

REPORT  
ON WAR CRIMES TRIALS IN SERBIA  
DURING 2022



Humanitarian Law Center Foundation

# REPORT ON WAR CRIMES TRIALS IN SERBIA DURING 2022

Belgrade, 2023



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# Table of contents

<b>Abbreviations</b> .....	5
<b>Introduction and methodology</b> .....	7
<b>General findings and the socio-political context</b> .....	8
Inefficiency of the OWCP .....	8
Public attitude to war crimes in 2022.....	8
Implementation of the 2021-2026 National Strategy for the Prosecution of War Crimes in the Republic of Serbia .....	12
Excessive and unnecessary anonymisation.....	14
Trials in absentia.....	16
Failure of witnesses to appear.....	16
<b>CASES BEFORE THE HIGHER COURT in 2022</b> .....	17
I. The Bratunac-Suha Case.....	17
II. The Vlasenica Case .....	22
III. The Teslić Case.....	26
IV. The Štrpci Case.....	33
V. The Ćuška/Qyshk Case.....	52
VI. The Srebrenica Case.....	61
VII. The Zvornik – Standard Case .....	74
VIII. The Kalinovik Case.....	82
IX. The Bratunac II Case.....	91
X. The Sanski Most II Case .....	97
XI. The Rogatica Case.....	113
XII. The Rudice Case .....	123



<b>FIRST INSTANCE JUDGMENTS</b> .....	<b>130</b>
I. The Brčko – Rasadnik Camp Case .....	130
II. The Sanski Most–Lušci Palanka Case .....	141
III. The Brod na Drini Case .....	149
IV. The Đakovica Case.....	155
<b>FINAL JUDGMENTS</b> .....	<b>160</b>
I. The Bosanska Krupa Case II.....	160
II. The Hrasnica Case .....	167
III. The Bihać III Case .....	177
<b>PROCEEDINGS INITIATED IN 2022</b> .....	<b>181</b>
I. The Zagreb Case .....	181
II. The Petrovačka cesta Case .....	186
III. The Jajce Case .....	189
IV. The Višegrad Case.....	193
V. The Srebrenica II Case.....	196
VI. The Bosanski Novi II Case .....	202



## Abbreviations

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





## Introduction and methodology

This is the 11<sup>th</sup> 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 2022, namely a total of 25 cases conducted before the War Crimes Departments of the Higher Court and/or the Court of Appeal in Belgrade. The Report provides a brief overview of the proceedings and of the HLC's basic findings in respect of cases which are of public relevance. A large number of the war crimes cases covered by this Report have been going on for a number of years now, so that previous HLC annual trial reports are also relevant for a full grasp of the course of the proceedings and the pertinent HLC findings.

The report focuses on the work of the Office of the War Crimes Prosecutor (OWCP) and of the courts in parts of the judicial proceedings open to the public, primarily by analysing the indictments and the 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 not be undertaken in respect of the individual cases, as no information on their activities is publicly available.

In the reporting period, the War Crimes Department of the Higher Court in Belgrade handed down first-instance judgments in five cases.<sup>1</sup> It also rendered a decision terminating criminal proceedings in respect of one defendant who had died.<sup>2</sup> The War Crimes Department of the Court of Appeal in Belgrade handed down two judgments.<sup>3</sup> Over the reporting period, the OWCP reportedly issued 12 indictments against 19 persons, five of which were transferred from BiH.<sup>4</sup>

Since it began working in 2003 until the end of 2022, the OWCP brought indictments in 101 war crimes cases, indicting a total of at least 231 persons and encompassing at least 3,405 victims who lost their lives<sup>5</sup>. Final judgments have been rendered in 60 cases and 30 cases are pending. In cases which have been concluded by a final decision, a total of 89 defendants have been convicted and 54 acquitted. Also, indictments were dismissed against 30 out of the total number of the indictees, either on account of their incapacity to stand trial, or because proceedings were terminated on account of their deaths. In the finally concluded cases, the indictments listed a total of 974 victims who had lost their lives, whereas the final judgments list 748 victims who had perished.

Preceding the analyses of the cases in the Report is an overview of general findings on war crimes trials in 2022, and of important socio-political developments which have had some bearing on war crimes trials.

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1 The *Brčko – Rasadnik Camp, Sanski Most – Lušci Palanka, Đakovica, Brod na Drini and Hrasnica* cases.

2 The accused Dragan Dopuda.

3 Judgments rendered in the *Bosanska Krupa II* and *Hrasnica* cases.

4 OWCP Letter PI. No. 1/23 of 24 January 2023.

5 The exact figures were impossible to ascertain as not all indictments the OWCP declares to have issued in 2022 are publicly available.



# General findings and the socio-political context

## Inefficiency of the OWCP

Over the reporting period the negative trend has continued of an inadequate number of indictments being issued by the OWCP, account being taken of the OWCP's capacity. In 2022, according to information supplied by the OWCP, 12 indictments were issued against 19 persons<sup>6</sup>, five of which are indictments from transferred cases. In actual fact, 11 indictments are in question, because one indictment from 2021, after the court remanded it to the OWCP to amend it, received a new number in 2022<sup>7</sup>, and one indictment issued against four persons was dismissed immediately.<sup>8</sup> OWCP's engagement in preparing indictments from transferred cases is minimal, as prosecutorial work leading up to the indictment had been fully completed prior to the transfer – the investigation had been conducted, the indictment issued and confirmed by the competent court. Therefore, just six indictments resulting from OWCP's own investigations over the course of a whole year, can be considered extremely inefficient work indeed, that being under one indictment per deputy prosecutor annually, in view of the fact that in 2022 the OWCP had 12 and later on 11 deputies.<sup>9</sup> Such performance, or rather the absence of a final result of the OWCP's work, renders pointless any strategy for the prosecution of war crimes, whether the National or the Prosecutorial one. Particularly so, if account is taken of the data that the Office of the Republic Public Prosecutor provides in the *Work of Public Prosecutor Offices on Preventing Crime and Protecting Constitutionality and Legality in 2021* - namely that in 2021 the OWCP had 1,144 criminal cases pending.<sup>10</sup> The issuance of only six own indictments at an annual level, with such a large number of cases, portends that nothing noteworthy will be done to deal with the impunity of war crime perpetrators.

8

## Public attitude to war crimes in 2022

The official policy of remembrance of the 1990's wars which is based on selective memory, the relativisation of crimes, the glorification of war criminals and the denial of adjudicated facts, remained unchanged in 2022 as well.

6 Indictments: KTO 1/22 – no available data on the identity of the four accused, KTO 2/22 against Vladimir Mikac, Zdenko Radulj, Željko Jelenić and Danijel Borović, KTO 3/22 against Branko Tunić, KTO 4/22 against Jovo Jandrić and Slobodan Pekez, KTO 5/22 against Slađan Tasić, KTO 6/22 against Dule Petrit, KTO 7/22 against Dušan Lončar, KTO 8/22 against Milorad Kotur, KTO 9 /22 against Novak Stjepanović, KTO 10/22 against Momir Jasikovac, KTO/11 against Lazar Mutlaka and KTO 12/22 – no data available on the number and identity of the accused.

7 Indictment KTO 3/22 against Branko Tunić, formerly KTO 4/21.

8 Indictment KTO 1/2022 of 18 January 2022, information about its dismissal available at <https://www.tuzilastvorz.org.rs/sr/%D0%BF%D1%80%D0%B5%D0%B4%D0%BC%D0%B5%D1%82%D0%B8/%D0%BA%D1%82%D0%BE-122>, accessed on 3 March 2023.

9 In 2022, one OWCP deputy prosecutor retired.

10 Republic Public Prosecutor, "Work of Public Prosecutor Offices on Preventing Crime and Protecting Constitutionality and Legality in 2021" available at <http://www.rjt.gov.rs/docs/rad-javnih-tuzilastava-na-suzbijanju-kriminaliteta-i-zastiti-ustavnosti-2022.pdf>, pp.179 -196, accessed on 2 March 2023.



At the end of December 2021, Milan Mojsilović, Chief of the Serbian Armed Forces General Staff, conferred a commemorative military medal on retired General Vinko Pandurević.<sup>11</sup> Pandurević was finally convicted by the International Criminal Court for the former Yugoslavia (ICTY) of a crime against humanity and of war crimes committed in July 1995 in Srebrenica, including murder, persecution and forcible transfer. Today he lives in Serbia and is a frequent guest on TV programmes. On 9 January 2022, he was among the guests at the ceremony to mark the Day of Republika Srpska in Banjaluka, where he stood on the saluting dais with representatives of Serbia's state leadership.<sup>12</sup> On that occasion, Ana Brnabić, Serbia's prime minister, stated that "Republika Srpska is the fruit of the desire of the Serbian people [...] for crimes like the ones committed against the Serbian people in World War II to be prevented."<sup>13</sup>

In the first days of 2022, a video was shown of members of the Priboj Police Administration singing songs calling for a new genocide and crimes against humanity. Following public pressure, disciplinary action was initiated against the filmed policemen, which, as a mild measure, negates the seriousness of this incident.<sup>14</sup> Several days later, on Orthodox Christmas Eve, a group of people sang in the streets of Priboj "It is Christmas, it is Christmas, shoot at the mosques", carrying torches and setting off fireworks. Reportedly, the police identified an eighteen-year-old lad who is the only person clearly visible in the video, and the competent prosecutor's office has been informed of the incident.<sup>15</sup>

Minister of the Interior of Serbia, Aleksandar Vulin, was guest of honour at the commemoration of the Day of Srebrenica Municipality, on 11 March 2022<sup>16</sup>, while sitting in the front row, as a "VIP 2" guest was also Saša Cvjetan, member of the "Škorpioni" unit.<sup>17</sup> In 2005, the District Court in Belgrade convicted Cvjetan to 20 years of imprisonment for a war crime against Albanian civilians in Podujevo: the murder of 14 women and children and the wounding of five children.<sup>18</sup> He was released on 22

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11 Ministry of Defence of the Republic of Serbia, "Reception for Delegations of the Generals and Admirals of Serbia Club" available at <https://www.mod.gov.rs/lat/18208/prijem-delegacije-kluba-general-a-i-admirala-srbije-18208>, accessed on 26 January 2023.

12 Radio Free Europe, "Parade Held in Banjaluka to Mark the Controversial 9<sup>th</sup> of January", available at <https://www.slobodnaevropa.org/a/januar-rs-nesutavni-praznik/31642751.html>, accessed on 26 January 2023.

13 Danas, "Brnabić: the RS Came into Being to Prevent Crimes against Serbs Committed in World War II", available at <https://www.danas.rs/svet/region/brnabic-rs-je-nastala-da-bi-se-sprecili-zlocini-nad-srbima-pocinjani-u-drugom-svetskom-ratu/>, accessed on 26 January 2023.

14 N1 "Disciplinary Action Taken against Policemen Who Sang about Srebrenica in Priboj", available at <https://n1info.rs/vesti/disciplinski-postupak-protiv-policajaca-koji-su-pevali-o-srebrenici-u-priboju/>, accessed on 26 January 2023.

15 Radio Free Europe, "MUP of Serbia: Police Identified the Young Man Who Sang Improper Song in Priboj", available at MUP Srbije: Policija identifikovala mladića koji je pevao neprimerenu pesmu u Priboju, accessed on 26 January 2023.

16 Novosti, "Vulin Attended the Day of Srebrenica Municipality Ceremony: As Long as Aleksandar Vučić Leads Serbia, Republika Srpska Will Be Our Priority", available at VULIN PRISUSTVOVAO OBELEŽAVANJU DANA OPŠTINE SREBRENICA: Dok Aleksandar Vučić vodi Srbiju, Republika Srpska će biti naš prioritet (novosti.rs), accessed on 26 January 2023.

17 Danas, "Member of the Škorpioni at Solemn Commemoration of the Day of Srebrenica Municipality", available at <https://www.danas.rs/svet/region/pripadnik-skorpiona-na-svecanom-obelezavanju-dana-opstine-srebrenica/> accessed on 26 January 2023.

18 Judgment of the District Court in Belgrade K.No. 1823/04 of 17 June 2005.



March 2018, over three and a half years before his sentence expired.<sup>19</sup> This is not the only time that Vulin appeared in the company of war criminals. Among others, at the election rally of his party, the Movement of Socialists, held on 27 March 2022, one of the speakers was retired general Vladimir Lazarević, convicted by the ICTY to 14 years of prison for aiding and abetting crimes against humanity against the Kosovo Albanians in 1999.<sup>20</sup>

The anniversary of the start of NATO's bombing campaign against FR Yugoslavia was marked by a central commemoration ceremony in Kraljevo, at which the keynote speakers were Aleksandar Vučić, Milorad Dodik and the Patriarch of the Serbian Orthodox Church, Patriarch Porfirije. As every year at 24 of March state commemorations, honouring the victims was in the background, while the central motif was Serbia as a victim, which "had not attacked anybody", as "the most beautiful, unvanquished, free, freedom-loving and invincible", attacked by a far more powerful enemy. Keeping silent about the crimes committed by Serbian forces during the war in Kosovo, before and after the NATO bombing, remains a part of the official remembrance policy. In addition to the central ceremony in Kraljevo, the start of the bombing campaign was also marked in other places throughout Serbia. Among others, a gathering was held in the National Theatre in Niš entitled "Lest it be forgotten" at which spoke retired General Vladimir Lazarević, convicted by the ICTY for aiding and abetting crimes against humanity against the Kosovo Albanians during the 1999 war.<sup>21</sup>

A convicted war criminal, Vojislav Šešelj, also ran at the presidential and parliamentary elections held on 3 April, and six convicted war criminals (Vojislav Šešelj, Vladimir Lazarević, Veselin Šljivančanin, Nikola Šainović, Dragan Vasiljković, Vinko Pandurević) supported the lists and candidates of the ruling SNS-SPS coalition.<sup>22</sup>

The president of Serbia used the anniversary of the Srebrenica genocide to put the spotlight on alleged attacks on the Serbian people, and said that this year, on the occasion of the anniversary, he had noticed more hate and "a more vehement campaign" targeting the Serbian people<sup>23</sup>. In Serbia, the victims of Srebrenica are commemorated only by a few non-governmental organisations and by

19 Humanitarian Law Center press release of 25 April 2018, "*Convicted of Murdering Women and Children in Podujevo - Saša Cvjetan – Released before Expiry of Sentence*", available at <http://www.hlc-rdc.org/?p=35087&lang=de>, accessed on 2 March 2023.

20 Alo, "*Let us not allow a revision of our freedom-loving past to the detriment of the Serbian people because that past is our code and our identity*", available at <https://www.alo.rs/vesti/politika/612194/general-lazarevic-porucio-savelikog-predizbornog-skupa-pokreta-socijalista-u-beogradu/vest>, accessed on 2 March 2023.

21 Niške vesti, "*General Lazarević, Speaking to the Glory and in Honour of Heroes, Delivers a Lesson in History*", available at <https://niskevesti.rs/general-lazarevic-govoreci-u-cast-i-slavu-junacim-odrzao-cas-istorije/>, accessed on 2 March 2023.

22 YIHR, "*Attitude Towards War Crimes in the 2022 Election Campaign*", pp. 5-10, available at <https://www.yihr.rs/wp-content/uploads/2020/06/War-criminals-elections-2020.pdf>, accessed on 2 March 2023

23 Blic, "*It Seems That Everybody in the Balkans is Waiting for the Second Half; Vučić: We Must Avoid War at All Costs*", available at <https://www.blic.rs/vesti/politika/cini-se-da-svi-na-balkanu-cekaju-drugo-poluvreme-vucic-moramoda-izbegnemo-rat-po/3scn36b>, accessed on 2 March 2023.



citizens: through performances<sup>24</sup> debates,<sup>25</sup> virtual monuments<sup>26</sup> and symbolic candle lighting.<sup>27</sup> The lighting of candles, staged regularly outside the Presidency building since 2015, this year had to be brought forward from evening to late afternoon, because only a few hundred metres away a big event was organised to celebrate Novak Đoković's victory at Wimbledon.

The anniversary of Operation "Oluja/Storm" was marked by a state commemoration on 4 August in the evening, at the central city square in Novi Sad. The commemoration programme, as in previous years, consisted of a combination of speeches by high state and church dignitaries, and a culture and arts programme directed by Dragoslav Bokan, former commander of the „Beli orlovi /White Eagles/" paramilitary unit. In their speeches, Aleksandar Vučić and Milorad Dodik sought to accentuate the continuity of crimes against Serbs in Croatia, linking the NDH /Independent State of Croatia/ genocide with the crimes of the 1990's. Dodik used this opportunity to openly deny the war crimes of the Serb forces, saying that there did not exist a single place in the territory of the former Yugoslavia where "Serbs had organised camps".

In August 2022, retired general Božidar Delić was elected Deputy Speaker of the National Assembly of Serbia, and retired general Svetozar Andrić member of the City Council of the City of Belgrade. During the war in Kosovo, Delić was the commander of the 549<sup>th</sup> Motorised Brigade of the Yugoslav Army in whose zone of responsibility over 2,100 Albanian civilians were killed. The HLC filed two criminal complaints against Delić but he was never indicted. Delić died in August 2022. The HLC has been demanding an investigation of Svetozar Andrić ever since 2006, and in March 2018 also filed a criminal complaint against him for a number of crimes committed during the war in BiH, including the expulsion of Bosniaks from Zvornik, Vlasenica and Kalesija and the destruction of their property, as well as the setting up of the Sušica camp in u Vlasenica, in which about 160 detainees were killed and many women raped.<sup>28</sup> An indictment against Andrić was never issued and over the past ten years he has held a number of various public offices.

When the councillors of the "Za dobar grad –Moramo"/ We Must – for a Better City/coalition in the City Assembly of Belgrade emphasised the problematic CV of Svetozar Andrić, Aleksandar Šapić, the newly-elected mayor of Belgrade replied that "anyone against whom Nataša Kandić and

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24 N1, "Women in Black Performance: Srebrenica - the Name of Genocide Banner Unfurled", available at <https://n1info.rs/vesti/aktivisti-zena-u-crnom-razvili-transparent-srebrenica-ime-genocida/>, accessed on 2 March 2023.

25 Danas, "Debate: Denial of the Srebrenica Genocide Present in Serbia for 27 Years Now, in Different Forms", available at <https://www.danas.rs/vesti/drustvo/debata-negiranje-genocida-u-srebrenici-prisutno-je-u-srbiji-vec-27-godina-u-razlicitim-oblicima/>, accessed on 2 March 2023.

26 AL Jazeera, "Virtual Monument to Srebrenica in Belgrade: Life is What the Dead Dream About", available at <https://balkans.aljazeera.net teme/2021/7/17/virtualni-spomenik-srebrenici-u-beogradu-u-tom-prostoru-ce-ostati-zauvijek>, accessed on 2 March 2023.

27 Danas, "Candles Lit outside the Presidency for the Victims of Srebrenica", available at <https://www.danas.rs/vesti/drustvo/kod-predsednistva-upaljene-svece-za-zrtve-genocida-u-srebrenici/>, accessed on 2 March 2023.

28 Humanitarian Law Center press release "Criminal Complaint Against Svetozar Andrić", available at <http://www.hlc-rcd.org/?p=34855&lang=de>, accessed on 2 March 2023.



the Humanitarian Law Center file a complaint should be celebrated by the Serbian people.”<sup>29</sup> Šapić has already been known to glorify both those suspected of war crimes and those who have been convicted by final judgments. In September last year, he posted on the social media, for a second time, a photograph with retired Major Veselin Šljivančanin whom the ICTY has convicted of a war crime against prisoners of war at Ovčara.<sup>30</sup>

In September 2022, the Diocese of New Gračanica-Midwestern America of the Serbian Orthodox Church awarded Vojislav Šešelj the Order of Saint Bishop Mardari.<sup>31</sup> Šešelj was convicted by the ICTY of crimes against humanity, including incitement to persecution and deportation of non-Serbs from Vojvodina. Apart from Šešelj, in October 2022, the Serbian Orthodox Church also decorated Vladimir Lazarević, with the Order of the Martyrs of Surdulica, conferred on him by Bishop Pahomije of Vranje.<sup>32</sup>

## **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 the new 2021-2026 National Strategy for the Prosecution of War Crimes (National Strategy).<sup>33</sup>

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.<sup>34</sup>

29 Danas, “Šapić: He against whom Nataša Kandić files a complaint, should be celebrated by the Serbian people”, available at <https://www.danas.rs/vesti/politika/sapic-onaj-protiv-koga-natasa-kandic-podnese-krivicnu-prijavu-treba-da-bude-slavljen-u-srpskom-narodu/>, accessed on 2 March 2023.

30 Nova.rs, “Šapić Photographed with a War Criminal Says: Here you go, so you can attack me”, available at Šapić se slikao sa ratnim zločincem i poručio: Evo da možete da me napadate (nova.rs), accessed on 2 March 2023.

31 Danas, “Serbian Orthodox Church Bishop Irinej of Bačka Decorates Šešelj”, available at <https://www.danas.rs/vesti/drustvo/spc-dodelila-orden-seselju-odlikovao-ga-vladika-backi-irinej/>, accessed on 2 March 2023.

32 Novosti, “General Lazarević Decorated with the Order of the Holy Martyrs of Surdulica: Our Commander is the Fatherland”, available at <https://www.novosti.rs/srbija/vesti/1159924/general-lazarevic-odlikovan-ordenom-surdulickih-mucenika-nama-komanduje-otadzbina>, accessed on 2 March 2023.

33 2021-2026 National Strategy for the Prosecution of War Crimes, October 2021, available on the official website of the Office of the War Crimes Prosecutor: [https://www.tuzilastvorz.org.rs/public/files/pages/2021-10/Nacionalna%20strategija%20za%20procesuiranje%20ratnih%20zlocina%20od%202021.%20do%202026.%20godine\\_compressed.pdf](https://www.tuzilastvorz.org.rs/public/files/pages/2021-10/Nacionalna%20strategija%20za%20procesuiranje%20ratnih%20zlocina%20od%202021.%20do%202026.%20godine_compressed.pdf), accessed on 15 February 2022.

34 Action Plan for the implementation of the 2021 – 2026 National Strategy for the Prosecution of War Crimes, available at <https://www.tuzilastvorz.org.rs/public/files/pages/2021-10/AP%20za%20sprovodjenje%20Nacionalne%20strategije%20za%20procesuiranje%20ratnih%20zlocina%20%20%28Sluzbeni%20glasnik%2097%2021%29%20111.pdf>, accessed on 15 February 2022.



The Government of the Republic of Serbia adopted the first National Strategy on 20 February 2016, for the period from 2016 to 2020. It defined a set of activities in pursuance of a common aim – improving the prosecution of war crimes in Serbia.<sup>35</sup> The HLC has monitored and reported on the implementation of the National Strategy, and an overview of the results of the implementation of the first National Strategy is given in the First, Second, Third, Fourth and Fifth Reports on the Implementation of the National Strategy for the Prosecution of War Crimes, which the HLC presented during its term.<sup>36</sup>

The general conclusion regarding the achieved results of the First National Strategy is that the basic objective – upgrading the efficiency of war crimes proceedings before the authorities of the Republic of Serbia - has not been accomplished. That the results of the implementation of the National Strategy are poor was also indicated in the European Commission's Serbia Progress Report for 2022.<sup>37</sup>

To monitor the implementation of the new National Strategy, a Task Force for Monitoring the National Strategy was set up on 9 December 2021, consisting of representatives of all relevant institutions dealing with its implementation. This working body reports to the government on the results of the implementation of the Strategy on a quarterly basis and Reports on the Implementation of the Strategy are posted on the web sites of the Ministry of Justice and the OWCP.<sup>38</sup> Over the reporting period, three reports were posted, covering the period up to 30 September 2022.<sup>39</sup>

According to the reports, a Prosecutorial Strategy for the Investigation and Prosecution of War Crimes with an accompanying Action Plan was drafted in 2022, applicable until 2026; its adoption was expected in the last quarter of 2022, although the general public knew nothing about it.<sup>40</sup>

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35 2016 – 2020 National Strategy for the Prosecution of War Crimes in Serbia, available at [https://tuzilastvorz.org.rs/public/documents/2021-04/p\\_nac\\_stragetija\\_cir.PDF](https://tuzilastvorz.org.rs/public/documents/2021-04/p_nac_stragetija_cir.PDF)

36 First Report on the Implementation of the National Strategy for the Prosecution of War Crimes, HLC, December 2017, available [https://www.hlc-rdc.org/wp-content/uploads/2017/12/Izvestaj\\_Strategija\\_I\\_eng.pdf](https://www.hlc-rdc.org/wp-content/uploads/2017/12/Izvestaj_Strategija_I_eng.pdf); Second Report on the Implementation of the National Strategy for the Prosecution of War Crimes, HLC, June 2018, available at [https://www.hlc-rdc.org/wp-content/uploads/2018/07/Izvestaj\\_Strategija\\_2\\_ENG-ff.pdf](https://www.hlc-rdc.org/wp-content/uploads/2018/07/Izvestaj_Strategija_2_ENG-ff.pdf); Third Report on the Implementation of the National Strategy for the Prosecution of War Crimes, HLC, December 2018, available at [https://www.hlc-rdc.org/wp-content/uploads/2018/12/Third\\_Report\\_on\\_the\\_Implementation\\_of\\_the\\_National\\_Strategy\\_for\\_the\\_Prosecution\\_of\\_War\\_Crimes.pdf](https://www.hlc-rdc.org/wp-content/uploads/2018/12/Third_Report_on_the_Implementation_of_the_National_Strategy_for_the_Prosecution_of_War_Crimes.pdf) Fourth Report on the Implementation of the National Strategy for the Prosecution of War Crimes, HLC, June 2019, available at <https://www.hlc-rdc.org/wp-content/uploads/2019/07/Fourth-Report-on-the-Implementation-of-the-National-Strategy-for-the-Prosecution-of-War-Crimes.pdf> Fifth Report on the Implementation of the National Strategy for the Prosecution of War Crimes, HLC, December 2019, available at [https://www.hlc-rdc.org/wp-content/uploads/2019/12/Fifth\\_Report\\_on\\_the\\_Implementation\\_of\\_the\\_National\\_Strategy\\_for\\_Prosecution\\_of\\_War\\_Crimes.pdf](https://www.hlc-rdc.org/wp-content/uploads/2019/12/Fifth_Report_on_the_Implementation_of_the_National_Strategy_for_Prosecution_of_War_Crimes.pdf), all texts accessed on 15 February 2022.

37 European Commission Annual Report on Serbia's Accession Negotiations for 2022, available at <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Serbia%20Report%202022.pdf> accessed on 2 March 2023.

38 Decision of the Government of the Republic of Serbia 05 No. 02-11325/2021 of 9 December 2021.

39 Reports Number 1, 2 and 3 on the implementation of the National Strategy for the Prosecution of War Crimes, available at <https://www.mpravde.gov.rs/tekst/17978/izvestaj-o-sprovođenju-nacionalne-strategije-za-procesuiranje-ratnih-zlocina.php>, accessed on 2 March 2023.

40 Report Number 3 on the Implementation of the National Strategy for the Prosecution of War Crimes, available at <https://www.mpravde.gov.rs/tekst/17978/izvestaj-o-sprovođenju-nacionalne-strategije-za-procesuiranje-ratnih-zlocina.php>, accessed on 2 March 2023.



As the new Prosecutorial Strategy for the Prosecution of War Crimes has not been made public yet, we can only hope that it acknowledges all the weaknesses of the previous one and envisages mechanisms for overcoming them. Also, that the new prosecutorial strategy will eliminate two basic shortcomings of the previous one – the absence of clear prioritising criteria for the OWCP to follow in selecting cases to be processed in the forthcoming period, and the absence of key performance indicators – the anticipated progress in prosecuting war crimes, in terms of quality and quantity.

In 2022, OWCP's capacity continued to be enhanced through the professional advancement of deputy prosecutors and other staff who attended five trainings in the fields of international humanitarian law and communication skills, and one in the use of new information technologies.<sup>41</sup>

Reportedly, the new OWCP website is being successfully updated regularly, but that is untrue; namely, often indictments are not posted on the website after the completion of the pretrial hearing stage but much later, and sometimes only when, pursuant to the Law on Free Access to Information of Public Importance, the OWCP is requested to submit an indictment during the actual trial.

Although the Reports state that a range of activities are being undertaken to enhance efficiency in war crimes trials, the basic result – initiating a larger number of proceedings – has not been attained, as the number of self-initiated indictments issued (a total of six) at the annual level is almost half the number of the existing deputy prosecutors.

This gives rise to fears that the implementation of the new Strategy will not yield any significant results either.

14

### **Excessive and unnecessary anonymisation**

Over the reporting period, the OWCP continued with the practice of excessively and unnecessarily anonymising the indictments posted on its website. The OWCP Rulebook on Anonymisation of Personal Data in Office of the War Crimes Prosecutor Indictments for War Crimes<sup>42</sup> stipulates 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”.<sup>43</sup> Instead of the entire indictment, only the operative part is posted, making it entirely impossible to ascertain on what evidence the OWCP bases the indictment. The Rulebook also envisages anonymisation of the personal particulars of the parties to the proceedings, such as “the names and surnames and nicknames of physical persons, the address, date and place of birth”<sup>44</sup>,

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41 Ibid.

42 Rulebook on Anonymisation of Personal Data in Office of the War Crimes Prosecutor 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](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 6 February 2023.

43 *Ibid*, Article 1, paragraph 2.

44 *Ibid*, Article 5, paragraph 1.



but, however, it also provides that “data on the name, surname and nickname of a physical person who is a party to the proceedings (the accused is a party to 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”. It is also explicitly stipulated that data on participants in the proceedings shall be exempted from anonymisation if in question are persons whose particulars have already been made publicly available.<sup>45</sup> As the names of the accused have been anonymised, the OWCP is evidently in breach of a provision of its own Rulebook, in total disregard of the public interest, that being public disclosure of the identity of persons who stand accused of war crimes. It is particularly pointless for the OWCP to anonymise indictments transferred from BiH, by redacting the names of the accused and of the victims, despite it being totally redundant. Namely, data on the identity of the accused had already been publicly available before the OWCP issued those indictments, as they had already been posted on the website of the BiH court; the BiH media had reported on the issued indictments, stating the names of the accused; domestic media have also frequently reported that the Republic of Serbia has assumed criminal prosecution of those cases, so that anonymisation was totally superfluous. The OWCP also anonymises the names of the victims, regardless of the fact that they too had been publicly available even before the OWCP issued its indictments, because the names of the victims are listed in the media every year on the occasion of commemorations of tragic anniversaries and many of them are inscribed in memorials erected in public spaces.

Anonymising publicly posted indictments in this way, the OWCP makes them totally unclear<sup>46</sup> and the accused totally invisible to the general public, which is entirely contrary both to the 2016 National Strategy<sup>47</sup> and the Prosecutorial Strategy for the Prosecution of War Crimes in Serbia<sup>48</sup>. Namely, the mentioned strategies aim at promoting overall societal attitudes to the issue of war crimes trials, primarily by facilitating access to information about war crimes proceedings in pursuit of the ultimate aim – improved transparency of war crimes trials. 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 sheer formality, the victims are unimportant and the public should not in fact be informed about it at all.

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45 *Ibid*, Article 5, paragraph 2.

46 In all OWCP indictments, the accused are indicated as A.A., available at <https://www.tuzilastvorz.org.rs/sr/%D0%BF%D1%80%D0%B5%D0%B4%D0%BC%D0%B5%D1%82%D0%B8/%D0%BE%D0%BF%D1%82%D1%83%D0%B6%D0%BD%D0%B8%D1%86%D0%B5>, accessed on 16 January 2023.

47 2021-2026 National Strategy for the Prosecution of War Crimes, available at [https://www.mpravde.gov.rs/files/Usvojeni%20tekst%20Strategije%20za%20procesuiranje%20ratnih%20zlo%20C4%8Dina%20\(Sl.%20glasnik%2097%2021\)%20222.pdf](https://www.mpravde.gov.rs/files/Usvojeni%20tekst%20Strategije%20za%20procesuiranje%20ratnih%20zlo%20C4%8Dina%20(Sl.%20glasnik%2097%2021)%20222.pdf), accessed on 16 January 2023.

48 2018-2023 Prosecutorial Strategy for the Investigation and Prosecution of War Crimes in Serbia, 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 2023.



## **Trials in absentia**

During the reporting period, the OWCP brought two indictments against citizens of the Republic of Croatia who were out of the reach of the state authorities of the Republic of Serbia, and for the first time proposed that they be tried in absentia. Having accepted OWCP's proposal in the case against the accused Branko Tunić, the Court ruled accordingly, and the trial commenced on 7 October 2022. In respect of the second case, concerning four pilots of the Croatian Air Force who stand accused of shelling a column of refugees in August 1995, the Court has not yet ruled on a trial in absentia, but it is highly certain that it will. Although the possibility of trials in absentia has been provided for under the law, it has not been exploited in war crime trials to date. To wit, the CPC stipulates that "The defendant may be exceptionally tried in his absence only if he is at large or is otherwise not accessible to government authorities, provided that particularly important reasons exist to try him in absentia."<sup>49</sup>

Trials in absentia for this kind of crime is not an unknown practice in the region, as it has been applied for quite some time now in the Republic of Croatia, but it has met with harsh criticism both in the domestic and international public. On the other hand, in Bosnia and Herzegovina there is no legal possibility for trials in absentia, as the law explicitly provides that "An accused may never be tried in absentia"<sup>50</sup> Therefore, in order to strengthen regional cooperation and trust among the states in the region, such trials should not be practised, especially as they are being abused for daily politicking purposes and commented upon through the media using incendiary rhetoric, contributing thus to mounting tensions among the states.

16

## **Failure of witnesses to appear**

Witnesses are evidently ever less responding to summons to appear in war crimes cases. That is primarily because many years have gone by since the commission of the crimes. Thus, 30 years have elapsed since the crimes that were committed in BiH territory, which account for the majority of the cases, which inevitably resulted in a reduced number of witnesses capable to testify, given their age or state of health. Year after year, the number of witnesses able and willing to testify keeps decreasing; some have gone abroad and are difficult to get in touch with, some do not want to testify; all this causes the frequent rescheduling of hearings, and ultimately makes the conduct of the proceedings very difficult. In war crimes cases, witnesses are an essential and often the only relevant means of proof, so that the danger exists that trying war crime cases in the future will be increasingly problematic for lack of evidence. Particularly so, because the number of indictments for war crimes issued in Serbia is small, and case transfers through regional cooperation are slow, with several years passing from the confirmation of the indictment in BiH until the case is transferred to and an indictment issued by the OWCP.

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<sup>49</sup> Criminal Procedure Code of the Republic of Serbia, Article 381.

<sup>50</sup> Criminal Procedure Code of Bosnia and Herzegovina, Article 247.



# CASES BEFORE THE HIGHER COURT in 2022

## I. The Bratunac-Suha Case<sup>51</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> first instance proceedings	
<b>Date of indictment:</b> 22 October 2018	
<b>Trial commencement date:</b> 5 November 2019	
<b>Prosecutor:</b> Svetislav Rabrenović	
<b>Defendant:</b> Jovan Novaković	
<b>Criminal offence charged:</b> war crime against the civilian population under Article 142 of the FRY Criminal Code	
<b>Case transferred from BiH</b>	
<b>Trial Chamber</b>	Judge Vladimir Duruz (Chairperson) Judge Snežana Nikolić - Garotić Judge Vinka Beraha-Nikićević
<b>Number of defendants:</b> 1 <b>Defendant's rank:</b> no rank <b>Number of victims:</b> 300 <b>Total number of witnesses heard:</b> 3	<b>Number of scheduled court days in the reporting period:</b> 8 <b>Number of court days in the reporting period:</b> 1 <b>Number of witnesses heard in the reporting period:</b> 1 <b>Total number of expert witnesses heard:</b> 2
<b>Key developments in the reporting period:</b> Main hearing	

17

<sup>51</sup> The *Bratunac-Suha* Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/bratunac-suha.html>, accessed on 6 February 2023.



