



Humanitarian Law Center

REPORT  
ON WAR CRIMES TRIALS IN SERBIA  
DURING 2021



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## 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>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 tenth 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 2021, namely a total of 26 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 decisions terminating criminal proceedings in respect of three defendants who had died<sup>2</sup>, and dismissed the indictments against two defendants who had become unfit to stand trial.<sup>3</sup> The War Crimes Department of the Court of Appeal in Belgrade handed down six judgments<sup>4</sup> and three rulings on appeals lodged against judgments of the Higher Court in Belgrade quashing the first instance judgments and remanding the cases for retrial.<sup>5</sup> In the reporting period the OWCP issued seven indictments against nine persons.<sup>6</sup>

Since it began working in 2003 until the end of 2021, the OWCP brought indictments in 88 war crimes cases, indicting a total of 210 persons and encompassing at least 3,041 victims who lost their lives. Final judgments have been rendered in 58 cases and 17 cases are pending. In cases which have been concluded by a final decision, a total of 86 defendants have been convicted and 54 acquitted. Also, indictments were dismissed against 24 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 1,049 victims who had lost their lives, whereas the final judgments list 737 victims who had perished.

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1 The *Sanski Most – Lušci Palanka, Brčko II, Kalinovik, Ključ Reizović* and *Bosanska Krupa II* cases.

2 The accused Ljubiša Vasiljević, Drago Samardžija, and Nenad Bubalo.

3 The accused Nedeljko Aničić and Dragomir Parović.

4 Judgments rendered in the *Bosanski Petrovac – Gaj, Ključ – Režovići, Doboј – Kožuhe, Bogdanovci, Ključ – Velagići* and *Brčko II* cases.

5 Rulings in the *Hrasnica* and *Sanski Most – Lušci Palanka* and *Kalinovik* cases.

6 OWCP Letter PI. no. 10/21 of 12 January 2022.





Preceding the analyses of the cases in the Report is an overview of general findings on war crimes trials in 2021, and of important socio-political developments which have had some bearing on war crimes trials.

## General findings and the socio-political context

### Inefficiency of the OWCP

Over the reporting period the negative trend has continued of a declining number of indictments being issued against fewer suspects, and with the indictments mainly a result of cases having been transferred from Bosnia and Herzegovina, rather than of investigations conducted by the OWCP. In 2021, seven indictments were filed against nine persons<sup>7</sup>, four of which were from transferred cases. Account being taken of the fact that the OWCP has a prosecutor and twelve deputy prosecutors, issuance of just three indictments resulting from its own investigations over the course of a whole year can be considered extremely inefficient work indeed. Namely, the indictments in the transferred cases came from Bosnia and Herzegovina, where prosecutorial work leading up to the indictment had been fully completed – the investigation had been conducted, the indictment issued and confirmed by the competent court. The case was transferred to Serbia solely because the trial could not be conducted before a competent BiH court owing to the inaccessibility of the accused. It is highly worrisome that for a third year in a row the number of OWCP deputy prosecutors exceeds the overall number of issued indictments per year.<sup>8</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. The small number of OWCP-issued indictments was also pointed out in the European Commission's Serbia 2021 Report on its progress on the path towards EU accession.<sup>9</sup>

The OWCP remains disinclined to efficiently conduct self-initiated proceedings against senior-ranking army personnel. As far back as November 2016, the HLC filed a criminal complaint for a war crime committed in the village of Lovas against Dušan Lončar, the former Commander of the 2nd Proletarian Guards Mechanised Brigade of the Yugoslav People's Army,<sup>10</sup> and the OWCP initiated an investigation against the same only in February 2021. In July 2019, the HLC filed another criminal complaint against Dušan Lončar for a war crime against the civilian population committed in the village of Bogdanovci in the first half of November 1991, but the OWCP has not acted upon it. The

7 Indictments: KTO 1/21 against Danko Vladičić, KTO 2/21 against Branko Basara and Nedeljko Aničić, KTO 3/21 against Nenad Bubalo, KTO 4/21 against A.A, and KTO 5/21 against Edin Vranj. More specific information about other 2021 OWCP indictments was not publicly available at the time of drafting the report.

8 In 2020, seven indictments were issued and in 2019 only three.

9 Annual European Commission Serbia 2021 Progress Report on its path to EU accession, available at [https://www.mei.gov.rs/upload/documents/eu\\_dokumenta/godisnji\\_izvestaji\\_ek\\_o\\_napretku/izvestaj\\_ek\\_oktobar\\_21.PDF](https://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/izvestaj_ek_oktobar_21.PDF), accessed on 17 January 2022.

10 See HLC press release of 3 November 2016, "Criminal Complaint for the 1991 Crime in Lovas", available at <http://www.hlc-rdc.org/?p=32894>, accessed on 14 January 2022.



HLC has described these criminal complaints in detail in its *Report on War Crimes Trials in Serbia in 2019*.<sup>11</sup> Account being taken of the suspect's age (78) and the OWCP's past performance rate, it is highly probable that these proceedings will not conclude with a final adjudication.

In March 2018, the HLC filed a criminal complaint against Svetozar Andrić, the former commander of the VRS Birač Brigade<sup>12</sup> for crimes committed in the zone of responsibility of his brigade, but the OWCP has not acted upon this complaint either.

Although the OWCP has formally brought indictments against high-ranking personnel, e.g. Rajko Kušić, Drago Samardžija, Branko Basara and Nedeljko Aničić, these indictments did not result from OWCP's own investigation but are from cases transferred from BiH, in other words the result of the work of other prosecutorial offices.<sup>13</sup>

## **Adverse impact of the Covid-19 epidemic on war crimes trials in 2021**

Trial hearings were repeatedly postponed due to the Covid-19 epidemic, as judges, defendants and witnesses contracted the disease or were under isolation measures. As well, witnesses failed to appear before the court, particularly those from the region, due to epidemic-related issues (e.g. increased risk of a possible infection in view of their own poor health or that of their household members, or due to their current health condition presenting COVID-19-like symptoms) or mandatory isolation measures. The impression is gained that a number of witnesses from the region, viz. in the Zvornik - Standard case, whom the court had called many times and who did not appear before it invoking the epidemiological situation, are using it to avoid testifying. Such an epidemiological situation has also had an adverse effect on the attendance of victims' family members at war crimes trials, as many of them are elderly and with health issues and had given up travelling for security considerations. Due to the absence of witnesses, defendants or trial chamber members, of the total number of 127 trial hearings scheduled in 2021, only 62, i.e. less than half, were actually held.

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## **Revisionism of the 1990s wars**

In 2021, in the Republic of Serbia the earlier established practice continued of revisionism of the 1990s wars through disregard for and minimization of adjudicated facts, the promotion of war criminals, by making available public arenas and government resources for the publication and promotion of books by convicted war criminals and for movie and TV productions.

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11 Humanitarian Law Center (Belgrade, HLC 2020) Report on War Crimes Trials in Serbia in 2019, pp. 103-112, available at [http://www.hlc-rdc.org/wp-content/uploads/2020/03/Izvestaj\\_o\\_sudjenjima\\_za\\_ratne\\_zlocine\\_u\\_2019.\\_godini.pdf](http://www.hlc-rdc.org/wp-content/uploads/2020/03/Izvestaj_o_sudjenjima_za_ratne_zlocine_u_2019._godini.pdf), accessed on 14. January 2022.

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

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



The genocide in Srebrenica continued to be denied at the highest state level through the reactions of the political elite to the judgment pronounced on Ratko Mladić by the Appeals Chamber of the International Residual Mechanism for Criminal Tribunals, and by diverting attention from the crimes listed in the judgments by drawing attention to Serb victims, and portraying the judgment as a judgment imposed on the entire nation and a means whereby to exert pressure on the state. Prior to the delivery of the judgment, Serbia's president Aleksandar Vučić stated that the 8<sup>th</sup> of June 2021 would be "a hard day for the Serbian people". "After on 8 June 2021, Ratko Mladić, former commander of the VRS Main Staff, was sentenced to life imprisonment for the genocide in Srebrenica, the persecution of Bosniaks and Croats, terrorization of Sarajevo citizens and taking members of international peace forces (UNPROFOR) hostage, assessments of the judgment soon followed. Minister of the Interior Aleksandar Vulin said that the Mladić judgment was "a judgment imposed on justice and an act of revenge" and that the Hague Tribunal had been "set up not to seek justice and contribute to reconciliation but to put Serbs on trial".<sup>14</sup> Prime Minister Ana Brnabić did not wish to comment on the judgment itself, but said that "there is no doubt that the Hague tribunal is a political one" and one that rather than contribute to reconciliation has only taken us farther away from it. She also stated that "this day shall signify new pressures on Serbia, and while the Hague tribunal may not have put Serbia on trial, it certainly did Serbs" and that "Serb victims have not seen any justice done, they have, in fact, remained second class victims, which is terrible and appalling".<sup>15</sup> Seeking to demonstrate that the judgment was unjust, the media reported extensively on the dissenting opinion of Judge Prisca Matimba Nyambe, a member of the Appeals Chamber, stating, e.g. that it showed "how much the Hague tribunal manipulated the events in Srebrenica in its judgments", that there was no genocide<sup>16</sup>, that she "would have ordered a retrial"<sup>17</sup> and that "the judgment in The Hague was not all smooth sailing".<sup>18</sup> Vojislav Šešelj, convicted before the ICTY, also voiced his opinion on the judgment, announcing "an offensive unleashed against Serbia's president Aleksandar Vučić after the Hague Tribunal passed judgment on General Ratko Mladić"<sup>19</sup>. Nela Kuburović, former minister of justice, in an authorial article on the Mladić judgment commented on how much it was all "directed

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14 Slobodna Evropa "Vulin: Mladić's life sentence is not a judgment but an act of revenge", 8 July, available at <https://www.slobodnaevropa.org/a/vulin-presuda-mladicu/31296916.html>, accessed on 17 January 2022.

15 B92 "Ana Brnabić on the judgment", 8 June 2021, available at [https://www.b92.net/info/vesti/index.php?yyyy=2021&mm=06&dd=08&nav\\_id=1871585](https://www.b92.net/info/vesti/index.php?yyyy=2021&mm=06&dd=08&nav_id=1871585), accessed on 17 January 2022.

16 Alo "Judge Nyambe debunked the great myth, there was no genocide in Srebrenica - the Muslim victims in Srebrenica are mainly armed soldiers of the Army of Bosnia and Herzegovina" 11 June 2021, available at <https://www.alo.rs/vesti/politika/512733/sudija-nijambe-razbila-veliki-mit-nema-genocida-muslimanske-zrtve-u-srebrenici-su-uglavnom-naoruzani-vojnici-abih/vest>, accessed on 17 January 2021.

17 Blic "Judge Nyambe: I would order a retrial", 8 June 2021, available at [https://www.blic.rs/vesti/politika/ratko-mladic-presuda-sudija-nijambe/bkfcdk5?pushmedia=3ab096139f4f791&utm\\_source=browser&utm\\_campaign=push\\_3ab096139f4f791&utm\\_medium=push](https://www.blic.rs/vesti/politika/ratko-mladic-presuda-sudija-nijambe/bkfcdk5?pushmedia=3ab096139f4f791&utm_source=browser&utm_campaign=push_3ab096139f4f791&utm_medium=push), accessed on 17 January 2022.

