security operations group had been formed by former members of the State Security Service when they left Brčko following the outbreak of the first armed conflicts. The accused had not been a member of this group – he was with the public security sector. The witness did not know before whom those persons who were arrested at checkpoints would be brought, or who could decide whether they would be detained. He occasionally saw the accused, but did not know what his job was, as they had no official contacts. He refuted the defendant's statement that he had ordered him to interrogate Aleksandar Pavlović, because the defendant had neither been a member of the Operations Group, nor did he have the authority to decide on detaining arrested persons.⁵⁶²

Defence witness Suad Kurtović stated that he knew the accused, as they had both been on the police force prior to the outbreak of armed conflicts in Bosnia and Herzegovina. Injured party Aleksandar Pavlović (a.k.a. Aca) was the witness's next door neighbour, and he was trying to help Aca get out of Brčko, when they were both captured at the Rahić checkpoint and taken to the police. The police

557 *Ibid.*

558 *Ibid.*

559 Transcript from the main hearing of 14 April 2021.

560 Transcript from the main hearing of 28 May 2021.

561 *Ibid.*

562 *Ibid.*



told him that they had received a tip that his neighbour Aca had a radio set. They talked to the police, the accused and another police officer, and the witness and Pavlović recounted the whole story to the police – about their intention to come to Rahić – after which the witness was released, although Pavlović was detained until the allegations about the radio set were checked. Aca remained in prison, and after a month the witness went to Okrajci, where the prison was, to pay him a visit. Actually, the prison was a warehouse with a tin roof, and unliveable. He noticed that Pavlović had visibly lost a lot of weight. Pavlović approached him and told him that in the evening drunken fighters would come from the battlefield and torment the prisoners. He did not specifically name any of the persons who had maltreated him. After the war, when on one occasion he met Aca, they talked about the time Aca had spent in prison, and he again told him that he had been maltreated, but did not mention any names that time either. Neither did he say that he had sustained any injuries during his detention at the camp. He never mentioned the accused.⁵⁶³

The acting deputy war crimes prosecutor amended the indictment, by leaving out allegations that the accused had also inhumanely treated, intimidated, unlawfully detained, tortured and perpetrated violence against other unidentified persons; the amended indictment charges the accused that, as one of the chief interrogators at the Rahić camp, he had committed such acts only against injured parties Aleksandar Pavlović, Milenko Radušić, Vasiljko Todić and Rado Simić.⁵⁶⁴

First-instance judgment

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On 18 March 2022, the Higher Court in Belgrade rendered a judgment finding the accused Osman Osmanović guilty of the criminal offence of a war crime against the civilian population, and sentenced him to a term of imprisonment of five years.⁵⁶⁵

The Court established that, in May and June 1992, the accused, in his capacity of a MUP inspector in Brčko, together with a number of members of the Croato-Muslim forces in the armed conflict, inhumanely treated Vasiljko Todić, a VRS member, and two Serb civilians, Rado Simić and Milenko Radušić. The accused intimidated and inflicted bodily harm on injured party Milenko Radušić, who had been arrested at the Okrajci checkpoint near Gornji Rahić (Brčko municipality, BiH), hitting him with police truncheons and a variety of batons. Other members of Croato-Muslim armed units also participated in the infliction of bodily harm on the injured party, with whose actions the accused agreed, accepting them as his own. He also participated, in June 1992, in the interrogation of and infliction of bodily harm on Vasiljko Todić, who had been arrested as a VRS member. In the course of June 1992, at the Okrajci locality where a makeshift camp had been set up, he took injured party Rado Simić out of a metal plate chamber, and inflicted bodily injury on him by hitting and kicking him on the body. The Court omitted from the enacting terms of the judgment the defendant's treatment of injured party Aleksandar Pavlović, maintaining that such acts did not constitute an act of commission of a criminal offence. It also left out the defendant's conduct vis-à-vis all injured parties during the

563 Transcript from the main hearing of 5 November 2021.

564 *Ibid.*

565 Judgment of the Higher Court in Belgrade K.Po2 1/20 of 18 March 2022.



period of their detention, because the defendant had not been the superior of the persons who were harming the injured parties. The mere presence of the accused at such events in the absence of a single act that could be interpreted as his consenting to such conduct and accepting it as his own, did not make him a co-perpetrator in the incriminated acts.

In weighing the sentences, the Court assessed as mitigating circumstances in favour of the accused the absence of a criminal record, his family situation and the lapse of time since the commission of the offence. The court assessed as aggravating circumstances his persistence and ruthlessness in committing the crime, and its consequences.⁵⁶⁶

The accused was remanded in custody until dispatched to serve his sentence, or until its expiry at the latest.

Course of the proceedings in 2023

Second-instance judgment

On 26 January 2023⁵⁶⁷, after a hearing, the Court of Appeal in Belgrade issued a judgment by which it reversed the first-instance verdict, found the defendant Osman Osmanović guilty of the criminal offence of war crime against civilians – inhumane treatment, application of intimidation measures, torture and infliction of great suffering and violation of bodily integrity against the injured party Miljenko Radušić, and sentenced him to three years and six months in prison.⁵⁶⁸

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With the same judgment, the court acquitted the defendant of the accusation that he treated the injured party Vasiljko Todić inhumanely and committed violence against his health, physical and mental well-being, finding that the acts committed by the defendant did not constitute the acts of the criminal offence charged against him.

Also, due to the lack of evidence, the Court omitted the actions of the defendant towards the injured party Rado Simić from the factual description of the judgment, and assessed that the first-instance court acted correctly when it omitted the treatment of the defendant towards the injured party Aleksandar Pavlović from the operative part of the judgment, finding that such actions did not constitute an act of committing a criminal offence.

As mitigating circumstances on the part of the defendant, the Court took into consideration his family circumstances and absence of prior criminal record, while as aggravating circumstances the conditions under which the criminal offence was committed, the severity of the committed offence, and the resulting consequences in the form of inflicting psychological and physical suffering on the injured party.

⁵⁶⁶ *Ibid.*

⁵⁶⁷ Trial Chamber: judge Nada Hadži – Perić, Chairperson, judges Rastko Popović, Miodrag Majić, PhD, Olivera Anđelković, PhD, and Duško Milenković, members of the Chamber.

⁵⁶⁸ Judgment of the Court of Appeal in Belgrade Kž1 Po2 2/22 of 26 January 2023.



In relation to the acquittal part of the judgment, the Court of Appeal took the position that the first-instance court was wrong to find that the defendant's actions directed against the injured party Vasiljko Todić had shown important characteristics of inhumane treatment. Inhumane treatment is defined as an action that inflicts severe physical suffering or is a serious attack on human dignity, while the actions taken by the accused, such as a slap in the face and "cursing his mother for lying", did not represent it. Thus, such acts did not reach the minimum level of cruel treatment to constitute inhumane treatment, and therefore did not constitute an act of commission of the criminal offence for which the accused was charged. Therefore, the court acquitted the defendant of criminal responsibility for these actions.

HLC Findings

Excessive anonymisation of the indictment

218 The indictment of OWCP in this case, which is available to the public on the OWCP website within the section "Indictments"⁵⁶⁹, was anonymised in such a way that only the disposition in which the data on the name of the accused were anonymised was published, which is not in accordance with the Rulebook of the OWCP on the anonymisation of personal data in indictments of the Office of the War Crimes Prosecutor.⁵⁷⁰ Namely, the Rulebook provides that OWCP indictments "shall as a rule be published in their entirety on the OWCP webpage, but with any 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".⁵⁷¹ Instead of publishing the indictment as a whole, only its operative part was published, so it was not possible to determine in any way on which evidence the OWCP 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, the address, date and place of birth"⁵⁷² but, 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".⁵⁷³ 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, which is public disclosure of the identity of a person who stands accused of a war crime.

569 OWCP Indictment KTO no. 1/2020 of 21 February 2020, available at: https://tuzilastvorz.org.rs/public/indictments/kto_1_20_cir.pdf, accessed on 27 December 2023.

570 Rulebook on the Anonymisation of Personal Data in War Crimes Prosecution Indictments of 20 March 2019, available at: https://www.tuzilastvorz.org.rs/public/documents/2021-04/%D0%9A%D0%A2%D0%9E_2_20_%D0%90%D0%BD%D0%BE%D0%BD%D0%B8%D0%BC%D0%B8%D0%B7%D0%BE%D0%B2%D0%B0%D0%BD%D0%BE.pdf, accessed on 27 December 2023.

571 *Ibid*, Article 1, paragraph 2.

572 *Ibid*, Article 5, paragraph 1.

573 *Ibid*, Article 5, paragraph 2.



Apart from that, such anonymisation is wholly unnecessary, given the fact that the media⁵⁷⁴ have been reporting on the accused ever since his arrest in 2019, and some have published his photograph as well.⁵⁷⁵

The first-instance and second-instance judgments delivered by the Belgrade Higher Court to the HLC were also overly anonymised. In fact, the names of the injured parties and witnesses were completely anonymised, so that an understanding of the judgments by persons who did not monitor the trial is almost impossible. It cannot be concluded how many witnesses testified to specific circumstances, whether it was one or more witnesses, whose testimonies the court accepted, or to which of the injured parties the testimonies relate. This anonymisation procedure is the simplest for the court, but instead of completely obscuring the data, the data should be altered (e.g. “injured party A.A.”, or “witness B.B.”), so that by reading the judgment, a clear picture can be obtained of the critical event, the statements given and all the circumstances that the court took into consideration when deciding. In addition, the trial was public throughout its entire duration.

Unexplained decision on the sentence in the second-instance judgment

When deciding the sentence of the defendant, the Court of Appeal, both in the operative part of the judgment and in its explanation, referred to the provisions of Article 5 of the FRY CC (criminal sanctions and their general purpose), Article 33 (purpose of punishment), Article 38 (imprisonment) and Article 41 (measurement of sentence), and sentenced him to imprisonment for 3 years and six months, i.e. below the legal minimum of five years for the criminal offence in question, without referring to the legal provision on mitigation of the sentence, i.e. Article 42 of the FRY CC. The Court has not explained its decision. Article 42 of the FRY Criminal Code does indeed stipulate that the court may impose a sentence on the perpetrator below the limit prescribed by law when it determines that there are particularly mitigating circumstances that indicate that even a reduced sentence could achieve the purpose of punishment. In its judgment, the Court of Appeal did not even mention that it accorded some circumstances the importance of being particularly mitigating, nor did it explain why these circumstances or their totality represented the particularly mitigating circumstances that formed the basis for lowering the sentence. This means that the court, when measuring the sentence, did not state that it applied a certain legal provision, nor did it explain why it applied it. This is inadmissible for any court, and especially for the Court of Appeal.

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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

574 Novosti, “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 8 January 2024.

575 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 8 January 2024.



in BiH territory where the witnesses and the injured parties are residing. However, the request was declined. It is not disputed that the state authorities of the Republic of Serbia, in accordance with the provisions of the Law on the Organisation and Jurisdiction of State Authorities in War Crimes Proceedings⁵⁷⁶, are competent to conduct proceedings against Osman Osmanovic. 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.⁵⁷⁷

However, with a view to intensifying regional cooperation, which is necessary for prosecuting efficiently all suspects, and also for building victims' confidence, the HLC is of the opinion that these proceedings should have been transferred to BiH. After all, in 2021, the criminal prosecution of Edin Vranj, a BiH national, who, like Osman Osmanović, was arrested on entering Serbia, was transferred to BiH. At the time of Osman Osmanović's arrest and indictment an identical legal framework was in place, providing for the possibility of prosecution transfers, so there was no reason not to have taken such action.

576 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- other law and 6/2015).

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



IV. The *Teslić Case*⁵⁷⁸

CASE FACTS	
Current stage of the procedure: final judgment rendered	
Date of indictment: 30 December 2019	
Trial commencement date: 28 September 2020	
Prosecutor: Ivan Marković	
Defendant: Nebojša Mirović	
Criminal offence: war crime against the civilian population under Article 142 of the FRY CC	
<p>Case transferred from BiH</p> <p><i>This proceeding is the result of cooperation between Serbia and BiH in the prosecution of war crimes, which was intensified after the OWCP and the Prosecutor's Office of BiH signed the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide in 2013. The confirmed indictment against the defendant was transferred by the Doboj District Public Prosecutor's Office, given that the defendant, who is a citizen of the Republic of Serbia and residing in Serbia, was not available to the authorities of BiH.</i></p>	
Trial Chamber	<p>Judge Rastko Popović (Chairperson)</p> <p>Judge Nada Hadži - Perić</p> <p>Judge Miodrag Majić, PhD</p> <p>Judge Olivera Anđelković</p> <p>Judge Dragoljub Albijanić</p>
<p>Number of defendants: 1</p> <p>Defendant's rank: no rank</p> <p>Number of victims: 36</p> <p>Total number of witnesses heard: 12</p>	<p>Number of scheduled court days in the reporting period: 3</p> <p>Number of court days in the reporting period: 2</p> <p>Number of witnesses heard in the reporting period: 0</p> <p>Total number of experts witnesses heard: 0</p>
<p>Key developments in the reporting period:</p> <p>Final judgment rendered</p>	

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⁵⁷⁸ *The Teslić Case*, trial reports and case files available at: <http://www.hlc-rdc.org/Transkripti/teslic.html>, accessed on 3 January 2024.