## Course of the proceedings

### Overview of the proceedings up to 2022

#### 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 whom 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; 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.<sup>52</sup>

#### 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 able-bodied men from the village of Suha, who had been separated from the women and children and taken to the “Vuk Karadžić” Primary School, he said that he did not know what was happening to them at the school. He underlined that he had helped two Bosniak men escape, one of whom is now living in the USA, and the other in the vicinity of Tuzla. To his knowledge, members of the “White Eagles” and “Šešelj’s men”, were in Bratunac then and had come there to plunder.<sup>53</sup>

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.<sup>54</sup>

#### 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

52 OWCP Indictment KTO No. 6/2018 of 22 October 2018, available at [https://www.tuzilastvorz.org.rs/public/indictments/%D0%9A%D0%A2%D0%9E\\_6\\_18\\_%D0%8B.pdf](https://www.tuzilastvorz.org.rs/public/indictments/%D0%9A%D0%A2%D0%9E_6_18_%D0%8B.pdf), accessed on 6 February 2023.

53 Ibid.

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



standing and facing a number of armed men. The men were armed with long-barrelled firearms, were in motley garb and had come from somewhere, 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, they actually steered clear of them. In fact, 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. To that Milošević reacted by saying, referring to the police, that “we will not and may not do these things”. The witness remarked that prior to this case on occasion dead bodies had been found and houses deserted and looted in Bratunac. In 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 driving Suha villagers out. He knows the accused, but does not know if he belonged to any armed formations during the war and if so which ones<sup>55</sup>.

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 driven out 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 pulled up and all the people were transferred to Visoko, as he later heard. Prior to 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 does not know who carried out the cleansing of the village of Suha but he knows that “all kinds of things happened” during these actions<sup>56</sup>.

19

## **Overview of the proceedings in 2022**

Eight court days were scheduled in 2022, only one of which was held, during which one witness was heard. The hearings were postponed four times because summoned witnesses failed to appear in court.

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.

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<sup>55</sup> Transcript of the main hearing held on 27 September 2021.

<sup>56</sup> Ibid



The witness set out from his home, because other people did and he was afraid to stay – they were in fact forced out. Namely, they saw armed men telling them to get going, and they did because they were scared, although nobody held him at gunpoint then. On that occasion the accused wore an olive drab uniform, he carried a Motorola and a pistol, on which basis the witnesses concluded that he held some commanding post. He saw the accused standing in the centre of the village, at a junction, as he addressed the villagers moving in that direction: “We are going down there”. He saw several other soldiers near the accused, and recognised one 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.<sup>57</sup>

## HLC Findings

### **Regional cooperation**

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

20

### **Excessive and unnecessary anonymisation of the indictment**

The OWCP Indictment in this case, which is publicly accessible on the OWCP homepage under “Indictments”<sup>58</sup>, 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.<sup>59</sup> 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”<sup>60</sup> Instead of the entire indictment, only the operative part was posted, making it entirely impossible to ascertain on what evidence the OWCP based the indictment. As well, the Rulebook envisages anonymisation of the personal particulars of the participants in the proceedings, such as “the names and surnames and nicknames of physical persons, the address, date

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57 Transcript of the main hearing held on 30 August 2022.

58 OWCP Indictment KTO No. 6/2018 of 22 October 2018, available at [https://www.tuzilastvorz.org.rs/public/indictments/%D0%9A%D0%A2%D0%9E\\_6\\_18\\_%D0%8B.pdf](https://www.tuzilastvorz.org.rs/public/indictments/%D0%9A%D0%A2%D0%9E_6_18_%D0%8B.pdf), accessed on 6 February 2023.

59 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](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 6 February 2023.

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



and place of birth”<sup>61</sup>, but, however, it also provides that “data on the name, surname and nickname of a physical person who is a participant in the proceedings shall not be subject to anonymisation if the legitimate interest of the public to know prevails over the protection of the identity of the physical person in question.”<sup>62</sup> As the name of the accused has been anonymised, the OWCP is evidently in breach of a provision of its own Rulebook, in total disregard of the public interest, that being public disclosure of the identity of a person who stands accused of a war crime. As well, 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 him<sup>63</sup>, as well as on the website of the BiH Court<sup>64</sup> so that there was no need whatsoever to anonymise it.

### **Failure of witnesses to appear**

In 2022 the trend continued of witnesses failing to appear at trials. Namely, only one court day was held in 2020 and 2021 each, and main hearings were postponed in four instances because the witnesses failed to show up; in 2022 the trial was also postponed four times for failure of witnesses to appear. This delayed the proceedings as over a period of three years the court managed to examine only three witnesses for the prosecution. The poor response of the witnesses in the last two years was largely attributable to the Covid-19 pandemic, but is also due to the fact that almost thirty years have elapsed since the critical event and that both witnesses and injured parties are of advanced age and deteriorating health and consequently increasingly reluctant to testify.

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61 *Ibid*, Article 5, paragraph 1.

62 *Ibid*, Article 5, paragraph 2.

63 BN, “Indictment against Jovan Novaković”, available at [https://www.rtvbn.com/339062/Optuznica protiv Jovana-Novakovica](https://www.rtvbn.com/339062/Optuznica%20protiv%20Jovana-Novakovica), accessed on 6 February 2023

64 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 6 February 2023.



## II. The Vlasenica Case<sup>65</sup>

<b>CASE FACTS</b>	
<b>Current stage of the proceedings:</b> first instance proceedings	
<b>Date of indictment:</b> 17 September 2020	
<b>Trial commencement date:</b> 7 December 2020	
<b>Prosecutor:</b> Miodjub Vitorović	
<b>Defendant:</b> Višnja Aćimović	
<b>Criminal offence charged:</b> war crime against the civilian population under Article 142 of the FRY Criminal Code in conjunction with Article 22 of the FRY Criminal Code	
<b>Case transferred from BiH</b>	
<b>Trial Chamber</b>	Judge Vladimir Duruz (Chairperson)  Judge Snežana Nikolić - Garotić  Judge Vinka Beraha-Nikićević
<b>Number of defendants:</b> 1  <b>Defendant's rank:</b> no rank  <b>Number of victims:</b> 37  <b>Number of witnesses heard:</b> 5	<b>Number of scheduled court days in the reporting period:</b> 8  <b>Number of court days in the reporting period:</b> 1  <b>Number of witnesses heard in the reporting period:</b> 0  <b>Number of expert witnesses heard:</b> 0
<b>Key developments in the reporting period:</b>  Main hearing	

22

<sup>65</sup> The *Vlasenica* Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/vlasenica.html> accessed on 6 February 2023.



## Course of the proceedings

### Overview of the proceedings up to 2022

#### Indictment

The accused Višnja Aćimović is charged that, after she joined and was active on the side of the Army of Republika Srpska (VRS), in the beginning of June 1992 she participated together with Pero Kostić (now deceased) and other unidentified VRS members in the killing of 37 civilians of Bosniak ethnicity at the “Mračni dol” locality in Vlasenica Municipality, 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.<sup>66</sup>

#### 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.<sup>67</sup>

23

#### Witnesses in the proceedings

Five witnesses/injured parties were heard, but none of them had first-hand knowledge of the critical event.

Witness and injured party Hadžira Bećirović stated that at the time 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 to fire on 5 May 1992. According to the account of 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.<sup>68</sup>

66 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](https://www.tuzilastvorz.org.rs/public/indictments/2021-07/kto_03_20_Cir.pdf), accessed on 6 February 2023.

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

68 Transcript of the main hearing held on 4 March 2021.



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.<sup>69</sup>

Witness and injured party Nezira Bekić, the sister of the slain 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 men. He was first taken to Milići and then to Vlasenica, where all trace was lost of him. After the war, when her brother's mortal remains were found, she and other family members went to Tuzla to identify him.<sup>70</sup>

Witness and injured party Amira Ademović, daughter of the slain Omer Ahmetović, was 16 years of age when on 5 May 1992 her father was taken away from their home by masked soldiers. She has had no news about her father since.<sup>71</sup>

### **Overview of the proceedings in 2022**

Eight court days were scheduled in 2022, of which only one was held; not a single witness was heard and the trial was postponed six times due to the failure of summoned witnesses to appear.

## HLC Findings

24

### **Regional cooperation**

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

### **The beginning of the trial was difficult to follow**

The beginning of Višnja Aćimović's trial was difficult to follow because it had not been publicly disclosed what exactly the OWCP's Indictment charged the accused with.<sup>72</sup>

Namely, the indictment against the accused had been read out at the pretrial hearing, which was barred to the public,<sup>73</sup> so that it was not read out at the main hearing, nor was it posted on the OWCP's webpage at that time.

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69 Transcript of the main hearing held on 6 July 2021.

70 Transcript of the main hearing held on 29 September 2021.

71 Ibid.

72 OWCP Indictment KTO. No. 3/20 of 17 September 2020.

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



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.<sup>74</sup>

### **Excessive and unnecessary anonymisation of the indictment**

The OWCP Indictment in this case, which is publicly accessible on the OWCP homepage under “Indictments”<sup>75</sup>, 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.<sup>76</sup> 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”<sup>77</sup>. Instead of the entire indictment, only the operative part was posted, making it entirely impossible to ascertain on what evidence the OWCP based the indictment. As well, the Rulebook envisages that data on the personal particulars of participants in the proceedings (the accused is a participant in the proceedings) shall be exempted from anonymisation if in question are persons whose data in the proceedings had already been publicly available.<sup>78</sup> In view of the fact that the first and last names of the accused had been published in the BH media as far back as 2017, i.e. considerably before the OWCP issued an indictment against her<sup>79</sup>, as well as on the website of the BiH Court<sup>80</sup> there had been no need whatsoever for anonymising them.

### **Failure of witnesses to appear**

Not a single summoned witness appeared before the court in 2022, an increasingly frequent practice in these proceedings. The reason why witnesses fail to appear is primarily the lapse of time since the critical event, as the same happened 30 years ago, and that, due to old age or poor health, many witnesses are no longer able to appear before the court or have lost interest in testifying altogether

25

74 OWCP letter PI. No. 23/30 of 31 December 2020.

75 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](https://www.tuzilastvorz.org.rs/public/indictments/2021-07/kto_03_20_Cir.pdf), accessed on 6 February 2023.

76 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](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 6 February 2023.

77 *Ibid*, Article 1, paragraph 2.

78 *Ibid*, Article 4, paragraph 3, item 1)

79 Balkan Transitional Justice, “Woman Indicted for Massacre in Vlasenica”/ available at <https://balkaninsight.com/sr/2017/01/30/%C5%BEena-optu%C5%BEena-za-u%C4%8De%C5%A1%C4%87e-u-masakru-u-vlasenici-01-30-2017/>, accessed on 6 February 2023.

80 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 6 February 2023.



### III. The Teslić Case<sup>81</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> first instance proceedings	
<b>Date of indictment:</b> 30 December 2019	
<b>Trial commencement date:</b> 28 September 2020	
<b>Prosecutor:</b> Ivan Marković	
<b>Defendant:</b> Nebojša Mirović	
<b>Criminal offence charged:</b> war crime against the civilian population under Article 142 of the FRY Criminal Code	
<b>Case transferred from BiH</b>	
26 Trial Chamber	Judge Snežana Nikolić - Garotić (Chairperson) Judge Vinka Beraha Judge Vladimir Duruz
<b>Number of defendants:</b> 1 <b>Defendant's rank:</b> no rank <b>Number of victims:</b> 36 <b>Total number of witnesses heard:</b> 12	<b>Number of scheduled court days in the reporting period:</b> 7 <b>Number of court days in the reporting period:</b> 4 <b>Number of witnesses heard in the reporting period:</b> 4 <b>Number of expert witnesses heard:</b> 0
<b>Key developments in the reporting period:</b> Main hearing	

<sup>81</sup> The *Teslić* Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/teslic.html> accessed on 24 January 2023.



## Course of the proceedings

### **Overview of the proceedings up to 2022**

#### **Indictment**

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

27



9. In June 1992, in the building of the Teslić Territorial Defence, together with a member of the Teslić Police Station, ordered a Bosniak civilian being interrogated to press his forehead against the wall and raise his arms with three fingers extended and then delivered two rounds of strong blows to his back with a wooden stick and wrung his arms behind his back, while the policeman pushed his fingers into his eyes forcing him to confess where he had been and with whom.
10. In June 1992, in a room in the Teslić Police Station, while interrogating with another policeman a Bosniak civilian about the positions of the Bosniaks, forced him to stand against the wall and beat him with a police truncheon, and then ordered him to sit on a chair, grabbed him by the hair, pulled him downwards and then whacked him on the back with the truncheon so that he lost consciousness,
11. In the summer of 1992, at the local Muslim cemetery in the village of Ružević, together with a member of the police, beat six Bosniak civilians on the body with the metal barrel of a pump action rifle and a wooden stick,
12. In July 1992, in the vicinity of the local cemetery in the village of Donji Ruževići, beat a Bosniak civilian with a metal part of a horse-drawn cart, a crossbar, on the left shoulder and back, as a result of which the injured party fell down and fainted.<sup>82</sup>

### **Defence of the accused**

28

Presenting his defence, the accused denied having committed the criminal offence that he was charged with. He stated that in the critical period he had been a member of the reserve police force and that he worked on protecting the Muslim population, but also on seizing weapons from them. He emphasised that he had been an ordinary reserve policeman who could be issued orders by any active police officer on his shift on a particular day. He also said that he did not know any of his superiors or of the injured parties.<sup>83</sup>

### **Witnesses in the proceedings**

Witness Radomir Jokić was mobilized in the beginning of August 1992 to the post of chief of police in Teslić. He does not know the accused, nor does 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.<sup>84</sup>

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82 OWCP Indictment TRZ KTO 4/19 of 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](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 November 2021.

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

84 Transcript of the main hearing held on 25 February 2021.



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.<sup>85</sup>

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.<sup>86</sup>

At the critical time witness Ibrahim Salkanović was a member of the regular police force in Teslić. He knows 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 does not know what kind of arms the accused had, but he knows that the reserve police force was equipped with “PAPs (semi-automatic rifles)” and automatic rifles. He has no first-hand knowledge of the critical events. His father 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 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.<sup>87</sup>

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 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 Radulović that the accused often maltreated them, after which he stopped coming.<sup>88</sup>

Witness and injured party Asim Halušić stated that he lived in the village of Donji Ruževići 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 Bosniak men, civilians, to work duty. Once when they were on work duty, the accused separated a group of men, among whom 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 having them face the wall, so that the witness could not see who

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85 Ibid.

86 Ibid.

87 Transcript of the main hearing held on 20 May 2021.

88 Transcript of the main hearing held on 14 June 2021.



beat him. After the beating, Šaban remained lying on the floor and died shortly afterwards from the consequences of the beating.<sup>89</sup>

Witness and injured party Hidajet Halušić stated that in June 1992 he was apprehended and locked up in the building of the former TO /Territorial Defence/ in Teslić, with about another 130 Bosniak men. One day the accused arrived and called him out by name and surname and led him out and 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.<sup>90</sup>

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.<sup>91</sup>

### **Overview of the proceedings in 2022**

Seven court days were scheduled in 2022, of which four were held, during which four witnesses were heard.

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 and they were taken to do different work. The accused Mirović was in charge of this. Before these events he had not known him, and the locals called him Nebojša, Neša or Srbijanac. The population of his village was first informed that they were to surrender their weapons; 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 hit him with some kind of a pole several times. They asked the witness about all sorts of things. Minja Tomić then beat him on Srbijanac's order, 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. 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 and that he had told 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.<sup>92</sup>

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89 Ibid.

90 Ibid.

91 Transcript of the main hearing held on 2 December 2021.

92 Transcript of the main hearing held on 20 September 2022.



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 on 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. According to the chain 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 Staff numbered between 600 and 700 men under arms, while some of them are 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 pieces of 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 in respect of the accused.<sup>93</sup>

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 one was the "Patriotic League", the military wing of the SDA /Party of Democratic Action/, i.e. of the Bosniaks, and which armed the local Bosniak population. Negotiations were held for military weapons in their possession to be handed over, which a number of places refused, and attacks on the army also started. Following the adoption of the decision for the JNA to withdraw from BiH, he handed over the soldiers to the VRS because men hailing from those parts 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 Dobož 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, plundered and terrorised the locals. Other paramilitary units also cropped up in the area of the municipality which represented 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 brought that all men fit for military service, regardless of where they came from but 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, of the police, and of the local authorities, and one of the topics of the briefings was 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 they could meet them and assess whether they needed any training and where they would be assigned; that is how the witness came to meet the accused, among others. He knows that the accused had the nickname "Srbijanac". 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

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93 Ibid.



knows where the village of Donji Ruževići is, but throughout his stay in Teslić he had not heard of any actions having been undertaken or the rounding up of locals there.<sup>94</sup>

## HLC Findings

### **Regional cooperation**

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

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<sup>94</sup> Transcript of the main hearing held on 6 December 2022.



## IV. The Štrpci Case<sup>95</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> first instance proceedings	
<b>Date of indictment:</b> 10 May 2018	
<b>Trial commencement date:</b> 29 January 2019	
<b>Prosecutor:</b> Miodub Vitorović	
<b>Defendant:</b> Gojko Lukić, Jovan Lipovac, Duško Vasiljević, Dragana Đekić	
<b>Criminal offence charged:</b> war crime against the civilian population under Article 142 of the FRY Criminal Code in conjunction with Article 22 of the FRY Criminal Code	
<b>Trial Chamber</b>	Judge Snežana Nikolić - Garotić (Chairperson) Judge Vladimir Duruz Judge Vinka Beraha-Nikićević
<b>Number of defendants:</b> 4	<b>Number of scheduled court days in the reporting period:</b> 9
<b>Defendants' rank:</b> no rank	<b>Number of court days in the reporting period:</b> 6
<b>Number of victims:</b> 20	<b>Number of witnesses heard in the reporting period:</b> 2
<b>Number of witnesses heard:</b> 35	<b>Total number of expert witnesses heard:</b> 7
<b>Key developments in the reporting period:</b>	
Main hearing	

33

<sup>95</sup> The Štrpci Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/strpci.html>, accessed on 24 December 2022.



## Course of the proceedings

### Overview of the proceedings up to 2022

#### 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 1<sup>st</sup> Company of the 1<sup>st</sup> Battalion of the VRS Višegrad Brigade, and other members of the VRS (between 25 and 30 of them) are charged with belonging to an armed group entrusted with the special task of abducting, on 27 February 1993, non-Serb passengers from fast train number 671 operating on the Belgrade–Bar railway route. The accused Jovan Lipovac, Ljubiša Vasiljević and Duško Vasiljević, together with other members of the group, came to the railway station in the village of Štrpci, ordered the station master to stop the train, positioned themselves alongside both sides of the train when it stopped and then boarded it and asked the passengers for their ID papers. They took 20 passengers – non-Serb civilians - off the train, namely: Fevzija Zeković, Halil Zupčević, Ilijaz Ličina, Rasim Čorić, 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.

34

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

Then they forced them, barefoot, in their underwear, their hands bound with wire behind their backs, to climb onto the truck again, in which they were taken to the village of 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 injured parties had to run the gauntlet in twos or threes at a time to the house where two members of the armed group awaited them and then killed them with 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.<sup>96</sup>

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96 OWCP Indictment KTO 1/15 of 10 May 2018.



## Defences of the accused

Presenting their defences, all the defendants denied having committed the criminal offence they were charged with. Thus, the accused Gojko Lukić stated that in the critical period he was working for the “Official Gazette” in Belgrade and that he would only go to Rujište near Višegrad to visit his parents.<sup>97</sup> The accused Ljubiša Vasiljević stated that while on the reserve police force in Višegrad he was gravely wounded in the left leg on 2 January 1992 and was taken to hospital in Užice where he underwent treatment until the end of May 1993. At the time of the critical event he was only half able to walk supporting himself with crutches. After the treatment, he was declared unfit for military service for the next five years.<sup>98</sup> 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.<sup>99</sup> 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.<sup>100</sup> The accused Dragana Đekić stated that she had had nothing to do with the critical event whatsoever, except that she was in Višegrad in that period. Ever since 2002 she has been “subjected to torture at the hands of the state as they are involving her in all the events, from Zvornik to Višegrad”. They have been hounding her all these years, but she will only tell it like it is. She knows Milan Lukić from the Višegrad front, from where, after the events in Sjeverin (abduction from a bus and killing of non-Serb passengers), she returned to Belgrade. When Milan Lukić called and told her that he urgently needed fighters because the defence line had been penetrated, she mustered a group of about 15 volunteers, among them Nebojša Ranisavljević, and took them to Višegrad. On arriving in Višegrad, she was assigned to the Intervention Brigade.<sup>101</sup>

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## Witnesses in the proceedings

Witnesses/injured parties Nail Kajević, Selma Čolović, Ragip Ličina<sup>102</sup>, Alija Kapetanović, Etem Softić, Misin Rastoder, Edin Bakija<sup>103</sup>, Islam Sinančević<sup>104</sup>, Đordije Vujović and Izudin Hanić<sup>105</sup> 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 towards the station building.<sup>106</sup>

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

98 *Ibid.*

99 *Ibid.*

100 *Ibid.*

101 *Ibid.*

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

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

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

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

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



Witness Zoran Udovičić, a police officer escorting the train, stated that the train stopped at the station in Štrpci and that soldiers in different outfits surrounded the train. He told a fellow guard, Miroslav Vranić, who was also escorting the train, to go to the front end of the train and check what the soldiers wanted, while he himself went towards the rear of the train. A group of four or five soldiers then entered the train and when he asked them to state their business they said that “they were looking for their strays”. They wore various uniforms; some were in camouflage fatigues, others in standard olive drab. He noticed a soldier who had a fur cap on. The soldiers opened the compartments and asked the passengers for their IDs, and also took some of the passengers off the train. The passengers who got off the train headed in the direction of the railway station. About seven or eight passengers were taken off that part of the train in which he was situated, and later his colleague Vranić told him that 12 or 13 passengers had been taken off his section of the train. All of them were men fit for military service and he thought that military reservists of Republika Srpska were being taken off the train for mobilisation purposes. The witness also said that he had specific instructions in his patrol sheet that should the train stop, VRS soldiers were to be let onto the train to check whether there were any conscripts among the passengers, and that, as that had also happened before, he suspected nothing.<sup>107</sup>

Witnesses Zoran Bogetić, Zoran Pantović<sup>108</sup>, Ljubiša Radomirović and Nenad Cvetić<sup>109</sup> 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.

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Witness Damijan Mitrašinović was the commander of the VRS Goražde Brigade at the time the critical event happened. 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 Rujište, 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 chucked 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.<sup>110</sup>

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

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107 *Ibid.*

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

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

110 *Ibid.*



commander of a Višegrad Brigade battalion, stopped him by a burnt house and signalled to him to head for the yard. He then saw dead persons lying in the snow, with pools of blood around them. He was told that he was to drive their bodies to the bank of the nearby River Drina. Some other people loaded the bodies, he only transported them. He also noticed there Dušan Božić, Krsto Papić's driver at the time. He was at the steering wheel of a "Lada Niva" parked on the other side of the road. When he returned, he asked the director of the cooperative why he had sent him on such a mission, to which the latter replied that he had been obliged to do so, having been given such orders himself.<sup>111</sup>

Witness Dušan Božić, Krsto Papić's driver at the time of the critical event, stated that one evening in February 1993, he and Papić had gone to Prelovo, to the house of his father-in-law, which was some 100 metres away from the school building. Papić walked to the school, and soon afterwards called him on his "Motorola" telling him to bring the car around to the school, which the witness did. He saw a truck parked by the school; Papić told him that they would be returning to Rujište. He confirmed that witness Dragoljub Čarkić had hauled away bodies in the village of Mušići but said that he had not taken part in 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.<sup>112</sup>

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 a couple of cars, a truck, some soldiers, Stanica the cook, and Mitrašin Glišić, a kitchen hand, outside the school. He entered the school and went to the signallers' room. There he found a frightened signaller and Milan Lukić who told him to mind his own business when he asked him what was going on. He called his driver on the Motorola to pick him up at the school and then rode to Rujište. While in Prelovo, he did not see Gojko Lukić, and was not sure that he saw the accused Jovan Lipovac either. He had seen the accused Ljubiša Vasiljević before this event; he knew that one of the Vasiljević brothers had crutches, but he could not remember which one. He knew the accused Dragana Đekić, and he used to see her in Višegrad and at Rujište. She had been with Milan Lukić. While in Prelovo, he had heard a female voice, but was unable to explain why in his statement to the OWCP he had said that he had recognised the voice as being that of the accused Dragana Đekić. He had entered into an agreement with the Prosecutor's Office of Bosnia and Herzegovina in connection with his activities in Mušići (the witness had organised the disposal of the bodies of the slain passengers from the execution site in Mušići, but did not testify about that at the main hearing, only before the OWCP). He had had numerous contacts with BiH and OWCP prosecutors in connection with this event. The prosecutor

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

112 *Ibid.*



from Bosnia and Herzegovina, Džermin Pašalić, had exerted pressure on him, whereas there had not been any pressures exerted on him by the OWCP.<sup>113</sup>

Witness Nebojša Ranisavljević<sup>114</sup> 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 had them all line up against the wall and ordered them to empty their pockets. They found a pistol on one of the young men and beat him. They took the passengers out of the gym and, on Lukić’s orders, tied their hands 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.<sup>115</sup>

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The Chamber ordered a forensic expert analysis to ascertain the causes of death of the injured parties whose bodies have been found<sup>116</sup>, as well as a ballistic analysis.

Medical court expert Dr. Zoran Stanković testified in respect of the duration of the treatment and recovery of the accused Ljubiša Vasiljević.<sup>117</sup>

Witness for the prosecution Mićo Jovičić<sup>118</sup> stated that, having been talked into it by Nebojša Ranisavljević and the accused Dragana Đekić, he arrived in Višegrad from Belgrade as a volunteer on 16 January 1993. He became a member of the Višegrad Light Infantry Brigade Intervention Company, which was positioned at Okolišta. He had met the accused Gojko Lukić, the brothers Vasiljević, Jovan

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

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

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

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

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

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



Lipovac, as well as Milan Lukić, in Višegrad when walking about town in his spare time. He would often go from Okolišta to Višegrad, as it was only about a twenty-minute walk to Višegrad. On 27 February 1993, he was at Okolišta in the company of Nebojša Ranisavljević when Milan Lukić and Boban Indić, the Intervention Company commander, arrived and told them to get ready as they would be going into action, and that a truck would be waiting for them at the gate. It was a military truck, known as a “150”, olive drab and with a tarpaulin cover. The witness and Ranisavljević sat in the cargo area of the truck, where there were another ten or so soldiers, among whom he 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 cab, and the witness thinks that Dragan Šekarić was at the wheel of the truck. He did not know where they were going. The truck got stuck on the way, and Milan Lukić shouted at them to quickly push it out of the rut because they would be late for the train.

They arrived at the railway station in Štrpci, where he noticed that two passenger cars had followed the truck. The soldiers formed a gauntlet along the railway track, while the witness remained by the truck with several combatants. He noticed that on arriving at the station some of the soldiers had put on balaclavas. He saw Milan Lukić, Boban Indić and another soldier going to the station master’s office, and he supposes that they had ordered him to stop the train. When the train stopped, Lukić, Indić, 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 (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 about” the gym were Duško Vasiljević and the Poluga brothers; he also saw the accused Jovan Lipovac in the gym. The abducted passengers had taken their clothes off, on someone’s orders, he guessed. They were in just their underpants and undershirts and some were barefoot; he saw three piles of their clothes, valuables, watches, chains, rings and documents in the gym. He remembers having seen a green passport among those things. In the school in Prelovo he noticed a man of small build, whose name he later learned was Glišić, shifting on his feet around the soldiers, one of whom would not let him enter the school.



Sometime later, the abducted passengers were led out of the gym, their hands bound with wire or string and ordered to climb into the truck cargo area. Several soldiers boarded the truck and helped them climb, as they were tied, and the witness also helped. The truck set off from Prelovo with the witness sitting in the cargo area, and the two passenger cars 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 a soldier nicknamed “Colonel”, while the others formed a gauntlet. The abducted passengers were taken off the truck in twos or threes and led to Boban Indić and Milan Lukić, who killed them with shots to the back of the head. He could see that it was Lukić because he wore a tall fur hat, which the witness could see when the flash from the discharging firearm illuminated it. One of the abducted passengers tried to escape. Nebojša Ranisavljević shot at him and wounded him, after which Milan Lukić walked up to him and slit his throat. After all the abducted passengers had been killed, the witness went back to Okolišta, while the others returned to Prelovo <sup>119</sup>

40 Witness for the prosecution Mitrašin Glišić<sup>120</sup> stated that he knew all the accused. Gojko Lukić and his brother Milan Lukić, a primary schoolmate of his, are from Rujište, as is the accused Jovo Lipovac, whose family he also knows. He knows Duško and Ljubiša Vasiljević, who are from Đurevići, and he had met the accused Dragana Đekić in the company of one Riki from Užice when he arrived. He said that at the time of the critical event he had been working as a kitchen hand at the primary school in Prelovo and that he also slept there. On the upper floor of the school were the Command of the Župljanska Company, whose commander was Krsto Papić, and the radio communications unit. The signaller was Dragan Simić, a.k.a. “Učo”, and Duško Božić, Krsto Papić’s driver, would stand in for him. He remembers that it was winter, the month of February, about five o’clock in the afternoon, when Radomir Šušnjar told the cook Stanica Marković to go home because Milan Lukić would be bringing civilians to the school. He went outside to see what it was about, and noticed a truck that had skidded off the road near the driveway to the school, by the Ajdarovac drinking fountain. When he approached the truck, he saw soldiers there, and he 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 on the road, they drove the truck to the school. Following the truck were also two passenger vehicles. Some twenty soldiers positioned themselves around the truck. Among them were Niko Vujčić, Obrad Poluga, Novak Poluga, Mitar Četnik, Neša who had been in Montenegro, Milovan Vilaret and Stevo Vilaret, Jovo Lipovac, Radojica Ristić, Sredoje Lukić, as well as Duško and Ljubiša Vasiljević, Gojko Lukić, Dragana Đekić and Milan Lukić. A gauntlet was formed from the truck to the school entrance and the civilians in the truck were ordered to get off it, take their bags and go inside the school. The civilians entered the school hallway and were led to the gym. The witness does not know the exact number of the civilians, he thinks that there might have been some twenty of them. Dragana Đekić yelled at the civilians, cursed their Ustasha mothers and hit them with a rifle butt. He also saw Jovo

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

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



Lipovac hit the civilians with a rifle butt and kick them. Later, Krsto Papić and Duško Božić arrived at the school. They went upstairs to the office where the signallers and Dragan Simić were. Milan Lukić, Boban Indić and Obrad Poluga followed them to the office. The witness was standing below the office window and he could hear them talking. Krsto was asking Milan why he had brought the civilians to Prelovo and had not taken them to some other place and killed whomsoever he chose there. Milan Lukić swore in response and then Milan, Boban and Obrad left the office and went into the gym. Cries and screams of the civilians being beaten in the gym could be heard. The witness was in front of the school all the while; the soldiers who were outside would not let him in. After some time, soldiers emerged from the school and again formed a gauntlet through which the men from the gym were ushered to the truck. The men were undressed and covered in blood. They had nothing on except for their underwear, namely just their underpants, and were barefoot; one tall man had a cross carved on his back. All the soldiers who were at the school boarded the truck and the passenger vehicles and drove away towards Višegrad. Before leaving, Milan Lukić gave the witness a jerry can with oil and ordered him to take all the things from the gym outside and burn them. He made several round trips taking out clothes and some papers and documents, and he burned them. As he was bringing out the fourth batch, Milan Lukić and the soldiers accompanying him came back. They first went into the gym and divided the booty, the valuable items that had been seized from the passengers; some of the soldiers were dissatisfied; they said that Milan had given them little money. Then Milan went upstairs to see Krsto Papić. The witness heard them arguing, Milan was ordering Krsto to go with the soldiers on the following day and “pick that up”, and when Krsto asked where the slain men had been dumped, Milan answered that they were in a garage in Rasim’s house in Mušići. In the days that followed, Krsto Papić and commander Damljan Mitrašinović from Višegrad had words over how Milan Lukić had obtained the truck. When the cook Stanica came to the school on the second day, she told the witness that news had been broadcast on TV about the people abducted from the train at Štrpci; they said that they had been taken in an unknown direction. While the two of them were in the kitchen, Krsto Papić came and told him to go and see Drago Čarkić and tell him to take his tractor to Mušići. In the meantime, Božidar and Ilija Vukadinović and Ilija Papić arrived at the school, and, together with Krsto and his driver, went somewhere in a “Niva” vehicle. After they had left, Milan Lukić arrived and proceeded to inspect how the witness had cleaned up the gym. When he saw that a sock and a button had remained, he slapped the witness in the face and ordered him to clean it up all over again. He cleaned the gym again but could not clean it thoroughly because the walls were blood-soaked. When that same day Krsto Papić and the others returned to the school, over lunch they laughed about how Čarkić had been nauseated and had thrown up on seeing the 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, and then they pushed them with boat-hooks downstream the River Drina.<sup>121</sup>

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



The Trial Chamber ordered neuropsychiatric evaluation of witness Mitrašin Glišić in order for his mental faculties of memorization, intelligence and recall capacity and probability of confabulation to be established, always having regard to the witness's educational background.<sup>122</sup>

On 16 August 2021, criminal proceedings were terminated against the accused Ljubiša Vasiljević who had died.<sup>123</sup>

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.<sup>124</sup> 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 knows Mića Jovičić, he was not in his unit and he saw him only seldom, from time to time, in town. The name Mitrašin Glišić rings a bell 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.<sup>125</sup>

Court sworn expert, neuro-psychiatrist Dr. Ratko Kovačević, chaired the Medical Board which evaluated witness Mitrašin Glišić. He stated that the Medical Board established that witness Mitrašin Glišić's was a simple personality structure, with an intellectual capacity in the low average brackets, no educational superstructure and with 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, memorization and reproduction of memorized content were intact. The evaluation also found that the witness does not have dementia, does not confabulate and is 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, memorization or recall functions.<sup>126</sup>

Court sworn expert Zvezdanka Savić, medical psychology specialist, a 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.<sup>127</sup>

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 finding and opinion.<sup>128</sup>

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122 Order on expert evaluation K.Po2 No. 4/2017 of 23 October 2020.

123 Ruling K.Po2 No. 7/14 of 16 August 2021.

124 Transcript of the main hearing held on 22 January 2021.

125 Ibid.

126 Transcript of the main hearing held on 24 May 2021.

127 Ibid

128 Order on additional expert evaluation LPo2 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 is no record indicating that the said diagnosis had been made by a neuro-psychiatrist 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.<sup>129</sup>

In response to a remark by counsel that the witness was an alcoholic, as that diagnosis was in his medical file, the expert said that acute alcoholism was a psychiatric disease. In the medical documentation there was, however, no evidence confirming that diagnosis, as there was no evidence of the witness having been referred to a psychiatrist or of any therapy having been prescribed him upon 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 expert 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 had gone through an episode of severe depression, but, following medical treatment, her mental condition stabilized. 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.<sup>130</sup>

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Court sworn expert Dr. Milena Stanković, 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.<sup>131</sup>

Court sworn expert Zvezdanka Savić, 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's is a simplified personality with intact social functioning. His attitude towards authority is intact, he is capable of recollecting past events and his capacity of recounting past events is preserved. He is not impressionable nor is he manipulative.<sup>132</sup>

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129 Transcript of the main hearing held on 14 October 2021.