18 Kurir "The Mladić judgment in The Hague was not all smooth sailing: Why was Judge Nyambe's position on Srebrenica and the Army of Republika Srpska dissenting", 8 June 2021, available at <https://www.kurir.rs/vesti/politika/3705407/haska-presuda-mladicu-nije-prosla-glatko-zasto-se-sudija-nijambe-imala-drugaciji-stav-o-srebrenici-i-vojski-republike-srpske>, accessed on 17 January 2022.

19 Espresso: "What Šešelj said after Mladić's judgment! This Serbian politician will pay the price for all his deeds" 8 June 2021, available at [https://www.espresso.co.rs/vesti/politika/809823/seselj-se-oglasio-posle-presude-mladicu-ovog-srpskog-politicara-ce-stici-kazna-za-to-sto-je-uradio?utm\\_source=Midas&utm\\_medium=Widget&utm\\_campaign=Mini%2bPool%2b\(Kurir%2b%252f%2bMondo%2b%252f%2bEspresso\)](https://www.espresso.co.rs/vesti/politika/809823/seselj-se-oglasio-posle-presude-mladicu-ovog-srpskog-politicara-ce-stici-kazna-za-to-sto-je-uradio?utm_source=Midas&utm_medium=Widget&utm_campaign=Mini%2bPool%2b(Kurir%2b%252f%2bMondo%2b%252f%2bEspresso)), accessed on 17 January 2022.



against Serbia and the Serbian people”<sup>20</sup>, while he tabloids portrayed the convicted Ratko Mladić as a hero.<sup>21</sup>

On 30 June 2021, The Trial Chamber of the International Residual Mechanism for Criminal Tribunals sentenced former leaders of the State Security Service (SDB) Jovica Stanišić and Franko Simatović – Frenki to 12 years of imprisonment each for the crimes of the Red Berets against the non-Serb population in Bosanski Šamac in the spring of 1992. This judgment too was met with condemnation on the part of the political elite in Serbia, with, e.g. president Aleksandar Vučić stating that “this is revenge exacted upon us”<sup>22</sup> and Aleksandar Vulin, Minister of the Interior, that “the judgment imposed on the former leaders of the State Security Service Jovica Stanišić and Franko Simatović is an attempt at putting the Serbian state and the Serbian people on trial”.<sup>23</sup>

Vladimir Lazarević, colonel-general of the Serbian Armed Forces and former commander of the VJ Priština Corps, whom the ICTY sentenced to 14 years of imprisonment for crimes against humanity, violation of the laws or customs of war and other inhumane acts committed in Kosovo from March to June 1999, was on 11 August 2021 conferred the freedom of the city municipality of Pantelej in Niš.<sup>24</sup>

On the occasion of marking the anniversary of the beginning of the bombing of the Federal Republic of Yugoslavia, a Radio Television of Serbia programme hosted Nikola Šainović, former vice premier of the FRY Government, and Vladimir Lazarević, former general of the Yugoslav Army, both convicted by the ICTY for crimes against humanity committed during the war in Kosovo. Both denied responsibility for the committed crimes, with Šainović stressing that they had been “the acts of individuals”, for which the Yugoslav authorities could not be held accountable. “Somebody had to pay for that and we paid”, he said.<sup>25</sup>

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Veselin Šljivančanin, also convicted before the ICTY for crimes committed at Ovčara in 1991, continued to promote his books in cultural institutions. The promotional event for the book “This is my country, I am in command here” had originally been scheduled for 9 September 2021, at the children’s department of the “Dositej Novaković” National Library in Negotin, but rather than being

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20 Novosti “Authorial text by Nela Kuburović: The Tribunal dishonored its own Statute”, 11 June 2021, available at <https://www.novosti.rs/vesti/kolumne/1005820/autorski-tekst-nele-kuburovic-tribunal-srusio-svoj-statut>, accessed on 17 January 2022.

21 Balkan transitional justice “After the final judgment Serbian tabloids describe Mladić as a ‘hero’”, 9 June 2021, available at <https://balkaninsight.com/2021/06/09/srpski-tabloidi-nakon-konacne-presude-mladica-opisuju-kao-heroja/?lang=sr>, accessed on 17 January 2022.

22 B92 “Some say that The Hague judges took enormous sums of money for that ...This is revenge exacted upon us”, 1 July 2021, available at [https://www.b92.net/info/vesti/index.php?yyyy=2021&mm=07&dd=01&nav\\_category=11&nav\\_id=1884324](https://www.b92.net/info/vesti/index.php?yyyy=2021&mm=07&dd=01&nav_category=11&nav_id=1884324), accessed on 17 January 2022.

23 RTS “Reactions to the Simatović and Stanišić Judgment”. 20 June 2021, available at <https://www.rts.rs/page/stories/sr/story/125/drustvo/4426846/presuda-simatovic-stanistic-reakcije.html>, accessed on 17 January 2022.

24 Pantelej municipality News of 11 August 2021, available at <http://www.pantelej.org.rs/news/1146>, accessed on 17 January 2021.

25 Balkan transitional justice “Šainović and Lazarević denied responsibility for crimes against Albanian civilians”, 24 March 2021, available at <https://balkaninsight.com/2021/03/24/sainovic-i-lazarevic-negirali-odgovornost-za-zlocine-nad-albanskim-civilima/?lang=sr>, accessed on 17 January 2022.



cancelled in response to public pressure it was only shifted to the Library pavilion in the city park.<sup>26</sup> Promotions of the book were held on 23 October 2021 in the National Library in Rekovac<sup>27</sup> as well as in Žarkovo.

On 5 May 2021, to mark the 190<sup>th</sup> anniversary of the founding of the Serbian Armed Forces Guard, the Guard commander, Major-General Milomir Todorović, honoured, among others, Veselin Šljivančanin with a commendation as the highest tribute for his contribution to the promotion of the work and reputation of the Guard.

On 28 December 2021, General Milan Mojsilović, Chief of the Serbian Armed Forces General Staff, conferred a commemorative military medal for his participation in the defence against NATO's aggression against the FRY on retired General Vinko Pandurević, finally convicted by the ICTY of a crime against humanity and of war crimes committed in July 1995 in Srebrenica.<sup>28</sup>

On 22 September 2021, the book "Košare and Paštrik – Serbian Thermopylae", was presented at the Serbian Army Hall, co-authored by Nebojša Pavković, former commander of the 3<sup>rd</sup> VJ Army, also convicted by the ICTY of crimes against humanity and war crimes committed during the war in Kosovo.<sup>29</sup>

Organised by the Ministry of Defence, on 23 September 2021, the documentary "The Heroic 125<sup>th</sup> Motorised Brigade" premiered at the Yugoslav Cinematheque.<sup>30</sup> During the war in Kosovo, 1,813 Albanian civilians were killed in the zone of responsibility of this brigade.<sup>31</sup> The trial is on-going of twelve members of the 177<sup>th</sup> Peć Military-Territorial Detachment, which was under the command of the 125<sup>th</sup> Motorised Brigade, for war crimes against civilians. The Public Relations Department of the Ministry of Defence and the "Zastava film" Military Film Centre broadcast the film "The Heroic 125<sup>th</sup> Motorised Brigade" as part of a serial of six documentaries within the project "War Brigades Awarded the Order of National Hero in 1999".

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26 02! "Following public reaction, the promotion of a war criminal's book was transferred from the children's library, 8 September 2021, available at <https://www.021.rs/story/Info/Srbija/284252/Posle-reakcije-javnosti-promocija-knjige-ratnog-zlocinca-premestena-iz-decije-biblioteke.html>, accessed on 17 January 2022.

27 Rekovac Library, News, 23 October 2021, available at <https://bibliotekarekovac.rs/2020/10/23/promocija-knjige-veselina-sljivancanina-ovo-je-moja-zemlja-ovde-ja-komandujem-2/>, accessed on 17 January 2022.

28 Ministry of Defence of the Republic of Serbia, Reception for the delegation of the Club of Generals and Admirals of Serbia, 28 December 2021, available at <https://www.mod.gov.rs/lat/18208/prijem-delegacije-kluba-general-a-i-admirala-srbije-18208>, accessed on 17 January 2022.

29 N1 "Book on Košare and Paštrik by Pavković and Antić presented, a message from prison", 22 September 2021, available at <https://rs.n1info.com/vesti/predstavljena-knjiga-pavkovic-a-i-antica-o-kosarama-i-pastriku-poruka-iz-zatvora/>, accessed on 17 January 2022.

30 Ministry of Defence of the Republic of Serbia (2021) "Premiere of the documentary "The Heroic 125<sup>th</sup> Motorised Brigade", Ministry of Defence, 23 September 2021, available at: <https://www.mod.gov.rs/lat/17868/premijera-dokumentarnog-filma-herojska-125-motorizovana-brigada-17868>, accessed on 20 January 2022.

31 Humanitarian Law Center (2013) Dossier: the 125<sup>th</sup> Motorised Brigade of the Yugoslav Army, Belgrade: Humanitarian Law Center, available at: <http://www.hlc-rdc.org/wp-content/uploads/2013/10/Dosije-125.pdf>, accessed on 20 January 2022.



On 15 November 2021, the Ministry of the Interior and Radio Television of Serbia presented a new series of documentary feature films "The Kosovo Dossier", which deals with the chronology of events and the fates of civilians and police officers in Kosovo in the period between 1998 and 2001.<sup>32</sup> As announced, the series will include six films, the first two of which will be shown in early 2022 and are dedicated to civilians who lost their lives and 118 police officers who perished in Kosovo in 1998.

Announcing the series, Serbian Minister of the Interior, Aleksandar Vulin, emphasized that "the Ministry is duty-bound to preserve the truth about the time of the Albanian armed insurrection and NATO aggression against our country" and that "the series is an organised, systematic, documented and truth- and evidence-based way to tell the Serbian story and our history". From the announcements that one of the films shall be about Račak, which in the words of the lady who authored the films "recounts a police action which was brilliantly executed and which was ultimately portrayed as a horrendous ordeal of civilians"<sup>33</sup>, it is obvious that the series is in the service of historical revisionism of the role of VJ and police forces of the Republic of Serbia in the armed conflicts in Kosovo.

## Mural of Ratko Mladić

On 23 July 2021, a mural of finally convicted war criminal Ratko Mladić cropped up on Njegoševa Street in Belgrade.<sup>34</sup> This is just one of many Ratko Mladić murals in existence throughout Serbia. The Njegoševa St. mural was painted over a number of times during the summer but was always restored.

As the Vračar borough would not remove the mural of the war criminal on its own initiative, and the local homeowners were afraid to do it, representatives of the Youth Initiative for Human Rights NGO notified their intention to hold a public gathering, scheduled for 9 November 2021, being the Day Against Fascism and Antisemitism. Their application stated that the homeowners association could not arrange for the removal of the mural because a number of professional housepainters had refused to do it fearing the extremist groups standing guard by the mural, and also because the mural was initially covered with a protective anti-whitewashing layer, necessitating this action to be carried out by a professional service, which the YIHR representatives recruited.