Course of the proceedings

Indictment

The accused Nebojša Mirović is charged with having participated, in the summer of 1992, on the territory of Teslić municipality (BiH), 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 baton;
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 a Bosniak civilian about the possession of weapons, he kept hitting him in the neck and all over the body with a wooden baton;
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 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, he forcefully 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 Ružević, while local Bosniaks were digging a canal by the roadside, he 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 Ružević, he beat viciously with a wooden bat a Bosniak civilian and his minor son, then 14 years old;
9. In June 1992, in the building of the Teslić Territorial Defence, together with a member of the Teslić Police Station, he ordered a Bosniak civilian under interrogation to press his forehead against the



wall and raise his arms with three fingers extended and then delivered two series 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 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, he 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 struck 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, he 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 Ružević, he beat a Bosniak civilian with a crossbar, the metal part of a horse-drawn cart, on the left shoulder and back, as a result of which the injured party fell down and fainted.⁵⁷⁹

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 had 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 the injured parties.⁵⁸⁰

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Witnesses in the proceedings

Witness Radomir Jokić was mobilised at the beginning of August 1992 to the post of Chief of Police in Teslić. He did not know the accused, nor did he have any knowledge about his activities during the war. About 20 members of Serb paramilitary forces who had imposed a reign of terror had been arrested in Teslić.⁵⁸¹

Witness Ratko Marković stated that the accused had only been a casual acquaintance. He was a member of the reserve police force in Teslić, but had not participated in any actions together with the accused. He occasionally saw him in passing, in town.⁵⁸²

579 OWCP Indictment KTO 4/19 dated 30 December 2019, available at: https://www.tuzilastvorz.org.rs/public/indictments/kto_4_2019_%D0%90%D0%BD%D0%BE%D0%BD%D0%B8%D0%BC%D0%B8%D0%B7.pdf, accessed on 24 January 2023.

580 Transcript from the main hearing of 28 October 2020.

581 Transcript from the main hearing of 25 February 2021.

582 *Ibid.*



Witness Nenad Dakić, a member of the reserve police force in Teslić, stated that he knew the accused only superficially. They had never been in an action together.⁵⁸³

At the critical time, witness Ibrahim Salkanović was a member of the regular police force in Teslić. He knew the accused from that period as a member of the reserve police force. People called the accused Nešo and “Srbijanac” [The Serbian], and he had met him quite a few times. He did not know what kind of arms the accused had, but he knew that the reserve police force was equipped with PAPs (semiautomatic rifles) and automatic rifles. He had no first-hand knowledge of the critical events. His father had told him that the accused had been with a group of policemen who had conducted a search of his house, on which occasion the accused had smashed a photograph of Tito. Smail Jašarević told him that the police had searched his house, and that the accused had been among them and had hit him on the back and placed a knife under his throat on that occasion.⁵⁸⁴

Witness and injured party Šaban Zukić met the accused only when a group of Bosniak men, comprising the witness, were driven away from Gornji Ružević in the direction of the village of Halušići by members of the Serb police. The accused slapped him in the face on that occasion. He was taken to Teslić for an interrogation which was conducted in a building beside the SUP [Secretariat of the Interior]. He was interrogated by a policeman in civilian clothes, who beat him, while another uniformed policeman only kept the interrogation record. Every now and then, the accused would come into the room where he was being interrogated and hit him on the body with a truncheon. At a certain point he grabbed him by the hair, threw him down on the floor and viciously hit him in the area of the spine, and the witness fainted from the blow. The accused was in uniform and armed at that moment. Later, the accused often came to the witness's house allegedly looking for some weapons, but he also asked for fuel, as the witness owned farming machinery and had some fuel in stock. The witness's wife complained to Chief of Police Radulović that the accused often maltreated them, after which he stopped coming.⁵⁸⁵

Witness and injured party Asim Halušić stated that he lived in the village of Donji Ružević in Teslić municipality and that he knew the accused not as Nebojša Mirović, but by his nickname “Mićo Srbijanac” [The Serbian], as one who used to come and assign civilian Bosniak men to work duty. Once, when they were on work duty, the accused separated a group of men, among whom were the witness and Šaban Osivčić, and ordered them to enter a mosque, where they had to lie down on the floor. There were other armed men there with the accused, whom he could not recognise as they wore masks. They took them away and beat them whilst having them face the wall, so that the witness could not see who beat him. After the beating, Šaban remained lying on the floor and died shortly afterwards from the consequences of the beating.⁵⁸⁶

583 *Ibid.*

584 Transcript from the main hearing of 20 May 2021.

585 Transcript from the main hearing of 14 June 2021.

586 *Ibid.*



Witness and injured party Hidajet Halušić stated that in June 1992 he was apprehended and locked up in the building of the former Territorial Defence (TO) in Teslić, with some 130 other Bosniak men. One day, the accused arrived and called him out by his name and surname and led him out to another room, where he beat him. He ordered him to stand facing the wall, to place his forehead against the wall and to raise three fingers. He hit him on the back with some sort of a bat. He beat him on two occasions. He also kicked the witness, breaking two of his ribs. At that time the accused was a big, brawny man; he wore a blue police jacket. He had not known the accused before that, but other detainees who knew him had told him who he was.⁵⁸⁷

Witness and injured party Adem Hodžić stated that he knew the accused, who used to come to his village as a policeman in the critical period, but that he had treated him correctly.⁵⁸⁸

Witness for the prosecution Sead Jašarević stated that at the time of the armed conflicts in BiH he lived in the village of Donji Ružević in Teslić municipality. In the June and July 1992 period, weapons were seized from Bosniaks, who were also taken to do various kinds of work. The accused Mirović was in charge of all this. Before these events he had not known him, and the locals called him Nebojša, Neša or “Srbijanac” [The Serbian]. The population of his village was at first informed that they were to surrender their weapons; then later, they came to the village, had the locals assemble outside the Centre, took them into the Centre and beat them. He saw Srbijanac beat up his neighbours. He saw him from time to time until November 1992, when he left the village. Sometime in mid-July 1992, a reserve police officer came to the witness’s house armed with a pistol, together with “his mate”, and took him to a clearing where Srbijanac and several other policemen were. There he saw Haso Jašarević, who had already been beaten up, and Srbijanac hitting him with some kind of a pole several times. The policemen asked the witness about all sorts of things. Minja Tomić then beat him on the orders of Srbijanac [The Serbian], who asked him who in the village had weapons. In the witness's assessment, the accused was the boss of the reserve police -- he did not belong to either the army or the police, but to some special external unit. When asked why he was saying only now that he too had been beaten up, the witness answered that nobody had asked him about it before. To the Chairperson's observation that nobody had asked him about it now either, but that he had recounted it anyway, the witness said nothing. He explained that in that period every village had guards, and that in his village various weapons such as rifles and mines had been handed over.⁵⁸⁹

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Witness Predrag Markočević stated that at the time of the critical events he was a member of the police in Teslić, namely, that he had been in the police force from 1985 until he retired. From September 1991, he worked as the Chief of the Crime Department, and from April 1992 he was considered the commander of the peace-time police station. In May and June 1992, the police in Teslić had a reserve force comprising men who were not locals, because people would be mobilised wherever they could be found. In line of command, he was the defendant’s superior. On 15 April 1992, the BiH Army was founded and everybody was arming themselves. On 19 May 1992, the municipal Muslim TO

587 *Ibid.*

588 Transcript from the main hearing of 2 December 2021.

589 Transcript from the main hearing of 20 September 2022.



Staff numbered between 600 and 700 men under arms, although some of them were listed in the indictments as civilians. The village of Ružević was only two kilometres away from the front line and its Muslim inhabitants were well armed. When disarmament was undertaken, 51 Muslims were found to possess military weapons and criminal charges were pressed against them; the witness submitted a list of their names to the court. Over 400 military weapons were found in the Teslić area. Sead Jašarević, formerly a JNA officer, was in the village of Ružević and he armed the entire village. At night, the Muslims posted guards in the villages armed with military weapons. There had been complaints about the police, but none with respect to the accused.⁵⁹⁰

226 Defence witness Veselin Medojević stated that he had arrived in Teslić in September 1991 as the commander of a JNA battalion. In early 1992, paramilitary units began to appear. The first was the "Patriotic League", the military wing of the SDA [Party of Democratic Action], that is to say, of the Bosniaks, which armed the local Bosniak population. Negotiations were held for military weapons in their possession to be handed over, a process which in a number of places was refused, whilst attacks on the army also started. Following the adoption of the decision for the JNA to withdraw from BiH, the witness handed over the soldiers to the VRS, because it was men hailing from those parts who were in question, and he himself remained in Teslić, as there had been no possibility for him to transfer to Serbia. In mid-May 1992, a paramilitary formation called "Miće" turned up in Teslić. It consisted of Serbs from the area of Doboj and Maglaj. They came armed and in various army and/or police uniforms. On arriving in town, this group staged a mini-coup d'état. They beat people up, and plundered and terrorised the locals. Other paramilitary units also cropped up in the area of the municipality, presenting themselves as some kind of an army. The witness remained in Teslić until late June 1992. While he was still in Teslić, the decision was announced that all men fit for military service, regardless of where they came from but to be found in the territory of Republika Srpska, were to report to the army or the police. That is how the accused also came to be assigned to the reserve police force. The reserve police force wore uniforms just like the active force. Daily staff meetings were held, attended by representatives of the military brigade which was in the area, the police, and the local authorities, and one of the topics of the briefings was the assignment to the army or the police of men from Serbia, Montenegro or Macedonia who happened to be in Teslić. These men were called for interviews, so that the authorities could meet them and assess whether they needed any training and where they would be assigned; which is how the witness came to meet the accused, among others. He knows that the accused had the nickname "Srbijanac" [The Serbian]. The accused had not been a member of the "Miće" group, but actually took part in the action of their arrest. During the period the witness stayed in Teslić, there had been no complaints against the army or the police. He knew where the village of Donji Ružević is, but throughout his stay in Teslić he had not heard of any actions having been undertaken there, or of any gathering of locals.⁵⁹¹

590 *Ibid.*

591 Transcript from the main hearing of 6 December 2022.



Course of the proceedings in 2023

During the reporting period, three court days were scheduled, two of which were held, whilst one was postponed due to the absence of the defence counsel of the accused Nebojša Mirović.

First-instance judgment

On 6 March 2023, the Higher Court in Belgrade⁵⁹² issued a judgment acquitting the defendant Nebojša Mirović of the charge that he committed the criminal offence of war crime against civilians referred to in Article 142 of the FRY CC, in the manner that was charged to him by the indictment of the OWCP.⁵⁹³

The court found that it was indisputable that the defendant was part of the reserve police in Teslić, and that he went to the village of Donji Ružević and other villages in the vicinity of Teslić in a search for the surrender of weapons. The court also found that during the critical period, there were paramilitary formations in the Teslić area, and that one of them was a group called "Miće", which terrorised the civilian population of Bosniak nationality. Some witnesses stated that the nickname of the defendant was "Srbijanac" [The Serbian], but they had described him differently. For some, he was a tall and large man, for others he was short and blond, so it was not possible to reliably determine that the defendant was the person nicknamed "Srbijanac" [The Serbian]. Also, the OWCP omitted to cite any of the injured parties or witnesses for some counts of the indictment. For some of the injured parties listed in the indictment, there is no information about where they are or who they are, nor have they ever been questioned before a competent authority regarding the critical events. Bearing in mind all the above, the Trial Chamber concluded that the evidence presented during the proceedings was not clear and reliable enough to conclude beyond a reasonable doubt that the defendant committed the criminal offence for which he is charged, as a result of which the Court rendered an acquittal.⁵⁹⁴

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Second-instance judgment

On 9 November 2023, the Court of Appeal in Belgrade rendered a judgment, rejecting the appeal of the OWCP as unfounded and confirming the first-instance judgment.⁵⁹⁵

The Court of Appeal assessed that the first-instance court correctly concluded that there was not enough evidence that the defendant had committed the criminal offence charged against him by the indictment, so it accepted it as correct, and assessed the appellate allegations as unfounded.⁵⁹⁶ Namely, the Court of Appeal fully accepted the assessment of the first-instance court that the testimonies of witnesses/injured parties who stated that they knew the defendant and knew what he looked like were mutually contradictory, many even to themselves, that they were confusing, whereby it could only

592 Composition of the Chamber: judge Snežana Nikolić-Garotić, Chairperson, judges Vinka Beraha Nikićević and Vladimir Duruz, members of the Chamber.