130 Ibid.

131 Transcript of the main hearing held on 26 November 2021.

132 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.<sup>133</sup>

Defence counsel for the accused requested that the basic and additional expertise findings be extracted from the case file, contending that in 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.<sup>134</sup>

It ordered a new expert evaluation in respect of the same facts.<sup>135</sup>

### **Overview of the proceedings in 2022**

Due to the change of the Trial Chamber Chairperson, the main hearing restarted on 18 April 2022.<sup>136</sup> 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.

Court sworn expert Dr. Jelena Sredanović, 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 a 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 are irreversible changes which affect basic mental functions, in particular memory, which in the witness is compromised. Memorisation and reproduction of earlier and current events are 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 is very modest. The witness is illiterate, of modest intellectual capacity, a person currently functioning within the framework of slight intellectual disability. Memory, memorisation and recall are all diminished, as are his psychomotor capacities. He has shown a sound knowledge of social rules and norms of behaviour. His is a simple personality structure, with very modest currently registered intellectual capacities, not only because

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133 Transcript of the main hearing held on 21 December 2021.

134 Ruling K.Po2 No. 4/17 of 21 December 2021.

135 Transcript of the main hearing held on 21 December 2021.

136 Former Chairperson Judge Vera Vukotić retired and was replaced by Judge Snežana Nikolić – Garotić.



of his primarily low intellectual capacity, but also due to a combination of exceptionally unstimulating conditions of development, as well as to verified organic changes. No neurologist participated in the evaluation, as the Hospital does 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.<sup>137</sup>

On 14 September 2022, the Court ordered that witness Mitrašin Glišić be evaluated by a commission in respect of his fitness to testify and entrusted this task to the Forensic Psychiatry Board of the Faculty of Medicine in Belgrade.<sup>138</sup>

Court sworn expert Zvezdanka Savić, 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. Due to her family situation she was particularly susceptible, and it was about a flight 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.<sup>139</sup>

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, by the school, 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 also were. They stood behind the captives with their rifles pointed at them. He stated that he knew that all volunteers in the RS army who were employed in Serbia had their years of service registered in Serbia and received their salaries regularly.<sup>140</sup>

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137 Transcript of the main hearing held on 14 September 2022.

138 Ruling of the Higher Court in Belgrade K.Po2 No. 4/2017 of 14 September 2022.

139 Transcript of the main hearing held on 15 September 2022.

140 Ibid.



Witness Krsto Papić, who was also examined 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 only saw Milan Lukić, with whom he had a very unpleasant exchange. He had a correct relationship with the deputy war crimes prosecutor, and the same did not suggest anything to him. According to the witness, the accused Gojko Lukić had not participated in the war but “lived a carefree life in Višegrad”.<sup>141</sup>

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 Okolišta. 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 knows Mićo Jovičić, as well as Neša Ranisavljević, while she saw Milan Lukić only twice. She spent a very brief time at the front, some three to four months, but was unable to connect that stint to any particular time such as New Year’s, Christmas or a Patron Saint’s Day. From her time at the battlefield she remembers an event when once they set out on a mission from Okolišta. 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 action they were sent on was “to beat a path through the snow”. She remembers that the accused Dragana Đekić fell into deep snow on that occasion. Dragana was with them the whole day. She heard about the abduction only on the following day, she did not see the abducted Muslims, she does not know what happened with them, because she does not read the newspapers, she only watches entertainment shows on television. The only thing about it that she knows is 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 one Davor. Describing the accused in that period, she said that she wore camouflage coveralls, military boots and carried a “Heckler” and that she never wore her hair in a ponytail.<sup>142</sup>

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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 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 made 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 is a person with a simple personality structure, of basically low intellectual potentials, ranging below the average. He was not found to suffer from any severe mental diseases, 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 i.e. fit to give evidence. He suffers from Parkinson’s disease, with consequently deteriorated motor

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141 Ibid.

142 Transcript of the main hearing held on 26 October 2022.



functions 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 is why the consultant was not invited to attend the examination. The Board did not base its finding 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. In respect of the chronic alcoholism diagnosis stated in the witness's medical record, apart from that statement, there is no other evidence such as, e.g., the prescribed therapy, namely there is no psychiatric diagnosis of chronic alcoholism. At the same time, the Board did not have unequivocal information that witness Glišić was 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 does not present confabulations which are a psychological disorder – persons with confabulations are unaware that they are replacing memory gaps with them. The Board comprises university professors but can also engage other experts who are not employed at the Faculty.<sup>143</sup>

Prof. Dr. Nikola Vojvodić, 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 evidence (in respect of its duration and sitting position while testifying) refer to the witness's physical capacity. Mildly slower speech and thinking do 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 mental faculties are entirely preserved. To 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 is highly pliable, and functions are easily taken over by parts of the brain not affected by trauma. Such children can exhibit developmental difficulties in childhood which can 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 does not have such damage – all of his brain structures affecting memory are preserved. To the questions of 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 that particular attention needs 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 could conclude that such competency has been impaired. It is not the expert's task to deal with the

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143 Transcript of the main hearing held on 25 November 2022.



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, that 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 is that it causes permanent brain damage, which the witness does not have, and the other is that it can cause chronic epilepsy, which the witness does not have either. Therefore, from the aspect of the witness's competency to testify, there are no chronic consequences of alcoholism. The witness's different statements about the time he did his military service is an issue of working memory which can be affected by a variety of factors, such as stress and fatigue, but that is 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 is a person with a low educational level and he does not have a grip on universally known facts. The witness was not found to confabulate. Asked by the defence expert about the witness possibly having dementia, the professor replied that there are cases of patients with Parkinson's disease having concurrent dementia, but in the terminal stage of the disease, and the witness is not in that stage. The witness's tremor is 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 is unable to tell time in itself means nothing. The question is whether he had at all been able to tell time and then forgot it, or had never been able to. Fast loss of the capacity to tell time would be a sign of rapid dementia, which would have been obvious in the subject, and nothing like it was observed in the witness.<sup>144</sup>

48 Court-sworn expert Dr. Jasmina Barišić, 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 has functional thinking which demonstrates that in question is a person who is not mentally retarded. He possesses concrete and functional thinking, which is sufficient for normal functioning. His is a simplified personality structure without memory damage. She has read his earlier statements and has not found them to be significantly inconsistent. She concluded that the witness is not a suggestible person. As the witness has been alcohol-free over a protracted period, its consumption has not left observable consequences. His memory, perception and speech are preserved, he is not prone to confabulation, and she has 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 of the witness, and that such an attitude on the part of the expert required of 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. In the very least, the court should not accept such findings and opinion.<sup>145</sup>

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144 Ibid.

145 Transcript of the main hearing held on 12 December 2022.



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, and 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 wail and cry. Later they were brought out of the gym, almost naked, in only their underwear and some of them were barefoot. After they 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 regrets not having saved their personal documents. He knows 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 knows the accused Gojko Lukić, as well as his brother Sredoje and Milan. Gojko was in Milan's group, he had a uniform and a weapon, and he was hitting the civilians with his rifle butt, as were Obrad and Novak Poluga. He knows 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 with signallers, and Krsto Papić went there and called Damjan Mitrašinović and asked him why he had sent Milan Lukić, and 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 assesses that there had been about 50 soldiers by the school in Prelovo and all of them left with the civilians.<sup>146</sup>

49

## 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, 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 the identified formal deficiencies as stipulated under the Criminal Procedure Code or because the investigation needed to be expanded.

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146 Ibid.



The indictment was finally confirmed only on 24 October 2018.<sup>147</sup> Having the indictment repeatedly returned for rectification of formal deficiencies is a disgrace for any prosecutorial office and particularly for one of the OWCP's rank. To hide this, the OWCP removed the indictment from its website.<sup>148</sup>

### Inadmissible conduct of the expert witness

Although member of the Medical Board Zvezdanka Savić had not taken part in the additional expert evaluation, the Board chairman, professor Dr. Ratko Kovačević, stated in its findings and opinion that she had. Apart from that, he also signed the findings in her name and informed her accordingly. This action resulted in an unlawful document that could not be used in the proceedings, and in the entire expertise, both the basic and the additional findings, being extracted from the case file and a

147 **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 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.

148 OWCP website – available at <https://www.tuzilastvorz.org.rs/sr/%D0%BF%D1%80%D0%B5%D0%B4%D0%BC%D0%B5%D1%82%D0%B8/%D0%BE%D0%BF%D1%82%D1%83%D0%B6%D0%BD%D0%B8%D1%86%D0%B5>, accessed on 23 December 2022.



new expert evaluation ordered. Such conduct of the experts is incompatible with their role in court proceedings and the court should have informed the Ministry of Justice of this, as court experts, according to the Law on Court Experts, are appointed and relieved of duty by the minister of justice.<sup>149</sup>

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149 Law on Court Experts (*Official Gazette of RS* number 44/2010).



## V. The Čuška/Qyshk Case<sup>150</sup>

<b>CASE FACTS</b>	
<b>Current stage of the proceedings:</b> first instance proceedings (retrial)	
<b>Date of indictment:</b> 10 September 2010	
<b>Trial commencement date:</b> 20 December 2010	
<b>Prosecutor:</b> Bruno Vekarić	
<b>Defendants:</b> Toplica Miladinović, Abdulah Sokić, Srećko Popović, Siniša Mišić, Slaviša Kastratović, Boban Bogičević, Veljko Korićanin, Vladan Krstović, Lazar Pavlović, Milan Ivanović and Predrag Vuković	
<b>Criminal offence charged:</b> war crime against the civilian population under Article 142 of the FRY Criminal Code	
<b>Trial Chamber</b>	Judge Vladimir Duruz (Chairperson) Judge Vinka Beraha-Nikićević Judge Snežana Nikolić - Garotić
<b>Number of defendants:</b> 11	<b>Number of scheduled court days in the reporting period:</b> 7
<b>Defendants' rank:</b> low and medium	<b>Number of court days in the reporting period:</b> 3
<b>Number of victims:</b> 141	<b>Number of witnesses heard in the reporting period:</b> 1
<b>Number of witnesses heard:</b> 116	<b>Number of expert witnesses heard:</b>
<b>Key developments in the reporting period:</b>	
Main hearing	

52

<sup>150</sup> The Čuška Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/cuska.html>, accessed on 20 December 2022.



## Course of the proceedings

### Overview of the proceedings up to 2022

#### 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.<sup>151</sup>

The accused were charged with having, as members of the 177<sup>th</sup> Peć Military-Territorial Detachment (177<sup>th</sup> 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.<sup>152</sup>

The OWCP issued indictments for the same crime against Zoran Obradović<sup>153</sup>, Milojko Nikolić<sup>154</sup>, Ranko Momić<sup>155</sup>, Siniša Mišić<sup>156</sup> and Dejan Bulatović<sup>157</sup>, on 1 April 2011, 27 April 2011, 31 May 2011, 7 November 2011 and 26 September 2012 respectively.

The indictment was amended on 27 September 2012 with the accused also charged with crimes they had committed in the villages of Ljubenić/Lubeniq, Pavljan/Pavlane and Zahać/Zahaq. On 1 April 1999, in the village of Ljubenić/Lubeniq, they killed at least 43 Albanian civilians and wounded 12, torched 11 houses, seized money from civilians and expelled them to Albania. Following an attack on the village of 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 drove out civilians.<sup>158</sup>

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

53

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151 OWCP Indictment number KTRZ 4/10 of 10 September 2010, available at [https://www.tuzilastvorz.org.rs/public/indictments/ktrz\\_4\\_10\\_cir~0.pdf](https://www.tuzilastvorz.org.rs/public/indictments/ktrz_4_10_cir~0.pdf) accessed on 30 December 2022.

152 *Ibid.*

153 OWCP Indictment, KTRZ 4/10 of 1 April 2011.

154 OWCP Indictment, KTRZ 07/11 of 27 April 2011.

155 OWCP Indictment, KTRZ 9/11 of 31 May 2011, available at [https://www.tuzilastvorz.org.rs/public/indictments/%D0%9A%D0%A2%D0%A0%D0%97\\_9\\_11\\_Cir.pdf](https://www.tuzilastvorz.org.rs/public/indictments/%D0%9A%D0%A2%D0%A0%D0%97_9_11_Cir.pdf) accessed on 30 December 2021.

156 OWCP Indictment, KTRZ 19/11 of 7 November 2011.

157 OWCP Indictment, KTO No. 5/2012 of 26 September 2018.

158 OWCP 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.<sup>159</sup>

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 October<sup>160</sup>, 16 October<sup>161</sup> and 5 December 2013<sup>162</sup>) 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 Belgrade<sup>163</sup> 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.<sup>164</sup>

The court found the accused Toplica Miladinović, Commander of the 177<sup>th</sup> Peć VTO, guilty of having issued an order to the late Nebojša Minić, Commander of the 177<sup>th</sup> 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 life 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.

159 Amended OWCP Joint Indictment, KTRZ 4/10 of 17 December 2012.

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

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

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

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

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



## Second instance decision

On 26 February 2015, the Court of Appeal in Belgrade<sup>165</sup> 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 either.<sup>166</sup>

## Retrial

The retrial started before a new Chamber<sup>167</sup> 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.<sup>168</sup>

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

The previously protected witness Zoran Rašković took the stand and stated that the accused Krstović and Ivanović had been in the village of Ljubenić/Lubeniq on the critical day, while he was not sure about the accused Pavlović. Witness Zoran Rašković fully stood by all of his prior statements given during these proceedings. He described the attack on the village of Ljubenić/Lubeniq and stated that between 60 and 100 men – Albanian civilians - had been shot dead on that occasion. He said that the commander of the “Šakali” /Jackals/ unit had issued an order for all males above 12 years of age to step out of a group of assembled Ljubenić/Lubeniq villagers, and that they were then executed.<sup>169</sup>

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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.<sup>170</sup>

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

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

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

168 OWCP Indictment number KTO 8/13 of 7 April 2014, available at [https://www.tuzilastvorz.org.rs/public/indictments/%D0%9A%D0%A2%D0%9E\\_8\\_13.pdf](https://www.tuzilastvorz.org.rs/public/indictments/%D0%9A%D0%A2%D0%9E_8_13.pdf) accessed on 30 December 2022.

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

170 OWCP Indictment 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 unfit to follow the proceedings on account of ill health.<sup>171</sup>

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.<sup>172</sup> Witnesses who had already taken the stand earlier were also examined.<sup>173</sup>

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 Vuković<sup>174</sup>, a former member of the 177<sup>th</sup> Peć VTO, for the criminal offence of a war crime against the civilian population committed in the villages of Ljubenić/Lubeniq and Ćuška/Qyshk.<sup>175</sup>

56 He is charged with attacking civilians in the village of Ljubenić/Lubeniq, namely, searching the houses of Albanians, threatening them with weapons, expelling them from their houses, shooting in the direction of civilians and their houses from an automatic weapon and killing four civilians as a result. Having rounded up the villagers in the centre of the village, the accused VTO members singled out a group of 60 men, and drove out most of the civilians, forcing them to head in the direction of Albania. Vuković is also charged with the large-scale destruction of the property of Albanian civilians, namely setting family houses and other buildings on fire, as well as with participation in the killing of and infliction of bodily injuries on 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 men 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 Ćuška/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 and then opened fire on them from automatic weapons, killing 11 and wounding one civilian 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 shot them dead there with his firearm.

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

172 *Ibid.*

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

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

175 OWCP Indictment, 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.<sup>176</sup>

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.<sup>177</sup>

### **Overview of the proceedings in 2022**

Seven court days were scheduled in 2022, during which one witness was heard and the accused Predrag Vuković presented his defence.

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 three of them escorted a group of between 10 and 15 civilians into a house and shot them dead. After they entered the house with the civilians, he heard bursts of fire and he 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 you do it, 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 omitted to say before that General Balić had told “Mrtvi” 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 today would be the last chance for him to retract all of his earlier statements, or else he would kill his whole family. He explained that as soon as the court found his whereabouts, so did Momić, and so he assumes that there is an “insider” in the court. He is now scared, and kept quite a few things to himself, because “wise men” had told him that the times were different now and to tread very carefully.<sup>178</sup>

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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 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, of

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<sup>176</sup> Transcript of the main hearing held on 22 November 2019.

<sup>177</sup> *Ibid.*

<sup>178</sup> Transcript of the main hearing held on 8 July 2022.



weapons, with an automatic rifle. There he found “Mrtvi” (Radoslav Minić), Boban Bogićević, 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 comes. He learned that they would be going on a mission the evening before in a café, 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 his was the last word. Several passenger vehicles with members of the unit drove to Čuška, and the accused rode in the last vehicle. There already were tractors in place in the village with women and children aboard. 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 a shade and remained sitting there with the present women for an hour or an hour and a half and then went back to Peć; namely, he did not go to the villages of Pavljan and Zahać. Zoran Obradović’s allegations that he had killed a man are untrue. He was appalled at the harassment of the women and children in Čuška, and their expulsion, and he knows that money was demanded from the people but cannot recall who demanded money and from whom. At Čuška he saw Zoran Obradović, whom he knows from an earlier period, and who, he claims, “is not all there”, and Zoran Rašković running in and out of the yard “like mongooses”, and he also saw Milojko Nikolić. He knows the accused Toplica Miladinović from before only by sight, he actually saw him only once when reporting to the Military Department.<sup>179</sup>

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## HLC Findings

### **Protracted proceedings**

This trial has been going on for twelve 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.

The HLC gave a detailed analysis of this problem in its *Report on War Crimes Trials for 2021*.<sup>180</sup>

### **Flawed indictment**

Over the course of the trial, the OWCP repeatedly issued indictments against new perpetrators, dropped criminal charges against some of the defendants, and amended and revised the indictments a number of times. Thus it was only two years after it had issued the first indictment for the crime in the village of Čuška/Qyshk, that the OWCP amended the indictment to also include the crimes

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179 Transcript of the main hearing held on 27 December 2022.

180 For more, see: Humanitarian Law Center, *Report on War Crimes Trials in Serbia in 2021* (Belgrade, HLC, 2021), p. 93, available at [http://www.hlc-rdc.org/wp-content/uploads/2022/11/Godisnji-izvestaj-2022\\_srpski.pdf](http://www.hlc-rdc.org/wp-content/uploads/2022/11/Godisnji-izvestaj-2022_srpski.pdf), accessed on 24 January 2023.



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, delaying the proceedings and subjecting the victims to additional traumatising, as they do not know when the proceedings will finally end and whether they will see justice served.

### **Incomplete OWCP indictment**

The extensive evidence which has been presented since the commencement of this trial points to the responsibility of also 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: “...it has not been determined at what level all this had been organised, nor is that the subject of these proceedings...”<sup>181</sup>

There seemed to be some progress towards establishing the responsibility of some senior military personnel as well in connection with the crimes charged in the indictment for the Čuška/Qyshk Case, when in August 2014 the OWCP decided to initiate an investigation against the Commander of the 125<sup>th</sup> VJ Motorised Brigade, Dragan Živanović, whose zone of responsibility encompassed these villages. However, on 1 March 2017, the OWCP issued an order ending the investigation, having established that insufficient evidence existed to charge him. The grounds for such a decision on the part of the OWCP can be seriously challenged, it remaining unclear how the deputy prosecutor entrusted with the matter concluded that there was not sufficient evidence to indict, since he had neither examined all of his own witnesses nor all the witnesses proposed by the legal representative of the injured parties and the defence.<sup>182</sup>

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### **Unclear role of the Ministry of the Interior**

The role of the MUP in organising, executing and covering up crimes was not clarified during these proceedings either. A number of witnesses spoke about the role of the police forces, as did some of the defendants in presenting their defences.<sup>183</sup> 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 177<sup>th</sup> VTO. One of the entries registers that two MUP companies had been attached to the 177<sup>th</sup> VTO. Furthermore, several injured parties, and in fact the defendants, testified that in addition to military personnel there had also been a large number of police officers in their village when the crimes were

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

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

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



being committed. The Chairperson of the Chamber also stressed this upon 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...”<sup>184</sup> Nonetheless, and all this evidence notwithstanding, the OWCP failed to investigate allegations of the involvement of MUP members in this crime, in contravention of its legal obligation to conduct an efficient and effective investigation so as to adequately look into all allegations of crimes committed.

### **Witness protection**

The testimony of witness Zoran Rašković is among the most striking witness accounts in all war crimes proceedings conducted to date. In addition to rendering a significant contribution to the establishment of the facts, his testimony is particularly important for highlighting one of the major problems plaguing all war crimes trials in Serbia, that being the inefficient protection of insider witnesses, i.e. of former or active members of security forces. Witness Zoran Rašković (who had been granted the status of protected witness during the investigation but at the trial took the witness stand under his full name and surname of his own accord) at the first trial repeatedly openly pointed to the shortcomings of the witness protection programme and the threats being levelled at him, including by the very policemen in charge of his security.<sup>185</sup> Giving evidence in the retrial, he stressed that these problems had continued and said that he was unable to obtain an identity card which made it impossible for him to live a normal life.<sup>186</sup> The HLC analysed this problem comprehensively in its *Report on War Crimes Trials in Serbia in 2011*<sup>187</sup> and *Analysis of the Prosecution of War Crimes in Serbia*.<sup>188</sup>

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

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

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

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

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



## VI. The Srebrenica Case<sup>189</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> first instance proceedings	
<b>Date of indictment:</b> 21 January 2016	
<b>Trial commencement date:</b> 12 December 2016	
<b>Prosecutor:</b> Bruno Vekarić	
<b>Defendants:</b> Nedeljko Milidragović, Milivoje Batinica, Aleksandar Dačević, Boro Miletić, Jovan Petrović, Aleksa Golijanin and Vidosav Vasić	
<b>Criminal offence charged:</b> war crime against the civilian population under Article 142 of the FRY Criminal Code	
<b>Trial Chamber</b>	Judge Mirjana Ilić (Chairperson) Judge Zorana Trajković Judge Dejan Terzić
<b>Number of defendants:</b> 7 <b>Defendants' rank:</b> low rank <b>Number of victims:</b> 1,313 <b>Number of witnesses heard:</b> 29	<b>Number of scheduled court days in the reporting period:</b> 8 <b>Number of court days in the reporting period:</b> 4 <b>Number of witnesses heard in the reporting period:</b> 4 <b>Number of expert witnesses heard:</b> 2
Key developments in the reporting period: Main hearing	

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<sup>189</sup> The *Srebrenica–Kravica* Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/srebrenica.html>, accessed on 20 December 2022.



## Course of the proceedings

### Overview of the proceedings up to 2022

#### 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).<sup>190</sup>

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

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

62 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.

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

#### Defences of the accused

The accused Nedeljko Milidragović, Aleksa Golijanin, Vidosav Vasić and Aleksandar Dačević did not present a defence, i.e. continued to exercise their right to remain silent.<sup>191</sup> The accused Boro Miletić, Dragomir Parović and Jovan Petrović did not wish to present a defence at the main hearing, stating that they stood by their statements given before the OWCP; therefore the audio recordings of their questioning before the OWCP were played. In his statement given before the OWCP, the accused Boro Miletić stated that he was a refugee from Croatia when he was arrested in Belgrade on 29 June 1995 and then transferred to Mt. Jahorina and told that he was now assigned to the police force of

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190 OWCP Indictment 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](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 20 December 2022.

191 *Ibid.*



Republika Srpska. There were many people at Jahorina who, just like him, had been forcibly brought there. The defendant Nedo Milidragović was his platoon commander. On 11 July, they set off from Mt. Jahorina on a field mission towards a village by the River Drina, whose name he did not remember. On the following day, they reached a road and the bus that he was on stopped near a group of UNPROFOR soldiers who had surrendered. They got off the truck and walked all the way up to the UNPROFOR base, around which he saw women and children. The accused Milidragović ordered them to comb the terrain to check whether there were any Muslims in the nearby houses or woods. They found a boy whom commander Nedo handed over to a group of soldiers. They continued searching the area all day.<sup>192</sup> On the third day, 14 July, they set out again to secure the asphalt road, in order to be on the lookout for anyone wanting to surrender, but no one showed up. In the two days that he spent securing the road he saw about ten busloads of captured Muslims. On the fourth day they were on the move again; they came to a place where they stopped near a level tract of land with a building enclosed by a wire mesh fence, which looked like a factory compound. Behind the fence there were many women and children, perhaps around a thousand, and no men. Their task was to guard them, to make sure that no women or children escaped through holes in the wire fence. A large number of buses and trucks came to take them away and kept transporting them all day long until dark. On the fifth day his unit returned to Jahorina.<sup>193</sup>

In his statement given before the OWCP, the accused Dragomir Parović stated that on 19 or 20 June 1995 he was arrested by police in Belgrade and transferred to Jahorina, where they informed him that he was now a member of the special police. He could not recall the exact date on which about 100 police officers were transported from Jahorina to Bratunac. On the following day they were transported to the UNPROFOR base and tasked with disarming members of UNPROFOR. Then the accused Milidragović ordered him to search the houses near the base with another lad from the platoon. They finished searching the houses by two or three o' clock, and were then ordered to march towards a factory where there were civilians, a couple of thousand of them, mostly women and children, with a few men. That evening they were driven away by buses and trucks. The next morning the accused Milidragović lined them up and said that they would be going on a mission. They were to watch a section of the road in case anyone surrendered. Nedo brought a boy, between 12 and 13 years old, and ordered him to call out to his relatives to give themselves up. Half an hour later, some Muslim civilians surrendered. The civilians who surrendered were transported by trucks in groups of 20-30, and the accused believes that two groups surrendered that day. The accused went on to say that the boy whom Nedo 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. After

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<sup>192</sup> Transcript of the main hearing held on 7 February 2017.

<sup>193</sup> Transcript of the main hearing held on 13 April 2017.



that, they were marched to a house by the road and ordered to lie on the ground face down, next to one another. Milidragović signalled to him and another man, whose name he could not remember, and told them to shoot them. According to the defendant's words, the other guy opened fire first, discharging a burst of fire. Some men were still alive after the shooting. The accused states that he could not bring himself to shoot at them and discharged half of the magazine at the ground, claiming that all those near him survived. During the night, some of the wounded men cried out in pain, and other members of the unit mocked them because of that. In the morning Milidragović and Golijanin went to those men who were still alive, bursts of fire rang out and the cries stopped. That was their last day in the area. They trudged through the forest on a beaten track made by the Muslims who had surrendered over the previous days. En route, buses picked them up and drove them to the school in which they were previously billeted and from the school on to Jahorina. He claimed that he and his platoon had not been involved in the event in the warehouse in Kravica.<sup>194</sup>

64 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 3<sup>rd</sup> 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 said, they waited for the Zvornik Corps and General Mladić. The task was to take Srebrenica. They reached Bratunac by bus and then walked on to Potočari, but found no one there. The next day they deployed to the Sandići village area, securing a road to prevent Muslims from crossing from one side of the road to the other. He heard Mladić call out over the loud hailer: "Neighbours, surrender, you will come to no harm", after which he saw some men surrender. He knew nothing about the events in the warehouse in Kravica, he had heard "some stories" and volleys of fire, but he was in the vicinity of Konjević Polje, some 14 km from the warehouse, at the time. He heard that 10 to 15 Muslims had been shot outside the warehouse and that two or three women had been raped.

As they were retreating through the woods, they came across two bodies. He said that one body belonged to a man who had hanged himself, which he concluded from the suicide note they found in his pocket. He 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.<sup>195</sup>

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

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

195 *Ibid.*



to the 3<sup>rd</sup> Platoon of the 1<sup>st</sup> Company of the Brigade. Company commander Tomislav Krstović was his immediate superior. He saw the accused Nedeljko Milidragović and Aleksa Golijanin at Jahorina, but did not know the other defendants at the time. Most of the members of his unit had been forcibly recruited, just like him. They were treated like traitors and deserters. On 11 or 12 July 1995, they were all bussed from Jahorina to the village of Bjelovac, to be billeted at the local school where they spent the night. The next day they went to Potočari. They came close to the UNPROFOR base, but did not enter it. There were several thousand people outside by the base. They were civilians – women, children, elderly people and perhaps about ten middle-aged men. These people were frightened, but no one prevented them from moving around. His unit was tasked with maintaining order and ensuring that the assembled people did not come to any harm. In Potočari he also noticed VRS troops. While he was in Potočari, buses arrived, which he believed came to take away the civilians. At about 1300 or 1400 hours his unit received orders to return to Bjelovac; so he did not know what happened to the civilians later. That evening or the next, they set off from Bjelovac, tasked with securing the Bratunac–Konjević Polje road. They were to ensure the safe passage of buses transporting women and children from Bratunac towards Konjević Polje and further on to Tuzla. There was a forest along the section of the road they were manning; the road was winding and there was shooting from all directions all night. The shooting abated just before daybreak, and members of the BiH Army started to surrender that day - some 20 or 30 surrendered. Some of them wore uniforms, others were in plain clothes, and they were unarmed. The men who had surrendered were picked up by a truck on board which were VRS members. From the truck they kept calling over a loud hailer to Muslims to surrender. Members of his unit only guarded those who had surrendered. Early in the afternoon they returned to Bjelovac, and on the following day they headed through the forest in the direction of Konjević Polje to search the area, looking for members of the BiH Army who had not surrendered. He had never been to Kravica and he had never even heard of the warehouse before.<sup>196</sup>

### **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.<sup>197</sup> 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.<sup>198</sup> 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

<sup>196</sup> Transcript of the main hearing held on 7 February 2017.

<sup>197</sup> Ruling of the Court of Appeal in Belgrade Kž2 Po2 7/17 of 5 July 2017.

<sup>198</sup> Law on Public Prosecution Service, Article 36.



now in office. The Higher Court ruled to decline this request on the grounds that the proceedings could continue only when a new indictment had been filed by the OWCP.

Deciding on the OWCP appeal against the ruling dismissing the indictment, on 19 September 2017, the Court of Appeal ruled<sup>199</sup> 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.<sup>200</sup> 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.

66

### **Witnesses in the proceedings**

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

Witness and injured party Saliha Osmanović recounted how in July 1995 she had left Srebrenica with her husband and son and that they parted at a place called Kazani (The Pit). She went to Potočari while her husband and son headed in the direction of Tuzla through a forest. She never saw them again.<sup>201</sup>

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.<sup>202</sup>

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

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

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

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



Witness Zoran Erić stated that on 11 July 1995 he was sent from Bratunac to the agricultural cooperative in Kravica to feed the cattle kept in a cattle shed behind the warehouse. From the shed he could not see what was going on in front of the warehouse. In the afternoon of 13 July 1995, he was in the shed, when he heard shouts “Allahu Akbar!”, and then “Let’s strangle the Chetniks with our bare hands!” He later heard that four prisoners from the warehouse had caught a guard, dragged him into the warehouse and killed him. “Thunderous shooting” ensued and he also heard hand grenades exploding. The shooting started during the day, but lasted throughout the night as well. Short bursts were fired from multiple weapons. The warehouse was packed with people. The shooting stopped on 14 July 1995 before noon; two to three hours later survivors were called over a loud hailer to come out of the warehouse. They were calling people out and telling them that a water tank truck had arrived, as well as ambulances and buses to take them away. After the calls he heard the order “Fire!” issued three times, with an interval between each order, as well as shots coming from the road. Those who came out were all killed. He did not dare leave the shed during the shooting. When he came out of the shed he saw many dead bodies. He thinks that there were 200–300 bodies outside the warehouse. He also saw about ten slaughtered people whose bodies were by the roadside. He did not know how many people had been killed inside the warehouse, as he did not go inside.<sup>203</sup>

Witnesses for the prosecution who were heard, members of the Jahorina Training Centre of the Special Police Brigade of the MUP of Republika Srpska, described their stay at Jahorina and their deployment to the Srebrenica area in July 1995, but had no first-hand knowledge of the events in Kravica and only heard much later that “something had happened” there.<sup>204</sup>

Witness for the prosecution Radenko Đurković, a construction machinery operator, recounted how in July 1995, Dragan Mirković, the director of the Bratunac Public Utility Company summoned him and ordered him to excavate a grave in Glogova. He was shown the actual location at which to dig by Mirković and Momir Nikolić, an officer of the VRS. He dug a grave between 30 and 50 metres long. When he had excavated the grave, Mirković sent him to the warehouse in Kravica, where he loaded bodies on trucks. By his estimation there were some 200 bodies in the warehouse. The next day, again on Mirković’s orders, he excavated another, larger grave across from the first one. That same day he again went to Kravica to load bodies on trucks. Buried at Glogova were the bodies of the men killed in Kravica, but the trucks also hauled in the bodies of men killed elsewhere, e.g. on the attempted breakthrough line. Namely, there was fighting in the forests below Crni Vrh with the BiH Army which was trying to breach the line. When it was all over, he filled in the graves at Glogova. After two to three months, Momir Nikolić recruited the same team, this time to dig up and relocate the bodies. They worked for 15 days, and only at night, apparently in order to remain unseen. The bodies were transported towards Bratunac, to a location unknown to him.<sup>205</sup>

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

<sup>203</sup> *Ibid.*

<sup>204</sup> Transcript of the main hearing held on 13 November 2018.

<sup>205</sup> Transcript of the main hearing held on 19 March 2019.



Kravica<sup>206</sup>, 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.<sup>207</sup>

Defence witness Boško Budimir explained that he had been taken together with his brother Veljko Budimir to the Police Training Centre at Jahorina and that the accused Milidragović was their commander. Both of them, being car mechanics and drivers, repaired the vehicles that were at the Centre. Upon their field deployment to Bjelovac, on the orders of Duško Jević, Commander of the Jahorina Centre, they repaired and drove back UNPROFOR personnel carriers. Thus, on one occasion they drove a personnel carrier to Zvornik and the accused Milidragović and his *kum* /his best man or children's godfather/ followed behind them in a passenger car. After they had parked the personnel carrier behind the Zvornik police station, Milidragović took them to his home and they stayed there for the night. The next day, 12 July, St. Peter's Day, they returned to Bjelovac. The witness and his brother were then ordered to go and check several other personnel carriers which were somewhere near the road to Potočari, and to drive them back to Bjelovac too. They managed to fix one of the carriers and drove it to Bjelovac, and Jević ordered them to drive it to Janja. They set off for Janja around 10 a.m. on 14 July 1995, and were on the way to Janja again followed by the accused Milidragović, whom he had in fact seen earlier that morning in Bjelovac. From Janja they went to Zvornik and spent the night at Milidragović's place, and in the morning of 15 July 1995 they returned to Bjelovac.<sup>208</sup>

68

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.<sup>209</sup>

At the time of the critical event, defence witness Duško Jević<sup>210</sup> 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 1<sup>st</sup> Company and they arrived in the village of Bjelovac and were billeted at the primary school there. That same evening they received orders that the following day they were to go to Potočari to secure civilians. In the morning 12 July 1995, they went there together with members of the Zvornik Public Security Station. They

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

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

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

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

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



were tasked firstly with guarding civilians up to the moment of their evacuation and, secondly, with securing the Bratunac–Konjević Polje road. The 2<sup>nd</sup> Company from Jahorina also arrived to secure the road. The evacuation of civilians from Potočari began that day and continued until the afternoon of 13 July 1995. They guarded the civilians in Potočari so that nobody would harm them. Also manning the road were RS Army soldiers. In the evening of 13 July 1995, he went to Bijeljina and returned on 14 July. He reported to Borovčanin who informed him that there had been an incident. About midday he inspected the road and, driving along, noticed a pile of hay, a truck and a loader outside the warehouse in Kravica. He did not see members of his unit in the vicinity of the warehouse on that occasion – but he saw them on the road together with members of the Zvornik Special Police Unit (PJP). None of his platoon commanders had informed him that there had been an incident, nor was he aware that any of them had ordered killing the prisoners. He heard about the critical incident only later. While on field duty they came across two broken-down UNPROFOR personnel carriers, and he ordered the accused Milidragović to repair them with his men and move them to the RS Police base in Janja. He entrusted Milidragović with this task because he was an expert on armoured vehicles. He did not know when the personnel carrier was transferred.<sup>211</sup>

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 for armoured personnel carriers in the Special Police Unit and an instructor at the Police Training Centre at Jahorina. On 14 July 1995, the witness travelled from the direction of Zvornik towards Srebrenica, his task being to set up a police station in Srebrenica. On the way, in the section of the road between Bratunac and Konjević Polje, he observed the defendants' unit deployed along the road. On arrival at the warehouse in Kravica at around 1 p.m. he noticed the accused Milidragović some 300 to 500 metres from the warehouse, but did not know when he had arrived at the location or what his movements had been. He did not see the bodies of the executed captives in front of the warehouse. He believed Kravica to have been an event unassociated with the events in Srebrenica, that actually “an incident happened” there. He knew nothing about the involvement of any members of the

69

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<sup>212</sup>. He had issued such an order to all of his security personnel, and his deputy Popović<sup>213</sup> was put in charge of the operation. According to information he had obtained by September 1995, there had been 320 victims in Kravica.<sup>214</sup>

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

212 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).