The Vračar police station banned the public gathering by its decision of 4 November 2021, because "the danger existed of a conflict breaking out with persons who would protest against and oppose the holding of the gathering".<sup>35</sup>

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32 Ministry of the Interior of the Republic of Serbia (2021) "Minister Vulin: 'The Kosovo Dossier' a systematic, documented and truth- and evidence-based series about the truth", MUP, 15 November 2021, available at: <https://bit.ly/3H5sGAw>, accessed on 20 January 2022.

33 Radio and television of Vojvodina, "MUP and RTS presented 'The Kosovo Dossier'; Vulin: Series on the truth" 15 November 2021, available at [https://www.rtv.rs/sr\\_lat/drustvo/mup-i-rti-predstavili-dosije-kosovo;-vulin-serijal-o-istini\\_1288856.html](https://www.rtv.rs/sr_lat/drustvo/mup-i-rti-predstavili-dosije-kosovo;-vulin-serijal-o-istini_1288856.html), accessed on 17 January 2022.

34 Danas daily, "Mural depicting Ratko Mladić cropped up on Njegoševa Street in Belgrade", 23 July 2021, available at 2. U Beogradu je 23. jula 2021. godine u Njegoševoj ulici osvanuo mural pravnosnažno osuđenom ratnom zločincu Ratku Mladiću, accessed on 20 January 2022.

35 Decision 03.15.11.2 number: 212-70/21 of the Vračar Police Station, of 4 November 2021.





The decision was appealed from, but the Ministry of the Interior denied the appeal by its decision of 6 November 2021, without making any reference to the appeal counts. The second-instance authority just said in one sentence that the first instance decision was regular and lawful.<sup>36</sup>

Upon receipt of this decision, a complaint was filed with the Administrative Court, requesting, among other, the stay of execution of the decision of the Ministry of the Interior. On 9 November 2021, the Administrative Court rejected the stay of execution request, expounding that this was not a substantive act whose stay of execution could be requested.<sup>37</sup> The claim itself has not yet been decided by the Administrative Court although proceedings in this legal matter should be considered urgent.

The Youth Initiative for Human Rights informed the public that the gathering had been banned. In addition, the police deployed police forces around the mural, which guarded and protected the war criminal's mural all day on 9 November 2021 to prevent any damage to it. Minister of the Interior Aleksandar Vulin described the efforts to remove the mural as "hypocritical, perfidious and ill-intended".<sup>38</sup>

However, on the day of the scheduled event, two women activists, Aida Ćorović and Jelena Jaćimović, came to the mural and threw eggs on it. The police took them into custody and released them from the police station only later that evening. The police used excessive force against them and deprived them of freedom. All this was filmed on camera.<sup>39</sup>

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Following such police conduct, numerous activists gathered and headed towards the mural on Njegoševa Street, protesting against the arrest of the two activists. At the same time, groups of extremists gathered and shouted threats at the activists, with the minister of police also showing up at the scene.<sup>40</sup> The police protected the war criminal's mural all day.

The assembly ban imposed by the police on the activists for which the reason given was the potential danger of a conflict breaking out with persons who would "protest against and oppose the holding of the gathering..." clearly demonstrates that the police put extremists groups and activists in the same bracket. This was a signal that the activists who wanted to whitewash the war criminal's mural had no support of the state whatsoever, and that, on the contrary, the state decided to protect the Ratko Mladić mural as a singular monument to what currently is the dominant political idea in Serbia.

Such action on the part of the state drew wide criticism, and on 19 November 2021, rapporteurs of the Parliamentary Assembly of the Council of Europe urged the authorities of the Republic of

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36 Decision 03.3. number: 214-2159/21 of the Ministry of the Interior - Police Directorate – of 9 November 2021.

37 Decision 21 U.26605/21 of the Administrative Court, of 9 November 2021.

38 Ministry of the Interior of the Republic of Serbia (2021) "Minister Vulin: Do not hide behind Antifascism", MUP, 5 November 2021, available at: <https://bit.ly/3msa99H>, accessed on 20 January 2022.

39 Video: Police action against woman activist targeting the Mladić mural in Belgrade | Ratko Mladić Vijesti | Al Jazeera, accessed on 20 January 2022.

40 N1 "Police cordon blocked access to mural depicting Ratko Mladić, Vulin says – order maintained", 10 November 2021, available at <https://rs.n1info.com/vesti/skup-podrske-aidi-corovic-aktivisti-kazu-da-ce-krenuti-ka-muralu-mladicu/>, accessed on 20 January 2022.



Serbia to remove the Ratko Mladić mural and take “strong measures against the glorification of war criminals”.<sup>41</sup> At a Security Council session, Serge Brammertz, Chief Prosecutor of the International Residual Mechanism for Criminal Tribunals, and ambassadors of western countries condemned the glorification of war criminals, adducing as an example the mural dedicated to Ratko Mladić in downtown Belgrade.<sup>42</sup>

The first war crimes prosecutor in the Republic of Serbia, Vladimir Vukčević, also reacted to the glorification of war criminals by calling upon the citizens to sign the appeal “A crime is a crime”, warning that such politics were pushing Serbia into new conflicts.<sup>43</sup>

Citizens of Belgrade and of other cities in Serbia also reacted to the graffiti extolling war criminals. In Belgrade, many graffiti and stencils dedicated to Ratko Mladić were covered with the black circle, square and cross symbols of the famous avant-garde artist of the first half of the 20<sup>th</sup> century, Kazimir Malevich. On most of the graffiti is a signature, where, apart from the name of the Soviet artist, are written the words “anti-miserabilistic avant-art interventionism”.<sup>44</sup>

Stickers with the inscription “Ratko Mladić – convicted of genocide” appeared in a number of places in Belgrade,<sup>45</sup> Novi Sad,<sup>46</sup> Pančevo,<sup>47</sup> Niš<sup>48</sup> and other cities. After the graffiti “Ratko Mladić Serbian hero” appeared on the building of the Belgrade Youth Center, a group of non-governmental organisations and antifascists staged a protest during which the graffiti was pasted over with stickers “Ratko Mladić - war criminal”,<sup>49</sup> and that same day, after the stickers had been removed, the activists erased the graffiti.<sup>50</sup> However, the graffiti was there again already on the following day<sup>51</sup> and has not been removed to date.

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41 Danas “The Council of Europe called upon the Serbian authorities to remove the mural depicting Ratko Mladić”, 11 November 2021, available at <https://www.danas.rs/vesti/drustvo/savet-evrope-pozvao-srpske-vlasti-da-uklone-mural-sa-likom-ratka-mladica/>, accessed on 20 January 2022.

42 Politika “Brammertz condemned in the UN SC glorification of Mladić on mural”, 13 December 2021, available at <https://www.politika.rs/scc/clanak/494378/Bramerc-u-SB-UN-osudio-velicanje-Mladica-na-muralu>, accessed on 20 January 2022.

43 Danas “Over 600 citizens signed the petition ‘A crime is a crime’” 13 November 2021, available at <https://www.danas.rs/vesti/drustvo/vise-od-600-gradjana-potpisalo-peticiju-zlocin-je-zlocin/>, accessed on 20 January 2022.

44 Mašina, “Malevich’s squares over the image of Ratko Mladić: new graffiti by unknown authors turned up” 10 December 2021, available at: <https://www.masina.rs/maljevicevim-kvadratima-preko-lika-ratka-mladica-osvanulim-novi-grafiti-nepoznatih-autora/>

45 N1, “Downtown Belgrade pasted with messages ‘Ratko Mladić convicted of genocide’”, 19 November 2021, available at: <https://rs.n1info.com/vesti/centar-beograda-oblepljen-porukama-ratko-mladic-osudjen-za-genocid/>

46 Danas, “‘Ratko Mladić convicted of genocide’ stickers in Novi Sad too”, 21 November 2021, available at: <https://www.danas.rs/vesti/drustvo/i-u-novom-sadu-nalepnice-ratko-mladic-osudjen-za-genocid/>

47 N1, “After Belgrade, ‘Ratko Mladić convicted of genocide’ stickers in Pančevo as well”, 20 November 2021, available at: <https://rs.n1info.com/vesti/posle-beograda-i-u-pancevu-nalepnice-ratko-mladic-osudjen-za-genocid/>

48 Danas, “Stickers against Ratko Mladić cropped up in Niš as well”, 2 December 2021, available at: <https://www.danas.rs/vesti/drustvo/nalepnice-protiv-ratka-mladica-osvanule-i-u-nisu/>

49 Radio Slobodna Evropa, “Ratko Mladić – war criminal’ stickers on the graffiti in Belgrade”, 25 November 2021, available at: <https://www.slobodnaevropa.org/a/beograd-nalepnice-grafit-ratko-mladic/31578809.html>

50 N1, “Graffiti dedicated to Ratko Mladić erased from the Belgrade Youth Center building”, 25 November 2021, available at: <https://rs.n1info.com/vesti/protest-nvo-kod-doma-omladine-policija-ne-dozvoljava-prilaz-novinarima/>

51 N1, “Graffiti dedicated to Mladić on the Youth Center facade ‘repaired’”, 26 November 2021, available at: <https://rs.n1info.com/vesti/grafit-posvecen-mladicu-na-fasadi-doma-omladine-popravljen/>





## 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>52</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>53</sup>

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>54</sup> It was divided into eight areas, with the general objectives, activities and deadlines for implementation defined for each. The areas are: 1. Improving the efficiency of war crimes proceedings before the authorities of the Republic of Serbia; 2. Protection of witnesses and victims; 3. Support to witnesses and victims; 4. Defence of the accused; 5. War crimes trials and the issue of missing persons; 6. Cooperation with the International Criminal Tribunal for the former Yugoslavia; 7. Regional and broader international cooperation; 8. Improvement of overall societal attitudes to the issue of war crimes trials.

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The HLC has monitored and reported on the implementation of the National Strategy, with the objective of assisting in the assessment of the quality and level of implementation of the planned measures and activities. The general conclusion relative to the achieved results of the first National Strategy is that the basic objective – that of improving the efficiency of war crimes proceedings before the authorities of the Republic of Serbia has not been attained. On the contrary, the HLC maintains that while it was in effect, Serbia evidently regressed in terms of the prosecution of war crimes and confrontation with the past.

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52 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.

53 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%20spvodjenje%20Nacionalne%20strategije%20za%20procesuiranje%20ratnih%20zlocina%20%20%28Sluzbeni%20glasnik%2097%2021%29%20111.pdf>, accessed on 15 February 2022.