593 Judgment of the Higher Court in Belgrade K.Po2 5/19 of 6 March 2023.

594 *Ibid.*

595 Judgment of the Court of Appeal in Belgrade Kž1 Po2 4/23 of 9 November 2023.

596 *Ibid.*



be concluded reliably that the defendant had the nickname "The Serb" and that he was in the police reserve, and that he was married to a woman from Teslić. These witnesses did not know the name of the person they described or about whom they stated that he did something, but they reported that they heard from others that it was "The Serb", but from their statements it could not be concluded beyond a reasonable doubt that it was precisely the defendant. This was especially because there were other paramilitary units in the area at the same time, including the so-called "Miće", who were all newcomers and who committed atrocities, and that the locals and other newcomers called "Srbijanac" [The Serbian].⁵⁹⁷

HLC Findings

Non-critical taking over of indictments through regional cooperation

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Bearing in mind the shortcomings in the indictment itself, which were pointed out by the first- and second-instance courts in their judgments, it is obvious that it was very superficial and more work on it necessary i.e. the collection of more supporting evidence. The position of the OWCP, which indiscriminately took over the indictment without first examining its quality in terms of the offered evidence, is worrying. In this way, the appearance of work being carried out by the Prosecutor's Office itself is created, and the number of indictments filed fictitiously increased, but to no real effect. On the contrary, great damage is done, because human and material resources are unnecessarily spent during the conduct of proceedings based on an incomplete and insufficiently prepared indictment, and therefore the outcome of the proceedings does not contribute to the achievement of justice. The injured parties from BiH, who gave their consent for the case to be transferred to the judiciary of the Republic of Serbia, some of them even testifying before the court, felt humiliated and deceived.

The task of the Public Office for War Crimes Prosecutor is not to raise as many indictments as possible, thus justifying the purpose of its existence, but to lead to the punishment of those responsible for war crimes by validly accusing and proving indictments during the proceedings.

⁵⁹⁷ *Ibid.*



V. The *Đakovica* Case⁵⁹⁸

CASE FACTS	
Current stage of the procedure: final judgment rendered	
Date of indictment: 28 June 2022	
Trial commencement date: 9 September 2022	
Prosecutor: Ljubica Veselinović	
Defendant: Petrit Dula	
Criminal offence: war crime against the civilian population under Article 142 of the FRY CC	
Trial Chamber	Judge Olivera Anđelković (Chairperson) Judge Rastko Popović Judge Nada Hadži - Perić Judge Miodrag Majić, PhD Judge Dragoljub Albijanić
Number of defendants: 1 Defendant Rank: low Number of victims: 1 Number of witnesses heard: 4	Number of scheduled court days in the reporting period: 2 Number of court days in the reporting period: 2 Number of witnesses heard in the reporting period: 0 Total number of experts witnesses heard: 0
Key events in the reporting period:	
Final judgment rendered	

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⁵⁹⁸ *The Đakovica Case* trial reports and case files available at: <http://www.hlc-rdc.org/Transkripti/djakovica2.html>, accessed on 4 January 2024.



Course of the proceedings

Indictment

The accused Petrit Dula is charged with having, as a member of the KLA, with several unidentified KLA members, on an unspecified date in the second half of June 1999, in Đakovica, forcibly taken out of the house of Lala Đeljone the civilian Gazment Krueziu and brought him to his house in Đakovica, where he subjected him to inhumane treatment, physically maltreated him and inflicted bodily injury on him by hitting him with a baseball bat, throwing bottles full of liquid at him, and striking him above the right ear with a full bottle, as a result of which the injured party repeatedly fainted, while other KLA members hit him with rifle butts, hands and feet, after which they took him to the KLA headquarters in the village of Babaloć. There, other KLA members maltreated him and interrogated him about the burial places of KLA members and their relatives who had lost their lives during the armed conflicts, and about participation in conflicts on the Serbian side.⁵⁹⁹

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 in Kosovo he was in Bulgaria at a friend's house, because he did not want to participate in any combats. He had lost his passport, but was afraid to go to the embassy to report it, and after the war he returned to Kosovo illegally via Macedonia. He had never been a KLA member, and did not have a uniform or weapons. He was on the street near his house talking to neighbours, when in the evening a vehicle – a white "Lada" – arrived, in which he saw the injured party, who was covered in blood. He knew the injured party by sight, as Gazment, but he did not know his last name. In the car, besides the injured party, was Rifat Mađuni, whom he recognised, while he did not know the car driver. They had come allegedly looking for some KLA card, but he did not know whose. While they were on the street, he did not see the injured party being hit or mistreated in any way by anyone. He had heard that the injured party worked at the cemetery, and that he had allegedly cut off the finger of one of the deceased to get his ring, and that the deceased in question was a relative of a KLA member. He knew Hasi Ruždi, and had heard that he had mentioned him in a negative context in some criminal proceedings, in order to lessen his own responsibility.⁶⁰⁰

Witnesses in the proceedings

Witness and injured party Gazment Krueziu explained that six men had taken him away from his mother-in-law's house in Đakovica, tied him up and started to beat him in an unknown street. As they were beating him, the only thing he could hear was them mentioning a certain "Petrit", but he did not hear his last name. They took him away several times. He did not know the people who seized

599 OWCP Indictment KTO 6/22 dated 28 June 2022, available at: <https://www.tuzilastvorz.org.rs/public/indictments/2022-09/%D0%9A%D0%A2%D0%9E-6-22%20%D0%B0%D0%BD%D0%BE%D0%BD%D0%B8%D0%BC%2C.pdf>, accessed on 4 January 2024.

600 Transcript from the main hearing of 9 September 2022.



him except for Rifat and Ljuan, nor could he say exactly in what month or year. The witness/injured party was shown his 2011 statement given in Podgorica, in which he said that he had recognised the accused, to which the witness replied that he had only recognised a certain Ruždiu, and that he did not remember the other ones now. In the witness's neighbourhood there were several persons by the name of Petrit, so that now he was not sure whether the accused was that particular Petrit. He denied that, when making the 2011 statement, he had given the defendant's first, last and father's name. The Chairperson noted that it was his statement given in Podgorica that was in question, in which it was not stated whether during his examination the witness/injured party was advised of his right to use the Albanian language as his native tongue, nor that there had been an interpreter present, nor whether the witness/injured party wished to make his statement in the Serbian language. She also pointed out the fact that the statement had been drawn up in the Cyrillic script, while the witness/injured party stated that he was unable to read anything written in Cyrillic. After the deputy war crimes prosecutor showed him a part of his 2011 statement where he said that on the critical day he had been brought to the defendant's house, the witness/injured party stated that he had been taken to the village of Babaloć in a white "Lada Niva" car, and that the men who had come for him wore KLA uniforms and had something like bombs attached to their uniforms. He also stated that this did not concern Petrit, for he was not there that day. A certain Petrit was present only when they were leading him away from his mother-in-law's house to a street unknown to him. In the car as they were leading him away they beat him with a baseball bat. He was not beaten by any person named Petrit, nor was the house in which they beat him in Đakovica. He repeated that he did not know Petrit Dula or his father. He thought that the reason they beat him was that they suspected him of cutting off the fingers of dead people to obtain their rings, as in that period he worked on transport of the deceased. After these events he went to Montenegro, and still lives there. The accused was also ushered into the courtroom, and after looking at him, the witness/injured party stated that "this is not the man", and that "that one was taller", and that it was not this Petrit, but another Petrit whom he knew well.⁶⁰¹

Witness Antigona Bahtijari, ex-wife of injured party Gazment Krueziu, lived in Đakovica in the critical period, but in that period her ex-husband spent more time with his second wife, and only came to her place to see the child. Once his second wife came with two other persons and took him away, which was after their daughter was born. Later, when she went to Podgorica, her ex-husband told her that he had been beaten and that a certain Rifat, who was lame and whom the witness actually knows, had beaten him. He did not mention that anyone else had beaten him. In December 2011, she was shown some photographs in Podgorica, but she did not recognise anyone. An interpreter for the Albanian language had been present. She could not read the Cyrillic script save for a few letters. After looking at all the persons present in the courtroom, she stated that she did not recognise anybody.⁶⁰²

Witness Fljoreta Ljalja was the second ex-wife of injured party Gazment Krueziu. At the time of the critical event, she lived in Đakovica. Injured party Gazment also lived with her, but he had another wife in Đakovica. He would often be called to remove dead bodies from the street, as he worked in

⁶⁰¹ Transcript from the main hearing of 4 October 2022.

⁶⁰² *Ibid.*



the public utilities company. Once some people came to take Gazment away, and they mentioned a certain Petrit, but they did not say his last name. She knew that there were several persons by the name of Petrit, but she was unable to recognise that person. She did not see any of those persons, because Gazment opened the door and went out to talk to them. Later, he told her that they had taken him to a house, but he did not say that they had beaten him. On another occasion, when they came for him, she recognised two persons, a certain Rifat and a certain Ljuan, because she only saw the two of them. They had military trousers on, but she could not see if they had weapons. When he came back, Gazment's upper jaw was broken and his jersey was all torn and bloody. Gazment told her that Rifat and Ljuan had beaten him. The third time, some people from Junik wearing black uniforms came for Gazment, but he was not beaten then and returned home in a couple of days. She did not know Petrit Dula, whose father was Fetah. She was unsure about the times when injured party Gazment was taken away from home. After the accused was ushered into the courtroom, the witness said that she did not know him. She had given a statement in Montenegro, when she was shown a photo-array, but she had not recognised anyone. Fearing that he would be picked up again, Gazment left Kosovo and went to Montenegro with his second wife, and she had had no news about him for over two years. The witness also went to Montenegro and lived there for a while, but she could not recall when. She had not been living with the injured party for over seven years now; he came to Đakovica occasionally to be with the children. She explained that the defendant's son had brought her to Belgrade by car. The witness was informed by Gazment that she should testify, and when she told him that she had no money for the trip, he told her that he would ask the defendant's son to drive her.⁶⁰³

232 Witness Dušan Karanović, police officer, member of SORZ, examined in 2011 witnesses Antigona Bahtijari, Fljoreta Ljalja and the injured party in Montenegro. He stated that during the examination the witnesses had been advised of their rights and were after it read the examination record which they then signed.⁶⁰⁴

First-instance judgment

On 8 November 2022, the Higher Court in Belgrade rendered a judgment finding the accused Petrit Dula guilty of the criminal offence of a war crime against the civilian population under Article 142, paragraph 1 of the FRY Criminal Code, and sentenced him to a term of imprisonment of two years.⁶⁰⁵

The Chamber had determined, on the basis of the statements of the injured party and of witnesses that the accused, as a member of the KLA, with several unidentified KLA members, on an unspecified date in the second half of June 1999, in Đakovica, had forcibly taken out of the house of Lala Đeljone the civilian Gazment Krueziu and brought him to his house in Đakovica, where he subjected him to inhumane treatment, physically maltreated him and inflicted bodily injury on him by hitting him with a baseball bat, throwing bottles full of liquid at him and striking him above the right ear with a full bottle, as a consequence of which the injured party repeatedly fainted, while other KLA members hit

603 Transcript from the main hearing of 26 October 2022.

604 Transcript from the main hearing of 4 November 2022.

605 Judgment of the Higher Court in Belgrade Kž1 Po2 no. 7/22 of 8 November 2022.



him with rifle butts, hands and feet, after which they took him to the KLA headquarters in the village of Babaloć. There other KLA members maltreated him and interrogated him about the burial places of KLA members and their relatives who had lost their lives during the armed conflicts, and about his participation in conflicts on the Serbian side. Namely, the injured party described in detail what had happened to him on the critical day, and how the KLA members who had come to pick him up looked, and the same event was described in detail by his wife Fljoreta Ljalja. From the statement of witness Dušan Karanović, the Court established that when examined in Montenegro in 2011, the witnesses gave their statements unhindered and had them read out to them before they signed them. The Court also established that at the time of the commission of the criminal offence an armed conflict existed in the territory of Kosovo, that KLA members maltreated the civilian population, and that the offence was committed in connection with the armed conflict, because they questioned the injured party whether he had participated in the armed conflict on the Serbian side.