213 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).

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



Nedo Jovičić, who had testified in several trials before the ICTY and the BiH court and was under protective measures when giving evidence in those proceedings about the events in Kravica on 13 July 1995, was also scheduled to take the stand as a defence witness for the accused Aleksa Golijanin. The Chamber therefore instructed the defence counsel for the accused Aleksa Golijanin to file an application or request for leave and/or authorisation with the court, and address a written request to the president of the International Residual Mechanism for Criminal Tribunals in order to obtain information on the specific decision and types of ICTY protective measures in respect of witness Nedo Jovičić, and to request that the protective measures be identified or confirmed, or possibly to apply to the International Residual Mechanism for Criminal Tribunals for cancellation or variation of the protective measures.<sup>215</sup>

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.<sup>216</sup> Defence witness Dobrila Stojanović, a distant female relative of the accused Nedeljko Milidragović, stated that she had been living in Zvornik at the critical time and that she kept company with the defendant's wife. She knows nothing about the events in the village of Kravica. She saw the accused Milidragović on 12 July 1995 in Zvornik, when he came to town in a white UNPROFOR personnel carrier and pulled up outside the shop in which the witness worked together with his wife. The accused entered the store and had a chat with them. She saw him again that day when he came home in the company of another two soldiers, as she was having coffee with his wife at that time.<sup>217</sup>

70

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

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

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

217 Ibid.



Šehovići which he then took to the frontline at Baljkovica. On this position the unit repelled intense attacks of the Muslim army coming from the direction of Srebrenica – in question were members of the 28<sup>th</sup> BiH Army Division. The witness knows that the Muslims in the Kravica warehouse were killed by members of the Skelani 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.<sup>218</sup>

Defence witness Vitomir Kapuran stated that in the critical period he was a member of the RS MUP /Ministry of the Interior/as Assistant Commander for Logistics, and that he had quarters at Janja. He knows 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 believes that it had been sometime around St. Peter’s Day, when the accused had driven some peace force vehicles to Janja.<sup>219</sup>

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 3<sup>rd</sup> Skelani Platoon comprised within the 2<sup>nd</sup> 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. Namely, 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 does not know which unit replaced them at the positions. He learned about the killings at Kravica from the media after the action.<sup>220</sup>

71

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 a total of twelve instructors there 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 came 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 strong, 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 does not know anything about the guarding of the Bratunac - Milići road and of the Kravica agricultural cooperative. His unit also searched the terrain, 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

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218 Ibid.

219 Ibid.

220 Transcript of the main hearing held on 29 November 2021.



was no organisational establishment and this group was not a military formation. Theirs was only an internal organisation enabling them to function. He had not been aware of the events at the Kravica agricultural cooperative, he found out about them only during the trial.<sup>221</sup>

### **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.<sup>222</sup>

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

### **Overview of the proceedings in 2022**

Ten court days were scheduled in 2022 of which only two were held, during which written evidence in the case file was examined. The trial was postponed twice due to the absence of a Trial Chamber member, once due to the absence of defence counsel, four times due to the absence of a defendant, and once due to the requested recusal of the deputy war crimes prosecutor on the case and of the Chairperson.

72

## HLC Findings

### **Regional cooperation**

The Prosecutor's Office of BiH issued an indictment for genocide against Milidragović and Golijanin, which the BiH Court confirmed already in July 2012. However, they could not be tried in BiH as they have been living in Serbia ever since the end of the war in BiH in 1995. 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.

### **Selective indictment**

True to its customary practice, in this case as well the OWCP indicted lower-ranking individuals only. Namely the principal defendant and highest ranking individual in this case was a platoon commander

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<sup>221</sup> Ibid.

<sup>222</sup> Transcript of the main hearing held on 8 February 2021.



at the time these crimes were committed. The HLC filed back in 2010 a criminal complaint with the OWCP for the crime of genocide in Srebrenica against several high-ranking VRS members who are living in Serbia, are seen in public, receive media coverage<sup>223</sup> and are accessible to the state authorities.<sup>224</sup> 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, for whom an international wanted notice has been issued, and Dragomir Pećanac, a VRS Major and Deputy Commander of the Military Police of the Bratunac Light Brigade, which was comprised within the VRS Drina Corps. Nonetheless, none of these individuals have been indicted so far.

### **Protracted proceedings**

The trial in this case began on 12 December 2016, being six years later in 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 seized of the case. In 2020, due to the Covid-19 epidemic, trials were not held during the state of emergency. During 2022 the trials were postponed four times due to the absence of a defendant or the absence of a Trial Chamber member or defence counsel. The number of the accused and their defence counsel is large. 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.

73

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223 See, e.g. Milorad Pelemiš' guest appearance in the programme "Goli život/Bare Life/" 2014, available at <https://www.youtube.com/watch?v=BPQUIH78yhI>, accessed on 30 December 2022.

224 HLC press release "Criminal Charges for the Genocide in Srebrenica", 16 August 2010, available at <http://www.hlcrdc.org/?p=13072>, accessed on 30 December 2022.



## VII. The Zvornik – Standard Case<sup>225</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> first instance proceedings	
<b>Date of indictment:</b> 10 May 2019	
<b>Trial commencement date:</b> 27 September 2019	
<b>Prosecutor:</b> Ognjen Đukić	
<b>Defendant:</b> Dalibor Maksimović	
<b>Criminal offence charged:</b> war crime against the civilian population under Article 142 of the FRY Criminal Code	
<b>Case transferred from BiH</b>	
<b>Trial Chamber</b>	Judge Vladimir Duruz (Chairperson) Judge Snežana Nikolić - Garotić Judge Vinka Beraha-Nikićević
<b>Number of defendants:</b> 1	<b>Number of scheduled court days in the reporting period:</b> 5
<b>Defendant's rank:</b> no rank	<b>Number of court days in the reporting period:</b> 53
<b>Number of victims:</b> 4	<b>Number of witnesses heard in the reporting period:</b> 1
<b>Number of witnesses heard:</b> 16	<b>Number of expert witnesses heard:</b> 1
<b>Key developments in the reporting period:</b>	
Main hearing	

74

<sup>225</sup> The *Zvornik-Standard* Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/zvornik.html> accessed on 14 December 2022.



## Course of the proceedings

### Overview of the proceedings up to 2022

#### Indictment

The accused Dalibor Maksimović<sup>226</sup> 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, while the unidentified person managed to escape. Then the defendant and an unidentified soldier walked up to Nedžad Karaosmanović, who at that moment was still giving signs of life, and the two of them kicked him to death.<sup>227</sup>

#### Defence of the accused

At this stage of the proceedings the accused exercised his right to remain silent.<sup>228</sup>

#### 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.<sup>229</sup>

226 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.

227 OWCP Indictment KTO No. 1/2019 of 10 May 2019, available at [https://tuzilastvorz.org.rs/public/indictments/anonim\\_maksimovic.pdf](https://tuzilastvorz.org.rs/public/indictments/anonim_maksimovic.pdf) accessed on 14 December 2022.

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

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



Witness Alija Handžić stated that her whole family had fled Zvornik at the beginning of the war, and had gone to Šabac to stay with the uncle of her sister-in-law Ljilja, Nijaz's wife. Nijaz registered them as refugees with the Red Cross in Šabac. A couple of days later they saw Branko Grujić, the then mayor of Zvornik, on television, calling the people to come back and report their property. Therefore, her two sisters-in-law decided to go to Zvornik and Nijaz drove them to the bus station. In the meanwhile, two men in plain clothes came to the house where they were staying asking for Nijaz, and said that he was to report to the Secretariat of the Interior (SUP) in Šabac. As soon as he came back, Nijaz went to report to the SUP, and while he was there, the same two men came and told her other brothers, Ilijaz and Nedžad, to go and report to the SUP. That was the last time she saw them. She first learned of the fate of her brothers in 1999, when a taxi driver from Memići recognised her and told her that he had heard about the tragedy that had befallen them, and that her brothers had been killed by someone from Milići. Edina, a friend of the witness, who is married to Mimo Perić, a shoemaker from Milići, told their mother that her sons had been killed by one "Dača from Milići", who had boasted of it to her husband. She also heard what had happened to her brothers from Zoran Crnogača, from Zvornik, who came to see her sometime in 2007 and told her that he had been apprehended and tied to the radiator in the building in which a soldier from Milići killed her brothers. He also said that Fadil Čirak had been killed with her brothers.<sup>230</sup>

76

Witness Božo Drmonjić, a fellow combatant of the defendant, stated that on the critical day he had heard some shooting on the ground floor of the building in Zvornik where they were stationed, and had later learned that a man had been killed. He did not know anything about the defendant's whereabouts at the time of the shooting. He said that on 17 December 2009 he gave a statement to the State Investigation and Protection Agency of Bosnia and Herzegovina (SIPA) under duress, and that he was threatened while giving it. SIPA personnel threatened him and even his daughter, who lives in France. They blackmailed him by saying that he would be "put away for 20 years if he did not sign". Therefore the allegations in that statement, to the effect that he had witnessed the critical event and that he was the person who had wrested the rifle away from the defendant after the latter had shot at the civilians, are untrue.<sup>231</sup>

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

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<sup>230</sup> *Ibid.*

<sup>231</sup> *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.<sup>232</sup>

Witnesses and injured parties Zilha Karaosmanović and Mila Karaosmanović did not have first-hand knowledge of the critical event. Witness and injured party Zilha Karaosmanović, the wife of the murdered Ilijaz Karaosmanović, explained that before the outbreak of war in Bosnia and Herzegovina she and her family, husband Ilijaz and their two sons, lived in Zvornik, in their own house. Her father-in-law, her mother-in-law and her brother-in law Nedžad and his wife Mila and their children, her sister-in-law (husband's sister) Alija with her husband and their children, all lived in Zvornik in a single household. Her husband's brother Nijaz also lived in Zvornik with his wife Ljilja and their children, in their own apartment. At the beginning of the war the entire family fled Zvornik and went to Šabac to stay with the uncle of her sister-in-law Ljilja. Ljilja's husband Nijaz registered them as refugees with the Red Cross in Šabac. Several days later she saw the then mayor of Zvornik municipality on TV calling upon the people to return and report their property. So she and her sister-in-law Mila decided to go to Zvornik, and her husband's brother Nijaz drove them to the bus station. They first went to Mali Zvornik, to see the witness's family and check what the situation in Zvornik was like. On arrival in Mali Zvornik, Alija told them over the phone that after their departure the police had taken away all three Karaosmanović brothers, namely Ilijaz, Nijaz and Nedžad. On hearing this, she went to the Zvornik police station to inquire about the fate of her husband and his brothers. The commander of the police station told her that her husband and his brothers had been taken to the "Standard" facility, where, allegedly, they were to be interrogated. Together with Mila she went to the "Standard" building, but they could not enter because they saw that there were many soldiers in the compound. The soldiers hurled all manner of comments their way, and one of them in fact advised them to leave and told them that their husbands would be interrogated and then released. They remained in Zvornik for another seven or eight days, but did not manage to find out what had happened to their husbands. They left Zvornik and went back to Mali Zvornik to her parents' place. On 23 April 1992, one Ostoja from Zvornik told a co-worker of her neighbour's that he had been present in "Standard" when all the three Karaosmanović brothers were killed there. This information was relayed to her by a person who wished to remain anonymous. Her husband's mortal remains were found after the war at the Kazan Bašča site in Zvornik, were identified and handed over to the family.<sup>233</sup>

77

Witness and injured party Mila Karaosmanović gave an identical statement.<sup>234</sup>

Witness for the prosecution Petar Golić stated that during the war he had been a member of the Milići Battalion; its Rudnik Company went to Zvornik in early April 1992, its task being to secure the Glinica /Alumina/ factory. On arrival in Zvornik they were quartered at the building of the present-day Faculty of Technology, which at the time was the building of "Standard" company, but their task was to stand guard at various checkpoints around town. On the critical day, a member of their unit,

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

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

234 Ibid.



Milutin Vujadinović, a.k.a. Luta, was killed in the town; together with another two soldiers he went to bring his body to the premises of “Standard”. In the meantime this “mess” happened at “Standard”. When he came to “Standard” with Luta’s body, there was a commotion there and he saw a body on the floor at the far end of the corridor near the stairway leading upstairs. He believes that the man was in civilian clothes. He saw bullet traces on the wall. People said that a person had jumped out of the window and escaped. He did not see the accused then.<sup>235</sup>

Witness for the prosecution Goran Kaldesić, explained that in the beginning of April 1992 he was a member of the Milići Territorial Defence, and that his unit had been dispatched to Zvornik with the task of securing vital economic facilities. Upon arrival in Zvornik they were put up in rooms on the ground floor of the “Standard” building, and police were accommodated on the upper floor. The witness was on duty at a checkpoint in town when he was informed over his radio unit that a fellow fighter nicknamed “Luta” had been killed. They then set off towards “Standard”, and on arrival he learned that a soldier had been wounded. He saw men in the building corridor, and heard from some combatants that a person named “Žučo” and his men had killed a prisoner, and that one had escaped.<sup>236</sup>

Witness for the prosecution Savo Đukanović stated that he had been a member of reserve JNA / Yugoslav People’s Army/ 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 knows the accused, he had not been a member of their unit, nor had he seen him in Zvornik.<sup>237</sup>

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 present soldiers told him that they had been killed by someone from the Milići Company, in retaliation for the killing of a fellow fighter.<sup>238</sup>

Witness for the prosecution Zoran Obradović worked as a policeman in Zvornik up to his retirement. In April 1992, the just established Serb police was stationed in the “Standard” building. Apart from the police, TO members, police reservists and members of paramilitary units were also stationed there. He has no first-hand knowledge of the critical event; fellow police officers had told him that a lad from

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

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

237 Transcript of the main hearing held on 19 January 2021.

238 Ibid.



Milići had been killed in town and that, in retaliation, members of that unit killed the Karaosmanović brothers and Fadil Ćirak.<sup>239</sup>

Witness and injured party Ljiljana Stiner is the wife of the late Nijaz Karaosmanović. She said that on Bayram day, i.e. 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 is the last time the witness saw them. As they were not coming 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 among whom was one Ostoja, an acquaintance of theirs, who told her not to go to Zvornik for 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 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 with 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 well-to-do 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.<sup>240</sup>

79

### **Overview of the proceedings in 2022**

Three court days were held in 2022 of the scheduled five, during which one expert witness was heard and examination of a witness for the prosecution was attempted.

Court-sworn expert, Dr. Branko Mandić, 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 to give evidence. According to available medical records, he is a recovered alcoholic. However, no memorisation or retrieval of memorised content disorders have been registered. The witness had also suffered a brain stroke, but from the existing documents it is impossible to see when, as it was registered in his medical record on 15 November 2017. A brain stroke can affect motor skills, but no psychological deficits are recorded in the 2018 psychiatric findings. He said that alcoholism was an addiction and not a mental disease. Memories of past events are preserved in alcoholics.<sup>241</sup>

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239 Transcript of the main hearing held on 1 March 2021.

240 Transcript of the main hearing held on 1 October 2021.

241 Transcript of the main hearing held on 27 January 2022.



The court attempted to hear witness for the prosecution Nenad Jović. The examination 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, 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.<sup>242</sup>

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.<sup>243</sup>

By the end of 2022 the requested medical documents had not been submitted to the court.

## HLC Findings

### **Regional cooperation**

These proceedings are a result of the 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 in 2013 the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide. Namely, the confirmed indictment against the accused was transferred by the Prosecutor's Office of Bosnia and Herzegovina, given that the accused, who is a national and resident of the Republic of Serbia, was not accessible to the authorities of BiH. This is the second transferred indictment against the same defendant.<sup>244</sup>

### **Excessive and unnecessary anonymisation of the indictment**

The OWCP Indictment in this case, which is publicly accessible on the OWCP homepage under "Indictments"<sup>245</sup>, 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.<sup>246</sup> 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

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242 Transcript of the main hearing held on 19 May 2022.

243 Ibid.

244 Under the first transferred indictment of the BiH Prosecutor's Office, the proceedings against the accused were conducted in the *Bratunac* Case, K.Po2 8/2017, in which the final judgment was rendered on 17 September 2020.

245 OWCP Indictment KTO No. 1/2019 of 10 May 2019.

246 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](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.



or omitted in a consistent manner”<sup>247</sup> Instead of the entire indictment, only the operative part was posted, making it entirely impossible to ascertain on what evidence the OWCP based the indictment. As well, the Rulebook envisages anonymisation of the personal particulars of the participants in the proceedings, such as “the names and surnames and nicknames of physical persons, the address, date and place of birth....”<sup>248</sup>, but, however, it also provides that “data on the name, surname and nickname of a physical person who is a participant in the proceedings shall not be subject to anonymisation if the legitimate interest of the public to know prevails over the protection of the identity of the physical person in question.”<sup>249</sup> As the names of both the accused and the victims have been anonymised, the OWCP is evidently in breach of a provision of its own Rulebook, in total disregard of the public interest, that being public disclosure of the identity of persons who stand accused of war crimes the commission of which poses a grave danger to society, and equally that of the victims, public reference to whom provides a form of redress for the victims and their families and is a prerequisite for the recognition of the sufferings they had gone through, primarily on account of their identity. 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.<sup>250</sup>

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247 *Ibid*, Article 1, paragraph 2.

248 *Ibid*, Article 5, paragraph 1.

249 *Ibid*, Article 5, paragraph 2.

250 Detektor, “*Maksimović: Indictment for Crimes in Zvornik Confirmed*”, available at <https://detektor.ba/2018/05/03/maksimovic-potvrđena-optuznica-za-zlocine-u-zvorniku/>, accessed on 14 January 2023.

“*BiH Court Informed that the Case 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.



## VIII. The Kalinovik Case<sup>251</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> retrial at first instance	
<b>Date of indictment:</b> 26 September 2019	
<b>Trial commencement date:</b> 13 January 2020	
<b>Prosecutor:</b> Ljubica Veselinović	
<b>Defendant:</b> Dalibor Krstović	
<b>Criminal offence charged:</b> war crime against the civilian population under Article 142 of the FRY Criminal Code	
<b>Case transferred from BiH</b>	
<b>Trial Chamber</b>	Judge Zorana Trajković Chairperson Judge Mirjana Ilić member Judge Dejan Terzić member
<b>Number of defendants:</b> 1	<b>Number of scheduled court days in the reporting period:</b> 7
<b>Defendant's rank:</b> no rank	<b>Number of court days in the reporting period:</b> 3
<b>Number of victims:</b> 1	<b>Number of witnesses heard in the reporting period:</b> 2
<b>Number of witnesses heard:</b> 17	<b>Number of expert witnesses heard:</b> 0
<b>Key developments in the reporting period:</b> Retrial at first instance	

82

<sup>251</sup> The *Kalinovik* Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/kalinovik.html>, accessed on 12 January 2023.



## Course of the proceedings

### Overview of the proceedings up to 2022

#### Indictment

The accused is charged that, as a member of the Army of Republika Srpska, one evening on an unspecified date in August 1992, together with an unidentified fellow combatant, he came to the “Miladin Radojević” Primary School in Kalinovik, in which unlawfully detained Bosniak civilians from Kalinovik and the nearby villages, mainly women and children, were held, entered the classroom in which injured party B1 was, called her by name and told her to come out. After she came out holding her minor child by the hand, he ordered her to send the child back in, or else he would rape it, and when injured party B1 complied, he took her to an empty adjacent classroom and ordered her to undress. When the injured party refused, he threatened to take her children, and, in fear for the lives of her children, the injured party undressed; the accused then raped her and threatened that she was to tell no one about the rape, for if she did, first her children and then she would come to grief. After the rape, the accused ordered her to remain undressed and left the classroom, and immediately afterwards the unidentified fellow combatant went in and raped the injured party.<sup>252</sup>

#### Defence of the accused

Presenting his defence, the accused denied having committed the crime he was charged with. He said that during the armed conflict he had been a member of the Army of Republika Srpska and an ordinary soldier. He had relatives in the village of Rudice in the Kalinovik municipality, namely his grandparents and uncles, whom he used to visit. The village had a mixed ethnic composition – Serbs and Muslims lived in it side by side. He knew his Muslim neighbours. Early in August 1992, he was positioned above the village of Rudice. Members of the 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 kin. Namely, captured Muslims would be exchanged for prisoners and dead bodies, and, as his uncle had been killed, he went there to see about an exchange. Accompanying him on that occasion were Nenad Ćiro, Nenad Jokić and Zoran Popović, who was later killed. The accused wore a uniform and a bullet-proof vest, and was armed with a rifle and hand grenades. On arriving at the school, he noticed several soldiers and policemen, as well as some civilians - women and children - but he spoke to none of them, nor did he see anyone he knew among them. He asked one of the soldiers what was going on, and left the school some fifteen minutes later. He never again went to the school to obtain information, for already on the following day he was transferred to the village of Dobro Polje, to the defence line. He is unable to put a face to the name and surname of injured party B1, he can only conclude from her surname that she could be from the environs of his village.<sup>253</sup>

83

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252 OWCP Indictment KTO 2/19 of 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](https://www.tuzilastvorz.org.rs/public/indictments/%D0%9A%D0%A2%D0%9E_2_19_%D0%8B%D0%B8%D1%80.pdf) accessed on 12 January 2023.

253 Transcript of the main hearing held on 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.<sup>254</sup>

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.<sup>255</sup>

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.<sup>256</sup>

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, nicknamed “Ustasha” when the accused Krstović came to the school and went to another room with Lalović. Shortly afterwards, other guards told him that Krstović had raped women then. The witness confirmed that these allegations in his statement were true.<sup>257</sup>

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.<sup>258</sup>

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

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

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

256 Ibid.

257 Ibid.

258 Transcript of the main hearing held on 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.<sup>259</sup>

The examination of injured party and protected witness B1 was barred to the public.<sup>260</sup>

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.<sup>261</sup>

### **First instance judgment**

On 13 May 2021, the Higher Court in Belgrade rendered a judgment pronouncing Dalibor Krstović guilty of 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.<sup>262</sup>

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 minor child, 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, and, 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 would come to grief.

85

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", and which the Court accepted, having assessed them as reliable, how the accused had taken the injured party out of the classroom, what had been happening 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 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.

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259 Ibid.

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

261 Ibid.

262 Judgment K. Po2 3/2019 of 13 May 2021 of the Higher Court in Belgrade.



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. It assessed his defence as unconvincing, contrary to the presented evidence and calculated in order to avoid criminal liability. Particularly so, because it is 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 undertaken 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 stands accused of. The accused had acted with direct intent as he had been aware of his act and that it was prohibited and had wanted its commission.

86

In sentencing, the Court took his 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 favour of the accused, while assessing the level of jeopardy to the injured party in the specific instance, the motives out of which the crime was committed and the manifest perseverance in forcing the injured party to intercourse as aggravating circumstances.

The Court referred the injured party to claim damages in civil action, having found that no sufficient 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 Ćemalović, neuropsychiatrist. To wit, it was determined from the findings that the injured party had a 45% diminished general vital capacity as a consequence of a 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 in 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.<sup>263</sup>

### **Second instance decision**

On 17 December 2021, the Court of Appeal in Belgrade<sup>264</sup> 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.<sup>265</sup>

The Court of Appeal found that the court of first instance had exceeded the charges as it 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 charged under the indictment. Apart from that, the quality of the right of the accused to a defence was also called in question and therefore his right to a fair trial. To wit, 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 in the investigation stage. As neither the defendant nor his defense 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.

### **Overview of the proceedings in 2022**

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Of the seven scheduled court days in 2022, three were held, during which two witnesses for the prosecution were heard. The trial was rescheduled once; once it was postponed because summoned witnesses failed to appear, once due to the illness of the defendant, and once because the accused had not received a particularised indictment.

In accordance with the order of the Court of Appeal, at retrial the court of first instance attempted to directly examine the witnesses whose statements, given in the investigation stage before the competent BiH authorities, had been read in the previous proceedings. Three of the witnesses (witnesses B, B4 and B6) notified the court that they were unable to testify owing to health reasons.<sup>266</sup> 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, while witness B3 died in the meantime.<sup>267</sup>

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<sup>263</sup> Ibid.

<sup>264</sup> Chamber composition: Judge Rastko Popović, Chairperson, Judges Olivera Anđelković, Nada Hadži Perić, Miodrag Majić, Ph.D., and Aleksandar Vujičić, members.

<sup>265</sup> Decision Kž1 Po2 6/21 of the Court of Appeal in Belgrade of 17 December 2021.

<sup>266</sup> Transcript of the main hearing held on 23 September 2022.

<sup>267</sup> Transcript of the main hearing held on 6 June 2022.



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 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 believes 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 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 buddy of the witness’s, 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, and stated the full name and surname of the woman, and that she was the same person that he had talked about in the investigation. Later Krstović denied this entire conversation, claiming that the witness had made it up. He 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 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 then that each one of them had had two or three. While the witness was a guard at the school nobody came in, except for Pero Elez. Once some “Pero’s troops” attempted to, they entered the hallway armed, 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.<sup>268</sup>

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 “beat some people who were there”. He had not heard that there had been raping at the school and he could not recall what he had stated earlier.<sup>269</sup>

## HLC Findings

### **Regional cooperation**

These proceedings are a result of the 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 in 2013 the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide. Namely, the confirmed indictment against the accused was transferred by

<sup>268</sup> Transcript of the main hearing held on 23 September 2022.

<sup>269</sup> Ibid.



the Prosecutor's Office of Bosnia and Herzegovina, given that the accused, who is a national and resident of the Republic of Serbia, was not accessible to the authorities of BiH.

### **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 need to be proven. Namely, in the indictment transferred by the BiH Prosecutor's Office<sup>270</sup>, the prosecutor expounded in detail the elements of the criminal offence of a war crime against the civilian population, but spoke about concrete evidence which is to confirm the incriminated acts of the accused only in very general terms. Thus, for instance, he states 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 acts, 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, i.e. for a crime against humanity, and that the BiH Court had not confirmed it, for which reason the prosecutor simply formally issued the same for a different criminal offence – a war crime against the civilian population, without at all aligning it with the new qualification and incriminated acts.

89

The OWCP put this indictment in order in accordance with the facts which are the subject of proving, precisely and clearly adducing in the rationale the statements of witnesses referring to the incriminated acts and their assessment, as well as an assessment of the defence of the accused and of other tendered evidence, whereby the OWCP provided very sound argumentation for maintaining that the acts of the accused featured all the essential elements of the criminal offence he is charged with.

### **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 witness who failed to appear and who had given statements in the investigation stage before the competent BiH authorities, without actually hearing them at the 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 the witness's credibility by the defendant, or possibly a confrontation, are impossible.

In recent times, the Court of Appeal has been known to automatically accept such grounds of appeal of 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

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<sup>270</sup> BiH Prosecutor's Office Indictment number T20 0 KTRZ 0002825 10 of 20 November 2017.



waste of time, with the procrastination of proceedings the only result. In the specific case, one of the witnesses 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 properly assessed that it was impossible to directly examine the witnesses, not even via video-conferencing. On the other hand, it is indeed questionable whether the right to a defence of the accused has really been impaired, if 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 had 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 of the impossibility to directly examine witnesses in the proceedings before the domestic court is in fact abuse of the right to a defence, which the Court of Appeal should be mindful of.



## IX. The Bratunac II Case<sup>271</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> first instance proceedings	
<b>Date of indictment:</b> 18 September 2020	
<b>Trial commencement date:</b> 29 January 2021	
<b>Prosecutor:</b> Ivan Marković	
<b>Defendant:</b> Novak Stjepanović	
<b>Criminal offence charged:</b> war crime against the civilian population under Article 142 of the FRY Criminal Code	
<b>Case transferred from BiH</b>	
<b>Trial Chamber</b>	Judge Dejan Terzić (Chairperson) Judge Mirjana Ilić Judge Zorana Trajković
<b>Number of defendants:</b> 1 <b>Defendant's rank:</b> no rank <b>Number of victims:</b> 1 <b>Total number of witnesses heard:</b> 9	<b>Number of scheduled court days in the reporting period:</b> 7 <b>Number of court days in the reporting period:</b> 3 <b>Number of witnesses heard in the reporting period:</b> 4 <b>Total number of expert witnesses heard:</b>
<b>Key developments in the reporting period:</b> Main hearing	

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271 The *Bratunac II* Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/bratunacII.html> accessed on 25 December 2022.



## Course of the proceedings

### Overview of the proceedings up to 2022

#### 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 in 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.<sup>272</sup>

#### 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.<sup>273</sup>

#### Witnesses in the proceedings

92 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 said that 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 them said that she had been raped, but the witness is 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 it all better”.<sup>274</sup>

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 same, 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 spent the rest of the time at the front line. He could not recall whether while he was there civilians were detained in the Sase Mine, but he does remember that his neighbour Gordana Omić and her two children were brought there.<sup>275</sup>

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272 OWCP Indictment KTO No. 4/20 of 18 September 2020, available at [https://tuzilastvorz.org.rs/public/indictments/%D0%9A%D1%82%D0%BE\\_4\\_20\\_%D0%9D%D1%81.pdf](https://tuzilastvorz.org.rs/public/indictments/%D0%9A%D1%82%D0%BE_4_20_%D0%9D%D1%81.pdf), accessed on 25. December 2022.

273 Transcript of the main hearing held on 29 January 2021.

274 Transcript of the main hearing held on 13 September 2021.

275 Ibid.



Witness Petko Rankić gave 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 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 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.<sup>276</sup>

Witness Dragan Đoković stated that there had been „inhumane treatments” 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.<sup>277</sup>

Witness Nenad Milovanović stated that he knows the accused and that he knows that he went to Bratunac during the war and that he took possession of a house there. He heard that women and girls were brought to that house.<sup>278</sup>

### **Overview of the proceedings in 2022**

Of the seven court days scheduled in 2022, three were held, during which four witnesses were heard. The trial was postponed four times due to the failure of summoned witnesses to appear, once due to the absence of the defence counsel for the accused and once due to the absence of a Trial Chamber member.

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. 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 took 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 detained, would be shot dead if he did not come back. He did not come back, and Edina and the witness said goodbyes and cried all night long, as they had said that Edina would be executed. The next morning, they heard a commotion outside the door, the guard opened the door and, among the soldiers, the

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<sup>276</sup> Ibid.

<sup>277</sup> Ibid.

<sup>278</sup> Ibid



witness saw Miroljub Todorović and the accused, who was standing by the door. The soldiers took her relative Edina and Šemso Alić out. Presently she heard six shots and thought that they had killed Edina. When later, following an exchange, they 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.<sup>279</sup>

94 Witness for the prosecution Fatima Demirović stated that she had no first-hand knowledge of the critical event, but that she was told about it all by her full sister Raza after the war. She explained that in April 1992 she had already been 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 who opened the door that they were looking for Muhamed. Muhamed heard that they were looking for him and 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, soldiers took a number of the civilians away aboard a truck, including the witness's parents, allegedly for an exchange, and 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 already were other girls. Accompanied by several soldiers, the accused also arrived there 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 knows the accused by sight from before the war as he used to come to their neighbourhood and hang out with some lads.<sup>280</sup>

Defence witnesses Rade and Spasoje Milovanović stated that they knew 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. When once they were 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 fired, killing Zvonko. They think that later they heard from someone that one of those girls was a relative of the accused. They had never heard that the accused assaulted women, only that he defended them, for he was very fair.<sup>281</sup>

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279 Transcript of the main hearing held on 28 February 2022.

280 Transcript of the main hearing held on 14 April 2022.

281 Transcript of the main hearing held on 13 September 2022.



## HLC Findings

### **Regional cooperation**

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

### **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, while in 2022 of the seven scheduled court days, only three were actually 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 person A.A.<sup>282</sup> Such anonymisation was totally unnecessary, as data on the indictment, including the full name of the defendant, has already been posted on the website of the BIH Court.<sup>283</sup> As well, prior to the start of the trial in the Republic of Serbia, the case had received media coverage in Bosnia and Herzegovina, with the defendant referred to by his full name.<sup>284</sup> Anonymising publicly posted indictments in this way, the OWCP makes them totally unclear<sup>285</sup> and the accused totally invisible to the general public, which is entirely contrary to the 2016 and 2021 National Strategies<sup>286</sup>, as well as to the Prosecutorial Strategy for

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282 OWCP Indictment KTO No. 4/20 of 18 September 2020, available at [https://tuzilastvorz.org.rs/public/indictments/%D0%9A%D1%82%D0%BE\\_4\\_20\\_%D0%9D%D1%81.pdf](https://tuzilastvorz.org.rs/public/indictments/%D0%9A%D1%82%D0%BE_4_20_%D0%9D%D1%81.pdf), accessed on 25 December 2022.

283 Case number S1 1 K 026153 17 Kro - Stjepanović Novak of the Court of Bosnia and Herzegovina.

284 Detektor, "Serbia requested to take over prosecution of the accused for crimes in Bratunac" 22 October 2020, available at <https://detektor.ba/2020/10/22/of-srbije-zatrazeno-da-preuzme-krivicno-gonjenje-optuzenog-za-zlocine-u-bratuncu/>, accessed on 3 December 2022.

285 The accused are indicated as A.A. in all OWCP indictments, available at <https://www.tuzilastvorz.org.rs/sr/%D0%BF%D1%80%D0%B5%D0%B4%D0%BC%D0%B5%D1%82%D0%B8/%D0%BE%D0%BF%D1%82%D1%83%D0%B6%D0%BD%D0%B8%D1%86%D0%B5>, accessed on 3 December 2022

286 National Strategy for the Prosecution of War Crimes, 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 3 December 2022.

2021-2026 National Strategy for the Prosecution of War Crimes, available at [https://www.mpravde.gov.rs/files/Usvojeni%20tekst%20Strategije%20za%20procesuiranje%20ratnih%20zlo%20C4%8Dina%20\(Sl.%20glasnik%2097%2021\)%20222.pdf](https://www.mpravde.gov.rs/files/Usvojeni%20tekst%20Strategije%20za%20procesuiranje%20ratnih%20zlo%20C4%8Dina%20(Sl.%20glasnik%2097%2021)%20222.pdf), accessed on 3 December 2022



the Prosecution of War Crimes in Serbia<sup>287</sup>. Namely, the mentioned strategies envisage the promotion of society's overall attitudes to the issue of war crimes trials, primarily through facilitated access to information about war crime proceedings, in pursuit of the ultimate aim – improved transparency of war crime trials. In a situation where in practice the general public is 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 sheer formality.

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287 2018-2023 Prosecutorial Strategy for the Investigation and Prosecution of War Crimes in the Republic of Serbia, 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 3 December 2022.