54 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)



A detailed overview of the results of the implementation of the 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 had presented while the strategy was in effect.<sup>55</sup>

The HLC principally criticised the newly adopted 2021 – 2026 National Strategy because its analysis of the current state of affairs in the prosecution of war crimes consisted only of partial data obtained exclusively from the institutions in charge, making the analysis deficient and failing to portray a true picture of how things stand. Such an analysis of the situation resulted in the setting of baseline values in the National Strategy that do not adequately mirror reality, and hence in planning measures and activities which cannot substantially contribute to the more efficient prosecution of war crimes. It is, for instance, stated in the National Strategy that between 2016 and 2020 the OWCP had issued a total of eight self-initiated and confirmed indictments, and also that “*the considerable strengthening of OWCP capacity in the period under review should prospectively result in new indictments.*” Such an analysis implies the conclusion that the current situation is sound and that it should be slightly improved during the period of implementation of the newly adopted National Strategy. However, it is a fact that throughout the analysed period the number of deputy prosecutors per year was higher than that of OWCP’s issued and confirmed indictments. Thus in 2020, only two of OWCP’s own indictments were confirmed, whereas in that period it had ten deputy prosecutors, which attests to its disastrous performance. The state of affairs being as it is, it is insufficient for the National Strategy to envisage that the period ahead “should result in new indictments”.

The HLC has been raising objections for years now related to the policy of prosecution of “less demanding” cases, those that list a smaller number of victims and cases which refer to isolated and minor incidents, as well as to the absence of cases with senior-ranking perpetrators as the accused. Apparently, the new Strategy has not addressed this problem either. In that context, the HLC is of the opinion that the absence of clear criteria for prioritising cases can actually sustain the continued practice of prosecuting “less demanding” cases of war crimes.

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A key objection to the just adopted National Strategy is that the opportunity to devote due attention to the informing of the Serbian public on war crimes and on issues of importance for confrontation with the past has been passed up. Namely, in contrast to the previous National Strategy, effective from

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55 First Report on the Implementation of the National Strategy for the Prosecution of War Crimes, HLC, December 2017, available at [http://www.hlc-rdc.org/wp-content/uploads/2017/12/Izvestaj\\_Strategija\\_1.pdf](http://www.hlc-rdc.org/wp-content/uploads/2017/12/Izvestaj_Strategija_1.pdf); Second Report on the Implementation of the National Strategy for the Prosecution of War Crimes, HLC, June 2018, available at [http://www.hlc-rdc.org/wp-content/uploads/2018/07/Izvestaj\\_Strategija\\_2\\_SRP-ff.pdf](http://www.hlc-rdc.org/wp-content/uploads/2018/07/Izvestaj_Strategija_2_SRP-ff.pdf); Third Report on the Implementation of the National Strategy for the Prosecution of War Crimes, HLC, December 2018, available at [http://www.hlc-rdc.org/wp-content/uploads/2018/12/Treci\\_izvestaj\\_o\\_sprovodjenju\\_Nacionalne\\_strategije\\_za\\_procesuiranje\\_ratnih\\_zlocina.pdf](http://www.hlc-rdc.org/wp-content/uploads/2018/12/Treci_izvestaj_o_sprovodjenju_Nacionalne_strategije_za_procesuiranje_ratnih_zlocina.pdf); Fourth Report on the Implementation of the National Strategy for the Prosecution of War Crimes, HLC, June 2019, available at <http://www.hlc-rdc.org/wp-content/uploads/2019/07/%C4%8Cetvrti-izve%C5%A1taj-o-sprovo%C4%91enju-Nacionalne-strategije-za-procesuiranje-ratnih-zlo%C4%8Dina.pdf> Fifth Report on the Implementation of the National Strategy for the Prosecution of War Crimes, HLC, December 2019, available at [http://hlc-rdc.org/wp-content/uploads/2019/12/Peti\\_izvestaj\\_o\\_sprovodjenju\\_Nacionalne\\_strategije\\_za\\_procesuiranje\\_ratnih\\_zlocina.pdf](http://hlc-rdc.org/wp-content/uploads/2019/12/Peti_izvestaj_o_sprovodjenju_Nacionalne_strategije_za_procesuiranje_ratnih_zlocina.pdf), all texts accessed on 15 February 2022.



2016 to 2020,<sup>56</sup> the new National Strategy does not devote a special section to activities on this subject. At the time of drafting this report, the public is unable to find out even the exact number or the names of deputy prosecutors at the OWCP, as these data have not been updated on the OWCP website for quite some time. Thus the names of only 10 deputy prosecutors feature on the OWCP website, while twelve of them are in the Action Plan. This is but one example to show that in the absence of a dedicated section dealing with public information, the situation in the forthcoming period can only deteriorate further.

## Transfer of criminal prosecution to Bosnia and Herzegovina

Edin Vranj, former Chief of the Crime Police Sector in the BiH Federal Police Directorate was arrested on 12 September 2021 at the Uvac border crossing between BiH and Serbia, pursuant to a Serbian wanted warrant issued on suspicion of the commission of a war crime.

The Higher Court in Belgrade remanded him in custody for up to 30 days, and the OWCP brought an indictment against him on 13 October, 2021 for the criminal offence of a war crime against prisoners of war referred to in Article 144 of the Criminal Code of the Federal Republic of Yugoslavia

Pursuant to regulations governing regional cooperation between the Republic of Serbia and Bosnia and Herzegovina, namely the Law on International Legal Assistance in Criminal Matters and the Agreement between the Republic of Serbia and Bosnia and Herzegovina on Legal Assistance in Criminal and Civil Matters, the OWCP filed a motion with the Higher Court in Belgrade for transferring criminal prosecution to the BiH authorities. The Court granted the motion, Edin Vranj was released from custody and criminal prosecution was transferred to the competent BiH authorities.

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This is the first case of the transfer of prosecution of BiH citizens arrested on entering the Republic of Serbia. Earlier arrested were Samir Hondo, criminal proceedings against whom ended in a final judgment of acquittal on 9 June 2014<sup>57</sup>, Ilija Jurišić, criminal proceedings against whom ended in a final judgment of acquittal on 25 December 2015<sup>58</sup> and Husein Mujanović<sup>59</sup> and Osman Osmanović<sup>60</sup> against whom proceedings are being conducted before the Higher Court in Belgrade.

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56 2016 -2020 National Strategy for the Prosecution of War Crimes, February 2016, available on the official website of the Office of the War Crimes Prosecutor: <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 February 2022.

57 Judgment Kž1.Po2 3/14 of the Court of Appeal in Belgrade of 9 June 2014.

58 Judgment Kž1 Po2 5/14 of the Court of Appeal in Belgrade.

59 HLC Press release "Husein Mujanović should be extradited to BiH", 21 February 2019, available at Huseina Mujanovića treba izručiti BiH, accessed on 15 February 2022.

60 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 14 February 2022.



The HLC welcomes such decisions of the OWCP and the Court as they contribute both to building mutual confidence and regional cooperation as well as to enhancing trust in the judiciary of the Republic of Serbia.

The cases were transferred following a meeting between the President of the Republic of Serbia Aleksandar Vučić and Minister of the Interior Aleksandar Vulin, State Secretary in the Ministry of Justice Bojana Šćepanović, republican Public Prosecutor Zagorka Dolovac and War Crimes Prosecutor Snežana Stanojković, which was held on 14 October 2021. The meeting discussed international cooperation, particularly the promotion of existing cooperation with the competent authorities of BiH in the prosecution of war crimes and their perpetrators in the territories of the two countries.<sup>61</sup>

Following the meeting, Serbian Minister of the Interior Aleksandar Vulin **stated that there were indictments issued against 26 citizens of Bosnia and Herzegovina by the judicial authorities of Serbia for war crimes committed against Serbs, and that Serbia was prepared to transfer these cases to the BiH judicial authorities which will then “have the chance to demonstrate their justice and whether anyone will be actually convicted”**<sup>62</sup>

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61 Beta “Meeting with Vučić: Office of the Prosecutor proposed to transfer the Vranj case to Bosnia” 14 October 2021 available at <https://beta.rs/vesti/politika-vesti-srbija/153613-sastanak-kod-vucica-tuzilastvo-predlozilo-da-se-slucaj-vranj-prepusti-bosni>, accessed on 15 February 2022.

62 N1 “Vulin: We are prepared to transfer cases against 26 BiH citizens” 14 October 2021, available at <https://ba.n1info.com/vijesti/vulin-spremni-smo-ustupiti-predmete-protiv-26-drzavljana-bih/>, accessed on 15 February 2022.



# WAR CRIMES CASES BEFORE THE HIGHER COURT

## I. The Bratunac II Case<sup>63</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>Number of scheduled court days in the reporting period:</b> 7
<b>Defendants' 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> 5
<b>Total number of witnesses heard:</b> 5	<b>Total number of expert witnesses heard:</b>
<b>Key developments in the reporting period:</b>	
Main hearing	

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<sup>63</sup> The Bratunac II Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/bratunacII.html> accessed on 25 November 2021.



## Course of the proceedings

### **Indictment**

The accused Novak Stjepanović, at the time a member of the VRS /Army of Republika Srpska/ Bratunac unit –Military Post 7042, is charged with having raped on an unspecified date 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>64</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>65</sup>

### **Witnesses in the proceedings**

In 2021 three court days were held during which five witnesses for the prosecution were examined, and in four instances the main hearings were postponed.

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>66</sup>

Witness Milija Perić stated that he did not remember giving a statement before the competent authorities of Bosnia and Herzegovina on 9 February 2017. After the Chairman of the Chamber 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>67</sup>

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64 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 November 2021.

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

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

67 Ibid.



Witness Petko Rankić gave statements before the competent authorities of Bosnia and Herzegovina 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>68</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>69</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>70</sup>

## HLC Findings

### **Regional cooperation**

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

### **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. Twice main hearings were cancelled for reasons unknown to trial monitors, once the defendant did not show up at the main hearing citing health reasons, and once the hearing was cancelled due to the illness of a Chamber member.

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68 Ibid.

69 Ibid.

70 Ibid



## 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>71</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>72</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>73</sup>. Anonymising publicly posted indictments in this way, the OWCP makes them totally unclear<sup>74</sup>, and the accused totally invisible to the general public, which is entirely contrary to the 2016 and 2021 National Strategies<sup>75</sup>, as well as to the Prosecutorial Strategy for the Prosecution of War Crimes in Serbia<sup>76</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.

71 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 November 2021.

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

73 Detektor, „Od Srbije zatraženo da preuzme krivično gonjenje optuženog za zločine u Bratuncu /Serbia requested to take over prosecution of the accused for crimes in Bratunac” 22 October 2020, available at <https://detektor.ba/2020/10/22/od-srbije-zatrazeno-da-preuzme-krivcno-gonjenje-optuzenog-za-zlocine-u-bratuncu/>, accessed on 3 December 2021.

74 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 2021.

75 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 2021.

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 2021.

76 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 2021.





## II. The Bihać III Case<sup>77</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> first instance proceedings	
<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 Dopuda	
<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> 7
<b>Defendants' rank:</b> no rank	<b>Number of court days in the reporting period:</b> 3
<b>Number of victims:</b> 11	<b>Number of witnesses heard in the reporting period:</b> 8
<b>Total number of witnesses heard:</b> 8	<b>Total number of expert witnesses heard:</b> 0
<b>Key developments in the reporting period:</b>	
Main hearing	

24

<sup>77</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 25 November 2021.



## 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, 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>78</sup>

### **Defence of the accused**

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>79</sup>

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### **Witnesses in the proceedings**

Three court days were held in 2021 on which a total of eight witnesses were heard, and hearings were postponed four times.