Namely, the court appreciated the statements of the injured parties and witnesses before the police in 2011, as well as the statements given at the main hearing, and found that the defendants and witnesses denied in their statements at the main trial that the injured party was beaten by the defendant Petrit Dula, as they had stated in the police station. When giving testimony at the main trial, in comparison to the previous statements given in the police station, they denied only the part related to recognising the defendant, clearly showing with their testimony insecurity, fear and desire to help the defendant. It is for this reason that the court did not accept the part of the testimony of the injured party and the witness given at the main trial in which they denied recognising the defendant.

In weighing the sentence, the court mitigated it below the legal minimum, taking into account the defendant's family circumstances and his attitude towards the offence, which circumstances the court assessed as particularly mitigating. The court also included in the pronounced sentence the time spent in detention from 5 June 2022.⁶⁰⁶

Course of the proceedings in 2023

Second-instance judgment

After the main hearing⁶⁰⁷, the Court of Appeals in Belgrade issued a verdict on 7 April 2023, by which the defendant Petrit Dula, in the absence of evidence, was acquitted of criminal responsibility.⁶⁰⁸

The Court of Appeal found that the first-instance court based the decision on the guilt of the defendant Petrit Dula exclusively on the testimony of the injured party and witnesses Antigone Bahtari and Floreta Ljalja, which they gave before the police, i.e. in pre-trial proceedings, on which the verdict

⁶⁰⁶ *Ibid.*

⁶⁰⁷ Composition of the chamber: judge Olivera Anđelković, Chairperson, judges Rastko Popović, Nada Hadži-Perić, Miodrag Majić, PhD and Dragoljub Albijanić, members of the Chamber.

⁶⁰⁸ Judgment of the Court of Appeal in Belgrade Kž1 po2 1/23 of 7 April 2023.



could not be based. Namely, the statements obtained in this way could be used in the proceedings, but a court decision could not be based on these statements alone.⁶⁰⁹

During the main trial before the first-instance court, the injured party and witnesses were for the first time able to see the defendant, so they stated that this was not the person they were pleading against before the police. During the entire procedure, the accused Petrit Dula denied the commission of the criminal offence he was charged with. Therefore, the Court of Appeal, assessing all the evidence, and in particular the testimony of the injured party in which he denied that the defendant, at the time, place and in the manner he was charged with, had taken incriminating actions against him, found that there was no evidence on the basis of which it could indisputably establish that the defendant had committed the criminal offence as stated in the indictment.

HLC Findings

Efficiency of proceedings

The trial in this case started on 9 September, and the first-instance judgment was rendered on 8 November 2022, and the second-instance judgment on 7 April 2023. Therefore, this procedure is an example of effectively conducted criminal proceedings, especially because it was a case in which the defendant was remanded in custody.

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Justification for conducting the procedure

Bearing in mind that the criminal proceedings against the defendant Petrit Dula were finally terminated with an acquittal, owing to the lack of evidence, the question is whether there were any grounds for conducting the proceedings, i.e. to what extent the OWCP had obtained valid evidence for the indictment. The only evidence on which the indictment was based were the statements of the injured party and the witnesses given to the police, on which, given the time of their taking (2011), a court decision could not be based.

Namely, in a provision of Article 604, paragraph 1, of the CPC, it is stipulated that the legality of actions taken before the beginning of the application of this Code (from 15.01.2012 for criminal offences in which the OWCP acts) will be assessed according to the provisions of the previously valid CPC.⁶¹⁰

The provision of Article 504 paragraph 4 of the previously valid CPC stipulates that statements and notices collected by the Public Prosecutor in pre-trial proceedings may be used as evidence in criminal proceedings, but the decision cannot be based only on them.

609 Article 504 f of the previously valid CPC.

610 Criminal Procedure Code ("*Official Gazette of the FRY*" No. 70/01 and 68/02 and "*Official Gazette of RS*", no. 58/04, 85/05, 115/05, 49/07, 122/08, 72 /09 and 76/10).



Therefore, the OWCP had to take into account these provisions primarily, and before issuing the indictment, to check the validity of the testimony of the injured party and the witness during the investigation; also, this fact should have been taken into account by the court, both when confirming the indictment and in conducting the first-instance proceedings.

Since the defendant, who was acquitted of the charge and spent some time in detention, has the legal right to compensation for damages⁶¹¹, because he was unjustifiably deprived of his liberty, the only advantage was that the entire procedure was completed in a short time. Namely, the amount of compensation due for unfounded deprivation of liberty is awarded per day. For each day of unfounded deprivation of liberty, a certain amount of monetary compensation is determined, which is multiplied by the number of days that the unfounded deprivation of liberty lasted.

The possibility of awarding compensation for unjustified deprivation of liberty must in no case be a reason to question the initiation or conduct of criminal proceedings, but this possibility should also be taken into account, so that criminal proceedings are conducted efficiently. This is especially the case because, according to the available data, by 2020 the Republic of Serbia has paid 1.8 million euros so far in damages for unjustified deprivation of liberty in war crimes proceedings.⁶¹² This has been because some proceedings after which damages were awarded lasted for many years, such as *Ovčara*⁶¹³ or the *Tuzla Column* cases.⁶¹⁴

611 Articles 583 and 584 of the CPA.

612 BIRN, “*Serbia, Bosnia Spend €3.4 Million on Acquitted War Suspects*”, 11 May 2020, available at: <https://balkaninsight.com/2020/05/11/serbia-bosnia-spend-e3-6-million-on-acquitted-war-suspects/?lang=mk>, accessed on 8 January 2024.

613 *The Ovčara Case*, trial reports and case files available at: <https://www.hlc-rdc.org/Transkripti/ovcara.html>, accessed on 8 January 2024.

614 *The Tuzla Column Case*, trial reports and case files available at: https://www.hlc-rdc.org/Transkripti/tuzlanska_kolona.html, accessed on 8 January 2024.



Proceedings finalised under the agreement on the confession of a criminal offence

I. The *Srebrenica III* Case⁶¹⁵

CASE FACTS	
Current stage of the procedure: final judgment rendered	
Date of indictment: 5 December 2022	
Prosecutor: Vasilije Seratlić	
Acting Judge: Vladimir Duruz (Preliminary Judge)	
Defendant: Miomir Jasikovac	
Criminal offence: war crime against the civilian population under Article 142 of the FRY CC	
Number of defendants: 1	Number of court days in the reporting period: 1
Rank of the accused: lower ranked – commander of a company of military police	Number of witnesses heard in the reporting period: 0
Total number of witnesses interviewed: 0	
Key developments in the reporting period: Judgment after accepting the agreement on the confession of the criminal offence	

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⁶¹⁵ *The Srebrenica III Case* available at: <https://www.hlc-rdc.org/Transkripti/srebrenica-III.html>, accessed on 11 December 2023.



Course of the proceedings

Indictment

Miomir Jasikovac was charged by the OWCP indictment⁶¹⁶ of 5 December 2022 that, in his capacity as commander of a company of military police at the Zvornik Brigade, he accommodated and guarded war prisoners of the BiH Army and civilians of the male sex captured and imprisoned by the VRS forces at previously selected locations, knowing that Bosniaks deprived of liberty would soon be summarily liquidated, that he was undertaking his actions for that purpose, and that he, together with other subordinate members of the military police, conducted the war prisoners to locations where they were killed by members of the VRS. Thus, on 13 July 1995, in Orahovac (Zvornik municipality), he took prisoners and held them in the premises of the Grbavica Primary School, and the next day they were led to a meadow next to the railway, where over 100 prisoners were killed. Then, on 15 or 16 July 1995, in Roćević (Zvornik municipality), he took prisoners and kept them imprisoned in the premises of the local primary school, only to later take them to the landfill in Kozluk, where members of the VRS killed over 100 of them. On 14 July 1995, he sent several members of the military police to report to the command of the 6th Battalion of the Zvornik Brigade, when they were further sent to the location of the dam in Petkovci, and where they, together with other members of the Zvornik Brigade, participated in the shooting of prisoners who were imprisoned in the school in Petkovci.

Judgement

On 13 January 2023, the Higher Court in Belgrade issued a judgment accepting an agreement on⁶¹⁷ the confession of a war crime against civilians, which the defendant Miomir Jasikovac concluded with the OWCP, and sentenced him to five years in prison.

This is the sixth concluded agreement on the confession of a war crime.⁶¹⁸

HLC Findings

Unexplained judgment

When issuing the judgment on the confirmation of the agreement on the confession of the criminal offence concluded by the accused Miomir Jasikovac with the OWCP, instead of explaining it, the Higher Court only listed the articles of the CPC on the basis of which it determined that the agreement

616 OWCP Indictment KTO no. 10/122 of 5 December 2012, available at: <https://tuzilastvorz.org.rs/public/indictments/2023-03/%D0%9A%D0%A2%D0%9E%20%2010-%2022%20%20ANON.pdf>, accessed on 11 December 2023.

617 Judgment of the Higher Court in Belgrade in the *Srebrenica III Case*, Spk. No. 1/22 of 13 January 2023.

618 The first plea agreement for the criminal offence of war crimes was concluded by the OWCP with the defendant Milan Škrbić in 2013, then with Marko Crevar in 2015, with Brano Gojković in 2016, Dragan Maksimović in 2018, Ramadan Maljoku in 2019, and the previously concluded plea agreements related to helping hide the Hague defendants.



contained all the elements prescribed by law, and stated that the legal assumptions regarding the evidence in relation to the agreement were met, that the sentence was in accordance with the Criminal Code, and that there were no legal obstacles to the conclusion of the plea agreement. This action of the court, when it comes to judgments confirming plea agreements in war crimes cases, is set as a rule.⁶¹⁹

In order to achieve the purpose of court proceedings, especially in war crimes cases, it is of particular importance that the court pronounces the reasoning of the judgment in cases of the confession of a crime committed. Otherwise, the court proceedings and the pronounced judgment lose their meaning, and do not make a real contribution to achieving justice.

Unexplained decision on the sentence

The Higher Court sentenced the defendant Miomir Jasikovac to five years in prison. According to the provisions of the CPC, the court will accept the agreement on the confession of the criminal offence by a judgment if it finds that the penalty provided for in the agreement is in accordance with the criminal law. However, the judgment nowhere explains the conclusion of the court that the penalty proposed by the agreement is in accordance with the criminal law. Given that the minimum sentence provided by the law for the criminal offence of war crime against civilians is five years in prison, such a decision should be formally made *in accordance with the criminal law*; but the court should have explained such a decision, especially given the gravity of the committed offence, by which hundreds of victims were killed. Therefore, it was necessary to explain for what reasons the court accepted a prison sentence of only five years, which is also the legal minimum.

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According to the provisions of the CPC, the judgment must contain a "partial explanation" if an agreement on the confession of a criminal offence has been accepted, namely the reasons which the court took into consideration when accepting the agreement.⁶²⁰ Since the CPC provides that the court must determine the legality of the penalty when accepting the agreement, the court undoubtedly had to at least partially explain the decision on the penalty.

Finally, the CPC does not order the court to omit the explanation in its entirety, but only suggests that the court "does not have to" provide it. Given that this was an agreement on the confession of a war crime in which a large number of victims were killed, that the public did not have access to the proceedings, and that there were many unknown facts about the manner of application of this institute, the court, despite the legal possibility, should have avoided this solution, despite being simpler.

619 See: Judgment of the Higher Court in Belgrade SPK Po2 2/13 of 13 September 2013, Judgment of the Higher Court in Belgrade SPK Po2 1/15 of 18 February 2016, Judgment of the Higher Court in Belgrade SPK Po2 no. 1/2016 of 27 January 2016, Judgment of the Higher Court in Belgrade K. Po2 number 10/17, SPK Po2 no. 1/2018 of 6 June 2018, Judgment of the Higher Court in Belgrade Spk. Po2 1/19 of 19 March 2019.