## X. The Sanski Most II Case<sup>288</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> first instance proceedings	
<b>Date of indictment:</b> 25 March 2021	
<b>Trial commencement date:</b> 28 June 2021	
<b>Prosecutor:</b> Snežana Pavlović Pejić	
<b>Defendant:</b> Branko Basara	
<b>Criminal offence charged:</b> war crime against the civilian population under Article 142 of the FRY Criminal Code	
<b>Case transferred from BiH</b>	
<b>Trial Chamber</b>	Judge Vladimir Duruz (Chairperson) Judge Beraha - Nikićević Judge Snežana Nikolić -Garotić
<b>Number of defendants:</b> 2	<b>Number of scheduled court days in the reporting period:</b> 8
<b>Defendant's rank:</b> high-ranking	<b>Number of court days in the reporting period:</b> 2
<b>Number of victims:</b> 287	<b>Number of witnesses heard in the reporting period:</b> 2
<b>Total number of witnesses heard:</b> 4	<b>Total number of expert witnesses heard:</b> 0
<b>Key developments in the reporting period:</b>	
Main hearing	

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<sup>288</sup> The *Sanski Most II* Case, trial reports and case file documents available at [http://www.hlc-rdc.org/Transkripti/sanski\\_most-II.html](http://www.hlc-rdc.org/Transkripti/sanski_most-II.html) accessed on 14 December 2022.



## Course of the proceedings

### **Overview of the proceedings up to 2022**

#### **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 6<sup>th</sup> VRS Sana Brigade, and Nedeljko Aničić, as the commander of the TO/ Territorial Defence/ 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 population displacement), 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:

#### **1. Unlawful detention and infliction of bodily injury**

when, on 25 May 1992, in concerted action with SOS /Serbian Defence Forces/ units and other military units of the 6<sup>th</sup> 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 6<sup>th</sup> Sana Brigade, where he was beaten up and was 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 to hand over all illegal and legal weapons to the Serb authorities; as well, 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, where some of them were subjected to psychological and physical maltreatment, moved to and held and viciously beaten in 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, all but the religious clerics – AJ and AK – who remained incarcerated at the Public Security Station, and who were subsequently killed and whose bodies were exhumed and identified at the “Lugovi – Trnava” location;



## **2. Attack on civilian population and civilian settlements**

when, on the night of 26 May 1992, after the 6<sup>th</sup> Sana Brigade artillery units were stationed in the Magarice, Dabar and Kruhari area, and the 1<sup>st</sup> and 4<sup>th</sup> 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**

when, on 27 May 1992, units of the 6<sup>th</sup> 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 were 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, while civilians ANJ and AO who had separated from the column en route to Dašići were killed; their bodies have been exhumed and identified at the “Greda I” mass grave site;

99

## **4. Murder**

when, 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; their bodies have been exhumed and identified at the “Greda I” mass grave;

## **5. Murder and unlawful detention**

when, 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, drove all the civilians 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

when, on 31 May 1992, the artillery of the 6<sup>th</sup> Sana Brigade, stationed at the Elementary 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 to fire 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

when, 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 been exhumed and identified at the “Hrustovo I – Kukavice” mass grave;

## 8. Murder and unlawful detention

when, on 31 May 1992, having entered the undefended hamlet of Begići, soldiers brought all civilians found there outside the house of BU, locked up the women and children in the house and led away the men through a field called “Vinogradine” towards the Vrhpolje bridge, and, when they arrived at the slaughterhouse near the bridge over the River Sanica, VV killed civilians BF and BH, and when they reached the junction at Vrhpolje he killed civilian BU, on the main road leading to Sanski Most he killed civilian BC, and when they reached the Vrhpolje bridge he killed civilian BČ, and he and other soldiers killed civilians on the Vrhpolje bridge, by ordering them to strip and jump off the bridge and 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 been exhumed and identified at the “Vrhpolje Bridge I and II” mass graves;

## 9. Murder

when, on 1 June 1992, after the inhabitants of Hrustovo gathered at the Keranjsko Cemetery to bury those killed in the garage of the family (...), they came under artillery fire of the 6<sup>th</sup> 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, and then:

- a) 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; their bodies have been exhumed and identified at the “Tomina – Markovići” mass grave;

100



- b) over 20 of them, including GŽ, GZ, GI, GJ and GK, were taken in the direction of Tomina – Gornja Tramošnja and killed; their bodies have been exhumed and identified at the “Gornja Tramošnja – Jankov Do” mass grave;

### **10. Unlawful detention**

when 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 called “Betonirka”, among whom were GL, GLj, GM, GN, GNj, GO, GP, GR, GS, GT, GĆ, GU, GF, GH, GC, GČ, GŽ, GŠ and DA, 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**

when, 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 “Kringa” detention facility in Sanski Most at which point they expelled them from the territory of the municipality and killed the men, among whom DB, DV, DG, DĐ, DE, DT and DZ; their bodies have been exhumed and identified at the “Vrhpoljski most – II” mass grave;

### **12. Murder**

when, 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; when they reached Vrhpolje bridge they were stopped by soldiers, ordered out of the vehicle which was seized, and the women and children accompanied by the attendant doctor were driven to the Health Centre, while DI and DJ were held and killed; their bodies have been exhumed and identified at the “Vrhpoljski most II” mass grave;

### **13. Murder and unlawful detention**

when, in the period from 31 May 1992 to 4 June 1992, in the village of Hrustovo, soldiers continued to search the houses and “mop up the 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, who have been exhumed and identified at the “Hrustovo – I” mass grave; and DH, DC, DČ, ZŽ, DŠ, ĐA, ĐB, ĐV, BG, ĐG, BČ, 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 been exhumed and identified at the “Vrhpolje – polje” mass grave;



#### **14. Murder and unlawful detention**

when, after shelling it on 31 May 1992, soldiers entered the village of Vrhpolje, searched it and flushed out 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 the village 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, when the expelled inhabitants had left the village, killed them; their bodies have been exhumed and identified at the “Gornja Tramošnja – Jankov Do” mass grave;

#### **15. Murder**

when, 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, ED, ET, EZ and EI, whose bodies have been found at the “Gornja Tramošnja – Jankov Do” mass grave, and the body of EJ in the “Vrhpoljski most – III” grave, while all trace has been lost of civilian EK since;

#### **16. Unlawful detention and displacement**

when, on 31 May 1992, on orders from the army, civilians found in the village of Vrhpolje were driven out of their houses, and, except for 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 “Krings” 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**

when, from 31 May 1992 onwards, the military continued to carry out searches and mopping up actions in the village of Vrhpolje, and killed male civilians whom they found and discovered, including VLj, EL, ELj, EM, EN and ENj, who have been exhumed and identified in individual graves in the village of Vrhpolje;

#### **18. Murder**

when, 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, while witnesses

102



TĐ and TE managed to escape through the window; ŽE was found by soldiers and delivered to the Public Security Station and all trace has been lost of him since;

**19. Attack on civilians and civilian settlements** when, in the period between 23 July 1992 and 25 July 1992, the artillery of the 6<sup>th</sup> 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 6<sup>th</sup> Sana Brigade and the 5<sup>th</sup> 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 6<sup>th</sup> Sana Brigade when they entered the villages;

## 20. Murder

when from 23 July 1992 to 25 July 1992, troops of the 6<sup>th</sup> 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, ŽE, 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, who have 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, exhumed and identified at the “Stari Majdan – Stara Rijeka” mass grave;

103

## Unlawful detention

At least on 25 July 1992, in the village of Briševo, as soldiers who had entered the village were killing people, torching houses, driving people out of their houses, beating up and psychologically and physically maltreating the population, they caught men forced out of their homes or caught in the woods or other places where they had fled in fear for their lives and took them to the “Kring” 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 up, among whom IP, IR, IS, IT, IĆ, IU, IE, IH, IC, IČ, IDž, IŠ, JA and JB;

## 21. Murder

**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; they have been exhumed and identified at the “Lukavice” mass grave.<sup>289</sup>

<sup>289</sup> Indictment KTO 2/21 of 25 March 2021, available at [https://tuzilastvorz.org.rs/public/indictments/2021-07/kto\\_2\\_21\\_%D0%90%D0%BD%D0%BE%D0%BD%D0%B8%D0%BC%D0%B8%D0%B7.pdf](https://tuzilastvorz.org.rs/public/indictments/2021-07/kto_2_21_%D0%90%D0%BD%D0%BE%D0%BD%D0%B8%D0%BC%D0%B8%D0%B7.pdf), accessed on 14 December 2022.



### **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 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.<sup>290</sup>

### **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 6<sup>th</sup> 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 fighters stayed at their homes, and he had to mobilize 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 Muslim villages in the area together with Nijaz Halilović, a TD captain at the time, and they promised that they would not attack the army, and that indeed was so until a JNA /Yugoslav People's Army/column was attacked in Sarajevo. He then received orders from the Krajina Corps to disarm the population in Muslim villages. On receiving these orders, he called all village elders 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 carry out the disarmament, which was done without anyone being arrested or taken into custody. The problem was the Mahala neighbourhood in Sanski most. There were "extremists" there who were armed and who exchanged fire with the earlier established SOS (Serb Defence Forces) who were 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, i.e. 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 this is a narrow neighbourhood. Fire was 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 about one and a half hours, after which the soldiers returned to their sector. No one was arrested or taken into custody by the unit. After the soldiers, civilian police was to enter the neighbourhood. The accused does not know what happened after his unit withdrew.

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 lads 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

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290 Transcript of the main hearing held on 28 June 2021.



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 they have been convicted. On the same day, 16 Muslims were taken to the Vrhpolje bridge and ordered to jump off the bridge and were shot at as they jumped. He does not know who killed them because by the time the men of 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 for negotiations if he wanted to save them. On that occasion they captured the battalion commander too, who had the communications plan on his person, and Captain Avdić communicated that the troops 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 fighters from the defendant's brigade were taken prisoner. 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 done by certain municipal bodies and SAS members, over whom he had had no authority whatsoever. At the request of SDA leaders, he relocated the unit to Lušci Palanka. He also helped everybody move out to a safe distance from the building housing the Muslim police, as he had received notice that the building would come under attack. All of them crossed to the opposite bank of the Sana River safely.

105

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 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 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 – this was devised so as to associate him with the territory somehow 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 carry out any orders of 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 he carried out their orders only.

Nijaz Halilović was arrested on the basis of a decision of the Serb political leadership of the municipality. He 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. He set out with them towards Serbia, with Nijaz wearing a police uniform. At the border they would not let the doctor pass, as 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 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. His unit had not carried out any actions with the MUP. The SJB /Public Security Station/ could make its own decisions so that the defendant does not know where people were detained or where they were taken. If the SOS and the TD did something of the kind, they 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 the municipality, the TD and the SOS or some self-styled “specials” who belonged 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 knows of the existence of the “Manjača” camp because he went there to get Nijaz out.<sup>291</sup>

### **Witnesses in the proceedings**

106

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 scared as he had received death threats, and so he sent his wife and children out of the town. He was arrested on 25 May 1992 and sent to the camp at Manjača. He was arrested by soldiers. He remained in the camp until December 1992. He was once beaten up while in Sanski Most, and he was maltreated during his stay in the camp as inmates were beaten daily. He knows the accused, he recalls that he came as a volunteer, he was a commander, he occasionally saw him at Peace League gatherings, and he has 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 killing on the bridge from a survivor. He 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 personally hear the shelling – 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.<sup>292</sup>

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<sup>291</sup> Ibid.

<sup>292</sup> Transcript of the main hearing held on 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 the Commander of the 6<sup>th</sup> 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 1600 hours on the following day. The witness went to Banja Luka to see his chief Stojan Župljanin and informed 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 was agreed on, 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/ as no agreement could be reached as to whose the SUP building would be. The witness said that the police must 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 Hujčić 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 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 could remain. Early in the morning, the Muslims left. In the night between 17 and 18 April 1992, 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 Rašula 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 he fell 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 there were no tanks or armoured vehicles, nor any members of the 6<sup>th</sup> Sana Brigade.

Concerning the events in Mahala, he knows that on 25 May 1992 the 6<sup>th</sup> Sana Brigade demanded that the Muslim population hand over their weapons, but the response was weak. During the disarmament in Mahala they clashed with those who had not surrendered their arms and a skirmish occurred, after which the Muslims left Mahala. He does 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 disarming 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, held sway over the Crisis Staff. As regards the arrests and bringing in of SDA members around 25 May 1992, he knows 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.

Later the 1<sup>st</sup> 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 one military policeman each. There was a detention unit in the police building. The detainees were transferred from the town to the military camp at Manjača.<sup>293</sup>

### **Overview of the proceedings in 2022**

Eight court days were scheduled in 2022, of which only two were held, during which two witnesses for the prosecution were heard. Twice the trial was postponed due to the absence of a Trial Chamber member and hearings were cancelled four times.

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 also referred to the police. This division also entailed a territorial division, where the Serb side got the area along the right bank of the Sana River and the Muslim side the left one. 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 it. A Crisis Staff existed in that period which had its bodies. To make it possible for the municipal authorities to function, the army had to get involved, i.e. the 6<sup>th</sup> Sana Brigade, which arrived in April 1992. The brigade command was situated in Lušci

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293 Transcript of the main hearing held on 1 December 2021.



Palanka, which is some 30 kilometres from Sanski Most, and the brigade commander was the accused Colonel Branko Basara. Members of the 6<sup>th</sup> Sana Brigade were locals.

The witness does not know whether the accused played any role in the Crisis Staff. He knows that during the peaceful period the accused did all he could for everything to transpire without any conflict. He was even reproached for that, some claimed that he was “Red”, because he would not remove the five-pointed star. In Sanski Most there existed the SOS, namely Serbian defence forces, and every Serb village had them, like Muslim villages had the MOS/Muslim Armed Forces/, and Croatian ones the HOS /Croatian Defence Forces/. Later, during 1992 and 1993, the SOS was uniformed and armed, but they were not connected with the 6<sup>th</sup> 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 military police – the Corps military police, but also the police from Prijedor, were present in the field. In May and June 1992, the witness interrogated persons that were brought in. The interrogation was conducted in a number of places: at the “Hasan Kikić” Elementary School, in the “Betonjerka”, in police quarters, but also at 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.

109

For a time, Miladin Papić was in charge of the “Betonjerka” building. He noticed that Zikrija Bahtić who had been brought in had bodily injury. The investigation established that Martić, a member of the reserve police force who was apprehended in that connection, had beaten him up. Proceedings were conducted against Martić on that account. He does not know why Bahtić was brought in. Some of the apprehended persons were released after interrogation. There are records of all interrogations which the witness signed. He does not know who drew up the lists of people to be taken to Manjača, or who decided on that. Mainly Muslims were brought in, because of the possession of weapons, and later also Serbs who sold those weapons to them. On 25 May 1992, Redžo Kurbegović, Muhamed Smajlović, one captain, 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 organising of attacks on the army, of which there had been a number. Aldin Draganović was the president of the Court, namely an investigating judge. He was brought in for refusing to hand over his weapon (a *Škorpion*) 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 knows that he went to Zagreb to procure weapons and explosives. He also knows that it was him who read out the proclamation on Radio Sanski Most.



As regards the shelling of Mahala and Muhići, the witness knows 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 does not know that civilians were killed in Mahala. Nor does he know anything about the shelling of the village of Briševo, as it is not within their jurisdiction and belongs to Prijedor. He heard about the killing of the Alibegović family in the village of Lukavice only half a year later, but does not know any details. Neither does he know anything about the events on the bridge in the village of Vrhpolje.

When a murder somewhere was reported to it, the police conducted an on-site investigation, and proceedings would be initiated against the perpetrators. Thus, criminal charges were brought against Goran Mrđa for killing three Muslims, which 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, 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 to be civilians. At Manjača he interrogated Eniz Šabanović, a doctor who was with the medical corps of the Muslim units. This was a person who had caused ethnically based conflicts while under the influence of alcohol before as well. Official records were drawn up of all interviews with the apprehended people. People were brought for interrogation by policemen who also guarded the buildings with detainees.

110 Detention facilities in Sanski Most were managed by the police. For a while Drago Vujanić was in charge, who was installed in that position by the Crisis Staff. In the area of Sanski Most municipality were the 6<sup>th</sup> 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 SOS was all over the place. The people were not armed by the 6<sup>th</sup> Sana Brigade – the weapons they got were army weapons, but they came from the other side, namely from Banja Luka and Krajina.<sup>294</sup>

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.<sup>295</sup>

## HLC Findings

### **Regional cooperation**

These proceedings are a result of the 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 in 2013

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294 Transcript of the main hearing held on 24 February 2022.

295 Transcript of the main hearing held on 31 August 2022.



the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide. Namely, the confirmed indictment against the accused was transferred by the Prosecutor's Office of Bosnia and Herzegovina, given that the accused, who is a national and resident of the Republic of Serbia, was not accessible to the authorities of BiH.

### **Legal qualification of the offence**

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 characterized 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. Namely, in the criminal legislation of the Republic of Serbia, a crime against humanity was specified as an individual crime in the Criminal Code which started to be applied as of 1 January 2006. 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 is 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, which is not formally done but he is charged as a co-perpetrator; so it remains to be seen how the OWCP will prove the accused's conduct as a co-perpetrator, which requires clear proof of the existence of a joint decision to commit the crime, and of the concrete act which the accused carried out with intent and which substantially contributed to the commission of the crime.

111

### **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.<sup>296</sup> As well, prior to the start

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



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<sup>297</sup>. Anonymising publicly posted indictments in this way, the OWCP makes them totally unclear<sup>298</sup>, and the accused totally invisible to the general public which is entirely contrary to the 2016 and 2021 National Strategies<sup>299</sup>, as well as to the Prosecutorial Strategy for the Prosecution of War Crimes in Serbia<sup>300</sup>. Namely, the mentioned strategies envisage the promotion of society's overall attitudes to the issue of war crimes trials, primarily through facilitated access to information about war crime proceedings, in pursuit of the ultimate aim – improved transparency of war crime trials. 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 sheer formality.

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 case it is 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.

### **Prosecution of senior personnel**

Two high-ranking officers of the former JNA stand accused in this case, Branko Basara as the Commander of the 6<sup>th</sup> 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 is not the result of the OWCP's work, but that this was a confirmed indictment transferred from BIH, namely that the charges against these high-ranking officers are the result of the work of the Prosecutor's Office of BiH.

112

297 Detektor, "The Sanski Most and Prijedor Crimes Case Transferred to Serbia/", 13 March 2020, available at <https://detektor.ba/2020/03/13/srbiji-ustupljen-predmet-za-zlocine-u-sanskom-mostu-i-prijedoru/>, accessed on 15 December 2022.

298 The first defendant is indicated as A.A. in all OWCP indictments, available at <https://www.tuzilastvorz.org.rs/sr/%D0%BF%D1%80%D0%B5%D0%B4%D0%BC%D0%B5%D1%82%D0%B8/%D0%BE%D0%BF%D1%82%D1%83%D0%B6%D0%BD%D0%B8%D1%86%D0%B5>, accessed on 15 December 2022.

299 National Strategy for the Prosecution of War Crimes, 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.

2021 – 2026 National Strategy for the Prosecution of War Crimes, 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 15 December 2022.

300 2018-2023 Prosecutorial Strategy for the Investigation and Prosecution of War Crimes in the Republic of Serbia, 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 15 December 2022.



## XI. The Rogatica Case<sup>301</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> first instance proceedings	
<b>Date of indictment:</b> 9 October 2020	
<b>Trial commencement date:</b> 12 March 2021	
<b>Prosecutor:</b> Ivan Marković	
<b>Defendant:</b> Rajko Kušić	
<b>Criminal offence charged:</b> war crime against the civilian population under Article 142 of the FRY Criminal Code	
<b>Case transferred from BiH</b>	
<b>Trial Chamber</b>	Judge Vinka Beraha Nikićević (Chairperson) Judge Snežana Nikolić - Garotić Judge Vladimir Duruz
<b>Number of defendants:</b> 1  <b>Defendant's rank:</b> high-ranking  <b>Number of victims:</b> 210  <b>Total number of witnesses heard:</b> 3	<b>Number of scheduled court days in the reporting period:</b> 8  <b>Number of court days in the reporting period:</b> 2  <b>Number of witnesses heard in the reporting period:</b> 1  <b>Total number of expert witnesses heard:</b> 0
<b>Key developments in the reporting period:</b>  Main hearing	

113

<sup>301</sup> The *Rogatica* Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/Rogatica.html> accessed on 15 December 2022.



## Course of the proceedings

### **Overview of the proceedings up to 2022**

#### **Indictment**

The accused Rajko Kušić is charged with having, 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 1<sup>st</sup> Podrinje Light Infantry Brigade, ordered attacks on civilians and settlements and himself participated in the attacks which resulted in deaths, as well as ordered the killing, torture, inhumane treatment, infliction of 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 1<sup>st</sup> 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 he 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, the detained women and girls 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:

114

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 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 ordered the civilians to get out of their flats, and when they did so, they 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, and 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; then 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, AĆ, 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 Ladjevine 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 did 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 Ladjevine 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, BĆ, BU, BF, BC and BH whose bodies were exhumed in the village of Kukavice in the beginning of October 1998, while all trace was lost of BĆ; 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 bussed earlier that day, with their hands tied, to the “Paklenik” pit from the “Rasadnik-Sladara” malting plant compound in Rogatica, while GP managed to escape the execution; the bodies of the slain were exhumed in 2000 in the “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 when they got out, killed by fire from automatic weapons civilians GP, GR, GS, GT, GĆ, GU, GE, 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, DE, DH, DC, DĆ, 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 were blindfolded and their hands tied and bussed somewhere, 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 when they got out they 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 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, of whom all trace had been lost until the year 2000 when their bodies were exhumed in the “Paklenik” pit near the village of Kalimanići in Sokolac municipality; he 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 1<sup>st</sup> Podrinje Light Infantry Brigade attacked the undefended Muslim village of Rakitnica, in Rogatica municipality, first executing an artillery and then also an infantry attack and killing with automatic weapons civilians EČ, EDž, EŠ, ŽA, ŽB, ŽV and ŽG, whose bodies were recovered and exhumed in the beginning of September 1998, and 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 1<sup>st</sup> 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 in the beginning of September 1998, and ŽO, ŽP, ŽR, ŽS and his daughter and ŽT, whose bodies have not been found to date, and wounding civilians ŽĆ, ŽU, ŽF, ŽH, while civilians ŽC, ŽČ, ŽDž, ŽŠ, ZA, ZB, ZV, VG, BD, 3Đ, 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 1<sup>st</sup> Podrinje Light Infantry Brigade attacked the undefended Muslim village of Kramer in Rogatica municipality from the direction of Stijenice, Burati and Zakomo village, 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 elementary 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 he then ordered 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; then he ordered one of his men to have the women, children and elderly men confined to the premises of the mentioned elementary school, and from there they were bussed 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 1<sup>st</sup> Podrinje Light Infantry Brigade, he 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 strong 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 1<sup>st</sup> 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, IE, 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, while “JI”, JK and JL managed to escape the execution;
13. In the period from 08 June 1992 to mid-August 1992, members of the 1<sup>st</sup> 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 1<sup>st</sup> Podrinje Light Infantry Brigade, and held captive between three hundred fifty and a thousand 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; suspect AA came there, 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 mentioned Secondary School Centre, women detainees “JLJ”, “JM”, “JN”, “JNj”, “JO”, “JP”, “JR”, “JS” and others were raped, male detainees were sent out to dig trenches, carry ammunition for the needs of Serb soldiers and set up machine gun emplacements with sandbags;

14. In mid-September 1992, members of the Rogatica 1<sup>st</sup> 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 1<sup>st</sup> 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 to unlawfully incarcerate Muslims in it, who were guarded by members of the Rogatica Brigade, later the Rogatica 1<sup>st</sup> Podrinje Light Infantry Brigade, and held captive around three hundred 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 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 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 and their bodies were exhumed in the vicinity of the “Rasadnik-Sladara” malting plant in November 1998, and in the “Paklenik” pit near the village of Kalimanići, in 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 1<sup>st</sup> 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 17<sup>th</sup> 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 1<sup>st</sup> 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 was 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.<sup>302</sup>

### **Defence of the accused**

At this stage of the proceedings the accused exercised his right to remain silent.<sup>303</sup>

### **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”. 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 he had not seen any civilians being taken off the vehicles on the way. On arrival at their destination, actually 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 go to the Rogatica municipality area.<sup>304</sup>

119

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, which had armed escorts. An incident occurred because Milan Lukić wanted to separate one of the men.

Just outside Rogatica the bus was stopped. Soldiers in fatigues separated the women and children from the men, claiming that the men would be exchanged. After the separation they continued to Sokolac and 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 were tied and beaten and their money and valuables seized. The men were taken to a grove and executed. When he saw that they were executing people, taking advantage of the fact that he was at the end of the line, near the forest, he fled together with another man. He saw Slaviša Vukojić by the pit where the executions were

302 Indictment KTO 5/20 of 9 October 2020, available at [https://tuzilastvorz.org.rs/public/indictments/%D0%9A%D0%A2%D0%9E\\_5\\_20\\_%D0%9A%D1%80~0.pdf](https://tuzilastvorz.org.rs/public/indictments/%D0%9A%D0%A2%D0%9E_5_20_%D0%9A%D1%80~0.pdf), accessed on 16 December 2022.

303 Transcript of the main hearing held on 12 March 2021.

304 Transcript of the main hearing held on 27 May 2021.



taking place; he later heard that he had been the accused's right-hand man. He does not know the accused.<sup>305</sup>

### Overview of the proceedings in 2022

Of the eight court days scheduled in 2022 two were held and one witness for the prosecution heard. The trial was postponed five times because summoned witnesses failed to appear.

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, in the assessment of the witness, was actually a camp, from which women and girls would be taken out in the evening, and he later learned that they were raped. On the following morning they separated the women and the elderly – among whom 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 “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, after which 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 and 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 men back and ordered them to join the others. He stood next to his uncle who then 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 by bursts of fire. The witness was hit in the left upper arm, 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 that he had who was doing the shooting. Špiro answered with a question “And who is asking”, and the person replied “Rajko Kušić is asking”, to which Špiro answered that he was 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 orders by the accused Kušić, and, 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 does not know him.<sup>306</sup>

120

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305 Transcript of the main hearing held on 19 October 2021.

306 Transcript of the main hearing held on 1 September 2022.



## HLC Findings

### **Regional cooperation**

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

### **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 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 characterized 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. Namely, in the criminal legislation of the Republic of Serbia a crime against humanity was specified as an individual crime in the Criminal Code which started to be applied as of 1 January 2006. 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.

121

### **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.<sup>307</sup> As well, prior to the start of the trial in the Republic of Serbia, namely already in 2015, the case had received media coverage in Bosnia and Herzegovina, with the defendant referred to by his full name<sup>308</sup>. Anonymising publicly posted indictments in this way, the OWCP makes them totally unclear<sup>309</sup>, and the accused totally invisible to the general public which is

307 Case number S1 1 K 017608 14 Kro of the Court of Bosnia and Herzegovina

308 Detektor, "Indictment Against Rajko Kušić Confirmed", 3 April 2015, available at <https://detektor.ba/2015/04/03/potvrdena-optuznica-protiv-rajka-kusica/>, accessed on 15 December 2022.

309 The first defendant is indicated as A.A. in all OWCP indictments, available at <https://www.tuzilastvorz.org.rs/sr/%D0%BF%D1%80%D0%B5%D0%B4%D0%BC%D0%B5%D1%82%D0%B8/%D0%BE%D0%BF%D1%82%D1%83%D0%B6%D0%BD%D0%B8%D1%86%D0%B5>, accessed on 3. December 2022.



entirely contrary to the 2016 and 2021 National Strategies<sup>310</sup>, as well as to the Prosecutorial Strategy for the Prosecution of War Crimes in Serbia<sup>311</sup>. Namely, the mentioned strategies envisage the promotion of society's overall attitudes to the issue of war crimes trials, primarily through facilitated access to information about war crime proceedings, in pursuit of the ultimate aim – improved transparency of war crime trials. 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 sheer formality.

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 case it is 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.

### **Prosecution of senior personnel**

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

122

### **Failure of witnesses to appear**

In the course of the proceedings to date hearings were for the most part postponed owing to the failure of summoned witnesses for the prosecution to appear before the court, with consequently two main hearings rescheduled in 2021 and five in 2022 five. Account being taken of the passage of time and the fact that most of the witnesses are from BiH, due to old age or poor health witnesses increasingly fail to respond to the summons of the court. As a result, proceedings are procrastinated and this also greatly affects possibilities for a fair adjudication.

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310 National Strategy for the Prosecution of War Crimes, 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 3 December 2022.

2021-2026 National Strategy for the Prosecution of War Crimes, 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 3 December 2022.

311 2018-2023 Prosecutorial Strategy for the Investigation and Prosecution of War Crimes in the Republic of Serbia, 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 15 December 2022.



## XII. The Rudice Case<sup>312</sup>

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

123

312 The *Rudice* Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/Rudice.html> accessed on 15 December 2022.



## Course of the proceedings

### **Overview of the proceedings up to 2022**

#### **Indictment**

The accused Nezir Mehmetaj is charged that 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, he 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:

- 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, and he did so; 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 so far unknown location where they were deprived of life in an undetermined manner, and their mortal remains have not been found to date;
- 124 - 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 as he had heard that the accused was looking for him and inquiring about his whereabouts, 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 the accused said this to him, "You are sorry because we killed the Dašić family"; after that, grabbing him roughly by the arms, they briefly took him to his family home in the village of Rudice and then forced him into a vehicle, and, before he went in, the accused said to one of his daughters "This is the last time that you see him, there won't be another time", and then they set off towards Zalac, where he was deprived of life in an undetermined manner, and his mortal remains have not been found to date;
- towards 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 and she was deprived of life in an undetermined manner and her mortal remains have not been found to date;
- 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, 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 jerry can and torched the houses and he also set the houses of another four families on fire;



- 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, he repeatedly maltreated and abused a number of non-Albanian inhabitants, Roma and Egyptians; on one occasion they took four persons out of their houses and beat them up kicking and hitting them and then threw 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 minor Roma and Egyptians 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, you Gypsies and Roma for living here, this will be Albanian only” he opened fire in their direction and the terrified young men took to their heels and two days later left the village of Rudice for good.<sup>313</sup>

### **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, got 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 has heard nothing about the Dašić family nor did he know them from an earlier period. He met some persons from that family only in 2018 or 2019 when they returned to the village. He does not know Zorka Šiljaković, and he has not heard what happened to her. He knows Izet Ahmadekaj, they have known each other since childhood, it was him in fact that he 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 a person in the village of Zablac also named Nezir Mehmetaj, but he does not know that person.<sup>314</sup>

125

### **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 neighbours, sad because they were leaving, saw them off. He returned to the village only several years later within an organised return of displaced persons. He saw all of their houses demolished

313 Indictment KTO 2/20 of 16 December 2020, available at [https://www.tuzilastvorz.org.rs/public/indictments/2021-07/%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](https://www.tuzilastvorz.org.rs/public/indictments/2021-07/%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 15 December 2022.

314 Transcript of the main hearing held on 22 April 2021.



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 entered the village, his neighbour Ramadan Jelaj came 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, while his sister-in-law Jovanka and neighbour Zorka Šiljaković were 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 organizers of the torture and killing of the Dašić family members. Reportedly a woman neighbour had asked the accused why they didn't 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 tell on them, and killed him too. The mortal remains of his father Mihailo and brother Dragutin have still not been found.<sup>315</sup>

126

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 signature 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 also sign the petition. When the bombing ceased in June 1999, he left Rudice in fear of KLA members. He first heard about the killing of his father and brother from his *kum*/child's godfather or witness at 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 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 one 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 other persons who told him about the ordeal of his family members because he feared for their safety as they were still living in Rudice.<sup>316</sup>

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 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 killed her mother on 25 or 26 June 1999 and looted and burned the house and the estate, as well as all

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315 Transcript of the main hearing held on 26 May 2021.

316 Ibid.



Serbian houses in the village. She heard that the accused had been the man in charge among the KLA members who had been involved. She does not wish to name the persons who told her about the killing of her mother, for they too would be killed as they are still living in the village. She notes that her relatives who remained living in Rudica are being forced by their Albanian neighbours to sign a petition requesting the acquittal of the accused.<sup>317</sup>

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, which he supposed had met a violent death, but he did not recognise them nor could tell their sex. He did not recognise the accused and he did not associate him with the killings.<sup>318</sup>

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 maltreated non-Albanians and plundered the abandoned houses of their Serbian and non-Albanian neighbours. He knows the accused well as they both hail from the village of Rudice. However, in the stories that he heard, no one had mentioned the accused.<sup>319</sup>

## Overview of the proceedings in 2022

127

Ten court days were scheduled in 2022, of which six were held. The trial was postponed twice owing to the absence of a Trial Chamber member, once due to the impossibility of establishing a videoconferencing link to examine a witness living abroad, and once because the accused had not received a translation of the expert witness's findings into Albanian. During the trial, the court examined two witnesses, one expert witness and one professional consultant.

Dejan Ćirković, who is not a 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 is 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 completed a specialised police course, as well as training abroad on the subject of facial recognition. While working he was not to establish the

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317 Ibid.

318 Transcript of the main hearing held on 9 July 2021.

319 Transcript of the main hearing held on 8 November 2021.



authenticity of the photograph at issue as he worked 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 in the disputed photograph.<sup>320</sup>

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 noticed, she concluded that similarity was highly improbable, as evident differences were in question.<sup>321</sup>

Defence witness Kumrije Mališeva, daughter of the late Ramadan Jelaj, stated that she knew the accused because they both lived in the village of Rudice. She knows 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.<sup>322</sup>

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 has been living and working in Germany since 1989 and he 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 from 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 found out 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 after three days. One day after he returned home, Nezir Mehmetaj came to see Ramadan and demanded that he go to the Dašić family and convey to them the message that they are to surrender their weapons, and Ramadan did so, 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

320 Transcript of the main hearing held on 16 March 2022.

321 Ibid.

322 Transcript of the main hearing held on 16 September 2022.



uttered – “I have the Dašić family on my conscience.” Several days later, Ramadan’s daughter Ajša called him and told him that they had remained without food in Rudice, 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 the road Nezir Mehmetaj and Bujar Bajraktari obstructed their passage by a car. The two of them pulled Ramadan out of the car and took him to a shop near Ramadan’s house and beat him up there. 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. Apart from 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 Ajše 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 claims that it is common knowledge that the Dašić family was killed by Mehmetaj and other KLA members, but that people are keeping their mouths shut for fear of revenge, and also 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 took money from the Mehmetaj family and that is why Kumrija perjured herself. As well, the witness stated that the Mehmetaj family had threatened him on several occasions.<sup>323</sup>

129

## HLC Findings

### **Unnecessary anonymisation of the indictment**

The OWCP 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.<sup>324</sup>

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<sup>323</sup> Transcript of the main hearing held on 20 December 2022.

<sup>324</sup> RTV *Nezir Mehmetaj Arrested at Merdare on a Wanted Warrant from Belgrade?*, 4 January 2020, available at [https://www.rtv.rs/sr\\_lat/hronika/nezir-mehmetaj-uhapsen-na-merdaru-po-poternici-iz-beograda\\_1081586.html](https://www.rtv.rs/sr_lat/hronika/nezir-mehmetaj-uhapsen-na-merdaru-po-poternici-iz-beograda_1081586.html), accessed on 30 December 2022.



# FIRST INSTANCE JUDGMENTS

## I. The Brčko – Rasadnik Camp Case<sup>325</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> first instance judgment	
<b>Date of indictment:</b> 21 February 2020	
<b>Trial commencement date:</b> 1 June 2020	
<b>Prosecutor:</b> Dušan Knežević	
<b>Defendant:</b> Osman Osmanović	
<b>Criminal offence charged:</b> war crime against the civilian population under Article 142 of the FRY Criminal Code	
<b>Trial Chamber</b>	Judge Mirjana Ilić (Chairperson) Judge Zorana Trajković Judge Dejan Terzić
<b>Number of defendants:</b> 1 <b>Defendant's rank:</b> no rank <b>Number of victims:</b> 4 <b>Number of witnesses heard:</b> 20	<b>Number of scheduled court days in the reporting period:</b> 3 <b>Number of court days in the reporting period:</b> 2 <b>Number of witnesses heard in the reporting period:</b> 0 <b>Number of expert witnesses heard in the reporting period:</b> 0
<b>Key developments in the reporting period:</b> First instance judgment	

130

<sup>325</sup> The *Brčko – Logor Rasadnik* Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/rasadnik.html> accessed on 27 December 2022.