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78 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 2021.

79 Transcript of the main hearing held on 9 March 2021.



Witness for the prosecution Kajo Zorić stated that he knew nothing about the events at the IMT repair shop in Ripač in the relevant period. During the war in BiH he was a VRS member, a driver in the Command of the 15<sup>th</sup> Bihać Brigade, he said. The Command was in the barracks in Ripač, where the witness was also quartered during the war. He never went inside the repair facility compound, nor, to his knowledge, did the military police. The witness was told that in an earlier statement he had stated that the accused was a member of the reconnaissance platoon, like Saša Ćurguz, and that someone had told him that some persons were being held captive at the IMT repair facility. They were interrogated in the barracks in Račić, and he actually named the interrogators. He was testifying before a BiH Court in proceedings against Željko Stanarević.<sup>80</sup>

Witness for the prosecution Milan Matijević explained that at the critical time he was a police officer in Ripač working on administrative jobs. The police station was situated in the former IMT service and repair facility. The buildings were enclosed and there were police at the gate. A group numbering around 140 persons was imprisoned there. A certain number, 60 or 70 of them, were exchanged. Those who remained would be taken away by military police in small groups but none ever returned. People said that they were being taken for an exchange or for compulsory work duty. Of the military police who came to get the prisoners he recognised Željko Stanarević, but he does not know the accused. The military police used a TAM 110 military truck to take the people away. The police commander in Ripač was Mihailo Lakić, who ordered that security be stepped up to ensure the safety of the detainees. There would be two police officers at the gate of the facility at all times, controlling entry into the compound and preventing unauthorized persons from entering and maltreating the prisoners.<sup>81</sup>

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Witness for the prosecution Nenad Rodić worked as a policeman in Ripač at the time of the critical incident. The station was situated within the compound of the former IMT service and repair shop. He saw prisoners in the warehouse wearing parts of military uniform. He thinks that before long between 70 and 80 detainees were taken to be exchanged, while the rest remained in the compound. Members of the military police and of the reconnaissance platoon would come for them in a TAM 110 military truck and take them away in groups of ten or so, reportedly for compulsory work service, but not one of them ever came back. He knows the accused, his nickname was “Pigo” and he was a member of the 15th Bihać Brigade Reconnaissance Platoon. Once the witness saw them come to get the prisoners, but he did not recognize any of them. He said that they started taking prisoners away a month after he had joined the police in Ripač on 18 or 19 May 1992. By the end of July or early August 1992, all the prisoners had been taken away. He saw the accused several times in June 1992, but outside the barracks and the repair facility compound.<sup>82</sup>

Witness for the prosecution Milan Popović was also working as a police officer in Ripač at the relevant time, and the station was within the compound of the former IMT repair shop. In June 1992, a large number of citizens, civilians from Ćukovi, were brought there. There were about 120 of them and

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80 Transcript of the main hearing held on 2 June 2021.

81 Ibid.

82 Ibid.



they were held there for about two months. While on shift duty, the witness could see military police and security guards coming in a TAM 110 military truck and taking away the detainees in groups of seven. He was told that they were being taken for interrogation, but none of those taken away ever returned. Their names would be called out by security guard Ratko Mihailović. Among the military police who came for the detainees he recognised Željko Stanarević, who treated the prisoners harshly – he subjected them to brutal mistreatment. He trampled on them as they lay in the truck covered with a tarpaulin. Two months later he heard that they had been thrown into the Hrgar pit, but he could not recall who had told him that. He knew some of the captives, they used to be co-workers. He has heard of the nickname “Pigo”, but he does not know who is in question.<sup>83</sup>

Witness for the prosecution Alija Handžić knew nothing about the critical event.<sup>84</sup>

Witness for the prosecution Muharem Štrkljević stated that in June 1992 Bosniaks were forcibly removed from the Kulen Vakuf area, to arrive first at Orašac and then at Štrbački Buk, where members of Serb armed forces separated a number of men. He does not know upon which criterion they were separated – he assumes that either those who had parts of military uniforms on or who looked as if they belonged to some military formation were taken out of the column. The witness himself was taken out of the column because he wore an army jacket. He saw Muharem Kurtagić being separated on that occasion also. The separated men were bound with wire and then transported by trucks to the village of Ripač, where they were locked up in the IMT service and repair facility. Between 130 and 140 men were detained there. A list of all the detainees was drawn up, and 15 or 16 days later, 70 of them, including the witness, were exchanged. Police officers entered the room in which they were detained and called out the names of 70 men who were taken to be exchanged. The prisoners who remained in the repair shop, between 60 and 65 of them, were all later killed. While the witness was in the repair shop, prisoners were repeatedly led away, usually in twos or threes, with between 12 and 15 prisoners taken away in all, never to return. They were taken away by the police, following a roll call of those to be led away. Whoever so wished could enter the repair shop and beat up the prisoners. He remembered a person nicknamed “Piksi”, who used to be a waiter and who repeatedly came and beat the prisoners. He does not know the accused or Željko Stanarević or Saša Đurguz, nor is the nickname “Pigo” familiar.<sup>85</sup>

27

Witness for the prosecution Sead Dautović had no knowledge of the events in the IMT service and repair facility in Ripač, as he had left it in May 1992. He later heard that people had been detained and maltreated there. He does not know the accused or Željko Stanarević or Saša Đurguz.<sup>86</sup>

Witness for the prosecution Derviš Čirić did not have first-hand knowledge of the critical events either, as he had left Ripač on 23 May 1992. He later found out that after he left Ripač, a camp was set up at the IMT service and repair facility, that civilians were held there and that some of them

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83 Ibid.

84 Transcript of the main hearing held on 15 September 2021.

85 Ibid.

86 Ibid.



were exchanged and others killed. He heard from inmates who had survived that police officer Slavko Dotlić maltreated and killed camp inmates, but he could not recall who exactly he had heard it from. He does not know the accused, but he had heard from survivors that the accused persecuted them in the camp. He knows Saša Čurguz, he knows that he was in the Ripač area, and he had heard that he also cruelly maltreated camp inmates.<sup>87</sup>

## HLC Findings

### **Regional cooperation**

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

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

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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>88</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 before the OWCP issued the indictment.<sup>89</sup>

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87 Ibid.

88 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 2021.

89 BiH Court case, number S1 1 K 017818 14 Kro – Dragan Dopuđa.



### III. The Brod na Drini Case<sup>90</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> first instance proceedings	
<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>Defendants' rank:</b> no rank <b>Number of victims:</b> 2 <b>Total number of witnesses heard:</b> 3	<b>Number of scheduled court days in the reporting period:</b> 5 <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	

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<sup>90</sup> 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

### **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, Bosnia and Herzegovina) and shot them dead with two rifle shots.<sup>91</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 Vranjača'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>92</sup>

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### **Witnesses in the proceedings**

Two court days were held in 2021 on which three witnesses were heard, and hearings were postponed three times.

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

91 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.

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



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 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>93</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>94</sup>

Protected witness S1 was also heard and his examination was barred to the public.<sup>95</sup>

## HLC Findings

### **Regional cooperation**

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

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93 Ibid.

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

95 Ibid.





## IV. The Sanski Most II Case<sup>96</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>Defendants:</b> Branko Basara and Nedeljko Aničić	
<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 Vinka Beraha Nikićević Judge Vera Vukotić
<b>Number of defendants:</b> 2	<b>Number of scheduled court days in the reporting period:</b> 4
<b>Defendants' rank:</b> high-ranking	<b>Number of court days in the reporting period:</b> 3
<b>Number of victims:</b> 287	<b>Number of witnesses heard in the reporting period:</b> 2
<b>Total number of witnesses heard:</b> 2	<b>Total number of expert witnesses heard:</b> 0
<b>Key developments in the reporting period:</b>	
Main hearing	

32

<sup>96</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 2021



## Course of the proceedings

### **Indictment**

The accused 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 – TD/ 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” 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;
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 BČ, 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 Begiči, 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;
  - 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, GE, 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 “Krings” 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, BĆ, ĐD, ĐE, ĐT, who have been exhumed from individual graves throughout the village and identified; ĐZ, ĐI, ĐJ, ĐK, ĐL, ĐLj, ĐM, ĐN, ĐNj, ĐO, ĐP, ĐR, ĐS, ĐT, ĐĆ, ĐU, ĐF, ĐH, ĐC and ĐČ, who have 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, EĐ, 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;
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 “Kring’s” Hall detention facility in Sanski Most; from there they were taken on trucks to Trnopolje in Prijedor and then transported aboard a freight train to Doboj, where they were ordered to continue on foot in the direction of Gračanica, to BIH Army-controlled territory;

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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 V LJ, 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 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. **Attacks 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, ŽF, ŽH, ŽC, ŽČ, TŽ, ŽŠ, ZA, ZB, ZV, ZG, ZD, ZĐ, ZE, ZT, ZI, ZJ, ZK, ZL, ZLj, ZM, ZN, ZNj, ZO, ZP, ZR, ZS, ZT, ZĆ, ZU, ZF, ZH, ZC, ZČ, ZD, ZŠ, IA, IB, IV, IG, ID, IĐ, IE and IŽ, 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;
21. **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 “Krings” 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, IF, IH, IC, IČ, IDŽ, IŠ, JA and JB;

22. **Murder** – on 1 August 1992, the army continued to search Muslim villages on the left bank of the River Sana, and, on arriving in the village of Lukavice, drove all the civilians found there out of their houses, separated the men from the women and children, and led away 14 male civilians from the family (...) to a spot just outside the village and killed them, including JV, JG, JD, JĐ, JE, JŽ, JZ, JL, JK, JL, JLj, JM, JN and JNj; they have been exhumed and identified at the “Lukavice” mass grave.<sup>97</sup>

### **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 is 94 years old.<sup>98</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 neighborhood 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

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97 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 2021.

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





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 killed all 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 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 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.

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.

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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>99</sup>

### **Witnesses in the proceedings**

Three court days were held in the reporting period, on which two witnesses were heard.

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 took his wife and children out of the town. He was arrested on 25 May 1992 and sent

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<sup>99</sup> Ibid.



to the camp at Manjača. He was arrested by soldiers. He remained in the camp until December 1992. He was once beaten up 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>100</sup>

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 as 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 HDZ 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

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100 Transcript of the main hearing held on 17 September 2021.



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 /Croatian Democratic Union/ 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 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 take 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.

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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>101</sup>

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



## HLC Findings

### **Regional cooperation**

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

### **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.

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### **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>102</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 defendants referred to by their full names<sup>103</sup>. Anonymising publicly posted indictments in this way, the OWCP makes them totally unclear<sup>104</sup>, and the accused totally invisible to the general public

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102 Case number S1 1 K 016738 14 Kro of the Court of Bosnia and Herzegovina, available at <http://www.sudbih.gov.ba/predmet/3435/show>, accessed on 15 December 2021.

103 Detektor, "Srbiji ustupljen predmet za zločine u Sanskom Mostu i Prijedoru /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 2021.

104 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 2021.



which is entirely contrary to the 2016 and 2021 National Strategies<sup>105</sup>, as well as to the Prosecutorial Strategy for the Prosecution of War Crimes in Serbia<sup>106</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 Bosnia and Herzegovina.