620 CPC, Article 429, paragraph 3, item 2.



Avoiding regional cooperation

The indictment against Miodir Jasikovac was filed by the OWCP about ten days after the Prosecutor's Office of BiH issued an indictment against him for the same crime. Namely, on 23 November 2022, the Prosecutor's Office of BiH issued an indictment against Miodir Jasikovac, but for the criminal offence of genocide, in which, for the same critical events, a significantly higher number of victims was stated - namely, the actual number of about 2,300 prisoners who were shot, clearly stating that these were events related to Srebrenica.⁶²¹ Instead of waiting for the case to be ceded if Jasikovac was not available to the BiH judiciary, the POWCP immediately filed an indictment, greatly reducing the number of victims, avoiding mentioning Srebrenica anywhere, and on the same day concluded an agreement with the accused on recognition of a criminal offence with an inadmissibly low prison sentence of five years.⁶²² The analysis of the plea agreements concluded so far shows that the OWCP have only concluded plea agreements with the defendants Miodir Jasikovac and Brano Gojković, whose incriminating actions are also related to Srebrenica and the murders of prisoners, concluded plea agreements on the same day when they filed indictments, and agreed with the defendant on very low prison sentences.⁶²³

621 Indictment of the Prosecutor's Office of BiH number T20 0 KOWCP 0004388 05, available at: https://www.tuzilastvobih.gov.ba/files/docs/Anonimizirana_optuznica_Miodir_Jasikovac.pdf, accessed on 12 December 2023.

622 Agreement on the confession of the criminal offence no. 1/22 of 5 December 2022.

623 Judgment of the Higher Court in Belgrade SPK - Po2 no. 1/2016 of 27 January 2016 confirming the plea agreement with Brano Gojković.



PROCEEDINGS INITIATED IN 2023

I. The *Bosanska Krupa – Donji Dubovik Case*⁶²⁴

CASE FACTS	
Current stage of the proceedings: first-instance proceedings	
Date of indictment: 11 November 2022	
Trial commencement date: 10 February 2023	
Prosecutor: Snežana Pavlović Pejić	
Defendant: Milorad Kotur	
Criminal offence: war crime against the civilian population under Article 142 of the FRY CC	
<p>Case transferred from BiH</p> <p><i>This procedure is the result of cooperation between Serbia and BiH in the prosecution of war crimes, which was intensified after the OWCP and the Prosecutor's Office of BiH signed the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide in 2013. The confirmed indictment against the defendant was transferred by the Prosecutor's Office of Bosnia and Herzegovina, given that the defendant, who is a citizen of the Republic of Serbia and residing in Serbia, was not available to the authorities of BiH.</i></p>	
Trial Chamber	<p>Judge Mirjana Ilić (President of the Chamber)</p> <p>Judge Zorana Trajković</p> <p>Judge Bojan Mišić</p>
<p>Number of defendants: 1</p> <p>Defendant's Rank: No rank</p> <p>Number of victims: 51</p> <p>Total number of witnesses heard: 14</p>	<p>Number of scheduled court days in the reporting period: 9</p> <p>Number of court days in the reporting period: 8</p> <p>Number of witnesses heard in the reporting period: 14</p> <p>Total number of experts witnesses heard: 0</p>
<p>Key developments in the reporting period:</p> <p>Main hearing</p>	

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⁶²⁴ *Bosanska Krupa – Donji Dubovik Case*, trial reports and case documentation available at: https://www.hlc-rdc.org/Transkripti/bosanska_krupa-donji_dubovik.html, accessed on 19 January 2024.



Course of the proceedings

Indictment

The defendant is charged, as a member of the Republika Srpska Police Reserve Forces, in the municipality of Bosanska Krupa (BiH), in the period from July to September 1992, with the following:

- In the second half of July 1992, together with colleagues Dušan Ćulibrk (finally convicted of the same criminal offence before the Court of BiH) and Božo Došen (in the meantime deceased), to have come to the Omarska camp located in the territory of the municipality of Prijedor, from where 44 Bosniak and Croat civilians were taken in a minibus for an alleged exchange that was supposed to take place in the territory of the municipality of Bosanska Krupa, and upon reaching the place of Donji Dubovik (municipality of Bosanska Krupa), to have ordered the vehicle to be stopped, after which the accused, together with Dušan Ćulibrk, tied the prisoners with wire, after which, all three of them took them to the "Lisac" pit and killed them by shooting them with automatic weapons;
- At the beginning of August 1992, together with Dušan Ćulibrk in Donji Dubovik, to have intercepted seven Bosniak civilians coming from Prijedor towards Bihać and killed them by shooting them with a firearm.⁶²⁵

Defence of the accused

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In presenting his defence, the accused denied the commission of the criminal offence for which he is charged, stating that he was a soldier and that he went wherever he was ordered to go, but that he did not commit any offence wherever he went. When they went Omarska to get the inmates, he was present, but he did not shoot. He stated that the head of the SJB Bosanska Krupa, Milan Vojnović, ordered that the "shooting" be carried out, and that he and his colleagues should go to the Omarska camp where "everyone will be waiting for them". He went to Omarska by minibus with seven or eight of his fellow police officers and when they arrived, the vehicle was parked at the entrance to the camp, next to some wire at the side of the road. He saw that they were bringing people, but he did not know how many there were. According to the accused, "some policemen" took prisoners out of the camp, but neither he nor his colleagues participated in it.

He also stated that Vojnović told him that after they had picked up the prisoners, an elderly Serb would wait for them in Donji Dubovik and take them to the pit. Arriving in Donji Dubovik, they stopped the minibus and the prisoners were taken to the hill where the pit is. One of the police officers went and brought the wire with which the prisoners were tied, after which the police officers took them away. Kotur stayed by the minibus, and a little later, when he went up the hill, it was all over. He saw the corpses of the prisoners when he came to the pit. When asked by the chairperson of the court

625 Indictment TRZ KTO no. 8/2022 of 14 November 2022, available at: <https://www.tuzilastvorz.org.rs/en/cases/indictments/%D0%BA%D1%82%D0%BE-822>, accessed on 19 January 2024.



panel whether he knew that the prisoners would be killed, he replied that everyone knew that because it was a state of war.

In relation to part of the accusation that he participated in the shooting of seven civilians, he stated that the police had information that Bosniak terrorists had been sent to their territory and that they were being searched for on the day of the crime. When they were caught, and they were discovered to be soldiers and not civilians, a large group of locals came to beat the prisoners. The defendant released a short burst into the ground to stop it, and then it all became chaotic. Afterwards, he did not know what had happened or who had fired, nor did he know what targets his shots hit.⁶²⁶

Witnesses in proceedings

During the interrogation of the prosecution witnesses - protected witnesses "C1"⁶²⁷, "C2"⁶²⁸, "C3"⁶²⁹ and "C4"⁶³⁰, the public was excluded.

The prosecution witness Stanko Krivaja, a guard at the Omarska camp, stated that at the end of May 1992, a smaller bus came to the camp at night and parked in front of the administrative building. About 40 inmates were taken out of the building and boarded the bus, which then, accompanied by two vehicles with rotating lights on, exited the camp. It was rumoured among the guards that there were two women among those taken and that they were all going to the exchange of prisoners. He did not know who came by bus to pick up the inmates, or who was accompanying the bus. The taking of the inmates could have been ordered by the then warden of the camp, Željko Mejakić, or by a person who was his superior.⁶³¹

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Prosecution witness Milorad Popović stated that he was a member of the VRS during the war and that he was on patrol with other locals from Donji Dubovik, which was about two or three kilometres away from the village. One night, at the end of July 1992, they heard a burst of fire from the direction of their village, so they sent the now deceased Milo Krnetić to see what was going on. When Milo returned, he told them that some people had been brought to their village by bus and killed at the Lisac pit. In early August 1992, when he returned home from the line for vacation, his cousin, the now deceased Đoko Popović, came and told him that the accused had ordered him to come with a horse-drawn carriage to a place called Jovina Poljana. When he reached the place, he saw seven dead bodies lined up next to each other, and that they were in civilian clothes. The accused then ordered him to load them into the carriage, which the witness refused, so the bodies were loaded by the locals present, who told him that the accused had ordered the bodies to be taken to the Lisac pit. Since he could not get all the way to the pit by carriage, he stopped at a place about 20 meters away from the pit, so Petar Brčín and some civilians unknown to him then took charge of these bodies, which the witness assumed were thrown into the pit.⁶³²

626 Transcript from the main hearing of 10 February 2023.

627 Transcript from the main hearing of 17 March 2023.

628 Transcript from the main hearing of 26 June 2023.

629 Transcript from the main hearing of 24 April 2023.

630 *Ibid.*

631 Transcript from the main hearing of 26 June 2023.

632 *Ibid.*



The witness for the prosecution, Nenad Nedimović, was a member of the active police force of the Bosnian Krupa Public Security Station (SJB), whose head was Milan Vojnović. He knew the accused as the commander of the police force of the Police Department in Arapuša. In late July or early August 1992, they were together in an ambush in the area of Donji Dubovik, because it was reported that a group of Muslims was passing through the area. They were informed that the group was moving towards the village of Dubovik, so they started to follow it, and the accused drove his car to intercept the group. When they reached the place about 300 meters away as the crow flies from the store in Dubovik, they saw a group of five to seven civilians in the valley below them; and across the road from them, above the civilians, he saw the accused with two or three other persons unknown to him. The witness and his group moved towards the civilians, urging them to surrender, and they began to flee to the opposite side, trying to get out of the valley, and moving towards the place where the accused was. By the time the witness's group had descended into the valley, the civilians had already climbed the road where the accused was. At that moment, they heard a burst of gunfire from the direction of the road, and when they climbed the road, he saw the dead bodies of those civilians by the side of the road. There is a video of the defendant with an automatic rifle, as well as persons called "Ćule" and "Žico". Soon, the locals of Dubovik began to gather to see what had happened, so Slobodan Majkić, the commander of the Bosnian Krupa SJB, who also came there, told the accused to remove the bodies.⁶³³

The prosecution witness/injured party Dževad Hujić said he did not know the accused, nor did he have direct knowledge of the critical event, because he lived in Zagreb at the time. His brother Hasan Hujić was killed, as well as cousins Rifet and Meho Hujić, and he heard about their killings from his parents and neighbours. They told him that members of the VRS set fire to the village, that people were forced to gather together, and that they were transported by buses to the "Keraterm" camp. His brother and cousins, along with some other neighbours, fled to the forest, from where they tried to reach Bihać through Ljubija, i.e. the territory under the control of the Army of BiH. One group of them was captured and killed.⁶³⁴

The prosecution witness Enes Kapetanović was detained at the Omarska camp, from which a group of inmates, including Ejub Osmanović and the witness's cousin Samir Redžić, were taken one night in the second half of July 1992. A bus arrived at the camp with a certain number of people already in it. The guard called out the names of a couple of people who got on the bus, none of whom later came back. The taking of the detainees could have been ordered by the interrogators, i.e. members of the Prijedor SUP who came to the camp and conducted interrogations of the detainees. After the interrogation was conducted, it was decided where someone would be sent – to the camp on Manjača, or to be killed. He did not know who took the detainees, and he did not know the accused.⁶³⁵

633 *Ibid.*

634 Transcript from the main hearing of 20 September 2023.

635 Transcript from the main hearing of 23 October 2023.



The prosecution witness Sulejman Balić was in the Omarska camp, where he saw that his cousins Fadil Balić and Mehmed Balić were also there. He had no direct knowledge of the taking of a group of prisoners in the second half of August 1992. Later, he heard from his cousin Ala Balić that his brothers Fadil and Mehmed Balić were also taken out at that time.⁶³⁶

The prosecution witness, the injured party Said Redžić, in all respects stood by the testimony he gave before the competent authorities of BiH on 10 October 2014. He had no immediate knowledge of the killing of his brother Muhamed Redžić. The last time he saw him was the night before the establishment of the camp in Trnopolje. Later, he heard that his brother was one of a group of inmates in the Omarska camp whom they were preparing to exchange, but that the exchange of prisoners did not take place. The remains of the witness's brother were found in a mass grave near Sanski Most.