## Course of the proceedings

### Overview of the proceedings up to 2022

#### Indictment

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

- 1) On 6 May 1992, after the injured party, civilian Aleksandar Pavlović, was brought to him, he asked to see his papers, kept his identity card and interrogated him about his alleged participation in war activities on the side of the Serbian forces; during the interrogation other present persons threatened the injured party that he would be put to the knife should he be found guilty; afterwards the accused unlawfully confined the injured party, who on the following day was placed in a structure made of metal plate – formerly a fruit drying chamber - with a concrete base and without windows, fresh air or water, where he was held captive until 14 July 1992; once during this period the accused came with a comrade-in-arms and showed the injured party to him and the latter kicked him in the knee,
- 2) On 13 May 1992, while interrogating the injured party, civilian Milenko Radušić, previously deprived of freedom, he and several of his comrades-in-arms tortured him all night, seeking information about militarily engaged individuals in Brčko, on which occasion the injured party was punched and kicked, hit with a wooden bat and a truncheon on the head and the body, including by the accused, which caused the injured party to faint several times. After the interrogation, the injured party was transferred to the chamber from which he was repeatedly taken for subsequent interrogations, during which he was physically and psychologically maltreated and suffered bodily harm. On an unspecified date in June 1992, together with another member of his unit, the accused took the injured party out of the chamber, cursed his mother and threatened that he would kill him and that he would not be leaving the place alive, striking and kicking him repeatedly on the body until the injured party wet himself as a result of the sustained blows.
- 3) On an unspecified date in June 1992, after injured party Vasiljko Todić, who had been unlawfully detained as a member of Serbian armed units, was brought from the chamber, he attended his interrogation which other members of the defendant’s side in the conflict were carrying out, during which, in order to extract a statement from him, the injured party was tortured and beaten, and was as a result all covered in blood, his eyes were almost completely shut and his nose, several teeth and one rib were broken. The accused walked up to the injured party, slapped him in the face, saying “I curse your mother, Chetnik, why are you lying”, after which the injured party was taken to the chamber where he was held captive for 31 days and from which he would be

131



taken out occasionally to clean garbage dumps, dig up unexploded ordnance from the ground and for interrogation, at which times he would again be physically and psychologically maltreated.

- 4) On an unspecified date in June 1992, he took detained injured party, civilian Rado Simić, out of the chamber and physically maltreated him, striking and kicking him repeatedly on the body and head until the injured party went limp from the blows and was then taken back to the chamber.<sup>326</sup>

### **Defence of the accused**

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

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

<sup>326</sup> OWCP Indictment KTO 1/20 of 21 February 2020, available at [https://tuzilastvorz.org.rs/public/indictments/kto\\_1\\_20\\_cir.pdf](https://tuzilastvorz.org.rs/public/indictments/kto_1_20_cir.pdf). Accessed on 27 December 2022.



He did not have the authority to decide whether people would be detained or not; he informed his superiors about the conducted interviews, and they brought the final decisions, but did not communicate them. He first received information about the 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, that they would burst in and maltreat people.

He has no idea why the injured parties are accusing him, but supposes that it has to do with the lawsuit for damages for defamation of character which he had won against the paper “Press RS”. The magazine had published an article in which his colleague Novalija Fazović accused him of torturing Serbs in the camp at Gornji Rahić, and the vice-president of the Association of Former Camp Inmates of Republika Srpska confirmed it. In his view, another reason why they were accusing him was the job he did after the war. He was the Chief of the Department for Fighting Organised Crime in the Ministry of the Interior (MUP) of the Tuzla Canton, and had, among other, conducted an investigation against the government. Investigated were ministers, heads of municipalities and directors of public companies. He had also conducted investigations in Brčko against a number of department heads while he served as director of the Public Revenue Office, and one of them, who had actually been prosecuted, vowed that he would exact revenge on him. The people he had conducted investigations against had certainly brought their influence to bear on the witnesses so that the latter would accuse him.<sup>327</sup>

### **Witnesses in the proceedings**

Injured party Vasiljko Todić stated that he had been detained in Gornji Rahić for 83 days, that the detainees were accommodated in a former fruit maturation chamber, devoid of elementary sanitary conditions. He had never had a change of clothes all that time, and the food they received was poor. Due to the meagre and poor quality meals he had lost a lot of weight. He recalls that detained with him were Aleksandar Pavlović, Milenko Radušić and Blagoje Vujanović who have died, as well as Miko Savić, Brano Sekučić, Budimir Stanišić and Rado Simić. The accused had been present during his interrogation. He would say to him “you are lying, Chetnik” and would slap him in the face, and others beat him and punctured him with awls, so that he lost consciousness a number of times. During his stay in the camp he would be taken out to load garbage and to dig up unexploded ordnance. On one occasion, as he was loading refuse, he saw the accused beating Radušić, kicking him in the head and stomach. He was beaten up so badly that he wet himself from the blows. Rado Simić told him that they had seized from him 3,500 German marks and a “Mercedes” which was given to the mullah in Rahić. When he asked that these be returned to him they thrashed him and the accused beat him the most.<sup>328</sup>

Witness Mara Vukmirović, the daughter of injured party Aleksandar Pavlović (now deceased), learned about the critical event from her father’s accounts. She knows that he had been issued no decision whatsoever on detention or anything else in connection with his detention in the camp, nor had any proceedings been conducted against him. Her father told her that he had been locked up in Gornji Rahić in the refrigeration unit of the “Okrajci” plant nursery. Fruit used to be dried there, and

<sup>327</sup> Transcript of the main hearing held on 1 June 2020.

<sup>328</sup> Transcript of the main hearing held on 27 July 2020.



her father called this metal container “the refrigerator”. On the very day of his arrest, her father was brought before the accused; Galib Hadžić was in the same room and he threatened him with a knife. Her father was a civilian, he had neither a uniform nor a weapon. He was trying to save himself, 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 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.<sup>329</sup>

134

Witness Snježana Simikić, paternal half sister of injured party Milenko Radušić (now deceased), stated that her brother had been mobilised, and was then arrested in mid-May 1992 in Brčko and taken to Gornji Rahić. He told her that he had been beaten every day, and she saw scars on his body. From his words she learned that the conditions in Rahić had been poor, that they slept on the floor, that they did not have water or enough food. When her brother returned home he was very thin, and he felt the consequences of the beating for some time. After a month and a half in captivity in Rahić, he was transferred to a camp in Maoča, and then to Tuzla, but said that he had been tortured only in Rahić. He would never say who had beaten and maltreated him.<sup>330</sup>

Witness Zora Simić, the wife of the late Rado Simić, stated that her husband had been stopped as a civilian in his vehicle, which was seized on that occasion and was never given back to him. He was then taken to the camp in Rahić, and later transferred to Tuzla, from which he was released in July 1992. Her husband told her that he himself had not been beaten by anyone while in the camp, but he also said that Vasiljko Todić had been beaten and that he had been brought there unconscious. He also said that Milenko Radušić had been beaten too. Her husband never mentioned the accused.<sup>331</sup>

Witness for the prosecution Arman Jašarević stated that in the critical period he had been a military police platoon leader, and that they escorted captives to Gornji Rahić to be interrogated by members of a State Security group. In the words of the witness, State Security, or rather the accused Osmanović, was the “alpha and omega” there. The military police only brought people to the State Security Command in Gornji Rahić for interrogation, while the actual interrogation and decisions as to whether they would be dispatched to the Rasadnik Camp were within the purview of the State Security. Interrogated persons would be transferred from Gornji Rahić to structures in the old nursery, in order to be hidden from the public eye. The house in which they were interrogated in

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

330 Ibid.

331 Transcript of the main hearing held on 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, he saw them being tortured. When interrogating the detainees, State Security men would have them undress, the witness saw only one or two in underpants while all the others were stark naked. They beat them with open and closed fists, rods and feet.<sup>332</sup>

Defence witness Senad Jašarević stated that he was a good friend of the accused and that in the critical period they had worked together. They were members of a State Security task force comprising former MUP members and stationed in the village of Gornji Rahić. In mid-May 1992, he and the accused were given the task of conducting an interview with Milenko Radušić. They were told that Radušić had been arrested in an automobile which was not his property, that there were hidden explosives in the vehicle and that Radušić was falsely representing himself as one Alija Zukić. The injured party was brought in by the military police and the interview with him was conducted in the premises of the Operations Group in a correct atmosphere, and an official note of the interview was compiled. The witness had noticed visible injuries on Radušić, but had not recorded that observation in the official note. Whether apprehended persons would be detained or released would be decided by the military authorities. Some of the interviewees were later transferred to the forest nursery in Maoča, where, in July 1992, together with the accused, he conducted another interview with injured party Radušić, which evolved in an almost friendly atmosphere. A record of the interview was drawn up and the witness signed it.<sup>333</sup>

135

Defence witnesses Hazim Mujkić and Novalija Fazlović had no knowledge that the accused had maltreated detained civilians.<sup>334</sup>

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 knows 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.<sup>335</sup>

Defence witnesses Esad Bando, Hadžaga Hodžić and Niko Salatović had no knowledge that the accused had mistreated prisoners.<sup>336</sup>

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

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

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

335 Transcript of the main hearing held on 5 March 2021.

336 Ibid.



Defence witness Kadrija Avdić stated that he had known the accused since 1986, when he came to Brčko to join the police force, that he saw him at the Rahić police station towards the end of May 1992, but that he did not know what his line of work had been.<sup>337</sup>

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. He remarked that none of the victims, except for Jašarević, had ever linked the accused and Karamehić to the camp. The prosecutor at the Brčko District Prosecutor's Office working on cases of crimes perpetrated against Serb victims was a Serb and very much committed to his work, and he believes that he would certainly have initiated proceedings against the accused had he had any information about his unlawful conduct during the war.<sup>338</sup>

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.<sup>339</sup>

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 knows 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 had no business contacts with the accused.<sup>340</sup>

Defence witness Momir Zec stated that he did not know the accused,<sup>341</sup> and witness Amir Sudar that he had never seen him at Okrajci where he had been detained for a while.<sup>342</sup>

Defence witness Halil Tahto stated that he knew the accused and that he knew that the same had been on 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 108<sup>th</sup> HVO (Croatian Defence Council) Brigade. A state security operations group was formed by the 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. He does not know before whom persons who were arrested at checkpoints would be brought, or who could decide whether they would be detained. He occasionally

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337 Transcript of the main hearing held on 2 April 2021.

338 Ibid.

339 Ibid.

340 Transcript of the main hearing held on 14 April 2021.

341 Transcript of the main hearing held on 28 May 2021.

342 Ibid.



saw the accused, but he does not know what his job was, as they had no official contacts. He denied 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.<sup>343</sup>

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 him get out of Brčko, when they were both captured at the Rahić checkpoint and taken to the police. The police 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 and 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, which was unliveable. He noticed that Pavlović had obviously lost a lot of weight; Pavlović approached him and told him that in the evening drunken fighters would come from the front and torment the prisoners. He did not specifically name any of the persons who maltreated him. After the war, when once 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.<sup>344</sup>

137

The deputy war crimes prosecutor seized of the case changed the indictment by leaving out allegations that the accused had inhumanely treated, intimidated, unlawfully detained, tortured and perpetrated violence against other unidentified persons also; the amended indictment charges the accused that, as one of the chief interrogators at the Rahić camp, he committed such acts only against injured parties Aleksandar Pavlović, Milenko Radušić, Vasiljko Todić and Rado Simić.<sup>345</sup>

## **Overview of the proceedings in 2022**

Of the scheduled three court days, two were held in 2022; one was postponed due to the absence of a Trial Chamber member.

### **First instance judgment**

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.<sup>346</sup>

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343 Ibid.

344 Transcript of the main hearing held on 5 November 2021.

345 Ibid.

346 Judgment K.Po2 1/20 of the Higher Court in Belgrade, of 18 March 2022.



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 different bats. 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 and accepted 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 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 implied 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.

138

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.<sup>347</sup>

The accused was remanded in custody until dispatched to serve his sentence, or until its expiry at the latest.

The HLC was unable to undertake 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 yet resulted in a final ruling.

## HLC Findings

### **Excessive anonymisation of the indictment**

The OWCP Indictment in this case, which is publicly accessible on the OWCP homepage under "Indictments"<sup>348</sup>, has been anonymised by the publication only of its operative part, with data on the name of the accused redacted, which is not in accordance with the OWCP Rulebook on Anonymisation

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<sup>347</sup> Ibid.

<sup>348</sup> OWCP Indictment KTO No. 1/2020 of 21 February 2020, available at [https://tuzilastvorz.org.rs/public/indictments/kto\\_1\\_20\\_cir.pdf](https://tuzilastvorz.org.rs/public/indictments/kto_1_20_cir.pdf), accessed on 27 December 2022.



of Personal Data in OWCP Indictments for War Crimes.<sup>349</sup> 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.”<sup>350</sup> Instead of the entire indictment, only the operative part was posted, making it impossible to ascertain on what evidence the OWCP had based the indictment. Also, the Rulebook envisages anonymisation of the personal particulars of the participants in the proceedings, such as “the names and surnames and nicknames of physical persons, their addresses, dates and places of birth”<sup>351</sup>, but, however, it also provides that “data on the name, surname and nickname of a physical person who is a participant in the proceedings shall not be subject to anonymisation if the legitimate interest of the public to know prevails over the protection of the identity of the physical person in question.”<sup>352</sup> Since 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, the public being entitled to be informed of the identity of persons charged with war crimes.

Apart from that, such anonymisation is wholly unnecessary, given the fact that the media have been reporting on the accused ever since his arrest in 2019<sup>353</sup>, and some have published his photograph as well.<sup>354</sup>

### **Avoidance of regional cooperation in the prosecution of war crimes**

The Prosecutor’s Office of Bosnia and Herzegovina requested Serbia to extradite the accused Osman Osmanović, in view of the fact that he is a BIH national and that the criminal offence was committed in BIH territory where the witnesses and the injured parties are; however, the request was declined. It is indubitable that according to the Law on Organisation and Jurisdiction of State Authorities in Prosecuting War Crimes<sup>355</sup>, the government authorities of the Republic of Serbia have jurisdiction for conducting proceedings against Osman Osmanović. Namely, under the said law they have jurisdiction for prosecuting the criminal offence of war crimes committed in the territory of the former Yugoslavia as of 1 January 1991, regardless of the nationality of the perpetrator or of the victim.<sup>356</sup>

139

349 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](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 2022.

350 *Ibid*, Article 1, paragraph 2.

351 *Ibid*, Article 5, paragraph 1.

352 *Ibid*, Article 5, paragraph 2.

353 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 24 January 2023.

354 Radio Brčko District BIH, “Serbian judiciary issues Indictment against Osman Osmanović”, available at <https://radiobrcko.ba/arhiva/srbijansko-pravosudje-podiglo-optuznicu-protiv-osmana-osmanovica/>, accessed on 24 January 2023.

355 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)

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



However, with a view to intensifying regional cooperation, which is necessary to efficiently prosecute all suspects but also for building victims' confidence, the HLC is of the opinion that these proceedings should have been transferred to 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 that there had been no reason not to take such action.



## II. The Sanski Most–Lušci Palanka Case<sup>357</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> first instance judgment at retrial	
<b>Date of indictment:</b> 3 April 2017	
<b>Trial commencement date:</b> 12 July 2017	
<b>Prosecutor:</b> Bruno Vekarić	
<b>Defendant:</b> Milorad Jovanović	
<b>Criminal offence charged:</b> war crime against the civilian population under Article 142 of the FRY Criminal Code	
<b>Case transferred from BiH</b>	
<b>Trial Chamber</b>	Judge Vinka Beraha-Nikićević (Chairperson) Judge Vladimir Duruz Judge Vera Vukotić
<b>Number of defendants:</b> 1 <b>Defendant's rank:</b> low rank <b>Number of victims:</b> 15 <b>Number of witnesses heard:</b> 21	<b>Number of scheduled court days in the reporting period:</b> 3 <b>Number of court days in the reporting period:</b> 2 <b>Number of witnesses heard in the reporting period:</b> 0 <b>Number of expert witnesses heard in the reporting period:</b> 0
<b>Key developments in the reporting period:</b> first instance judgment	

141

<sup>357</sup> The *Sanski Most – Lušci Palanka* Case, trial reports and case file documents available at [http://www.hlc-rdc.org/Transkripti/Sanski\\_Most\\_Lusci\\_Palanka.html](http://www.hlc-rdc.org/Transkripti/Sanski_Most_Lusci_Palanka.html), accessed on 12 December 2022.



## Course of the proceedings

### **Overview of the proceedings up to 2022**

#### **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 Vuković<sup>358</sup> 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 organising of resistance to the Serbian army, he punched and kicked them, hit them with a rifle and various other objects, tied them to a chair or a beam in the ceiling and then beat them viciously, as a result of which one civilian died. He also forced the civilians to cross themselves, crawl on the floor and kiss his boots.<sup>359</sup>

#### **Defence of the accused**

Presenting his defence, the accused denied having committed the offence he is charged with. He stated that at the relevant time he was a member of the reserve police force of the Sanski Most Public Security Station and that his duty post was at the Lušci Palanka branch police station. He apprehended Bosniak civilians on the orders of his immediate superior. He admitted to having hit one of the detainees several times but not so hard as to cause him any suffering.<sup>360</sup>

142

#### **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.<sup>361</sup> Namely, the previous prosecutor’s term of office had expired on 1 January 2016, and the new prosecutor assumed office only on 31 May 2017. Not even an acting prosecutor was appointed in the meantime, leaving the OWCP without an authorised prosecutor in the relevant period. As the indictment in this case was filed precisely at that time, namely on 3 April 2017, it is considered to have been filed by an unauthorised prosecutor.

#### **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

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358 Slavko Vuković died in the meantime.

359 OWCP Indictment KTO 1/17 of 3 April 2017, available at [https://www.tuzilastvorz.org.rs/public/indictments/kto\\_1\\_17\\_lat.pdf](https://www.tuzilastvorz.org.rs/public/indictments/kto_1_17_lat.pdf) accessed on 12 December 2022.

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

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



March 2018 from the point when they had been interrupted, namely by continuing the evidentiary procedure.<sup>362</sup>

### **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.<sup>363</sup> 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.<sup>364</sup> Witness Mesud Avdić also stated that the accused had beaten him while he was being held captive<sup>365</sup>, 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.<sup>366</sup>

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.<sup>367</sup>

Witness Ramiz Ramić, another detainee, stated that the accused had beaten Sadržir Alibegović.<sup>368</sup>

Witnesses Drago Predojević<sup>369</sup>, Duško Grujić<sup>370</sup>, Željko Marković<sup>371</sup>, Marko Praštalo, Duško Vranješ and Milan Dekić<sup>372</sup>, who, like the defendant, were reserve police officers at the time of the critical event, had no knowledge of the accused having beaten or otherwise mistreated any person confined within the building of the “Simo Miljuš” Memorial Museum.

Witness Vid Bilbija, who at the time of the critical event was an active police officer in the village of Lušci Palanka, stated that he knew the accused but that he did not know whether he had beaten the prisoners either. He had had the occasion to see some of the confined persons and 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.<sup>373</sup>

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

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

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

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

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

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

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

369 Transcript of the main hearing held on 28 June 2019

370 *Ibid*.

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

372 Transcript of the main hearing held on 13 December 2019.

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



Witness Boško Petrović was the patrol unit leader in the Police Station (SM) in Lušci Palanka in June and July 1992. Together with the patrol, he brought in injured party Džafer Kugić on the orders of the police station commander Slavko Vuković. People were always apprehended on his orders, and it was always stated that they would be brought in for interrogation. Kugić was brought in and duly handed over to the commander, after which the witness went about his other tasks. As he was about to leave, two military policemen came to the station and rushed into the commander's office where Kugić was and then a racket ensued. It was only after he had returned from the field that the officer on duty told him that Džafer Kugić had been beaten up in the commander's office and had died. He did not see the accused when Kugić was brought in. Injured party Dedo Dervišević was brought to the station a couple of days later. The witness left for field duty and on the following day he heard people talking in the station mentioning Dedo. The accused Jovanović was also present on that occasion, and he said that Dedo had left. When he asked him whether Dedo had gone home, the accused replied that "he had left in a car boot", and that he had slit his throat. He asked the commander about Dedo Dervišević, and commander Vuković told him that the accused had beaten up Dedo and that he died. He knows that Sado Kaltak was also brought in, as he saw him when he arrived at the station. Sado was wearing white trousers and a shirt. He was brought by Drago Predojević. He does not know what happened with him later.<sup>374</sup>

### **First instance judgment**

144

On 2 February 2021, the Higher Court in Belgrade 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.<sup>375</sup>

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 the 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. 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, and on the basis of the testimony of a witness, a police officer, that Jovanović was also responsible for Dervišević's death.

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<sup>374</sup> Transcript of the main hearing held on 1 September 2020.

<sup>375</sup> Judgment K.Po2 7/17 of the Higher Court in Belgrade, of 2 February 2021.



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 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.<sup>376</sup>

The HLC was unable to make a detailed analysis of the judgment of the court of first instance and the decision of the Court of Appeal because the Higher Court in Belgrade refuses to submit decisions from proceedings that have not yet resulted in a final ruling.

### **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.<sup>377</sup>

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, analyse all the presented evidence, 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.<sup>378</sup>

145

### **Overview of the proceedings in 2022**

In 2022 five court days were scheduled and were all held; one defence witness was examined<sup>379</sup>, while a second defence witness refused to testify.<sup>380</sup>

Defence witness Ranko Divjak, the defendant's father-in-law, stated that during the war in BiH he lived in Skucani Vakuf village (Sanski Most municipality) and always passed by the "Simo Miljuš" Memorial Museum in Lušci Palanka where he had a shop. He knows that the memorial museum

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376 Ibid.

377 Ruling of the Court of Appeal in Belgrade Kž1 Po2 2/21 of 29 October 2021.

378 Ibid.

379 Transcript of the main hearing held on 5 April 2022.

380 Transcript of the main hearing held on 14 February 2022.



was used as a detention unit; there were always many people around it; civilians, police officers and soldiers. He is not aware that anyone was maltreated in the detention unit. Throughout the war in BiH Muslims lived in Skucani Vakuf and were under police protection. During that period no one said that they were being maltreated whilst detained in Lušci Palanka nor did anyone complain to him about the conduct of the defendant.<sup>381</sup>

### **First instance judgment at retrial**

On 8 April 2022, the Higher Court in Belgrade rendered a judgment at retrial 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 reserve police officer in Lušci Palanka (Sanski Most municipality, BiH), forcibly brought Bosniaks from villages in the Sanski Most area and detained them at the “Simo Miljuš” Memorial Museum in Lušci Palanka. Together with other members of the police, either on the premises or when they were being taken to the police station for interrogation, he kicked and hit with a rifle or various other objects the detained civilians, tied them to a chair or a beam in the ceiling and beat them up, forced them to cross themselves, crawl on the floor and kiss his boots. Dedo Dervišević succumbed to 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.

146

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. To wit, 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 get in touch with the other two who were living abroad. That notwithstanding, the court held that there was no reason to doubt their statements, even if not given at the main hearing. That is because other witnesses who had testified at the main hearing also described the defendant’s conduct in detail identically to the description of 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.

The HLC was unable to undertake 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 yet resulted in a final ruling.

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381 Transcript of the main hearing held on 5 April 2022.



## HLC Findings

### **Regional cooperation**

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 in 2013 the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide. Namely, the Una-Sana Cantonal Prosecutor's Office in Bihać transferred the case to the OWCP since the accused, who is a national and resident of Serbia, was not available to the authorities of Bosnia and Herzegovina.

### **The proceedings were impossible to follow**

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

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

### **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 is because if witnesses are not directly heard, cross examination and testing the witness's credibility by the defendant, or, possibly a confrontation, are impossible.

Of late the Court of Appeal has been known to automatically accept such grounds of appeal of 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 is lost of many of them who have, e.g. gone abroad, but more often are 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 procrastination of proceedings the only result. On the other hand, it is indeed questionable whether the right to a defence of the accused has really been impaired, if it is borne 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 had 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 of the impossibility to directly examine witnesses in the proceedings before the domestic court is in fact abuse of the right to a defence, which the court should be mindful of.



### III. The Brod na Drini Case<sup>382</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> first instance judgment	
<b>Date of indictment:</b> 2 February 2021	
<b>Trial commencement date:</b> 6 June 2021	
<b>Prosecutor:</b> Ognjen Đukić	
<b>Defendant:</b> Danko Vladičić	
<b>Criminal offence charged:</b> war crime against the civilian population under Article 142 of the FRY Criminal Code	
<b>Case transferred from BiH</b>	
<b>Trial Chamber</b>	Judge Mirjana Ilić (Chairperson) Judge Zorana Trajković Judge Dejan Terzić
<b>Number of defendants:</b> 1  <b>Defendant's rank:</b> no rank  <b>Number of victims:</b> 2  <b>Total number of witnesses heard:</b> 12	<b>Number of scheduled court days in the reporting period:</b> 8  <b>Number of court days in the reporting period:</b> 6  <b>Number of witnesses heard in the reporting period:</b> 10  <b>Total number of expert witnesses heard:</b> 0
<b>Key developments in the reporting period:</b>  First instance judgment	

149

382 The *Brod na Drini* Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/brodnadrini.html> accessed on 14 December 2021.



## Course of the proceedings

### **Overview of the proceedings up to 2022**

#### **Indictment**

The accused Danko Vladičić is charged that on the night of 18 August 1992, armed with an army rifle and his face painted black, he 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.<sup>383</sup>

#### **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 knows 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 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, who went by the moniker of “Pušo”. He knows 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 saw Šefik Vranjača now and then. There were many paramilitaries in town, some of them from Montenegro, and the “Guard” was also there. They created 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 knows the protected witness, he had never had any conflicts with her and he does not know why she is incriminating him.<sup>384</sup>

#### **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 a 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, who could not bear it and later took his own life. About a month before her parents were killed, the witness received indirect word that she had better get them out of there for they were no longer safe. This had been relayed to her by her next door neighbour Mijo Đajić. Her

383 Indictment KTO 1/21 of 2 February 2021, available at [https://tuzilastvorz.org.rs/public/indictments/2021-07/%D0%9A%D0%A2%D0%9E\\_%D0%91%D1%80\\_1\\_21\\_%D0%A4%D0%B8%D0%BD%D0%B0%D0%BB%D0%BD%D0%BE\\_anonimizacija.pdf](https://tuzilastvorz.org.rs/public/indictments/2021-07/%D0%9A%D0%A2%D0%9E_%D0%91%D1%80_1_21_%D0%A4%D0%B8%D0%BD%D0%B0%D0%BB%D0%BD%D0%BE_anonimizacija.pdf), accessed on 14 December 2021.

384 Transcript of the main hearing held on 3 June 2021.



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 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 before the accused for the sake of their safety. She heard about the death of her parents from a woman friend, who came to tell it to her 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.<sup>385</sup>

Witness for the prosecution Aleksandar Vasiljević did not have first-hand knowledge of the critical event, but he knows that there was talk that the accused had killed the married couple Vranjača.<sup>386</sup>

Protected witness S1 was also heard and his examination was barred to the public.<sup>387</sup>

### **Overview of the proceedings in 2022**

Eight court days were scheduled in 2022 of which six were held, during which a total of 10 witnesses were heard; two hearings were cancelled.

Witnesses for the prosecution Munevera Kukara, Predrag Đajić, Milutin Pantelić and Zorica Dubovina did not have first-hand knowledge of the critical event. They had heard people say that the married couple Ramo and Tima Vranjača had been killed in their apartment, but not who perpetrated the murder.<sup>388</sup>

151

Defence witnesses Nebojša Karalić and Miroslav Živković stated that they knew the accused as a neighbour from Belgrade. In the critical period they socialised intensely, namely sold fuel together.<sup>389</sup>

Defence witness Dobrivoje Stojković stated that he knew the accused from the late 1980's as a neighbour from Dorćol. In 1991, 1992 and 1993 he sold gasoline and cigarettes and knows that the accused also did so; they saw each other every day and later they worked as house painters together.<sup>390</sup> Defence witnesses Zoran Tomić and Nedeljko Milović also stated that they used to see the accused in Belgrade often during the critical period.<sup>391</sup>

Defence witness Živadin Popović stated that in the critical period he worked at the Stari Grad Police Station in the General Crime Prevention Department as a field operative. In 1991 and 1992 he noticed the accused at Dorćol, he was a street gasoline vendor and had on that account been apprehended many times. About a year ago the witness came across Nebojša Karalić who asked him if he would

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385 Ibid.

386 Transcript of the main hearing held on 8 October 2021.

387 Ibid.

388 Transcript of the main hearing held on 10 March 2022.

389 Transcript of the main hearing held on 4 April 2022.

390 Transcript of the main hearing held on 20 May 2022.

391 Transcript of the main hearing held on 20 May 2022.



testify, as he thought that the accused was not guilty and that “we should help him”. He knows that Karalić and the accused socialised during the critical period – he thinks that they sold fuel together at the time.<sup>392</sup>

### **First instance judgment**

On 16 November 2022, the Higher Court in Belgrade 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. 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 was indubitable 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 Vranjačas to avenge his relative Dragomir Krnojelac, aka Krnjo, who had been killed at the frontline as a member of the VRS, on 8 August 1991. 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 Vranjačas had been killed by the accused.

Witnesses Zorica Dubovina and Milutin Đajić, locals, also stated that no other names, except for the defendant’s, had been mentioned in connection with the murder of the Vranjača married couple. Witness Zekira Vranjača, the daughter of the killed couple, stated that her brother had informed her that their parents had been killed as well as 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 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, together with another neighbour he saw her off to Foča to save her. That, in the finding of the Court, refuted the defendant’s claim that his was 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 confirm that they

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392 Transcript of the main hearing held on 12 July 2022.



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 stated that he had met witness Nebojša Karalić who 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 married couple Vranjača, 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 does not require membership of any armed unit, as 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.<sup>393</sup>

153

## HLC Findings

### **Regional cooperation**

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

### **Mitigating circumstances**

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 offences. That the lapse of time is not a circumstance to be considered in weighing penalties is also

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393 Transcript of the delivery of judgment on 16 November 2022.



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 circumstance<sup>394</sup> – as well as to contemporary jurisprudence.<sup>395</sup>

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394 ICTY Judgment *Dragan Nikolić* – point 273.

395 BGH, 2 StR 538/01, Judgment of 21.02.2002. year - the Federal Supreme Court of Germany, in one case of murder, mentioned that the length of time from punishable behavior to possible mitigating factor, but emphasized that is, considering the weight of the work that in 1943-44. committed by the accused, now 90 years old, during World War II circumstances cannot be taken into account.



#### IV. The Đakovica Case<sup>396</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> first instance judgment	
<b>Date of indictment:</b> 28 June 2022	
<b>Trial commencement date:</b> 9 September 2022	
<b>Prosecutor:</b> Ljubica Veselinović	
<b>Defendant:</b> Petrit Dulja	
<b>Criminal offence charged:</b> war crime against the civilian population under Article 142 of the FRY Criminal Code	
<b>Trial Chamber</b>	Judge Snežana Nikolić Garotić (Chairperson) Judge Vinka Beraha Nikićević Judge Vladimir Duruz
<b>Number of defendants:</b> 1 <b>Defendant's rank:</b> low rank <b>Number of victims:</b> 1 <b>Number of witnesses heard:</b> 4	<b>Number of scheduled court days in the reporting period:</b> 6 <b>Number of court days in the reporting period:</b> 5 <b>Number of witnesses heard in the reporting period:</b> 4 <b>Number of expert witnesses heard in the reporting period:</b> 0
<b>Key developments in the reporting period:</b> First instance judgment	

155

<sup>396</sup> The *Đakovica* Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/djakovica2.html>, accessed on 27 December 2022.



## Course of the proceedings

### **Indictment**

The accused Petrit Dulja 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 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 full bottles at him and striking him above the right ear with a full bottle, owing to 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 participation in conflicts on the Serbian side.<sup>397</sup>

### **Defence of the accused**

Presenting his defence, the accused denied having committed the criminal offence he is 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 fight. He had lost his passport, he 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, he 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 knows the injured party by sight, as Gazment, and he does not know his last name. In the car, besides the injured party, was Rifat Maduni whom he recognised, while he did not know the car driver. They had come allegedly looking for some KLA card, but he does 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 heard that the injured party worked at the cemetery and that he had allegedly cut off a deceased's finger to get his ring, and that the deceased in question was a relative of a KLA member. He knows Hasi Ruždi, and he has heard that he had mentioned him in a negative context in some criminal proceedings, only to lessen his own responsibility.<sup>398</sup>

### **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 unfamiliar street. As they were beating him the only thing he could hear was them mentioning one Petrit but he did not hear his last name. They took him away several times. He does not know the people who seized him except for Rifat and Ljuan, nor can he say exactly in what month or year. The witness/injured party

<sup>397</sup> OWCP Indictment KTO 6/22 of 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 3 February 2023.

<sup>398</sup> Transcript of the main hearing held on 9 September 2022.



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 one 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 exactly that 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 his statement given in Podgorica was in question, in which it was not stated that 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 that 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 "Lada Niva" vehicle, and that the men who had come for him wore KLA uniforms and had something like grenades attached to their uniforms. He also stated that this did not concern Petrit, for he was not there that day. One Petrit was present only as they were leading him always from his mother-in-law's house to a street unfamiliar 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 names Petrit, nor is the house in which they beat him in Đakovica. He repeated that he did not know Petrit Dulja or his father. He thinks that the reason they beat him was that they suspected him of cutting the fingers of dead people to get 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.<sup>399</sup>

Witness Antigona Bahtijari, ex-wife of injured party Gazment Krueziu, lived in Đakovica in the critical period, but in that period her husband spent more time with his second wife and only came to her place to see the child. Once his second wife came with another two persons and they took him away, which was after their daughter was born. Later, when she went to Podgorica, her husband told her that he had been beaten and that one Rifat who was lame beat him, whom the witness actually knows. 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 cannot 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.<sup>400</sup>

Witness Fljoreta Ljalja is the 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 the public utilities company. Once some people came to take Gazment away, they mentioned a certain Petrit, but

<sup>399</sup> Transcript of the main hearing held on 4 October 2022.

<sup>400</sup> Ibid.



they did not say his last name. She knows that there are several persons by the name of Petrit, but she is unable to recognise that person. She did not see any of those persons because Gazment went out to open the door and talked 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, one Rifat and one 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 does not know Petrit Dulja whose father is 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 has not been living with the injured party for over seven years now; he comes to Đakovica occasionally to be with the children. She explained that the defendant's son had given her a ride to Belgrade. 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 give her a ride.<sup>401</sup>

158

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.<sup>402</sup>

### **First instance judgment**

On 8 November 2022, the Higher Court in Belgrade rendered a judgment finding the accused Petrit Dulja 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.

Briefly expounding the judgment, the Chairperson stated that the Chamber had determined, on the basis of the statements the injured party and of witnesses that t 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 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 full bottles at him and striking him above the right ear with a full bottle, owing to 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

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401 Transcript of the main hearing held on 26 October 2022.

402 Transcript of the main hearing held on 4 November 2022.



interrogated him about the burial places of KLA members and their relatives who had lost their lives during the armed conflicts, and 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 is described in detail by his wife Fljoreta Ljalja. From the statement of witness Dušan Karanović, the Court established that when examined in Montenegro 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.

In weighing the sentence, the court mitigated it bearing in mind the defendant's family circumstances and his attitude vis-à-vis the offence.<sup>403</sup>

The HLC was unable to undertake 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 yet resulted in a final ruling.