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105 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 2021.

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 2021.

106 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 2021.



## V. The Rogatica Case<sup>107</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 Vera Vukotić 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> 2	<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> 2 <b>Total number of expert witnesses heard:</b> 0
<b>Key developments in the reporting period:</b> Main hearing	

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<sup>107</sup> The Rogatica Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/Rogatica.html> accessed on 15 December 2021.



## Course of the proceedings

### **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 relocation 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:

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1. Between the end of May and the beginning of June 1992, members of the Territorial Defence of the Serb Municipality of Rogatica, after having on the orders of the accused seized their legally owned weapons from the villagers of the Muslim-inhabited villages of Pašića Kula, Bijelogorice and Godimilje in Rogatica municipality, mounted an infantry attack on the mentioned villages, and, by shooting from automatic weapons and activating hand grenades killed civilians AB, AV, AG, AD, AĐ, AE and AŽ, whose bodies were exhumed early in September 1998; they also set many family homes on fire;
2. On the morning of 3 June 1992, members of the Rogatica Brigade carried out an infantry attack on the undefended Muslim village of Seljani in Rogatica municipality, on which occasion they separated the men from the women and children, and then took civilians AZ, AI, AJ, AK, AL, ALJ, AM, AN, ANJ, AO, AP, AR, AS and AT, to the Piješevac locality in Rogatica municipality, where they deprived them of their lives 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, AČ, ADŽ, BA, BV, BG, BĐ and BŽ were taken in an unknown direction; their bodies were found and exhumed in the year 2000 in the “Paklenik” pit near the village of Kalimanići in Sokolac municipality;

4. In June 1992, members of the 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, BE, BC and BH whose bodies were exhumed in the village of Kukavice in the beginning of October 1998, while all trace was lost of BČ; a large number of Muslim houses in the mentioned villages were torched;
5. On 15 June 1992, at the “Paklenik” pit near the village of Kalimanići in Sokolac municipality, which was in the zone of responsibility of the Rogatica Brigade, VV and another two members of the Rogatica Brigade, together with several members of the Višegrad Brigade and policemen of the Public Security Station of the Serbian municipality of Višegrad, deprived of life by fire from automatic weapons and activation of hand grenades civilians BDŽ, BŠ, VA, VB, VG, VD, VĐ, VE, VŽ, VZ, VI, VJ, VK, VL, VLj, VM, VN, VNj, VO, VP, VR, VS, VT, VĆ, VU, VE, VH, VC, VČ, VDŽ, VŠ,GA,GB,GV,GD, GĐ, GE, GŽ, GZ, GI, GJ,GK, GL, GLJ, GM,GN, GNJ and GO, whom they had 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,GF, GH, GC,GĆ,GDŽ,GŠ, DA, DB, DV, DG, DĐ, DE, DŽ, DZ, DI, DJ, DK, DL, DLj, DM, DN, DNJ, DO, DP, DR, OS, DT, DĆ, DU, DF, DH, DC, 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, ĐE, 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”, “DŠ”, “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 meager 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, JĆ, 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 meager 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>108</sup>

108 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 2021.



Three main hearings were held in 2021 of the scheduled seven. Twice main hearings were postponed due to the absence of a trial chamber member and twice because summoned witnesses failed to appear.

### **Defence of the accused**

At this stage of the proceedings the accused exercised his right to remain silent.<sup>109</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 he did not go to the Rogatica municipality area.<sup>110</sup>

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When armed conflicts broke out in BiH, witness for the prosecution Ferid Spahić was living in the village of Bosanska Jagodina, Višegrad municipality. Buses arrived in the village from Višegrad which were to transport the Bosniak inhabitants to the area around Olovo, which was under the control of the BiH Army. When the bus convoy got to Višegrad, more buses joined, 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 Vukojičić by the pit where the executions were taking place; he later heard that he had been the accused’s right-hand man. He does not know the accused.<sup>111</sup>

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

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

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



## HLC Findings

### **Regional cooperation**

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

### **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.

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### **Unnecessary Anonymisation of the indictment**

The OWCP posted on its website the indictment it had raised against Rajko Kušić anonymised, namely as being against person A.A. instead of naming the accused. Such anonymisation was entirely unnecessary, as data on the indictment, including the full name of the defendant, had already been posted on the website of the BIH Court.<sup>112</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>113</sup>. Anonymising publicly posted indictments in this way, the OWCP makes them totally unclear<sup>114</sup>, and the accused totally invisible to the general public which is

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112 Case number S1 1 K 017608 14 Kro of the Court of Bosnia and Herzegovina, available at <http://www.sudbih.gov.ba/predmet/3434/show>, accessed on 15 December 2021.

113 Detektor, "Potvrđena optužnica protiv Rajka Kušića/Indictment against Rajko Kušić confirmed/", 3 April 2015, available at <https://detektor.ba/2015/04/03/potvrđena-optužnica-protiv-rajka-kusica/>, accessed on 15 December 2021.

114 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%B%D1%82%D1%83%D0%B6%D0%BD%D0%B8%D1%86%D0%B5>, accessed on 3 December 2021.



entirely contrary to the 2016 and 2021 National Strategies<sup>115</sup>, as well as to the Prosecutorial Strategy for the Prosecution of War Crimes in Serbia<sup>116</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.

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115 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 2021.

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 2021.

116 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 2021.



## VI. The Rudice Case<sup>117</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> first instance proceedings	
<b>Date of indictment:</b>	
<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>Number of scheduled court days in the reporting period:</b> 6
<b>Defendants' rank:</b> no rank	<b>Number of court days in the reporting period:</b> 4
<b>Number of victims:</b> 9	<b>Number of witnesses heard in the reporting period:</b> 5
<b>Total number of witnesses heard:</b> 5	<b>Total number of expert witnesses heard:</b> 0
<b>Key developments in the reporting period:</b>	
Main hearing	

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<sup>117</sup> The Rudice Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/Rudice.html> accessed on 15 December 2021.





## Course of the proceedings

### **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 hitherto unknown location where they were deprived of life in an undetermined manner, and their mortal remains have not been found to date;
- 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>118</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 traveled 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 Jehaj 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>119</sup>

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### **Witnesses in the proceedings**

Four court days were held during the reporting period, on which five witnesses were examined.

Witness and injured party Ljubiša Dašić stated that he and his family had lived in the village of Rudice

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118 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 2021.

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



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 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 Šiljegović 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 organisers 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>120</sup>

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 Šiljegović 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>121</sup>

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

121 Ibid.



Witness and injured party Slavica Vratnica, the daughter of the killed Zorka Šiljegović, stated that her mother Zorka had lived in Rudice as a pensioner and that she 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 estate, as well as all 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>122</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 recognize them nor could tell their sex. He did not recognize the accused and he did not associate him with the killings.<sup>123</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>124</sup>

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## 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 2020.<sup>125</sup>

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<sup>122</sup> Ibid.

<sup>123</sup> Transcript of the main hearing held on 9 July 2021.

<sup>124</sup> Transcript of the main hearing held on 8 November 2021.

<sup>125</sup> RTV "Nezir Mehmetaj uhapšen na Merdaru po poternici iz Beograda/ 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 2021.



## VII. The Kalinovik Case<sup>126</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> first instance proceedings	
<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> 4
<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> 1
<b>Number of witnesses heard:</b> 15	<b>Number of expert witnesses heard:</b> 0
<b>Key developments in the reporting period:</b>	
Retrial at first instance	

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<sup>126</sup> The Kalinovik Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/kalinovik.html>, accessed on 14 January 2021.



## Course of the proceedings

### Overview of the proceedings up to 2021

#### 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>127</sup>

#### Defence of the accused

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Presenting his defence, the accused denied having committed the crime he was charged with. He said that during the armed conflict he had been a member of the Army of Republika Srpska and an ordinary soldier. He had relatives in the village of Rudice in the Kalinovik municipality, namely his grandparents and uncles, whom he used to visit. The village had a mixed ethnic composition – Serbs and Muslims lived in it side by side. He knew his Muslim neighbours. Early in August 1992, he was positioned above the village of Rudice. Members of the Bosnia and Herzegovina Army had mounted a major offensive on Trnovo, and he became concerned about his relatives. He came to Kalinovik and with three of his comrades went to the “Miladin Radojević” Primary School, where captured Muslims were held, in order to inquire about his kin. Namely, captured Muslims would be exchanged for prisoners and dead bodies, and, as his uncle had been killed, he went there to see about an exchange. Accompanying him on that occasion were Nenad Ćiro, Nenad Jokić and Zoran Popović, who was later killed. The accused wore a uniform and a bullet-proof vest, and was armed with a rifle and hand grenades. On arriving at the school, he noticed several soldiers and policemen, as well as some civilians - women and children - but he spoke to none of them, nor did he see anyone he knew among them. He asked one of the soldiers what was going on, and left the school some fifteen minutes later. He never again went to the school to obtain information, for already on the following day he was transferred to the village of Dobro Polje, to the defence line. He is unable 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>128</sup>

127 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 25 November 2021

128 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>129</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>130</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>131</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 of the Chamber showed the witness a portion of his statement given before the competent authorities of Bosnia and Herzegovina on 18 October 2007, in which he had stated that he remembered the rape of injured party B1, because he had been on shift duty together with Slavko Lalović, nicknamed “Ustasha” when the accused Krstović came to the school and went to another room with Lalović. Shortly afterwards, other guards told him that Krstović had raped a woman then. The witness confirmed that these allegations in his statement were true.<sup>132</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>133</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 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>134</sup>

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

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

131 Ibid.

132 Ibid.

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

134 Ibid.



The examination of injured party and protected witness B1 was barred to the public.<sup>135</sup>

During the evidentiary proceedings, the statements were examined of protected witnesses B2, B4 and B6 given before the Prosecutor's Office of Bosnia and Herzegovina, as owing to health reasons these witnesses were unable to appear before the court.<sup>136</sup>

### **Overview of the proceedings in 2021**

In 2021 three court days were held and protected witness B7 was heard whose examination was barred to the public.<sup>137</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>138</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.

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

136 Ibid.

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

138 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 “B3” 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.

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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>139</sup>

### **Second instance decision**

On 17 December 2021, the Court of Appeal in Belgrade<sup>140</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>141</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 Bosnia and Herzegovina 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.

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## HLC Findings

### **Regional cooperation**

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

### **Putting the transferred indictment in order**

The indictment that the OWCP issued against Dalibor Krstović, is an example of a well-constructed indictment, in particular the rationale describing the state of affairs according to the results of the investigation and the detailed presentation of the evidence substantiating the facts which need to

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139 Ibid.

140 Chamber composition: Judge Rastko Popović, Chairperson, Judges Olivera Anđelković, Nada Hadži Perić, Miodrag Majić, Ph.D., and Aleksandar Vujičić, members.

141 Decision Kž1 Po2 6/21 of the Court of Appeal in Belgrade of 17 December 2021.



be proven. Namely, in the indictment transferred by the BiH Prosecutor's Office<sup>142</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 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 giving the content of and an assessment of such statements. At the same time, the presentation of a large number of pieces of 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 the criminal offence of a crime against humanity, and that the BiH Court did not confirm it, for which reason the prosecutor simply issued the same for a different criminal offence – a war crime against the civilian population, without at all adapting it in line with the new qualification and incriminated acts.