The prosecution witness, the injured Mejra Dautović, mother of the murdered Edna Dautović, explained to the court that her daughter, a student, was taken from her family home in Prijedor on 14 June 1992, allegedly only for an informational interview. Instead of returning home, Edna was transferred to the Omarska camp, where her brother, Edvin Dautović, had already been put. With a group of 42 other inmates, Edna was taken out of the camp, allegedly for a prisoner exchange, only to have her body found later in a mass grave in the Lisac pit. From the survivors of the inmates Nusreta Sivac and Jadranka Cigelj, the witness heard that her daughter was tortured at the camp, and that the group of inmates which she was in was taken out of the camp on 23 July 1992 at about 23.00. She witnessed the exhumation of the Lisac pit, and her daughter's body was the eighteenth body removed from that pit. The witness's son, Edvin Dautović, was killed at the Omarska camp, about a month before her daughter was taken out of the camp. His remains were found in the Kevljani pit.⁶³⁷

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Prosecution witness Mehmed Filović stated that he had no knowledge of his cousin Miralem Velić's killing. When the mass grave was discovered, he was contacted by relatives, Miralem's brothers, who live in the United States, and by checking he determined that the remains of Miralem Velić were also found in that grave.⁶³⁸

The prosecution witness Nusreta Sivac was detained at the Omarska camp from 9 June 1992 until its closure. There were 37 women in all at the camp, and they were housed in the administrative building, in two rooms above the restaurant. Across from them were the rooms where the camp staff stayed. During the day, the women had the work obligation to distribute food to the inmates in the restaurant. The murdered Edna Dautović, whom she had known for a long time because she had been friends with her parents, was with the witness in the room. One day at the end of July 1992, in the late evening hours, Željko Mejakić, the camp commander, came to the room where she was staying and told Edna Dautović to pack her things because she was going for an exchange of prisoners. Nusreta said goodbye to Edna and escorted her to the corridor with several other women, and then she saw that the prisoner Sadeta Medunjanin was being taken out of the other room. The two of them left the administrative

636 *Ibid.*

637 Transcript from the main hearing of 24 November 2023.

638 *Ibid.*



building, and when asked by the witness where they were going to the exchange, Mejakić told her that they were being taken to Ličko Petrovo Selo. Several women and witnesses crossed to the other side of the corridor, where there were toilets and a bathroom, so they could look out of the window at the camp yard to see what was happening. The witness saw a bus with Bihać license plates, with an advertisement on the side that read "Šešelj Driving School". The bus was accompanied by five to six uniformed and armed persons, whom she did not know and who were not part the camp structures. They seemed to be decked up with a lot of Chetnik iconography. Edna and Sadeta got onto the bus and sat in the front row seats. Men called out the names of prisoners by reading from a list, but they also called out prisoners who were no longer alive, such as former court president Nedžad Šerić, as well as the witness's neighbour Samir Rešić. Since the witness was obliged to serve the prisoners food, she knew the people who were coming to eat, so when someone did not come for several days, she concluded that he had been killed. At the camp, people were tortured and killed, and every morning the corpses, which were lined up within the camp yard, were taken away. In that way, she could recognise later the people who had been killed by their wardrobe. On that occasion, the names of about 45 people were called out. People who were called out were reminded that they should not join the BiH Army after the prisoner exchange, because there were lists of names and they would be found out. She saw the bus leaving the camp. Later, after the war, she learned about the fate of the people who were taken away – that is, that they were killed, and their remains dumped in the "Lisac" pit in the area of Bosanska Krupa. With Edna's mother, Mejra Dautović, she was present at the identification of Edna's remains. She recognized Edna by her black pants and black hair, and then she saw and identified the remains of Sadeta Medunjanin. She recognized her by the red sweater she was wearing. Namely, the detainees shared the same wardrobe during their entire stay at the camp. The witness did not know on whose orders the detainees were taken from the camp and who made the decision to kill them. After the government in Prijedor was taken over by the SDS, a Crisis Staff was formed, where the government was gathered. Milomir Stakić was the chief of the Crisis Staff, and also members were Mićo Kovačević and the police chief Simo Drljača. It was not known to the witness whether the Crisis Staff gave orders the police or the police to the Crisis Staff. She did not know the accused.⁶³⁹

HLC Findings

Excessive and unnecessary anonymisation of the indictment

The indictment of the OWCP in this case, which is available to the public on the OWCP website within the section "Indictments", was anonymised in such a way that only the data on the name of the accused and victims were anonymised, which is not in accordance with the Rulebook of the OWCP on the anonymisation of personal data in indictments of the Office of the War Crimes Prosecutor.⁶⁴⁰

⁶³⁹ Transcript from the main hearing of 25 December 2023.

⁶⁴⁰ Rulebook on the anonymisation of personal data in indictments of the Office of the War Crimes Prosecutor of 20 March 2019, available at: https://www.tuzilastvorz.org.rs/public/documents/2021-04/%D0%9A%D0%A2%D0%9E_2_20_%D0%90%D0%BD%D0%BE%D0%BD%D0%B8%D0%BC%D0%B8%D0%B7%D0%BE%D0%B2%D0%B0%D0%BD%D0%BE.pdf, accessed on 19 January 2024.



Namely, the Rulebook stipulates that indictments of the OWCP are "published as a rule in their entirety on the OWCP website, but the data on the basis of which it is possible to identify the accused, injured parties, their legal representatives, witnesses, relatives, close persons, neighbours and the like are replaced or omitted in a consistent manner".⁶⁴¹ Instead of publishing the indictment as a whole, only its operative part was published, so it is not possible to determine in any way on which evidence the OWCP bases the indictment. The Rulebook also provides for the anonymisation of the personal data of participants in the procedure, such as "the name, surname and nickname of a natural person, the address, date and place of birth"⁶⁴², but at the same time provides that "anonymisation should not be forced on data such as the name, surname and nickname of a natural person, participant in the procedure (the accused is a participant in the procedure), in the event where the justified interest of the public to know prevails in relation to the protection of the identity of a natural person".⁶⁴³ As the name of the defendant has been anonymised, it is obvious that the OWCP disregarded the provision of its own Rulebook and completely ignored the interest of the public to be aware of the identity of the person accused with a war crime. At the same time, data on the name and surname of the defendant were publicly published in the media of BiH a year before the POWCP filed an indictment against him⁶⁴⁴, as well as on the website of the Court of BiH⁶⁴⁵, where the names of all victims were published; so there was no need for anonymisation, since the Rulebook stipulates that persons whose data in the proceedings were already available to the public, including information communicated by the competent state authority in connection with the specific case, are exempted from the anonymisation rule.⁶⁴⁶

641 *Ibid*, Article 1, paragraph 2.

642 *Ibid*, Article 5, paragraph 1.

643 *Ibid*, Article 5, paragraph 2.

644 "Confirmed Indictment for Crimes in Bosanska Krupa", *Detektor*, available at: <https://detektor.ba/2024/01/26/potvrdjena-optuznica-za-zlocine-u-bosanskoj-krupi-2/>, accessed on 20 January 2024.

645 Court of Bosnia and Herzegovina, Case S1 1 K 041736 21 Kro Miloroad Kotur, available at: <https://www.sudbih.gov.ba/Court/Case/2213>, accessed on 20 January 2024.

646 Article 4, paragraph 3, item 1) of the Rulebook on the anonymisation of personal data in indictments of the Office of the War Crimes Prosecutor of 20 March 2019.



II. The *Lovas II* Case⁶⁴⁷

CASE FACTS	
Current stage of the proceedings: first-instance proceedings	
Date of indictment: 6 September 2022	
Trial commencement date: 24 February 2023	
Prosecutor: Ognjen Đukić	
Defendant: Dušan Lončar	
Criminal offence: war crime against the civilian population under Article 142 of the FRY CC	
Trial Chamber	Judge Zorana Trajković (Chairperson) Judge Mirjana Ilić Judge Bojan Mišić
Number of defendants: 1 Defendants' rank: high rank Number of victims: 7 Total number of witnesses heard: 1	Number of scheduled court days in the reporting period: 5 Number of court days in the reporting period: 5 Number of witnesses heard in the reporting period: 1 Total number of experts witnesses heard: 0
Key developments in the reporting period: Main hearing	

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⁶⁴⁷ *Lovas Case*, trial reports and case documentation available at: https://www.hlc-rdc.org/Transkripti/lovas_II.html accessed on 6 March 2024.



Course of the proceedings

Indictment

The defendant is charged with having, on 9 October 1991, as the commander of the 2nd Proletarian Guard Motorised Brigade of the JNA and holding the rank of lieutenant-colonel, ordered an attack on the village of Lovas and its population, by issuing the Order for attack no. 9 Page pov. No. 350-1 for 10 October 1991, which called for the main forces to block the village and to take action with artillery against the facilities in the village, and for the auxiliary forces to "cleanse the village of members of the ZNG and the MUP, as well as the part of the population which is hostile", which is contrary to the basic principles of command and of the protection of the civilian population when performing combat actions. The defendant is further charged with, on 10 October 1991, having the forces under his command act on his order to carry out an attack on the village, as a consequence of which at least seven civilians were killed with firearms, including Vido Krizmanić, Ivan Ostrun, Mirko Grgić, Cecilija Badanjak, Danijel Badanjak, Josip Poljak and Pavo Đaković, and also several residential buildings were set on fire.⁶⁴⁸

Defence of the accused

In presenting his defence, the accused Dušan Lončar denied the commission of the criminal offence for which he is charged. He stated that he was 80 years old, and a military pensioner, and that he had an obligation to defend his reputation as a military officer of the JNA. His family was nationally mixed, and therefore the nationalistic hatred he is charged with was foreign to him. He graduated from military schools and, given his qualifications, he would never have written or signed such a "nebulous" order as he is charged for. In the war he lost everything because, speaking in the wider context, he was expelled from his apartment in Osijek, but he was proud of his attitude towards prisoners and the general population. [He felt that] finally he was being given the opportunity to present his view before the court, because he was the only one who knew the truth. He was upset that the institutions of this country did not initiate proceedings to protect him, and struck by the fact that this country needed the Humanitarian Law Center to initiate proceedings against him. He compared the relationship that Serbia has towards its accused persons with that of Croatia, where "their entire state rises to defend them, whilst in our country an NGO raises indictments". According to the defendant, the indictment against him "bears the stamp of Vukčević and Mrs. Kandić". He claimed that there was a civil war in Croatia that the JNA had tried to prevent. He felt terribly humiliated as a member of the JNA in the barracks in Sisak, which was without electricity and water, and that this had been done to them by "these so-called civilians". Lovas was an example of such a war. First, the Croats expelled the Serbs, and then, when the JNA came, the Serbs expelled the Croats. The hostile population in Croatia expressed all the frustrations they felt about Yugoslavia towards the JNA. The Army, i.e. the JNA, had the task of protecting the constitutional order, and anyone who was against it, with or without weapons, was

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⁶⁴⁸ Indictment OWCP KTO 7/22 dated 6 September 2022, available at: https://www.tuzilastvorz.org.rs/public/indictments/2023-03/ENG.-7-22%20_%20%D0%BD%D0%BE%D0%BD%D0%B8%D0%BC..pdf, accessed on 6 March 2024.



considered an enemy. Speaking about the armed forces of the enemy, he stated that one of the most notorious battalions was the Glavaš battalion, which was lined up in Bogdanovci on 10 April 1991, and the strongest battalion of 150 men was from Lovas. According to the defendant, "there was no question of peaceful civilians from Lovas". He added that he was not the commander of the brigade, that he did not have an army, and that none of the members of the JNA participated in the attack. He admitted that nine shells were fired at the village of Lovas, four of which exploded, but he noted that this was a common occurrence.