## HLC Findings

### **Efficiency of proceedings**

159

The trial in this case started on 9 September, and the first instance judgment was rendered on 8 November 2022. Therefore these proceedings are an example of an extraordinarily efficient trial at first instance.

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<sup>403</sup> Transcript of the delivery of judgment on 8 November 2022.



# FINAL JUDGMENTS

## I. The Bosanska Krupa Case II<sup>404</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> final judgment rendered	
<b>Date of indictment:</b> 26 December 2017	
<b>Trial commencement date:</b> 7 June 2018	
<b>Prosecutor:</b> Bruno Vekarić	
<b>Defendant:</b> Joja Plavanjac and Zdravko Narančić	
<b>Criminal offence charged:</b> war crime against the civilian population under Article 142 of the FRY Criminal Code	
<b>Case transferred from BiH</b>	
<b>Trial Chamber</b>	Judge Aleksandar Vujičić (Chairperson) Judge Rastko Popović Judge Nada Hadži Perić Judge Miodrag Majić Judge Olivera Anđelković
<b>Number of defendants:</b> 2 <b>Defendants' rank:</b> low rank <b>Number of victims:</b> 11 <b>Number of witnesses heard:</b> 25	<b>Number of scheduled court days in the reporting period:</b> 1 <b>Number of court days in the reporting period:</b> 1 <b>Number of witnesses heard in the reporting period:</b> 0 <b>Number of expert witnesses heard:</b> 1
<b>Key developments in the reporting period:</b> Final judgment rendered	

160

<sup>404</sup> The *Bosanska Krupa II* Case, trial reports and case file documents available at [http://www.hlc-rdc.org/Transkripti/bosanska\\_krupa\\_II.html](http://www.hlc-rdc.org/Transkripti/bosanska_krupa_II.html), accessed on 12 January 2023.



## Course of the proceedings

### Overview of the proceedings up to 2022

#### Indictment

The accused Joja Plavanjac is charged with murdering 11 Bosniak civilians in the first half of August 1992 in the “Petar Kočić” elementary school in Bosanska Krupa (BiH), and the accused Zdravko Narančić with aiding in the murder. The accused Zdravko Narančić, a member of the military police of the 11<sup>th</sup> VRS Krupa Light Infantry Brigade at the time, while on guard duty at a prison set up in the elementary school, let the accused Joja Plavanjac, a VRS soldier, enter the prison armed with an automatic rifle. In the prison, the accused Plavanjac first looked for detainee Predrag Praštalo, a man who had killed his mother several days before. Although Praštalo had already been transferred to the detention facility in Banja Luka, the accused Narančić first unlocked and opened the door to a room in which a group of Bosniaks, members of the “Joks” group, were held, and as soon as the door was opened, the accused Plavanjac opened fire on them from his automatic rifle, killing: Rasim Kaltak, Nezir Kaltak, Enes Kaltak, Emsud Kaltak, Ferid Kaltak, Fadil Alijagić, Edin Alijagić, Mirsad Omić, Rasim Nasić and Ismet Čehajić. The accused Narančić then unlocked and opened the door to another room and called for Tofik Sedić to come out, and when he did, Plavanjac took him to the school gym and after asking him why he had stopped his uncle Mićo Plavanjac, killed him with his automatic rifle.<sup>405</sup>

#### Defences of the accused

161

Presenting their defence, the defendants denied having committed the crimes they are charged with. The accused Joja Plavanjac claimed that the murders had been committed by his father, Lazo Plavanjac (now deceased). Namely, a RS soldier, Predrag Praštalo, had killed his mother on 31 July 1992, after which his father Lazo came to his place on 3 August 1992 and insisted that he drive him to the “Petar Kočić” elementary school in Bosanska Krupa, where he was told Praštalo was detained. Both he and his father were armed. A guard, the accused Narančić, a subordinate of his, opened the door to let them in. Narančić explained that Praštalo had been transferred to Banja Luka, but the father nonetheless insisted that he unlock the doors to the rooms holding Bosniak detainees, to see for himself if that was so. When Narančić opened the door to one of the rooms, the father recognised Tofik Sedić amongst the detainees in the room and talked to him. Meanwhile, the accused Plavanjac and Narančić went to an office for Plavanjac to check the duty officers’ log and make sure that Praštalo had indeed been transferred to Banja Luka. At a certain point they heard a shot, dashed out of the office and saw Tofik Sedić lying dead on the floor; then they again returned to the office to check the documents. Soon afterwards, they heard more shots, ran back to Plavanjac’s father and saw that he had shot several prisoners. He did not know how his father had opened the door to the room with the prisoners. Narančić grabbed Plavanjac’s father to prevent him from shooting again and pushed him out of the school. After that, the two of them left.<sup>406</sup>

405 OWCP Indictment KTO 4/17 of 26 December 2017, available at [https://tuzilastvorz.org.rs/public/indictments/kto\\_4\\_17\\_cir~0.pdf](https://tuzilastvorz.org.rs/public/indictments/kto_4_17_cir~0.pdf), accessed on 12 January 2023.

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



In his defence, the accused Zdravko Narančić stated that he had let the accused Plavanjac into the school premises because he was his superior and he had to obey him, confirming at the same time the account of the critical event the accused Joja Plavanjac gave in his defence.<sup>407</sup>

### **Witnesses in the proceedings**

Witnesses and injured parties Asim Nasić, Mirela Rekić, Osman Alijagić, Fatima Kaltak and Safija Kaltak were examined via a video-conference link with the Cantonal Court in Bihać. They had no first-hand knowledge of the critical event, but, due to poor sound quality, their examination was impossible to follow.<sup>408</sup>

Witnesses Duško Jakšić and Zdravko Marčeta, both members of the RS Army, did not have first-hand knowledge of the critical event either. They stated that they had heard that the late Lazo Plavanjac, father of the accused Joja Plavanjac, had also been involved in the killing of persons detained at the “Petar Kočić” elementary school, even though they had made no reference whatsoever to the father of the accused Plavanjac when testifying earlier before the competent authorities in BiH.<sup>409</sup>

Witnesses Mehmed Gerzić, Šefkija Kozlica, Sabit Alijagić, Miralem Selimović and Kasim Haluzović were all detained on the premises of the “Petar Kočić” elementary school in Bosanska Krupa. None of them had seen the late Lazo Plavanjac, the father of the accused Joja Plavanjac, at the time of the critical event. Witness Šefkija Kozlica said in his statement that he had seen the accused Joja Plavanjac coming to the school, and had then heard Plavanjac talking with the accused Narančić, a guard at the school at the time, and that afterwards he heard at first ten, and then one more shot.<sup>410</sup>

162

Witness Sabit Alijagić, a neighbour of the accused Plavanjac, stated that he knew that the mother of the accused Plavanjac had been killed a few days prior to the critical event, and that he thought this to have been the cause of the critical event. Namely, Plavanjac’s mother had been killed by a neighbour who was brought to the school, but was then taken somewhere shortly afterwards. On the following day, the accused Plavanjac came to the school, drunk and looking for his mother’s killer. He entered the room where, among others, the witness was being held, and took out Tofik. Sedić. He took Tofik to the gym and killed him there, after which he entered the room where the men referred to as “Joksovcı” were imprisoned, and opened fire at them.<sup>411</sup>

Witness Kasim Kaluzović stated that he had seen the accused Plavanjac coming to the school, that the door to the room where the witness was detained swung open, and that he then saw the guard Narančić with Plavanjac. Plavanjac pointed at Tofik Sedić, who was imprisoned in the same room, and took him out and to the gym. He heard Plavanjac asking Tofik where his brother Zijad was, as well as why he, as a reserve policeman, had halted Plavanjac’s uncle, and who was he to dare do that. Then,

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407 Ibid.

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

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

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

411 Ibid.



a single shot was heard from that direction. After this, single shots were also heard coming from the room where the “Joksovci”, ten of them, were detained.<sup>412</sup>

### **First instance judgment**

On 15 November, 2019, the Higher Court in Belgrade rendered a judgment pronouncing the accused Joja Plavanjac and Zdravko Narančić guilty of the criminal offence of a war crime against the civilian population, and sentenced Joja Plavanjac and Zdravko Narančić to terms of imprisonment of 15 and seven years respectively.<sup>413</sup>

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

163

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

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

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



Weighing the penalty for the defendant Joja Plavanjac, the court assessed the death of 11 persons of Bosniak ethnicity as an aggravating circumstance, and his family situation, the absence of a prior criminal record and the lapse of time since the perpetration of the offence as mitigating circumstances. With respect to the accused Zdravko Narančić, the court also considered the absence of a criminal record and the lapse of time since the perpetration of the offence as mitigating circumstances.<sup>414</sup>

### Second instance decision

On 22 September 2020, the Court of Appeal in Belgrade<sup>415</sup> ruled to quash the first instance judgment on account of a substantial procedural error and erroneous and incomplete factual findings and remanded the case to the court of first instance for retrial.<sup>416</sup>

### Retrial

In the retrial at first instance five court days were held during which seven defence witnesses for the accused Joja Plavanjac were heard, namely Gojko Škondrić<sup>417</sup>, Nada Vojinović<sup>418</sup>, Sveto Mamić<sup>419</sup>, Nada Plavanjac<sup>420</sup>, Mirko Zorić<sup>421</sup>, Zoran Đurić<sup>422</sup> and Branislav Mandić.<sup>423</sup>

#### First instance judgment at retrial

On 16 June 2021, the Higher Court in Belgrade<sup>424</sup> rendered a judgment again pronouncing the accused Joja Plavanjac and Zdravko Narančić guilty of the criminal offence of a war crime against the civilian population, and sentenced Joja Plavanjac and Zdravko Narančić to terms of imprisonment of 15 and seven years respectively.<sup>425</sup>

The Court did not accept the statements of the examined defence witnesses, assessing them as unconvincing and aimed at facilitating the procedural position of the accused Joja Plavanjac. Namely, all of them claimed that the late Lazo Plavanjac had confided in them that it had been him and not his son who had killed the innocent people, without, however, providing any details; as well, all the witnesses are either related to, or on good terms with the accused Plavanjac. Also common to all the statements is that their credibility cannot be verified. Particularly unconvincing, unrealistic and implausible is that the late Lazo Plavanjac told his relatives, friends and neighbours, whom he had not seen in over twenty years and was not particularly close to, about the murders he had allegedly

414 Ibid.

415 Chamber composition: Judge Rastko Popović, Chairperson, Judges Miodrag Majić, Ph.D., Aleksandar Vujičić, Nada Hadži-Perić and Omer Hadžiomerović, members.

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

417 Transcript of the main hearing held on 26 March 2021.

418 Ibid.

419 Ibid.

420 Transcript of the main hearing held on 21 April 2021.

421 Ibid.

422 Ibid.

423 Ibid.

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

425 Judgment K.Po2 No. 7/20 of the Higher Court in Belgrade of 16 June 2021.



committed, but never talked about it, after the event, with his own son, the accused Joja Plavanjac, with whom he remained on good terms until his dying day.

### **Appeals proceedings**

Deciding on the appeals of the defence counsel for the accused, the Court of Appeal in Belgrade, sitting on 22 November 2021, ruled to schedule a main hearing and for the accused Joja Plavanjac to undergo expert psychiatric evaluation in order for the facts to be properly established, namely his mental responsibility, taking account of the fact that his mother had been killed three days prior to the critical event.

### **Overview of the proceedings in 2022**

On 17 March 2022, the Court of Appeal held a main hearing at which it heard the accused and examined the medical court expert, psychiatrist Dr Branko Mandić, whose findings were that, due to emotional stress and drunkenness, the capacity of the accused to appreciate the significance of his acts and control them had been diminished, but not substantially.

### **Second instance judgment**

On 17 March 2022, the Court of Appeal in Belgrade<sup>426</sup> rendered a judgment finding the accused guilty of the criminal offence of a war crime against the civilian population, namely Joja Plavanjac of the murder of 11 Bosniak civilians and Zdravko Narančić of aiding in their murder, and sentenced them to terms of imprisonment of 14 and five years respectively.<sup>427</sup>

165

## HLC Findings

### **Regional cooperation**

These proceedings are a good example of the 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 in 2013 the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes Against Humanity and Genocide. Namely, this case was transferred by the Court of Bosnia and Herzegovina, given that the accused, who are nationals and residents of the Republic of Serbia, were not accessible to the BiH authorities.

### **Length of sentence and mitigating circumstances**

The prison sentences of 14 and five years imposed on the accused Joja Plavanjac and Zdravko Narančić respectively, are not appropriate to the gravity of the committed criminal offence, namely they are too

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426 Chamber composition: Judge Aleksandar Vujičić, Chairperson, Judges Rastko Popović, Nada Hadži Perić, Miodrag Majić and Olivera Anđelković, members.

427 Judgment Kž1 po2 5/21 of the Court of Appeal in Belgrade of 17 March 2022.



mild. The prison sentence of just five years imposed on the convicted Zdravko Narančić is inappropriate to the gravity of the criminal offence because he had aided the defendant Joja Plavanjac deprive of life as many as 11 persons whom it had been his duty to protect as a guard. Under the RS Criminal Code, anyone aiding another in committing a criminal offence shall be punished as prescribed by law for such an offence, or by a mitigated penalty.<sup>428</sup> As the prescribed penalty for the criminal offence in question is a term of imprisonment of a minimum of 5 years<sup>429</sup>, imposing a minimum sentence of imprisonment is not appropriate to the gravity of the consequences entailed by this criminal offence, or to the very manner in which it had been committed. Account is taken of the fact that the convicted Narančić, having at the request of the convicted Plavanjac unlocked the door to the room in which Tofik Sedić was detained, whom Plavanjac then killed, unlocked, again at Plavanjac's request, the door to another room in which there were 10 other detainees, whom Plavanjac also killed instantly, and that both of them acted with callousness and ruthlessly in perpetrating this crime. The convicted Joja Plavanjac killed 11 innocent Bosniak civilians out of ruthless revenge, frustrated at the fact that he had not found his mother's murderer, whom he knew, and who actually was a Serb, which invests his act with particular gravity. The fact that his mental responsibility had been impaired, but not substantially, a condition that he himself had also contributed to by alcohol consumption, can on no account be considered a mitigating circumstance.

As well, the HLC maintains that the lapse of time, which the court took into account in respect of both defendants, should not be considered as a mitigating circumstance in weighing sentences for this type of criminal offences. 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 circumstance<sup>430</sup> – as well as to contemporary jurisprudence<sup>431</sup>.

166

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428 Article 35 of the RS Criminal Code.

429 Article 142 of the FRY Criminal Code.

430 ICTY Judgment *Dragan Nikolić* – item 273.

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



## II. The Hrasnica Case<sup>432</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> final judgment rendered	
<b>Date of indictment:</b> 24 December 2018	
<b>Trial commencement date:</b> 22 March 2019	
<b>Prosecutor:</b> Miodjub Vitorović	
<b>Defendant:</b> Husejin Mujanović	
<b>Criminal offence charged:</b> war crime against the civilian population under Article 142 of the FRY Criminal Code	
<b>Trial Chamber</b>	Judge Miodrag Majić, Ph.D. (Chairperson) Judge Rastko Popović Judge Nada Hadži Perić Judge Olivera Anđelković Judge Duško Milenković
<b>Number of defendants:</b> 1 <b>Defendant's rank:</b> low rank <b>Number of victims:</b> 8 <b>Number of witnesses heard:</b> 15	<b>Number of scheduled court days in the reporting period:</b> 2 <b>Number of court days in the reporting period:</b> 2 <b>Number of witnesses heard in the reporting period:</b> 0 <b>Number of expert witnesses heard:</b> 0
<b>Key developments in the reporting period:</b> Final judgment rendered	

167

<sup>432</sup> The *Hrasnica Case*, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/hrasnica.html>, accessed on 27 December 2022.



## Course of the proceedings

### **Overview of the proceedings up to 2022**

#### **Indictment**

The accused Husein Mujanović is charged with detaining, in the period from 8 July to 15 October 1992, as a member of the Army of Bosnia and Herzegovina and the warden of the military prison in Hrasnica (Ilidža municipality, BiH), about 30 Serbian civilians who had been unlawfully deprived of liberty, and treating them inhumanely, failing to provide a bare minimum standard of accommodation conditions, and keeping them in rooms without water or a lavatory. He would issue orders for the prisoners to be beaten up, and six prisoners died from their injuries. He himself took part in the infliction of bodily injuries on the prisoners, beating, for example, the prisoner Mirko Vuković in his office, and the prisoner Savo Pejić in the atomic shelter.<sup>433</sup>

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

#### **Defence of the accused**

168

Presenting his defence, the defendant denied having committed the offence he stands accused of. He explained that military police, whose commander was Munir Hodžić, would bring persons to the prison and order him to guard them. The orders were issued by the brigade commander. As stated in the orders, they were being apprehended because of treason, draft evasion or some other reason, but always in connection with the war. Serbs were brought there because they were fit for military service. He never checked the identity of the persons brought in. There had been women as well, brought there on account of collaboration with the enemy. There had also been Croats and Muslims among the incarcerated. No one left the prison unless a warrant was issued. It was difficult to run the prison because everything was in very short supply. There was no electricity or water in Hrasnica, and food was scarce too. He had not beaten anyone, and witness Vuković had not mentioned him in his previous statement. He noted that none of the witnesses had recognised him in 1994 and 1995, but that then in 2018 everybody recognised him. He had not done any of the acts he is charged with in the indictment.<sup>434</sup>

#### **Witnesses in the proceedings**

Injured party Savo Pejić stated that he had been arrested on 18 August 1992 and put in a prison set up in some garages that had been partitioned with brick into smaller cells. It was totally dark in the cells, he lay on the bare concrete and there was just one blanket that he and the prisoner Radovan

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433 OWCP Indictment KTO No. 10/2018 of 24 December 2018, available at [https://www.tuzilastvorz.org.rs/public/indictments/%D0%9A%D0%A2%D0%9E\\_10\\_18\\_%D0%9E%D0%BF%D1%82%D1%83%D0%B6%D0%BD%D0%B8%D1%86%D0%B0~0.pdf](https://www.tuzilastvorz.org.rs/public/indictments/%D0%9A%D0%A2%D0%9E_10_18_%D0%9E%D0%BF%D1%82%D1%83%D0%B6%D0%BD%D0%B8%D1%86%D0%B0~0.pdf) accessed on 28 December 2022.

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



Unković shared to cover themselves. Not even a minimum of sanitary conditions existed, for drinking water they had to fill a bottle, and they relieved themselves inside the cells using some cans. After his imprisonment, it was not until November that he had his first bath, when they were taken out for forced labour to build a bridge over the River Železnica. At the witness's request, the guard allowed him to wash himself in the river. Food in the prison was insufficient and very poor in quality, and meals were dispensed only once a day. During his time in prison he was beaten up once, in September 1992. A guard, Senad Gadžo, took him out of the cell and beat him up outside the cell door, and when he fell to the floor, another guard, Zaim Laučić, kicked him in the kidney area. The defendant, whom he recognised by his voice, was also present and kept saying "Hit the Chetnik! Hit him! Let him have it!"<sup>435</sup>

Witnesses and injured parties Dušan Stanić and Mirko Vuković also confirmed in their testimonies that not even a minimum of decent accommodation conditions had existed in the prison. They also confirmed that the prisoners had been physically mistreated; witness and injured party Mirko Vuković stated that the accused had personally beaten him.<sup>436</sup>

Injured party Ljeposava Stojanović, whose husband succumbed to his injuries in prison, and Branislav Nikolić and Zoran Stjepanović, whose fathers also succumbed to their injuries after having been beaten up in prison, did not have first-hand knowledge about the critical events.<sup>437</sup>

### **First instance judgment**

On 6 July 2020, the Higher Court in Belgrade rendered a judgment pronouncing the accused Husein Mujanović guilty of a war crime against the civilian population and sentenced him to a term of imprisonment of 10 years.<sup>438</sup>

The Court found that the accused had imprisoned people unlawfully, treated the imprisoned civilians inhumanely, issued orders that bodily injuries be inflicted on them and that he himself also did so. The conduct of the accused features all the statutory elements of the criminal offence of a war crime against the civilian population under Article 142 of the FRY Criminal Code, such as: the existence of an armed conflict, serious violations of the rules of international humanitarian law, a nexus between the actions of the accused and the armed conflict and the commission of the criminal offence against persons who did not actively participate in hostilities, i.e. against persons protected under the Geneva Conventions. At the time of the commission of the criminal offence the accused was a prison warden, as attested to by the witnesses in their statements, as e.g. Dušan Stanić, and the case file also contains written documents to that effect. These are official memoranda and an order relieving the defendant of his post of prison warden. In the relevant period about 30 Serb civilians had been incarcerated solely on account of their ethnicity. None had been issued any detention warrants, nor did such decisions exist. Decisions on leaving the detention unit to go out for labour are not proof

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

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

437 Ibid.

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



that decisions to detain them had also existed, but only served to the defendant as a security measure because he was responsible for the head count of the prisoners. The poor conditions in detention were testified to by all the witnesses who had been held there. All of them said that food and water had been insufficient, that the food had been of poor quality and the meals meagre. The court lent credence to the witnesses who stated in their testimonies that no adequate medical care had been provided during their detention either. Notwithstanding the fact that conditions in Hrasnica had been poor, it had been the duty of the accused to provide better conditions for the detainees. The poor conditions that obtained, coupled with the fact that the accused himself inflicted bodily injuries on the detainees, speaks of his attitude towards them. The statements of the witnesses are along the same lines and they say that the conditions improved when the new warden assumed duty. Witness Obrad Milović in particular described how poor the conditions were, stating that one of the detainees was so hungry that he ate his own caked blood. The court lent credence to the witnesses who faithfully described what they knew about the incidents when bodily injuries were inflicted on the inmates. The Court did not accept the defendant's defence that at the critical time he had not been the prison warden as it was refuted by the statements of many witnesses: Vuković, Stanić, Medić and others. Witness Savo Pejić described in detail how he had been taken out and beaten and how the accused had behaved in those moments. As no evidence was presented that could call in question the statements of the witnesses, the court based its finding of guilty on them.<sup>439</sup>

### **Second instance decision**

170

On 3 February 2021, deciding the appeals of the OWCP, the accused and his defence counsel, the Court of Appeal in Belgrade ruled to quash the first instance judgment on account of a substantial violation of criminal procedure and erroneous and incomplete factual findings and remanded the case for retrial.<sup>440</sup>

The Court of Appeal concluded that refusal of all evidentiary motions for examining defence witnesses during the first instance proceedings violated the Constitution of the Republic of Serbia, as well as the provision of the Criminal Procedure Code which provides that everyone has the right to present evidence in their defence either by themselves or through defence counsel. To wit, during the proceedings, the defence counsel for the accused proposed that persons having first-hand knowledge in connection with the relevant events be heard as witnesses, but the court of first instance did not examine any of the proposed defence witnesses. In the assessment of the Court of Appeal, this had called in question the quality of the right to a defence and ipso facto the right to a fair trial, constituting a substantial violation of the provisions of criminal procedure.<sup>441</sup>

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439 Ibid.

440 Ruling of the Court of Appeal in Belgrade number Kž1 Po2 7/20 of 3 February 2021.

441 Ibid.



## Retrial at first instance

In the retrial, defence witnesses were examined.

Defence witness Nevzeta Ibrahimović, stated that she knew the accused as they had been neighbours in Hrasnica. In mid-August 1992, she started working for the military police of a BH Army brigade as a volunteer, as she could type. She worked for the crime investigation police service, which handled crime committed by members of the BiH Army. Nezir Agan was an inspector for a time and he interrogated prisoners held in detention. The detention unit had been set up in underground garages located between two skyscrapers. The service in which the witness worked was on the lower ground floor of one of the skyscrapers. The detainees were of all ethnicities, but most of them were Serbs. Two Papučić brothers, Brigita Papučić, Slavica Medić, Slobodanka Mladić, Savo Pejić and Dušan Stanić were in detention. They had been incarcerated for the alleged concealment of weapons or tip-offs to the enemy. Shortly after she had started volunteering, the accused was appointed detention unit warden but was relieved of that duty after a month and a half, two months at most.<sup>442</sup>

Defence witness Amir Šabović stated that the accused had been in Hrasnica up until the beginning of September 1992. His position was that of a member of the TO Staff Command. When armed conflicts first broke out in Hrasnica, the situation was very difficult as there was no electricity, food or water. Heading the military authorities until the beginning of August 1992 was Enes Zukanović. At the time, actually as of July 1992, there existed a military detention unit which was situated in underground garages between two skyscrapers. The accused was the warden of the detention unit and he discharged this duty until 10 or 15 August 1992 at the latest. As the head of the detention unit, the accused submitted requests for provisions for the detention unit. He performed his job professionally and tried to provide everything which was possible to obtain in the given circumstances.<sup>443</sup>

171

Defence witness Salem Podgorica stated that he was in Hrasnica when armed conflicts broke out and that he was in charge of logistics for the 104<sup>th</sup> BiH Army Viteška /Chivalrous/ Motorised Brigade, i.e. that he was responsible for the provision of supplies for military needs. The situation in Hrasnica was difficult at the time, as there was no electricity, food or water. The detention unit was in underground garages situated between two skyscrapers, and the brigade commander, Fikret Prevljak, appointed the accused detention unit warden, but he held this position for a short time only, a month perhaps. The accused would submit requisition claims to the brigade asking for food and clothing for the detainees. Soldiers and detainees ate the same food.<sup>444</sup>

Defence witness Hazim Pašić stated that before the war he too lived in Hrasnica, which was predominantly inhabited by Muslims, but there were also Croats and Serbs there. At the beginning of the war many Muslims from Ilidža came to Hrasnica and the situation was difficult as there was no electricity, food or water. Civilian authorities existed. Husein Mahmutović was the president of the

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442 Transcript of the main hearing held on 13 September 2021.

443 Ibid.

444 Ibid.



civilian authorities, and Fikret Prevljak headed the military authorities. He and the accused were both members of a BiH Army unit until the end of August 1992, when the accused was appointed military detention unit warden, but he returned to his unit again after about a month. On occasion, when he was not on the front, the witness would be on guard duty around the perimeter of the detention unit which was in some underground garages between skyscrapers, but he never went in.<sup>445</sup>

### **Overview of the proceedings in 2022**

In 2022, four court days were held during which a defence witness was heard.

Defence witness Sevda Huseinspahić stated that at the beginning of the war she was living in Hrasnica and that in mid-July 1992 the Military Department employed her as a typist as she could touch type. She worked for the Military Police of the BiH Army. She knows that there was a detention unit in the garages and that it was opened in May 1992, as well as that the warden was Tikač, whose first name she cannot recall. In mid-August 1992, the accused was appointed warden of that prison, but he did not stay in that position long. People remarked that he was a professional, but that he was too soft. The accused demanded better conditions for the prisoners in respect of food, clothing and cigarettes, he even addressed them in writing. The detainees were interrogated by the witness's boss, inspector Agan Nezir, and they looked normal to her when brought there for questioning. Detained were Serbs, but also Croats, like, for instance, Mirko Bunoza, and Bosniaks, and there were also women among the detainees. She knew detainees Savo Pejić and Dušan Stanić, as well as Brigita Papučić's husband. As far as she knows, the detained Serbs were interrogated on account of accusations of cooperating with the enemy and about weapons. Working as guards in the detention unit were Senad Gadžo, Nedžib Boberović and Halilović, while Sanija Sluško was a lawyer in the detention unit – later she transferred to the military security department. Husein Mahmutović was the president of the municipality, while Fikret Prevljak was the military commander, namely the commander of the 4<sup>th</sup> Viteška/Chivalrous/ Brigade. Records of detainees were kept by Agan Nezir. There existed written decisions for apprehending and interrogating people as well as for detention, which were signed by Agan Nezir. The accused could not have done that because he was the prison warden. People who were interrogated for the first time were brought to her office and she did not see any injuries on any of them. She is not aware of people having been beaten or killed in the garages.<sup>446</sup>

172

### **First instance judgment at retrial**

On 9 May 2022, the Higher Court in Belgrade<sup>447</sup> rendered a judgment at retrial pronouncing the accused Husein Mujanović guilty of a war crime against the civilian population and sentenced him to a term of imprisonment of 10 years.

In the assessment of the Court, it was ascertained during the proceedings that in the period from 8 July to 15 October 1992, as the warden of the military detention unit in Hrasnica, the accused had

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445 Ibid.

446 Transcript of the main hearing held on 22 March 2022.

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



unlawfully detained about 30 Serb civilians, treated them inhumanely, issued orders for, and himself inflicted bodily injuries on the detained civilians, which resulted in the death of six detainees. In the retrial, the court examined a total of nine defence witnesses. Testifying about the time when the accused became the detention unit warden, they stated that it was in the second half of August 1992. The Court did not accept these statements, because witnesses who had been detained, said that the accused had been the warden in an earlier period as well, which is corroborated by a written document as well – a receipt for the return of a storage battery dated 30 July 1992, signed by the accused as the warden of the military detention unit. The civilians had been detained unlawfully because no decision on detention issued by a competent authority existed. Surviving detainees testified in detail about the inadequate conditions in the military detention unit. None of them testified that they had benefited in any way from the defendant's request for the provision of blankets, and, the fact that they never got any, clearly attests to his intention to keep the detained civilians in inadequate conditions. After being beaten up in the detention unit, six persons died, and all the examined witnesses say that on 2 and 3 August they were taken to the atomic shelter and beaten to death. Witness Mirko Vuković, the only one who survived the beating, described what had happened in detail, but he also described how the accused had beaten him. Those events were also described in detail by witness Savo Pejić, and the court lent credence to their statements.

The Court extended the period of custody for the accused until referred to serve his sentence or its expiry at maximum.<sup>448</sup>

### **Second instance decision**

173

On 22 December 2022, deciding the appeals of the OWCP and the defence counsel for the accused, the Court of Appeal in Belgrade rendered a judgment partially upholding the appeal of the defence counsel and pronounced the accused Husein Mujanović guilty of a war crime from Article 142 of the CC FRY and sentenced him to a term of imprisonment of four years and six months, to which the time spent in detention as of 30 June 2018.

The Court found that the accused, in the period from 8 July to 15 October 1992, as the warden of the military detention unit in Hrasnica, unlawfully held about 30 Serb civilians detained, treated the detained civilians inhumanely and inflicted great mental anguish on them by failing to provide a minimum of decent living conditions, holding them locked up in garages which were partitioned so that one garage made two windowless cells, without cots or any other furnishings, where the detained civilians slept on the floor, had no lavatory or tap running water and were given just one bottle of water per cell and minimal quantities of food as meals, and not even a minimum of health care was provided them.<sup>449</sup>

The Court of Appeal excluded from the disposition acts of commission such as unlawful detention, issuance of orders for and participation in the infliction of injuries to bodily integrity which the

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448 Judgment K.Po2 3/21 of 9 May 2022 of the Higher Court in Belgrade.

449 Judgment Kž1 Po2 3/22 of 22 December 2022 of the Court of Appeal in Belgrade.



accused had been found guilty of by the first instance judgment. Namely, it held that it had not been proven beyond a reasonable doubt during the proceedings that the accused had committed these acts. The courts did not lend credence to the injured parties heard who were as witnesses, assessing them as not credible enough.<sup>450</sup>

In weighing the sentence, the court found as mitigating circumstances in favour of the accused that he is a family man, the father of two children and that he had no prior criminal record. Of aggravating circumstances, the Court maintained that, having previously successfully held the same job and having extensive experience, the accused should have addressed the objective difficulties existing in the operation of the detention unit and the resulting consequences in terms of the number of civilians who sustained serious mental anguish.<sup>451</sup>

## HLC Findings

### **Circumvention of regional cooperation in the prosecution of war crimes**

Although under the Law on Organisation and Jurisdiction of State Authorities in Prosecuting War Crimes the state authorities of the Republic of Serbia shall have jurisdiction in proceedings for war crimes committed on the territory of the former Socialist Federal Republic of Yugoslavia, regardless of the citizenship of the perpetrator or the victim (the principle of universal jurisdiction)<sup>452</sup>, the HLC maintains that the accused Mujanović should have been extradited to BiH, of which he is a national, for criminal proceedings to be conducted against him there.<sup>453</sup> This seems even more appropriate in view of the fact that proceedings are already being conducted against him in Bosnia and Herzegovina for an offence of the same type, as the accused himself confirmed.<sup>454</sup> Every state formed following the break-up of the former Yugoslavia should first and foremost prosecute those of its own citizens who have committed war crimes, as that would send the message that all of these states are prepared to confront and prosecute the crimes committed by their nationals, but equally that they are eager to establish and maintain good relations across the region. The application of the principle of universal jurisdiction reflects the mistrust that obtains between prosecutorial offices prosecuting war crimes, which are reneging on their professed readiness for regional cooperation; it also encumbers relations between countries and the competent prosecutorial offices, as in the case of Veljko Marić, which has plagued relations between Serbia and Croatia for a long time.<sup>455</sup>

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450 Ibid.

451 Ibid.

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

453 In 2018 the request of the BiH Ministry for extraditing the accused Husein Mujanović was refused.

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

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



## Excessive anonymisation of the indictment

The OWCP Indictment in this case, which is publicly accessible on the OWCP homepage under “Indictments”<sup>456</sup>, has been anonymised by the publication only of its operative part, with data on the names of the accused and the victims redacted, which is not in accordance with the OWCP Rulebook on Anonymisation of Personal Data in indictments issued by the Office of the War Crimes Prosecutor.<sup>457</sup> 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”.<sup>458</sup> Instead of the entire indictment, only the operative part was posted, making it impossible to ascertain on what evidence the OWCP had based the indictment. Also, the Rulebook envisages anonymisation of the personal particulars of the participants in the proceedings, such as “the names and surnames and nicknames of physical persons, their addresses, dates and places of birth”<sup>459</sup>, but, however, it also provides that “data on the name, surname and nickname of a physical person who is a participant in the proceedings shall not be subject to anonymisation if the legitimate interest of the public to know prevails over the protection of the identity of the physical person in question”.<sup>460</sup> Since 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, the more so because the identity of the accused had been publicly known even before the indictment was filed, i.e. from the moment of his arrest, which was reported in the media.<sup>461</sup> In the public interest, the indictment should have been posted on the OWCP website also, without anonymising the data regarding the defendant’s name, in order to disclose publicly all the allegations contained in it.

175

## Failure of defence witnesses to appear

In the retrial, the hearings were rescheduled three times because summoned defence witnesses failed to appear. Such conduct is not at all customary as defence witnesses are in question, who, as a rule, duly respond to summons by the court.

456 OWCP Indictment KTO No. 10/2018 of 24 December 2018, available at [https://www.tuzilastvorz.org.rs/public/indictments/%D0%9A%D0%A2%D0%9E\\_10\\_18\\_%D0%9E%D0%BF%D1%82%D1%83%D0%B6%D0%BD%D0%B8%D1%86%D0%B0~0.pdf](https://www.tuzilastvorz.org.rs/public/indictments/%D0%9A%D0%A2%D0%9E_10_18_%D0%9E%D0%BF%D1%82%D1%83%D0%B6%D0%BD%D0%B8%D1%86%D0%B0~0.pdf) accessed on 2 March 2023.

457 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](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 2 March 2023.

458 Ibid, Article 1, paragraph 2.

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

460 Ibid, Article 5, paragraph 2.

461 The *Telegraf*, 31 July 2018, “Former Warden of a Sarajevo War Camp Arrested at Border Crossing: Charged with Crimes against Serb Civilians”, available at <https://www.telegraf.rs/vesti/jugosfera/2979617-na-granicnom-prelazu-uhapsen-nekadasnji-upravnik-ratnog-logora-u-sarajevu-tereti-se-za-zlocine-prema-srpskim-civilima>, accessed on 2 March 2023.