The OWCP put in order this indictment in keeping 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.

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142 BiH Prosecutor's Office Indictment number T20 0 KTRZ 0002825 10 of 20 November 2017.



## VIII. The Bratunac-Suha Case<sup>143</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 Vera Vukotić Judge Vinka Beraha-Nikićević
<b>Number of defendants:</b> 1	<b>Number of scheduled court days in the reporting period:</b> 6
<b>Defendant's rank:</b> no rank	<b>Number of court days in the reporting period:</b> 1
<b>Number of victims:</b> 300	<b>Number of witnesses heard in the reporting period:</b> 2
<b>Total number of witnesses heard:</b> 2	<b>Total number of expert witnesses heard:</b> 2
<b>Key developments in the reporting period:</b>	
Main hearing	

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<sup>143</sup> The Bratunac-Suha Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/bratunac-suha.html>, accessed on 22 November 2021.



## Course of the proceedings

### Overview of the proceedings up to 2021

#### Indictment

The accused Jovan Novaković is charged with having, as the Commander of the Moštanica Company of the Bratunac Territorial Defence, on 10 June 1992, forcibly uprooted about 300 Bosniak civilians from the village of Suha (Bratunac municipality, Bosnia and Herzegovina), among whom women and children, by ordering, during an attack on the village, Bosniak civilians out of their houses, 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>144</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>145</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>146</sup>

### Overview of the proceedings in 2021

In 2021 only one court day was held on which two witnesses for the prosecution were examined, with main hearings postponed four times owing to the failure of duly summoned witnesses to appear.

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144 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 13 December 2021.

145 Ibid.

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



## Witnesses in the proceedings

Witness for the prosecution Rodoljub Đukanović explained that following multiparty elections he was appointed president of the Bratunac Municipality Executive Board, and was also a member of the Crisis Staff. He remembers that on 10 May 1992, as he was passing through the town together with Miroslav Deronjić, president of the Crisis Staff, he saw over a hundred Muslim men lined up standing and facing a number of armed men. The men were armed with long-barrelled firearms, were in motley 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>147</sup>.

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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>148</sup>.

## HLC Findings

### **Regional cooperation**

These proceedings are a result of the cooperation between Serbia and Bosnia and Herzegovina in the prosecution of war crimes, which was intensified after the Office of the War Crimes Prosecutor and the Prosecutor’s Office of Bosnia and Herzegovina signed in 2013 the Protocol on Cooperation in the

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<sup>147</sup> Transcript of the main hearing held on 27 September 2021.

<sup>148</sup> Ibid.



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

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

The OWCP Indictment in this case, which is publicly accessible on the OWCP homepage under "Indictments"<sup>149</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>150</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>151</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>152</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>153</sup> As the name of the accused, but also the names of the victims, have been anonymised, the OWCP is evidently in breach of a provision of its own Rulebook, in total disregard of the public interest, that being public disclosure of the identity of a person who stands accused of war crimes, the commission of which poses a grave danger to society, and equally that of the victims, public reference to whom provides a form of redress for the victims and their families and is a prerequisite for the recognition of the sufferings they had gone through, primarily on account of their identity.

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

Only one court day was held and main hearings were postponed in four instances in both 2020 and 2021 as witnesses failed to show up. In 2021 only two witnesses for the prosecution were heard. The failure of witnesses to appear is 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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149 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 22 November 2021.

150 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 \_\_\_ December 2021.

151 Ibid, Article 1, paragraph 2.

152 Ibid, Article 5, paragraph 1.

153 Ibid, Article 5, paragraph 2.



## IX. The Vlasenica Case<sup>154</sup>

CASE FACTS	
<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> Miodub 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 Vera Vukotić 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> 3 <b>Number of witnesses heard in the reporting period:</b> 5 <b>Number of expert witnesses heard:</b> 0
<b>Key developments in the reporting period:</b> Main hearing	

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<sup>154</sup> The Vlasenica Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/vlasenica.html> accessed on 23 November 2021.



## Course of the proceedings

### **Overview of the proceedings up to 2021**

#### **Indictment**

The accused Višnja Aćimović is charged that, after she joined and was active on the side of the Army of Republika Srpska (VRS), in the beginning of June 1992 she participated together with Pero Kostić (now deceased) and other unidentified VRS members in the killing of 37 civilians of Bosniak ethnicity at the “Mračni dol” locality in Vlasenica Municipality, Bosnia and Herzegovina. The civilians, who had been in prison in Vlasenica, were bussed to the “Mračni dol” site where an unidentified soldier successively took them off the bus, and the defendant and Kostić shot them dead with their firearms.<sup>155</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>156</sup>

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### **Overview of the proceedings in 2021**

#### **Witnesses in the proceedings**

Five witnesses/injured parties were heard during the reporting period, 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

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155 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 23 November 2021.

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





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>157</sup>

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>158</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>159</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>160</sup>

## HLC Findings

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### **Regional cooperation**

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

### **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>161</sup>

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

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

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

160 Ibid.

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



Namely, the indictment against the accused had been read out at the pretrial hearing, which was barred to the public,<sup>162</sup> so that it was not read out at the main hearing, nor was it posted on the OWCP's webpage at that time.

Following the main hearing, the HLC addressed a Request for Access to Information of Public Importance to the OWCP, which was accommodated and the indictment against Višnja Aćimović was made available to it.<sup>163</sup>

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

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



## X. The Teslić Case<sup>164</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>	
<b>Trial Chamber</b>	Judge Vera Vukotić , Chairperson Judge Vinka Beraha Nikićević member Judge Vladimir Duruz , member
<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> 8	<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> 8 <b>Number of court experts heard:</b> 0
<b>Key developments in the reporting period:</b> Main hearing	

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<sup>164</sup> The Teslić case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/teslic.html> accessed on 24 December 2021.



## Course of the proceedings

### Overview of the proceedings up to 2021

#### Indictment

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

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



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>165</sup>

### **Defence of the accused**

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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>166</sup>

### **Overview of the proceedings in 2021**

In 2021, of the total scheduled number of eight, four court days were held, during which eight witnesses for the prosecution were examined. Trial hearings were not held in two instances because witnesses who had been called failed to appear before the court, on one occasion there was no hearing owing to the absence of a Trial Chamber member, and once because of a lawyers' job action.<sup>167</sup>

<sup>165</sup> 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.

<sup>166</sup> Transcript of the main hearing held on 28 October 2020.

<sup>167</sup> In war crimes trials, given the level of the penalty, defence is compulsory.



## 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>168</sup>

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>169</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>170</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>171</sup>

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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>172</sup>

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

169 Ibid.

170 Ibid.

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

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



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 recognize as they wore masks. They took them away and beat them having them face the wall, so that the witness could not see who beat him. After the beating, Šaban remained lying on the floor and died shortly afterwards from the consequences of the beating.<sup>173</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>174</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>175</sup>

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## HLC Findings

### **Regional cooperation**

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

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173 Ibid.

174 Ibid.

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



## XI. The Štrpci Case<sup>176</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> Miodjub Vitorović	
<b>Defendants:</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	
<b>Trial Chamber</b>	Judge Vera Vukotić (Chairperson) Judge Vladimir Duruz Judge Vinka Beraha-Nikićević
<b>Number of defendants:</b> 4 <b>Defendants' rank:</b> no rank <b>Number of victims:</b> 20 <b>Number of witnesses heard:</b> 35	<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> 4
<b>Key developments in the reporting period:</b> Main hearing	

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<sup>176</sup> The Štrpci Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/strpci.html>, accessed on 24 December 2021.





## Course of the proceedings

### Overview of the proceedings up to 2021

#### 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 Ćorić, Nijazim Kajević, Muhedin Hanić, Ismet Babačić, Esad Kapetanović, Senad Đečević, Safet Preljević, Adem Alomerović, Zvijezdan Zuličić, Šečo Softić, Fehim Bekija, Rafet Husović, Jusuf Rastoder, Džafer Topuzović, Fikret Memović, Tomo Buzov and an unidentified person, and forced them at gunpoint onto a truck and transported them to the building of the primary school in Prelovo, where the accused Gojko Lukić and Dragana Đekić joined them.

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

Then they forced them, barefoot, in their underwear, their hands bound with wire behind their backs, to climb onto the truck again, in which they were taken to the village of 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>177</sup>

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<sup>177</sup> 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>178</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>179</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>180</sup> The accused Jovan Lipovac stated that he had participated in the war in Bosnia and Herzegovina as a member of the Višegrad Brigade and that he had been manning positions in his native village of Rujište and towards the border with Serbia.<sup>181</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 planting on her all the events, from Zvornik to Višegrad“. They have been hounding her all these years, but she will only tell it like it is. She knows Milan Lukić from the Višegrad front, from where, after the events in Sjeverin (abduction from a bus and killing of non-Serb passengers), she returned to Belgrade. When Milan Lukić called and told her that he urgently needed fighters because the defence line had been penetrated, she mustered a group of about 15 volunteers, among them Nebojša Ranisavljević, and took them to Višegrad. On arriving in Višegrad, she was assigned to the Intervention Brigade.<sup>182</sup>

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## Witnesses in the proceedings

Witnesses/injured parties Nail Kajević, Selma Čolović, Ragip Ličina<sup>183</sup>, Alija Kapetanović, Etem Softić, Misin Rastoder, Edin Bakija<sup>184</sup>, Islam Sinančević<sup>185</sup>, Đorđije Vujović and Izudin Hanić<sup>186</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>187</sup>

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

179 Ibid.

180 Ibid.

181 Ibid.

182 Ibid.

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

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

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

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

187 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>188</sup>

Witnesses Zoran Bogetić, Zoran Pantović<sup>189</sup>, Ljubiša Radomirović and Nenad Cvetić<sup>190</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 Damljan 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>191</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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188 Ibid.

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

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

191 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>192</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>193</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 and he knew that one of the Vasiljević brothers had crutches, but he could not remember which one. He knew the accused Dragana Đekić, and he used to see her in Višegrad and at Rujište. She had been with Milan Lukić. While in Prelovo, he had heard a female voice, but was unable to explain why in his statement to the OWCP he had said that he had recognised the voice as being that of the accused Dragana Đekić. He had entered into an agreement with the Prosecutor's Office of Bosnia and Herzegovina in connection with his activities in Mušići (the witness had organised the disposal of the bodies of the slain passengers from the execution site in Mušići, but did not testify about that at the main hearing, 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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192 Transcript of the main hearing held on 26 November 2019.