He was not a brigade commander and was in Osijek right before the critical event. He received a telegraph dated 29 September 1991, by which Commander Boro Ivanović informed him to report to the command of the army for temporary work. He reported to the Armoured Units Division, where he was sent to report to General Andrija Biorčević, who sent him to Šid in command of the division. When he came to Šid, he contacted Commander Dragoljub Arandelović, who showed him where his brigade was. He arrived there, no one introduced him, nor did he have any documents. He entered some kind of facility, which was like a command post, presented himself and said that he came for temporary work. The then brigade commander, Dragan Stanić, did not hand over the brigade in a regular procedure, did not talk to him but, after an hour, left for Valjevo. The brigade command did not have elementary working conditions. Only on 2 October 1991 were conditions met for the defendant to meet his associates – the nucleus of the command, and the officers who were directly responsible to him. The Chief of Staff, Slave Stojanov, then informed him that the 2nd Proletarian Guard Motorised Brigade of the JNA was part of the I Division. The brigade he had been assigned to had suffered the heaviest losses when it was brought into the fight, and it was a question of its survival. The Mayor of Valjevo came with 20 buses to Šid to pick up people who had fled from the battlefield, when the brigade commanders took their soldiers away in an organised manner. In addition, soldiers would leave the brigade on a daily basis. The trigger for the escape of soldiers from the brigade was the murder of two tank crews by the population of Croatian villages. The murder of one crew took place in front of the village of Ilače, when the population stopped the tank and killed the crew with sticks. The second case occurred in front of the village of Lovas, when the tank was hit with weapons, the crew was killed, and the tank was taken into the village. Near Lovas there was the Jelaš forest, where Croatian forces had their forces back in 1990, and Lovas played a key role. At the beginning of October 1991, an agreement was made to disarm Croatian villages between Šid and Vukovar, but in Lovas they did not agree with that. Lovas was completely fortified militarily; there was a column there of 150 men and two mortar platoons. One resistance point was the entrance to the village, which was laid with mines, and the next resistance point was the centre of the village and a cooperative that was full of weapons. The next facility was a cemetery, where mortars were most often set. These resistance points in Lovas were connected to 14 communication points. He was told that there were up to even as many as 1,000 soldiers in the village sometimes.⁶⁴⁹

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He said that he had been entrusted with a temporary task, and that he only found out about this on 10 October 1991 - that is, when he received an order from the commander of the I Division that he

649 Transcript of the main hearing of 24 February 2023.



had been appointed as the acting commander of the brigade. It was then that the security officer introduced him to a very complex security situation. Another problem was the attitude of paramilitary formations and Serbs towards members of the JNA, because they blamed the JNA, and especially its officers, for everything, as a result of which there were harassments, hittings and even murders of officers. The least well equipped and armed military body was the JNA. The Territorial Defence (TO) would come along equipped "as if they were fashion models". The basic problem was how to bring people into the army. The command brought and inserted the army throughout Serbia, including the TO and the volunteers. But the volunteers came to loot, and the army did not have the opportunity to stop it. He stated that on 7 October 1991 he was tasked with disarming Bapska. He returned to the brigade from Valjevo on 10 October 1991, and then found out what had happened. On 7 October 1991, the commander of the I Division, Arandelović, had told him that "these bandits" wanted to take Lovas, and to let them pass through the battle lines. The commander did not explain to him who these "bandits" were, nor did the defendant ask him, because it was not determined in time when they would take Lovas.⁶⁵⁰

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In the continuation of the presentation of the defence, the accused stated that the village of Lovas was armed and had become a military facility in its entirety. There were between 150 and 1,000 combatants there. Last time men came from the town of Orahovac, the birthplace of Stipe Mesić. A special place in the defence of Lovas had a group called "Chicago" or "Hyenas", which was located in the Jelaš forest and which attacked one vehicle of his brigade a few days before the seize of Lovas. According to the defendant, Lovas was practically a military garrison in which there were no women and children, nor persons under 20 years of age. He said he did not feel responsible for the attack because he did not order it. The command of his brigade was made of several parts, and the outpost was Tovarnik, while he himself stayed in Šid all the time. The allegations of some witnesses that they came to him at the command are untrue, because in order for someone to enter the command, he had to undergo strict control. When he came to the brigade, he had no command, and the brigade was about to be shut down; he found there about 1,000 people, while the normal composition of the brigade was between 3,000 and 5,000 people. Until 10 October 1991, he had been on a "temporary task", but on that day he received an order to perform his duties, signalled by his appointment as a brigade commander. On 10 October 1991, he had to go to Valjevo, owing to the tasks of the brigade, and returned only the next day around 2 p.m.⁶⁵¹

He was proud that he managed to train the brigade in a month. Only on 4 November 1991 did he receive the order appointing him commander of the brigade, with a promotion to the rank of colonel. There were some subordinations in place, and Valjevo TO was subordinated to his brigade – this came on 9 October 1991. It was a Serbian army that had its own weapons and equipment, and they did what they wanted. Lovas was attacked by parts of TO Krajina. Before the attack on Lovas, he did not receive any orders in that regard. The order to which the OWCP referred was written on 9 October 1991 at 4 p.m., and he saw it only 32 years later, at his defence attorney's office. The chief of the operational

⁶⁵⁰ *Ibid.*

⁶⁵¹ Transcript from the main hearing of 28 March 2023.



staff of his brigade was prone to alcohol and they practiced shooting – he assumed that it was worded something like a shooting order. In the period from 1 to 10 October 1991 he did not receive any document related to the attack, nor did he issue or sign any document. He did not remember that he received an order from the division command – he only received a verbal order from the division commander to let the men who were going to attack Lovas pass through the battle lines of his brigade. The unit that attacked Lovas was gathered from the surrounding villages, and members of the "Dušan the Mighty" detachment joined it; this process of gathering people had gone on from 21 September 1991. The government of Krajina then ordered the seizure of Lovas, and Ljuban Devetak and the chief of staff of Krajina Grahovac recruited men in the name of that government. Milan Radojčić also participated in recruiting the combatants.

The attack on Lovas was directly commanded by a person called "Tito". He knew this because "Tito" was mentioned by Ljuban Devetak and Željko Krnjajić. On the order for which the OWCP had charged him, the defendant did not recognise his signature, but he stated that he may have signed something in a rush, without even looking at what he had signed. He assessed the order as completely useless. Not a single soldier was involved in the attack on Lovas, and only five of the shells fired from the artillery exploded; nobody died and no one's house was damaged from those shells. The shelling of Lovas was ordered by officer Kamber. The enemy forces in Lovas knew about the attack, and that morning there had been "provocation" in the form of shooting from Lovas, which is why they ordered the opening of fire in return. After the seizure of Lovas, crimes were committed in the village and the perpetrators were convicted, but "in that conviction, a JNA officer was missing".

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The defendant repeatedly stated that the Humanitarian Law Center had filed an indictment against him. He also stated that the conviction of an officer would bring in money, and that he was that officer. The indictment made him sick, and as soon as it was filed, the money had been received. If convicted, the amount would increase by arithmetical progression. Whoever received the money should come forward. Croatia needed Lovas to justify the persecution of thousands of Serbs. Seven people died during the liberation of Lovas, which was not many, because during such actions the army expects to lose at least 10% of its personnel. Arming some other units, which the defendant is accused of, he considered to be "nonsense", because his own unit did not have enough weapons itself, let alone being able to give them to someone else - especially in view of the fact that weapons are "recorded through 100 records". After the liberation of Lovas, the TO Ljig company entered the village in the evening. The 2-platoon tank company deployed to the agricultural area around the silo. The organisation of life and work in the village was not within the jurisdiction of the accused.⁶⁵²

Witnesses in the proceedings

Witness for the prosecution Željko Krnjajić stated that before the attack on Lovas, he was a member of the police station (PS) in Tovarnik. A day before the attack, Officer Kamber of the JNA came to the police station, and said that Lovas would be attacked from all sides. On the eve of the attack, about

652 *Ibid.*



80 men gathered at the gas station in Tovarnik, namely, members of the Tovarnik PS, some people unknown to him and members of the volunteer unit "Dušan the Mighty". There were a lot of infantry weapons there, and an officer told them that each of them could take everything they needed from the pile of those weapons. Before they entered Lovas, several shells were fired at the village. When they entered the village, he saw that the house of Croatian police officer Ilija Baketa and half of the roof of Ljuban Devetak's house were on fire. A local resident, Milan Latas, was killed by artillery fire. Marija Vidić was wounded, and he drove her to the hospital in Šid. He did not see the local citizen Ivan Ostrun on the day of the attack on Lovas, but claimed that his son shot at them. He knew nothing about Mirko Grković, nor did he pass by the house of Pavo Đaković on the day of the attack. He said that Vid Krizmanić was a dangerous man. In the village, he saw the body of Kata Pavličević. During the attack on Lovas, he did not see any killed or wounded uniformed members of the ZNG or Croatian police. On that day, one volunteer was killed and two were wounded.⁶⁵³

HLC Findings

Processing of a high-ranking member of the JNA

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In this proceeding, a high-ranking officer of the former JNA, Dušan Lončar, has been charged. At the time of the commission of the criminal offence for which he is charged, he held the rank of lieutenant-colonel in charge of the Second Proletarian Guard Motorised Brigade of the JNA. The prosecution of a high-ranking member of the army is certainly a very positive move, given the extremely small number of such proceedings; however, it must be borne in mind that the HLC filed a criminal complaint as far back as November 2016, for a war crime committed in the village of Lovas, against Dušan Lončar.⁶⁵⁴ The HLC based the criminal complaint on Lončar's order to attack Lovas, as well as other documentation that had long been in the possession of the OWCP, since this evidence was mentioned in the 2007 OWCP indictment in the *Lovas* Case, filed against low-ranking perpetrators.⁶⁵⁵ Since the filing of the criminal complaint, the HLC has submitted several procedural insistences to which the OWCP replied that the case was in the pre-investigation procedure and that the allegations of the criminal complaint were being examined.⁶⁵⁶ The complaint, which was sent to the Office of the Republic Public Prosecutor (ORPP) owing to the OWCP's failure to act on the submitted criminal complaint, was rejected as unfounded.⁶⁵⁷ Against the decision of the ORPP, the HLC submitted a constitutional complaint to the Constitutional Court on 14 December 2017, in which it was pointed out that the order to suspend the investigation and the decision of the ORPP violated the right of the injured parties to a fair trial and the right to an effective investigation, which rights were guaranteed by the Constitution of RS⁶⁵⁸; the

⁶⁵³ Transcript from the main hearing of 28 November 2023.

⁶⁵⁴ See the HLC press release of 3 November 2016, "Criminal Complaint for Crime in Lovas Committed In 1991", available at: <http://www.hlc-rdc.org/?p=32894&lang=de>, accessed on 7 March 2024.

⁶⁵⁵ OWCP Indictment, KTRZ 7/07 of 28 November 2007, available at accessed 24 December 2019.

⁶⁵⁶ Letter OWCP KT. no. 6/16 of 27 February 2019.

⁶⁵⁷ Response of the ORPP number KTR. 1245/18 of 22 November 2018.

⁶⁵⁸ Constitution of the Republic of Serbia, Articles 32, 24 and 25.



complaint was rejected by the Constitutional Court.⁶⁵⁹ Only in February 2021 did the POWCP launch an investigation against Dušan Lončar, filing an indictment on 6 September 2022.

Reducing the number of victims by the POWCP

The indictment against Dušan Lončar lists the number of civilians killed as being "at least seven", which does not correspond to the facts that are well known to the POWCP. Namely, in a 2007 indictment filed by the POWCP for the crime in Lovas against the immediate perpetrators, it was stated that during the attack on Lovas on 10 October 1991, one person was killed and one wounded by artillery fire, and that 21 more civilians were killed on the same day by shots from infantry firearms, precisely owing to the actions taken by the accused "to cleanse the village of the hostile population". In this way, the POWCP favoured the accused by greatly reducing the criminal amount for which he is charged.

⁶⁵⁹ Decision of the Constitutional Court No: Už-1376/2018 of 31 May 2022.



III. The *Goražde* Case⁶⁶⁰

CASE FACTS	
Current stage of the proceedings: first-instance proceedings	
Date of indictment: 21 December 2022	
Trial commencement date: 13 April 2023	
Prosecutor: Snežana Pavlović Pejić	
Defendant: Lazar Mutlak	
Criminal offence: war crime against the civilian population under Article 142 of the FRY CC	
<p>Case transferred from BiH</p> <p><i>This proceeding is the result of cooperation between Serbia and BiH in the prosecution of war crimes, which was intensified after the OWCP and the Prosecutor's Office of BiH signed the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide in 2013. The confirmed indictment against the defendant was transferred by the Prosecutor's Office of Bosnia and Herzegovina, given that the defendant was not available to the competent authorities of BiH.</i></p>	
Trial Chamber	<p>Judge Vladimir Duruz (Chairperson)</p> <p>Judge Snežana Nikolić - Garotić</p> <p>Judge Vinka Beraha-Nikićević</p>
<p>Number of defendants: 1</p> <p>Defendant Rank: low</p> <p>Number of victims: 1</p> <p>Number of witnesses heard: 1</p>	<p>Number of scheduled court days in the reporting period: 6</p> <p>Number of court days in the reporting period: 2</p> <p>Number of witnesses heard in the reporting period: 1</p> <p>Total number of experts witnesses heard: 0</p>
<p>Key developments in the reporting period:</p> <p>Main hearing</p>	

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⁶⁶⁰ *Goražde Case*, trial reports and case documentation available at: <https://www.hlc-rdc.org/Transkripti/gorazde.html>, accessed on 25 January 2024.