## Problematic judgment of the Court of Appeal

In its judgment, the Court of Appeal found the accused Husein Mujanović guilty of a war crime against the civilian population and sentenced him to a term of imprisonment of four years and six months, namely under the statutory minimum – a prison sentence of at least five years. However, in the disposition, discussing the decision on the criminal sanction, the Court of Appeal, referring to the legal provisions regulating the general purpose of penalisation (Article 5 of the FRY CC), the purpose of punishment (Article 33 of the FRY CC), and the general rules on sentencing (Article 41 of the FRY CC), did not at all state that it had also applied the principle of mitigation of penalty (Article 42). Therefore, firstly, the disposition of the judgment does not specify the grounds for mitigating the penalty. That it is not an omission in drafting the judgment, namely failure to refer to an article of the law, is obvious from the fact that in giving the reasons for the judgment, the Court did not state that it was mitigating the sentence nor did it expound the reasons it had been guided by in reducing the sentence below the statutory minimum, which it had been required to do under the law. Such conduct of the court is impermissible, especially taking into consideration that we are talking about a judgment of the Court of Appeal. A sentence to be pronounced may be reduced under the statutory minimum, but only under specific conditions stipulated by law, namely the existence of particularly attenuating circumstances which demonstrate that the purpose of penalisation can be achieved with a mitigated sentence as well.<sup>462</sup> In the specific case, the Court did not make a single reference whatsoever to a circumstance it deemed particularly mitigating, and, in particular, it failed to do what it was required to do under the law - specify valid legal grounds for and expound the reasons for the duration of the sentence. The very legal concept of sentence mitigation is an exception relative to regular sentencing within the prescribed range, so that its application requires a detailed exposition of all the reasons the court was guided by in opting for it.

176

The Court of Appeal assessed that the acts of commission of the criminal offence the accused had been charged with and was found guilty of by the first instance judgment, such as unlawful detention, issuance of orders for and participation in the infliction of injury to bodily integrity, had not been proven beyond a reasonable doubt. However, the reasons it adduced for such a position are quite unconvincing, particularly the fact that it did not lend credence to the statements of the injured parties.

Bearing in mind the fact that the court of first instance provided a very detailed and clear analysis and assessment of all presented evidence, in particular the witness statements, both of each individual statement and of all of them taken together, an opposite assessment of the same statements required, in the very least, an equally detailed analysis, but none was given by the Court of Appeal, so that its reasons for adopting a totally contrary stance remain elusive.

In view of the foregoing, the judgment of the Court of Appeal is highly problematic and an example of the kind of judgment that the Court of Appeal should not be handing down.

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<sup>462</sup> FRY Criminal Code – Article 42.



## TERMINATED PROCEEDINGS

### III. The Bihać III Case <sup>463</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> proceedings terminated	
<b>Date of indictment:</b> 15 December 2020	
<b>Trial commencement date:</b> 9 March 2021	
<b>Prosecutor:</b> Gordana Jekić Bradajić	
<b>Defendant:</b> Dragan Dopuđa	
<b>Criminal offence charged:</b> war crime against the civilian population under Article 142 of the FRY Criminal Code	
<b>Case transferred from BiH</b>	
<b>Trial Chamber</b>	Judge Dejan Terzić (Chairperson) Judge Mirjana Ilić Judge Zorana Trajković
<b>Number of defendants:</b> 1	<b>Number of scheduled court days in the reporting period:</b> 1
<b>Defendant's rank:</b> no rank	<b>Number of court days in the reporting period:</b> 1
<b>Number of victims:</b> 11	<b>Number of witnesses heard in the reporting:</b> 0
<b>Total number of witnesses heard:</b> 8	<b>Total number of court witnesses heard:</b> 0
<b>Key developments in the reporting period:</b> Proceedings terminated	

177

<sup>463</sup> The *Bihać III* Case trial reports and case file documents available at [http://www.hlc-rdc.org/Transkripti/Bihac\\_III.html](http://www.hlc-rdc.org/Transkripti/Bihac_III.html) accessed on 7 December 2022.



## Course of the proceedings

### **Indictment**

The accused Dragan Dopuđa is charged as follows: on an unspecified date in the period between 24 June and the first half of July 1992, he, a member of the Reconnaissance Platoon of the 15<sup>th</sup> VRS Bihać Brigade at the time, and Željko Stanarević and Saša Ćurguz (both finally convicted by a BiH Court for the same offence) and another three unidentified members of the VRS, arrived in a truck at the “IMT traktorski servis /tractor repair shop/” camp in the village of Ripač, (Bihać municipality, BiH) where at least 59 Bosniak civilians were detained; an unidentified VRS member called out the names of 11 detained civilians and they tied their hands behind their backs, put them on a truck and then drove to the pit called “Bezdana” at Hrgar, following which he and another VRS member pulled four bound prisoners down on the ground and Željko Stanojević immediately killed them with a firearm, after which they dragged them to the pit and threw them in. Then Željko Stanarević ordered the remaining detainees to get off the truck and when they did so, Saša Ćurguz killed three of them with pistol shots, and the accused killed the remaining four detainees using a firearm. Their bodies were also thrown into the pit, in which the mortal remains of 83 persons were found in 1997; 66 of the bodies have been identified, among which the bodies of the 11 detainees killed in the way described above.<sup>464</sup>

### **Defence of the accused**

178

Presenting his defence, the accused denied having committed the criminal offence with which he is charged, claiming that at the time of the critical event he was at another location. He explained that he had done his military service in Niš from 17 September 1991 to the end of May 1992, after which he returned to Bihać. He was immediately assigned to the 15<sup>th</sup> Bihać Brigade and dispatched to guard the barracks in the village of Ripač. From mid-June 1992, he was assigned to the military police and sent for training – rather, Colonel Sovilj had all those who were not military police according to MOS /military occupational speciality/ separated from the force and sent for training. He saw captives at the “IMT tractor repair shop” but he never went inside. As a military police officer, he took prisoners as far as the camp gate a couple of times. That was after 10 June 1992, after the action at Ljutočka vale, Ćukovi and other places. He knows Saša Ćurguz and Željko Stanarević from before the war. He denied ever having been at the “Bezdana” pit, and he heard of it only during these proceedings.<sup>465</sup>

### **Overview of the proceedings up to 2022**

Three court days were held in 2021 during which a total of eight witnesses for the prosecution were heard, and the hearings were postponed four times. Seven of the examined witnesses had no knowledge whatsoever about the involvement of the accused in the taking of 11 prisoners from the camp situated on the premises of the “IMT tractor service and repair facility” in the village of Ripač,

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464 OWCP Indictment KTO 6/20 of 15 December 2020, available at [https://www.tuzilastvorz.org.rs/public/indictments/2021-07/kto\\_6\\_20\\_cir.pdf](https://www.tuzilastvorz.org.rs/public/indictments/2021-07/kto_6_20_cir.pdf), accessed on 7 December 2022.

465 Transcript of the main hearing held on 9 March 2021.



(Bihać municipality, BiH) to the pit called “Bezdana” at Hrgar, and their killing.<sup>466</sup> Only witness for the prosecution Derviš Čirić, who did not have first-hand knowledge of the critical events either, had heard from surviving camp inmates that the accused had persecuted them in the camp.<sup>467</sup>

## **Overview of the proceedings in 2022**

In 2022 there was one court day with the main hearing restarting owing to the substitution of a Trial Chamber member.<sup>468</sup>

## **Termination of proceedings**

As the accused Dragan Dopuđa died in the meantime, the Higher Court in Belgrade ruled to terminate the criminal proceedings against him.<sup>469</sup>

## HLC Findings

### **Regional cooperation**

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

179

### **Unnecessary anonymisation of the indictment**

The OWCP posted on its website the indictment it had brought against Dragan Dopuđa anonymised in such a way as to indicate that instead of the accused, in question was person A.A.<sup>470</sup> Such anonymisation was totally unnecessary, as data on the indictment, including the full name of the defendant, had already been posted on the website of the BiH Court prior to the OWCP’s issuance of the indictment.<sup>471</sup>

### **Proceedings terminated due to tardiness of the judiciary**

Tardiness in prosecuting the perpetrators of war crimes and the consequent lapse of time lead to the termination of criminal proceedings, as defendants die during the proceedings. To wit, the BiH

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466 Transcripts of the main hearings held on 2 June 2021 and 15 September 2021.

467 Transcript of the main hearing held on 15 September 2021.

468 Transcript of the main hearing held on 11 April 2022.

469 Decision K. Po2 9/20 of the Higher Court in Belgrade – War Crimes Department, of 12 May 2022.

470 OWCP Indictment KTO 6/20 of 15 December 2020, available at [https://www.tuzilastvorz.org.rs/public/indictments/2021-07/kto\\_6\\_20\\_cir.pdf](https://www.tuzilastvorz.org.rs/public/indictments/2021-07/kto_6_20_cir.pdf), accessed on 3 December 2022.

471 BiH Court Case number S1 1 K 017818 14 Kro – Dragan Dopuđa.



Court confirmed the indictment against Dragan Dopuđa as far back as 2 October 2014, and he was already then known to be out of reach of the BiH authorities, but it was years before the case was transferred to the judiciary of the Republic of Serbia. Because of such slowness of the judiciary and the evidently inadequate regional cooperation and thus the lapse of time, criminal proceedings are ever more frequently terminated due to the death of the accused.<sup>472</sup>

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<sup>472</sup> In 2021 proceedings against the accused Drago Samardžija and Nenad Bubalo were terminated.



# PROCEEDINGS INITIATED IN 2022

## I. The Zagreb Case<sup>473</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> first instance proceedings	
<b>Date of indictment:</b> 3 March 2022	
<b>Trial commencement date:</b> 7 October 2022	
<b>Prosecutor:</b> Dušan Knežević	
<b>Defendant:</b> Branko Tunić	
<b>Criminal offence charged:</b> war crime against prisoners of war under Article 144 of the FRY Criminal Code	
<b>Trial in absentia</b>	
<b>Trial Chamber</b>	Judge Snežana Nikolić Garotić (Chairperson) Judge Vinka Beraha Nikićević Judge Vladimir Duruz
<b>Number of defendants:</b> 1 <b>Defendant's rank:</b> low rank <b>Number of victims:</b> 14 <b>Total number of witnesses heard:</b> 4	<b>Number of scheduled court days in the reporting period:</b> 3 <b>Number of court days in the reporting period:</b> 3 <b>Number of witnesses heard in the reporting period:</b> 4 <b>Total number of expert witnesses heard:</b>
<b>Key developments in the reporting period:</b> Main hearing	

181

<sup>473</sup> The *Zagreb* Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/zagreb.html> accessed on 13 January 2023.



## Course of the proceedings

### **Indictment**

The accused<sup>474</sup> 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 Zagreb, in a ZNG facility in the settlement of Rakitje, where prisoners of war who had previously surrendered had been brought, killing one of them. He 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 lay 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.<sup>475</sup>

### **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 knows 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 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; Goran took them along 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

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

475 OWCP Indictment TRZ KTO 3/22 of 3 March 2022, available at <https://www.tuzilastvorz.org.rs/public/indictments/2022-09/%D0%9A%D0%A2%D0%9E%203-22%20%20%D0%9E%D0%BF%D1%82%D1%83%D0%B6%D0%BD%D0%B8%D1%86%D0%B0%20%D0%B0%D0%BD%D0%BE%D0%BD%D0%B8%D0%BC%D0%B8%D0%B7..pdf>, accessed on 13 January 2023.



told him that he had been killed. He said that he was very sorry, that he had been 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 in regards of Marko’s death, but they had not been contacted by any authorities of the Republic of Croatia.<sup>476</sup>

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 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 eyewitnessed Marko’s killing. They explained that it 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, one 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 always declared himself as a Yugoslav, as his father was the child of a mixed marriage. She is 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.<sup>477</sup>

183

Witness and injured party Željko Laketić was doing his compulsory military service in 1991 in the JNA, stationed in the village of Prečec garrison in the Republic of Croatia. His barracks 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 the first few 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 one. He recalls 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 and beat them with bats and kick

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<sup>476</sup> Transcript of the main hearing held on 18 November 2022.

<sup>477</sup> Ibid.



them all over the body. He would be all black and blue from the blows and unable to lie down on returning to the room. The blows had drawn blood from his ears and he is now hard of hearing as a consequence. As well, they threatened to kill them, drawing bayonets across their bodies and faces and saying, e.g. "Now I will gouge your eye out". Among the guards who beat me the most was one 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 initially 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.<sup>478</sup>

184

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 and 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. In 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, while 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.<sup>479</sup>

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478 Transcript of the main hearing held on 9 December 2022.

479 Ibid.



## HLC Findings

### **Trial in absentia**

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 have been met, the Court decided to try him in his absence.<sup>480</sup> 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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480 Article 381 of the Criminal Procedure Code of the Republic of Serbia.



## II. The Petrovačka cesta Case <sup>481</sup>

<b>CASE FACTS</b>	
<b>Current stage of the proceedings:</b> first instance proceedings	
<b>Date of indictment:</b> 18 February 2022	
<b>Trial commencement date:</b> 26 December 2022	
<b>Prosecutor:</b> Dušan Knežević	
<b>Defendants:</b> Vladimir Mikac, Zdenko Radulj, Željko Jelenić and Danijel Borović	
<b>Criminal offence charged:</b> war crime against the civilian population under Article 142 of the FRY Criminal Code	
<b>Trial Chamber</b>	Vladimir Duruz (Chairperson) Judge Snežana Nikolić Garotić Judge Vinka Beraha Nikićević
<b>Number of defendants:</b> 4  <b>Defendants' rank:</b> high/senior  <b>Number of victims:</b>  <b>Total number of witnesses heard:</b> 0	<b>Number of scheduled court days in the reporting period:</b> 1  <b>Number of court days in the reporting period:</b> 0  <b>Number of witnesses heard in the reporting period:</b> 0  <b>Total number of expert witnesses heard:</b> 0
<b>Key developments in the reporting period:</b>  Main hearing	

186

<sup>481</sup> The *Petrovačka cesta* Case, trial reports and case file documents available at [http://www.hlc-rdc.org/Transkripti/petrovacka\\_cesta.html](http://www.hlc-rdc.org/Transkripti/petrovacka_cesta.html) accessed on 13 January 2023.



## 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, 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 and the wounding of at least 15 civilians, 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.<sup>482</sup>

The one main hearing scheduled during the reporting period was not held because the requirements for holding it had not been met. 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, summons 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 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 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.

187

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 of the case submitted to the court a communiqué of 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 he proposed to the Court to rule accordingly.

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 one will be scheduled in due course.<sup>483</sup>

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482 OWCP Indictment KTO 2/2022, which had not been posted on the OWCP site by the time of writing this report, so that data published in the media has been given.

483 Transcript of the main hearing held on 26 December 2022.



## HLC Findings

### **Trial in absentia**

In the Petrovačka cesta case, the OWCP 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 for deciding on a trial in absentia.

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. Particularly so, because such trials are abused for everyday politicking and only serve to escalate tensions between states, which should focus 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, 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 clearly see what exactly the accused are being charged with and in what capacity, i.e. what type of responsibility is in question, the public gets its information from the media which state that the accused “bombarded a column of Serb refugees”<sup>484</sup> and also that “they are charged on account of command responsibility”, or that they “ordered the bombardment of a column of refugees”<sup>485</sup>, which creates unnecessary confusion. Particularly so 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.<sup>486</sup> 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.

188

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484 RTV Radio television Vojvodina, “Decision Pending on a Trial in Absentia of Croatian Pilots for Bombarding a Refugee Column on Petrovačka cesta”, 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](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 30 January 2023.

485 Jutarnji list, “Trial of Croatian Pilots in Belgrade Postponed until Further Notice, the Judge Has Not Even Scheduled a New Hearing”, 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 30 January 2023.

486 Blic, “Details of the Indictment against Four Croatian Pilots Published”, available at <https://www.blic.rs/vesti/politika/objavljeni-detalji-optuznice-protiv-cetiri-hrvatska-pilota/2bjldqs>, accessed on 30 January 2023.



### III. The Jajce Case<sup>487</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> first instance proceedings	
<b>Date of indictment:</b> 28 March 2022	
<b>Trial commencement date:</b> 14 October 2022	
<b>Prosecutor:</b> Snežana Pavlović Pejić	
<b>Defendants:</b> Jovo Jandrić and Slobodan Pekez	
<b>Criminal offence charged:</b> war crime against the civilian population under Article 142 of the FRY Criminal Code	
<b>Case transferred from BiH</b>	
<b>Trial Chamber</b>	Judge Dejan Terzić (Chairperson) Judge Mirjana Ilić Judge Zorana Trajković
<b>Number of defendants:</b> 2 <b>Defendants' rank:</b> low rank <b>Number of victims:</b> 27 <b>Total number of witnesses heard:</b> 2	<b>Number of scheduled court days in the reporting period:</b> 2 <b>Number of court days in the reporting period:</b> 2 <b>Number of witnesses heard in the reporting period:</b> 2 <b>Total number of expert witnesses heard:</b> 0
<b>Key developments in the reporting period:</b> Main hearing	

189

<sup>487</sup> The *Jajce* Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/jajce.html> accessed on 13 January 2023.



## 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 an organised group of ten men organised by Slobodan Pekez at the villages of Ljoljići and Čerkezovići 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, Nurija Zobić, Omer Karahodžić and Mustafa Bajramović survived the execution.<sup>488</sup>

### **Defence of the accused**

190

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 is certain about is 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 does not know how it happened that the civilians were executed, although he did participate in their escorting.<sup>489</sup>

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 the 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.<sup>490</sup>

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488 OWCP Indictment TRZ KTO 4/22 of 28 March 2022, available at <https://www.tuzilastvorz.org.rs/public/indictments/2022-09/KTO-4-22.pdf>, accessed on 13 January 2023.

489 Transcript of the main hearing held on 14 October 2022.

490 Ibid.



## Witnesses in the proceedings

Witness for the prosecution Dragan Ždrnja was the security officer of the 30<sup>th</sup> 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; 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.<sup>491</sup>

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 one 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 Čerkezovići the police did a roll call of the Bosniaks in order to prevent anyone from passing behind VRS battle lines and endangering the fighters.<sup>492</sup>

191

## HLC Findings

### Regional cooperation

These proceedings are a result of the 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 in 2013 the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide. Namely, on 16 November 2021, the Court of Bosnia and Herzegovina sent letters rogatory for the provision of international legal assistance (transfer and assumption of criminal prosecution of the accused Jovo Jandrić and Slobodan Pekez) to the competent authority in the Republic of Serbia, given that the accused, who are nationals and residents of the Republic of Serbia, were not accessible to the authorities of BiH. The OWCP assumed criminal prosecution of the accused.

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<sup>491</sup> Transcript of the main hearing held on 28 November 2022.

<sup>492</sup> Ibid.



## 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.<sup>493</sup> Such anonymisation was totally unnecessary, as data on the indictment, including the full names of the defendants, had already been posted on the website of the BiH Court.<sup>494</sup> As well, 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 defendants referred to by their full names<sup>495</sup>. Anonymising publicly posted indictments in this way, the OWCP makes them totally unclear<sup>496</sup>, and the accused totally invisible to the general public, which is entirely contrary both to the 2016 National Strategy<sup>497</sup> and the Prosecutorial Strategy for the Prosecution of War Crimes in Serbia<sup>498</sup>. 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 sheer formality.

There was no need to anonymise the names of the victims either, as already publicly available data 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.<sup>499</sup> The full names of all the victims are also inscribed on the memorial tomb (túrbe) in Čerkezovići, so that it is extremely inhumane to have their names anonymised in the indictment which was issued many years later.

192

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493 OWCP Indictment KTO 4/22 of 28 March 2022, available at <https://www.tuzilastvorz.org.rs/public/indictments/2022-09/KTO-4-22.pdf>, accessed on 13 January 2023.

494 BiH Court case number S1 1 K 002841 08 Kro (X-KR-05/96) Jovo Jandrić et al.

495 Klix, "Indictment issued against Jovo Jandrić and Slobodan Pekez", available at <https://www.klix.ba/vijesti/bih/podignuta-optuznica-protiv-jandric-jove-i-pekez-slobodana/081202104>, accessed on 16 January 2023.

496 In all OWCP indictments the accused are indicated as A.A., available at <https://www.tuzilastvorz.org.rs/sr/%D0%BF%D1%80%D0%B5%D0%B4%D0%BC%D0%B5%D1%82%D0%B8/%D0%BE%D0%BF%D1%82%D1%83%D0%B6%D0%BD%D0%B8%D1%86%D0%B5>, accessed on 16 January 2023.

497 2021-2026 National Strategy for the Prosecution of War Crimes, available at [https://www.mpravde.gov.rs/files/Usvojeni%20tekst%20Strategije%20za%20procesuiranje%20ratnih%20zlo%20lo%20C4%8Dina%20\(Sl.%20glasnik%2097%2021\)%20222.pdf](https://www.mpravde.gov.rs/files/Usvojeni%20tekst%20Strategije%20za%20procesuiranje%20ratnih%20zlo%20lo%20C4%8Dina%20(Sl.%20glasnik%2097%2021)%20222.pdf), accessed on 16 January 2023.

498 2018-2023 Prosecutorial Strategy for the Investigation and Prosecution of War Crimes in the Republic of Serbia, 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 2023.

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



## IV. The Višegrad Case<sup>500</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> first instance proceedings	
<b>Date of indictment:</b> 29 March 2022	
<b>Trial commencement date:</b> 8 November 2022	
<b>Prosecutor:</b> Ivan Marković	
<b>Defendant:</b> Slađan Tasić	
<b>Criminal offence charged:</b> war crime against the civilian population under Article 142 of the FRY Criminal Code	
<b>Case transferred from BiH</b>	
<b>Trial Chamber</b>	Judge Zorana Trajković (Chairperson) Judge Mirjana Ilić Judge Dejan Terzić
<b>Number of defendants:</b> 1  <b>Defendants' rank:</b> low rank  <b>Number of victims:</b> 5  <b>Total number of witnesses heard:</b> 0	<b>Number of scheduled court days in the reporting period:</b> 3  <b>Number of court days in the reporting period:</b> 1  <b>Number of witnesses heard in the reporting period:</b> 0  <b>Total number of expert witnesses heard:</b> 0
<b>Key developments in the reporting period:</b>  Main hearing	

193

<sup>500</sup> The *Višegrad* Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/visegrad.html> accessed on 13 January 2023.



## 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.<sup>501</sup>

### **Defence of the accused**

Presenting his defence, the accused denied having committed the criminal offence he is charged with, stating that he was not at all in BiH, in Višegrad, 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 it they never deployed into the field nor were 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. 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 parallel with the discharge of this duty, he trained the police. This can be confirmed by policemen Miloško 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, 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.<sup>502</sup>

501 OWCP Indictment KTO 5/22 of 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](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 2023.

502 Transcript of the main hearing held on 8 November 2022.



## HLC Findings

### **Regional cooperation**

These proceedings are a result of the cooperation between Serbia and BiH in the prosecution of war crimes, which was intensified after the OWCP and the BiH Prosecutor's Office signed in 2013 the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide. Namely, the confirmed indictment against the accused was transferred by the Prosecutor's Office of Bosnia and Herzegovina, given that the accused, who is a national and resident of the Republic of Serbia was inaccessible to the BiH authorities.

### **Unnecessary anonymisation of the indictment**

The OWCP posted on its website the indictment it had brought against Sladan Tasić anonymised in such a way as to indicate that instead of the accused, in question was person A.A.<sup>503</sup> Such anonymisation was totally unnecessary, as data on the indictment, including the full name of the defendant, had already been posted on the website of the BiH Court.<sup>504</sup> As well, already as of 2018, 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.<sup>505</sup> Anonymising publicly posted indictments in this way, the OWCP makes them totally unclear<sup>506</sup>, and the accused totally invisible to the general public, which is entirely contrary both to the 2016 National Strategy<sup>507</sup>, and the Prosecutorial Strategy for the Prosecution of War Crimes in Serbia<sup>508</sup>. 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 sheer formality.

195

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503 OWCP Indictment KTO 5/22 of 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](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 2023.

504 BiH Court case number S1 1 K 027633 18 Kro – Sladan Tasić.

505 Detektor, “*Tasić et al: Indictment Amended*”, available at <https://detektor.ba/2018/04/19/tasic-i-ostali-izmijenjena-optuznica/>, accessed on 16 January 2023.

506 In all OWCP indictments the accused are indicated as A.A., available at <https://www.tuzilastvorz.org.rs/sr/%D0%BF%D1%80%D0%B5%D0%B4%D0%BC%D0%B5%D1%82%D0%B8/%D0%BE%D0%BF%D1%82%D1%83%D0%B6%D0%BD%D0%B8%D1%86%D0%B5>, accessed on 16 January 2023.

507 2021-2026 National Strategy for the Prosecution of War Crimes, available at [https://www.mpravde.gov.rs/files/Usvojeni%20tekst%20Strategije%20za%20procesuiranje%20ratnih%20zlo%20C4%8Dina%20\(Sl.%20glasnik%2097%2021\)%20222.pdf](https://www.mpravde.gov.rs/files/Usvojeni%20tekst%20Strategije%20za%20procesuiranje%20ratnih%20zlo%20C4%8Dina%20(Sl.%20glasnik%2097%2021)%20222.pdf), accessed on 16 January 2023.

508 2018-2023 Prosecutorial Strategy for the Investigation and Prosecution of War Crimes in the Republic of Serbia, 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 2023.



## V. The Srebrenica II Case<sup>509</sup>

<b>CASE FACTS</b>	
<b>Current stage of the proceedings:</b> first instance proceedings	
<b>Date of indictment:</b> 29 December 2021	
<b>Trial commencement date:</b> 30 May 2022	
<b>Prosecutor:</b> Vasilije Seratlić	
<b>Defendant:</b> Milenko Živanović	
<b>Criminal offence charged:</b> war crime against the civilian population under Article 142 of the FRY Criminal Code	
<b>Trial Chamber</b>	Judge Dejan Terzić (Chairperson)  Judge Mirjana Ilić  Judge Zorana Trajković
<b>Number of defendants:</b> 1  <b>Defendants' rank:</b> high rank  <b>Number of victims:</b> unspecified  <b>Total number of witnesses heard:</b> 0	<b>Number of scheduled court days in the reporting period:</b> 4  <b>Number of court days in the reporting period:</b> 3  <b>Number of witnesses heard in the reporting period:</b> 0  <b>Total number of expert witnesses heard:</b> 0
<b>Key developments in the reporting period:</b>  Main hearing	

196

<sup>509</sup> The *Srebrenica II* Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/srebrenica-II.html> accessed on 13 January 2023.



## 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, 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, 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 that buses be provided for evacuation from the Srebrenica enclave, that traffic control be regulated, and addressing a request to the VRS Main Staff to authorize 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 1100 hours on 13 July 1995 at the latest; failure to appear or to accept our conditions for moving out, shall result in resumed combat operations."<sup>510</sup>

### **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 JNA's withdrawal, huge quantities of military materiel had remained in the area. The secondary military school in which were students who were underage and hence not allowed to bear arms was under a blockade. The men in the Pazarić barracks were also under a blockade. On 30 May 1992, he managed to pull out the secondary military school pupils without any losses and to bring them to the barracks in Lukavica. In the ensuing period

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510 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 13 January 2023.



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 getting 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 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 were there except for regular RS troops. There were some Chetniks who did all sorts of things, for "if you want your state to lose the war, let the paramilitary 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. Miroslav Deronjić (he was the leading political figure of the Bosnian Serbs in Bratunac) relieved the defendant of duty in May 1995. The former had led paramilitary units and had killed the Muslim inhabitants of a village.

198

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 unrealizable in practice. In the defendant's view it was "sky-high demagogy". 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 and to defend the people. In his own 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 got 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 neither safe areas nor UNPROFOR at the time, because the safe area 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, 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 was 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.<sup>511</sup>

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.

In March 1995, the Muslims' life 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 demilitarized, but, rather, a strong military formation was building up in the area. Every convoy which reached the defendant passed through to Srebrenica unscathed. 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 in 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, an SDS /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.

This decision "gave wings" to Radoslav 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 commanders' reconnaissance. Following this reconnaissance, on 5 June 1995, Krstić informed the VRS Main

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511 Transcript of the main hearing held on 12 September 2022.



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 could 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 Serb villages, leave Srebrenica and Potočari to the Muslims, and UNPROFOR was to deal with the problem of seized Serb flats in Srebrenica. Radoslav Krstić liaised with the Main Staff and subordinated units, and he himself had actually stated before the Hague Tribunal that he had not kept the defendant informed about anything. The defendant only stayed 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 called him to go to Pribićevec. The attack on Srebrenica began on 6 July 1995, 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.<sup>512</sup>

200

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. Radoslav 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 and where would collect the Muslims and transport them to territories under the control of the BiH Army. The Muslims decided to leave the area because in 1992 Muslim military units had extinguished all life in Serb villages, so that 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.

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512 Ibid.



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 also attended Zvonko Bajagić’s Patron Saint’s day feast at his house. 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 0730 hours on 12 July 1995 he 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 1700 hours. By 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 authorize 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.<sup>513</sup>

Presenting his defence in respect of count 4) of the indictment, the accused said that he had 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 his name was given although he had already handed over command of the Corps to Krstić.<sup>514</sup>

201

## HLC Findings

### **Indictment against a high-ranking officer**

After a long time, the OWCP 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.<sup>515</sup>

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) which was confirmed by the BiH Court on 31 December 2021<sup>516</sup>, which indicates a lack of adequate cooperation between the two prosecutorial offices.

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<sup>513</sup> Transcript of the main hearing held on 31 October 2022.

<sup>514</sup> Ibid.

<sup>515</sup> Indictments: KTO 2/21 against Branko Basara and Nedeljko Aničić, KTO 5/20 against Rajko Kušić, KTO7/20 against Drago Samardžija.

<sup>516</sup> BiH Court case number S1 1 K 041813 21 Kro Milenko Živanović.



## VI. The Bosanski Novi II Case<sup>517</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> first instance proceedings	
<b>Date of indictment:</b>	
<b>Trial commencement date:</b> 12 September 2022	
<b>Prosecutor:</b> Ivan Marković	
<b>Defendants:</b> Milenko Karlica and Željko Novaković	
<b>Criminal offence charged:</b> war crime against the civilian population under Article 142 of the FRY Criminal Code	
<b>Case transferred from BiH</b>	
<b>Trial Chamber</b>	Judge Snežana Nikolić Garotić (Chairperson) Judge Vinka Beraha Nikićević Judge Vladimir Duruz
<b>Number of defendants:</b> 2 <b>Defendants' rank:</b> low rank <b>Number of victims:</b> 24 <b>Total number of witnesses heard:</b> 3	<b>Number of scheduled court days in the reporting period:</b> 3 <b>Number of court days in the reporting period:</b> 2 <b>Number of witnesses heard in the reporting period:</b> 3 <b>Total number of expert witnesses heard:</b> 0
<b>Key developments in the reporting period:</b> Main hearing	

202

<sup>517</sup> The *Bosanski Novi* Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/bosanski-novi.html>, accessed on 19 January 2023.



## 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 present armed persons 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.<sup>518</sup>

### **Defence of the accused**

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, but that 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, and then they called him to go to a 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 they were told: "Here, you can have them, you 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 same had lots of weapons. When they got to Džemal's house, they went out while the accused remained by the car. He heard shots and soon afterwards Milan came and told

203

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518 OWCP Indictment KTO 7/21 of 30 December 2021, available at <https://www.tuzilastvorz.org.rs/public/indictments/2022-08/%D0%9A%D0%A2%D0%9E%20%D0%B1%D1%80.%207-21%20-%20%D0%B0%D0%BD%D0%BE%D0%BD%D0%B8%D0%BC%D0%B8%D0%B7..pdf>, accessed on 19 January 2023.



him that he had killed Džemal in self-defence. Later they drove to Ekići, and later Milan Balaban said that they had killed those people. He heard that they had wanted to pin Džemal Alić's killing on him, even though everybody knows who killed him. Branka Karlica, Milan Balaban's sister-german also told him that. He did not see anyone getting killed nor does he know where the accused Željko Novaković had been at that time.<sup>519</sup>

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 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 to 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.<sup>520</sup>

### **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 does not know anything about the relocation of bodies. He knows the accused Milenko Karlica.<sup>521</sup>

Witness for the prosecution Rajko Rađenović stated that during the war he had worked as a policeman in Bosanski Novi. As the 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. Namely if the police brought any VRS member in, 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 he who had a rifle at the time "had it all". 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.<sup>522</sup>

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

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519 Transcript of the main hearing held on 12 September 2022.

520 Ibid.

521 Transcript of the main hearing held on 25 October 2022.

522 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 apologizing 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.<sup>523</sup>

Before the killing of the Muslims they had been at a funeral. The accused were there with their wives and children – they followed that convoy. He admitted that he had lied when he stated 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 is 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 knows that Milan Balaban 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 upon Ekići and Alići, and so he took his weapon and set off. In the evening the Muslims were brought aboard two or three tractors. There were 26 of them and they took them to the cemetery and killed them. 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, and Ljuban Balaban was one of them.<sup>524</sup>

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## HLC Findings

### **Regional cooperation**

These proceedings are a result of the 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 in 2013 the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide. Namely, the confirmed indictment against the accused was transferred by the Prosecutor's Office of Bosnia and Herzegovina, given that the accused, who are nationals and residents of the Republic of Serbia were inaccessible to the BiH authorities.

### **Unnecessary anonymisation of the indictment**

The OWCP posted on its website the indictment it had brought against Milenko Karlica and Željko Novaković anonymised in such a way as to indicate that instead of the accused, in question were

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523 Ibid.

524 Ibid.



persons A.A. and B.B.<sup>525</sup> Such anonymisation was totally unnecessary, as data on the indictment, including the full name of the defendants, had already been published. Prior to the OWCP's issuance of the indictment, the case had received media coverage in BiH with the defendants referred to by their full names.<sup>526</sup> Data on the accused was also posted on the website of the BiH Court.<sup>527</sup> Anonymising publicly posted indictments in this way, the OWCP makes them totally unclear<sup>528</sup>, and the accused totally invisible to the general public, which is entirely contrary both to the 2016 National Strategy<sup>529</sup>, and the Prosecutorial Strategy for the Prosecution of War Crimes in Serbia<sup>530</sup>. 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 sheer formality.

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525 OWCP Indictment KTO 7/21 of 30 December 2021, available at <https://www.tuzilastvorz.org.rs/public/indictments/2022-08/%D0%9A%D0%A2%D0%9E%20%D0%B1%D1%80.%207-21%20-%20%D0%B0%D0%B-D%D0%BE%D0%BD%D0%B8%D0%BC%D0%B8%D0%B7..pdf>, accessed on 19 January 2023.

526 Faktor, „Zločini u Bosanskom Novom: Spojeni postupci protiv nedostupnih Novakovića i Karlice” / “Crimes in Bosanski Novi: Joinder of Cases Against Novaković and Karlica Who Are at Large”, available at <https://faktor.ba/vijest/zlocini-u-bosanskom-novom-spojeni-postupci-protiv-nedostupnih-novakovica-i-karlice/116664> accessed on 19 January 2023.

527 BiH Court case S1 1 K 032575 19 Kro Željko Novaković. BiH Court case S1 1K 020491 15 Kro Milenko Karlica.

528 In all OWCP indictments the accused are indicated as A.A., available at <https://www.tuzilastvorz.org.rs/sr/%D0%BF%D1%80%D0%B5%D0%B4%D0%BC%D0%B5%D1%82%D0%B8/%D0%BE%D0%B-F%D1%82%D1%83%D0%B6%D0%BD%D0%B8%D1%86%D0%B5>, accessed on 19 January 2023.

529 2021-2026 National Strategy for the Prosecution of War Crimes, 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 2023.

530 2018-2023 Prosecutorial Strategy for the Investigation and Prosecution of War Crimes in the Republic of Serbia, 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 19 January 2023.





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