Course of the proceedings

Indictment

The accused Lazar Mutlak is charged, as a then member of the TO Srpsko Goražde headquarters, Podkamen Company (Lozje), in the settlement of Lozje (Goražde, BiH), with having come armed with a gun, on 25 May 1992, and accompanied by another unidentified member of the TO Goražde headquarters, to the house where the wounded AB and AV, as well as the injured/protected witness "A" were located, and with addressing the latter with the words, "What are you doing here, 'bula'?" [translator's note: 'bula' – colloquial term for a Muslim woman], and then pointing the gun to her head, forcibly taking her to another room where he raped and sexually abused her, and then again pointing the gun to her head and threatening to kill her if she told anyone what had happened.⁶⁶¹

Defence of the accused

Presenting his defence, the accused denied the commission of the criminal offence he is charged with in its entirety. He stated that on the critical day, he entered the front yard of the house where the victim was, looking for some car parts, and that she invited him to enter the house, asking him to help her leave the house. He replied that he could not help and that this was the only communication he had with her. He also stated that he had lived in Canada from 1998 to 2010, but that when he applied for Canadian citizenship, he was questioned about this crime. To avoid problems in his family, he confessed and came to be tried in Serbia, "So that they would not send me to Sarajevo".⁶⁶²

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Witnesses in the proceedings

The prosecution witness, Dragomir Čarapić, stated that he knew the defendant because they were neighbours in Kokino Selo (now Lozje). During the war, he rarely saw him - both were ordinary soldiers. The witness did not have a uniform, while he was not sure about the defendant in that regards; he thought he was part of the police units. Regarding weapons, he thought that the defendant had an automatic rifle, and was sure that he had a gun, because he saw it on the defendant. At the end of May 1992, the witness went to the village to take care of the cow that his father had left there; passing by the house owned by certain Kanlić, he had to go behind the garage, when he heard some voices from the house. He looked towards the house and saw the defendant, who invited him to come in and see something. When he entered the house, he saw three women in a room without furniture. They were all wearing scarves, and he concluded from their dress that they were Bosniaks. One said that she was from Foča, and the other said that she was from Čajnič, while the third said that she knew him, as well as his father, because she was their neighbour; she also said that her child had been killed. He noticed that one of the women had a bandage around her neck, and another of them told him that she had been wounded in the leg. They begged them for help, but the witness told them that he could not

661 KTO Indictment No. 11/2022 of 21 December 2022 available at: <https://www.tuzilastvorz.org.rs/public/indictments/2023-04/ENG.%D0%9A%D0%A2%D0%9E-11-22%20anon.pdf>, accessed on 25 January 2024.

662 Transcript from the main hearing of 13 April 2023.



and should not help them, and the defendant also said that he could not help them. It is not known to the witness when the defendant came to the house. At first, he thought that the women were persons he was guarding, because the witness's brother was also guarding a Bosniak family. It is not known to him whether the defendant knew any of these women. At that time, the defendant was driving a Fiat – a "fića". The witness left the house and went off, but then met Boško Lasica, whose house was in the immediate vicinity, and who invited him for coffee. He sat down with Boško in front of his house for a while, and saw that the defendant left the house where the women were, and drove away in his "fića". Soon afterwards, the witness continued his walk through the village, to take care of the cow, when the defendant caught up with him and drove him one part of the way. The witness had not seen him since the day the defendant left for Canada. The trial chamber confronted the witness and the defendant about the circumstances of the difference in their statements, and so the defendant stated that he came to the house where the three Bosniak women were together with the witness in a "lada caravan" car, to take some parts for the "fića", which the witness confirmed. After the Chairperson told him that during the interrogation he had stated that he came to that house accidentally, after hearing voices and seeing the defendant there, the witness stated that a long time had passed.⁶⁶³

HLC Findings

Excessive and unnecessary anonymisation of the indictment

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The indictment of the OWCP in this case, which is available to the public on the OWCP website within the section "Indictments"⁶⁶⁴, was anonymised in such a way that only the disposition of the same was published, in which the data on the name of the accused and victims were anonymised, which is not in accordance with the Rulebook of the OWCP on the anonymisation of personal data in indictments of the Office of the War Crimes Prosecutor.⁶⁶⁵ Namely, the Rulebook provides that OWCP indictments "shall as a rule be published in their entirety on the OWCP webpage, but with any 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".⁶⁶⁶ Instead of publishing the indictment as a whole, only its operative part was published, so it is not possible to determine in any way on which evidence the OWCP bases the indictment. The Rulebook also stipulates that the data on the participant in the proceedings (the accused is a participant in the proceedings) are exempted from the anonymisation rule in the case of a person whose data in the proceedings were already available to the public.⁶⁶⁷ Given that the data on

663 Transcript from the main hearing of 8 November 2023.

664 KTO Indictment No. 11/2022 from 21 December 2022, available at: <https://www.tuzilastvorz.org.rs/public/indictments/2023-04/ENG.%D0%9A%D0%A2%D0%9E-11-22%20anon.pdf>, accessed on 25 January 2024.

665 Rulebook on the Anonymisation of Personal Data in War Crimes Prosecution Indictments of 20 March 2019, available at: https://www.tuzilastvorz.org.rs/public/documents/2021-04/%D0%9A%D0%A2%D0%9E_2_20_%D0%90%D0%BD%D0%BE%D0%BD%D0%B8%D0%BC%D0%B8%D0%B7%D0%BE%D0%B2%D0%B0%D0%BD%D0%BE.pdf, accessed on 23 January 2024.

666 *Ibid*, Article 1, paragraph 2.

667 *Ibid*, Article 4, paragraph 3, item 1).



the name and surname of the defendant were published in the media of BiH as early as 2019, i.e. well before the OWCP filed the indictment against him⁶⁶⁸, there was no need to anonymise them.

Frequent postponements of the trial

In this proceeding, six court days were scheduled during 2023, of which only two were held, while four were cancelled for reasons unknown to the public.

⁶⁶⁸ "Bosnian Serb Ex-Fighter Charged with Wartime Rape" BTJ, 11 March 2019, available at: <https://balkaninsight.com/2019/03/11/bosnian-serb-ex-fighter-charged-with-wartime-rape/>, accessed on 25 January 2024.



IV. The *Ključ – Velagići II Case*⁶⁶⁹

CASE FACTS	
Current stage of the proceedings: first-instance proceedings	
Date of indictment: 18 April 2023	
Trial commencement date: 7 November 2023	
Prosecutor: Vasilije Seratlić	
Defendants: Ilija Krčmar, Svetislav Račić, Željko Bajić, Nikola N. Ćuk, and Nikola D. Ćuk	
Criminal offence: war crime against the civilian population under Article 142 of the FRY CC	
<p>Case transferred from BiH</p> <p><i>This proceeding is the result of cooperation between Serbia and BiH in the prosecution of war crimes, which was intensified after the OWCP and the Prosecutor's Office of BiH signed the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide in 2013. The confirmed indictment against the defendants was transferred by the Prosecutor's Office of Bosnia and Herzegovina, since the defendants, who are citizens of the Republic of Serbia and residing in Serbia, were not available to the relevant authorities of BiH.</i></p>	
Trial Chamber	<p>Judge Mirjana Ilić (Chairperson)</p> <p>Judge Zorana Trajković</p> <p>Judge Bojan Mišić</p>
<p>Number of defendants: 5</p> <p>Defendants' rank: no rank</p> <p>Number of victims: 78</p> <p>Number of witnesses heard: 0</p>	<p>Number of scheduled court days in the reporting period: 2</p> <p>Number of court days in the reporting period: 1</p> <p>Number of witnesses heard in the reporting period: 0</p> <p>Total number of experts witnesses heard: 0</p>
<p>Key developments in the reporting period:</p> <p>Main hearing</p>	

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⁶⁶⁹ *Ključ – Velagići II Case*, trial reports and case documentation available at: <https://www.hlc-rdc.org/Transkripti/kljuc-velagici-II.html>, accessed on 25 January 2024.



Course of the proceedings

Indictment

The defendants are charged, with Marinko Miljević, Boško Unčanin and Dragan Despot, who are on trial for the same offence before the Court of BiH, as former members of the Military Police of the Second Engineer Regiment of the Second Krajina Corps VP 2430 Ključ VRS, with having shot at least 78 men, Bosniak civilians, on 1 June 1992, in Velagići, Ključ municipality. They guarded a military checkpoint in Velagići, where they stopped a column of Bosniak men from Vojići, Hasići, Hadžići and other hamlets of the village of Velagići on 1 June 1992, in the evening. Those men had come by invitation to the checkpoint carrying a white flag and sheets, and the accused took them to the premises of the old primary school near the checkpoint. The same day, in the late evening hours, they brought all the imprisoned civilians out to the front of the school, ordered them to stand in two rows, and then shot them with automatic weapons, killing at least 78 civilians, after which they transported and buried the bodies of the killed in trucks to the "Lanište II" mass grave.⁶⁷⁰

Defence of the accused

In pleading to the indictment, all the defendants stated that they understood the indictment and did not feel guilty. Defendants Ilija Krčmar, Željko Bajić, Nikola N. Ćuk and Nikola D. Ćuk stated that they would defend themselves by remaining silent, while the defendant Svetislav Račić stated that he did not want to present his defence for the time being. All defendants stated that they did not want to answer the questions asked.⁶⁷¹

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HLC Findings

Excessive and unnecessary anonymisation of the indictment

The Indictment of the OWCP in this case, which was published on the OWCP website within the section "Indictments"⁶⁷², is available to the public only partially, since only its disposition was published, where data on the name of the accused and victims were anonymised, which is not in accordance with the Rulebook of the OWCP on the anonymisation of personal data in indictments of the Office of the War Crimes Prosecutor.⁶⁷³ 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,

670 Indictment KTO no. 1/23 of 18 April 2023, available at: <https://www.tuzilastvorz.org.rs/public/indictments/2023-11/%D0%9A%D0%A2%D0%9E-1-23.pdf>, accessed on 25 January 2024.

671 Transcript from the main hearing of 7 November 2023.

672 Indictment KTO no. 1/23 of 18 April 2023, available at: <https://www.tuzilastvorz.org.rs/public/indictments/2023-11/%D0%9A%D0%A2%D0%9E-1-23.pdf>, accessed on 25 January 2024.

673 Rulebook on the Anonymisation of Personal Data in War Crimes Prosecution Indictments of 20 March 2019, available at: https://www.tuzilastvorz.org.rs/public/documents/2021-04/%D0%9A%D0%A2%D0%9E_2_20_%D0%90%D0%BD%D0%BE%D0%BD%D0%B8%D0%BC%D0%B8%D0%B7%D0%BE%D0%B2%D0%B0%D0%BD%D0%BE.pdf, accessed on 23 January 2024.



the injured parties, their legal representatives, witnesses, relatives, persons close to them, neighbours or similar could be identified, substituted or omitted in a consistent manner".⁶⁷⁴ Instead of publishing the indictment as a whole, only its operative part was published, so it is not possible to determine in any way on which evidence the OWCP bases the indictment. The Rulebook also stipulates that data on the participant in the proceedings (the accused is a participant in the proceedings) are exempted from the anonymisation rule in cases when a person's data in the proceedings are already available to the public.⁶⁷⁵ Considering that the data on the first and last name of the accused had been publicly published in the BiH media as early as 2021, i.e. well before the OWCP filed the indictment against them⁶⁷⁶, as well as on the website of the BiH Court⁶⁷⁷, there was no need to anonymise them.

674 *Ibid*, Article 1, paragraph 2.

675 *Ibid*, Article 4, paragraph 3, item 1.

676 "Six Bosnian Serb Ex-Soldiers Miss War Crimes Trial Opening", *Detektor*, available at: <https://detektor.ba/2021/07/20/krcamar-ilija-i-ostali-dvojica-optuzenih-negirala-krivicu-sestorica-nisu-dosla-na-rociste/?lang=en>, accessed on January 25, 2024.

677 Court of Bosnia and Herzegovina, Case S1 1 K 038729 20 *Kro Ilija Krčmar et al.*, available at: <https://www.sudbih.gov.ba/Court/Case/2088>, accessed on 25 January 2024.



Report on War Crimes Trials in Serbia during 2023

First Edition

Publisher:

Humanitarian Law Center Foundation

Dečanska 12, Belgrade

www.hlc-rdc.org

Author:

Marina Kljaić

Editor:

Jovana Kolarić

Translation:

Marijana Mitrović

Proof Editing:

Jonathan Boulting

Design:

Milica Dervišević

Print Run:

50

Printing:

Instant System, Belgrade

ISBN-978-86-7932-141-1

CIP - Каталогизacija у публикацији
Народна библиотека Србије, Београд

341.322.5:343.11(497.11)"2023"

KLJAIĆ, Marina, 1959-

Report on war crimes trials in Serbia during 2023 / [author Marina Kljaić]. - 1st ed. -
Belgrade : Humanitarian law center, 2024 (Belgrade : Instant System). - 263 str. : table ; 25 cm

Izv. stv. nasl.: Izveštaj o suđenjima za ratne zločine u Srbiji tokom 2023. godine. - Tiraž 50. -
Napomene i bibliografske reference uz tekst.

ISBN 978-86-7932-141-1

a) Ратни злочини -- Судски процеси -- Србија -- 2023

COBISS.SR-ID 149372937