193 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>194</sup>

Witness Nebojša Ranisavljević<sup>195</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 Mića Jovičić responded to a call for action that had come from Milan Lukić whom, “everyone dreaded” and dared not refuse him anything. They joined up with a group of fighters led on that occasion by Lukić, so that there were 15 to 20 of them. It was only when they came to the railway station in Štrpci that he realised where they were. Milan Lukić stopped the train and the witness boarded it and took some passengers off. After some fifteen minutes Lukić told them to stop and the passengers who had been taken off the train were then transported in a truck to the primary school in Prelovo and placed in the gym. Lukić had them all line up against the wall and ordered them to empty their pockets. They found a pistol on one of the young men and beat him. They took the passengers out of the gym and, on Lukić’s orders, tied their hands behind their backs; 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>196</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>197</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>198</sup>

Witness for the prosecution Mićo Jovičić<sup>199</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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194 Transcript of the main hearing held on 9 December 2019.

195 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.

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

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

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

199 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 an “150”, olive drab and with a tarpaulin cover. The witness and Ranisavljević sat in the cargo area of the truck, where there were another ten or so soldiers, among whom he recognized the accused Duško and Ljubiša Vasiljević, Jovan Lipovac, Ranko 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.



Some time 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 a.k.a. “Chetnik”, and a soldier nicknamed “Colonel”, while the others formed a gauntlet. The abducted passengers were taken off the truck in twos or threes and led to Boban Indić and Milan Lukić, who killed them with shots to the back of the head. He could see that it was Lukić because he wore a tall fur hat, which the witness could see when the flash from the discharging firearm illuminated it. One of the abducted passengers tried to escape. Nebojša Ranisavljević shot at him and wounded him, after which Milan Lukić walked up to him and slit his throat. After all the abducted passengers had been killed, the witness went back to Okolišta, while the others returned to Prelovo.<sup>200</sup>

Witness for the prosecution Mitrašin Glišić<sup>201</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 recognized Milan Lukić, Gojko Lukić, Boban Indić, Jovo Lipovac, Ljubiša and Duško, Dragana Đekić and Petko Indić. Milan Lukić ordered him to go and get Kosta Ilić, a local, to come with his tractor and pull the truck out, and the witness did so. When he got 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

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<sup>200</sup> Transcript of the main hearing held on 27 January 2020.

<sup>201</sup> Transcript of the main hearing held on 8 July 2020.





yelled at the civilians, cursed their Ustasha mothers and hit them with a rifle butt. He also saw Jovo Lipovac hit the civilians with a rifle butt and kick them. Later, Krsto Papić and Duško Božić arrived at the school. They went upstairs to the office where the signallers and Dragan Simić were. Milan Lukić, Boban Indić and Obrad Poluga followed them to the office. The witness was standing below the office window and he could hear them talking. Krsto was asking Milan why he had brought the civilians to Prelovo and had not taken them to some other place and killed whomsoever he chose there. Milan Lukić swore in response and then Milan, Boban and Obrad left the office and went into the gym. Cries and screams of the civilians being beaten in the gym could be heard. The witness was in front of the school all the while; the soldiers who were outside would not let him in. After some time, soldiers emerged from the school and again formed a gauntlet through which the men from the gym were ushered to the truck. The men were undressed and covered in blood. They had nothing on except for their underwear, namely just their underpants, and were barefoot; one tall man had a cross carved on his back. All the soldiers who were at the school boarded the truck and the passenger vehicles and drove away towards Višegrad. Before leaving, Milan Lukić gave the witness a jerry can with oil and ordered him to take all the things from the gym outside and burn them. He made several round trips taking out clothes and some papers and documents, and he burned them. As he was bringing out the fourth batch, Milan Lukić and the soldiers accompanying him came back. They first went into the gym and divided the booty, the valuable items that had been seized from the passengers; some of the soldiers were dissatisfied; they said that Milan had given them little money. Then Milan went upstairs to see Krsto Papić. The witness heard them arguing, Milan was ordering Krsto to go with the soldiers on the following day and “pick that up”, and when Krsto asked where the slain men had been dumped, Milan answered that they were in a garage in Rasim’s house in Mušići. In the days that followed, Krsto Papić and commander Damljan Mitrašinović from Višegrad had words over how Milan Lukić had obtained the truck. When the cook came to the school on the second day, she told the witness that news had been broadcast on TV about the people abducted from the train at Štrpci; they said that they had been taken in an unknown direction. While the two of them were in the kitchen, Krsto Papić came and told him to go and see Drago Čarkić and tell him to take his tractor to Mušići. In the meantime, Božidar and Ilija Vukadinović and Ilija Papić arrived at the school, and, together with Krsto and his driver, went somewhere in a “Niva” vehicle. After they had left, Milan Lukić arrived and proceeded to inspect how the witness had cleaned up the gym. When he saw that a sock and a button had remained, he slapped the witness in the face and ordered him to clean it up all over again. He cleaned the gym again but could not clean it thoroughly because the walls were blood-soaked. When that same day Krsto Papić and the others returned to the school, over lunch they laughed about how Čarkić had been nauseated and had thrown up on seeing the 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>202</sup>

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202 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>203</sup>

### Overview of the proceedings in 2021

In 2021, of the ten court days scheduled, six were held, on which two witnesses and three expert witnesses were examined. Hearings were not held in two instances due to the absence of a Trial Chamber member, once due to the absence of a defendant, and in one instance the hearing was rescheduled.

Criminal proceedings were terminated against the accused Ljubiša Vasiljević who had died.<sup>204</sup>

Two defence witnesses were heard. 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>205</sup> The other 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 kilometers 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>206</sup>

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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>207</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>208</sup>

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203 Order on expert evaluation K.Po2 no. 4/2017 of 23 October 2020.

204 Ruling K.Po2 no. 7/14 of 16 August 2021.

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

206 Ibid.

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

208 Ibid.



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>209</sup>

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>210</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>211</sup>

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>212</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

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209 Order on additional expert evaluation L.Po2 no. 4/17 of 23 August 2021.

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

211 Ibid.

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



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>213</sup>

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 proband 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>214</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>215</sup>

90 It ordered a new expert evaluation in respect of the same facts.<sup>216</sup>

## 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 FF Prosecutor's Office and the Office of the War Crimes Prosecutor of the Republic of Serbia signed in 2013, the BIH Prosecutor's Office and the OWCP set up a joint investigative team for this case which gathered evidence on the crime in Štrpci, this resulting in the simultaneous arrest on 5 December 2014 of five suspects in Serbia and ten suspects in Bosnia and Herzegovina.

### **Irresponsible conduct of the OWCP**

The OWCP's approach to the issuance of the indictment in this case has been quite irresponsible,

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213 Ibid.

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

215 Ruling K.Po2 no. 4/17 of 21 December 2021.

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



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. The indictment was finally confirmed only on 24 October 2018.<sup>217</sup> Having the indictment repeatedly returned for rectification of formal deficiencies is a disgrace for any prosecutorial office and for one of the OWCP's rank it is impermissible. To hide this, the OWCP removed the indictment from its website<sup>218</sup>

### Inadmissible conduct of the expert witness

Although member of the Medical Board Zvezdanka Savić had not taken part in the additional expert

217 **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.

218 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 2021.



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 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>219</sup>

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<sup>219</sup> Law on Court Experts (*Official Gazette of RS* number 44/2010).



## XII. The Čuška/Qyshk Case<sup>220</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 Bogićević, 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 (member) Judge Vera Vukotić (member)
<b>Number of defendants:</b> 11 <b>Defendants' rank:</b> low and middle rank <b>Number of victims:</b> 141 <b>Number of witnesses heard:</b> 116	<b>Number of scheduled court days in the reporting period:</b> 7 <b>Number of court days in the reporting period:</b> 0 <b>Number of witnesses heard in the reporting period:</b> 0 <b>Number of court experts heard :</b>
<b>Key developments in the reporting period:</b> Main hearing	

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<sup>220</sup> The Čuška Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/cuska.html>, accessed on 23 December 2021.



## Course of the proceedings

### Overview of the proceedings up to 2021

#### Indictment

The OWCP issued the first indictment for the crime in Ćuška/Qyshk on 10 September 2010 against nine accused persons – Toplica Miladinović, Srećko Popović, Slaviša Kastratović, Boban Bogičević, Zvonimir Cvetković, Radoslav Brnović, Vidoje Korićanin, Veljko Korićanin and Abdulah Sokić.<sup>221</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 Ćuška/Qyshk (Peć/Pejë municipality, Kosovo), killing on that occasion 44 Albanian civilians, setting fire to at least 40 family homes and over 40 other structures, three trucks and five passenger vehicles, seizing gold, jewellery and other valuables of unspecified worth and a total of DM 125,000 in cash, a number of passenger vehicles and two trucks, and expelling over 400 civilians, women, children and the elderly, from the village.<sup>222</sup>

The War Crimes Prosecutor's Office brought indictments for this crime against Zoran Obradović<sup>223</sup>, Miloško Nikolić<sup>224</sup>, Ranko Momić<sup>225</sup>, Siniša Mišić<sup>226</sup> and Dejan Bulatović<sup>227</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 Ćuška/Qyshk that same day, namely 14 April 1999, in the village of Pavljan/Pavlane they killed 10 civilians, set fire to at least seven family homes and seized money and valuables from civilians. On the same day in the village of Zahać/Zahaq they killed at least 22 civilians of Albanian ethnicity, seized about DM 28,000 and about 30 motor vehicles, set fire to at least five houses and relocated civilians.<sup>228</sup>

The OWCP dropped criminal charges against the accused Zvonimir Cvetković and, on 17 December

221 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 2021.

222 Ibid.

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

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

225 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.

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

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

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



2012, issued a single amended indictment against 13 accused persons: Toplica Miladinović, Srećko 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>229</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 with a submission issued on 19 June 2013. By the end of the first-instance proceedings, the OWCP had expanded and amended the indictment three times, (2 October<sup>230</sup>, 16 October<sup>231</sup> and 5 December 2013<sup>232</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>233</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>234</sup>

The court found the accused Toplica Miladinović, Commander of the 177<sup>th</sup> Peć VTO, guilty, because he had 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 Čuška/Qyshk, Pavljane/Pavlane and Zahać/Zahaq, had constantly been in touch with the members of his unit via a radio link with the late Nebojša Minić. So it was that, under the command of the late Nebojša Minić, on 1 April 1999, in Ljubenić/Lubeniq, the defendants killed at least 42 civilians and inflicted grave bodily injuries in the form of gunshot wounds on eleven injured parties; on 14 May 1999, they killed at least 41 civilians in the village of Čuška/Qyshk; on 14 May 1999, in the village of Pavljane/Pavlane, they killed 10 civilians, torching the houses and the mortal remains of the slain civilians afterwards. During this attack, the 13-year old G.N. was raped. Additionally, the Chamber established that 20 civilians had been deprived of life in the attack on the village of Zahać/Zahaq on 14 May 1999. The attacks on all these villages were attended by large-scale destruction and looting of property.

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

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

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

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

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

234 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>235</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.<sup>236</sup>

## Retrial

The retrial started before a new Chamber<sup>237</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 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>238</sup>

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

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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>239</sup>

On 22 December 2015, the OWCP brought a joint indictment against 12 accused – Toplica Miladinović, Srećko Popović, Miloško Nikolić, Siniša Mišić, Slaviša Kastratović, Boban Bogičević, Dejan Bulatović, Abdulah Sokić, Vladan Krstović, Lazar Pavlović, Milan Ivanović and Veljko Korićanin.<sup>240</sup>

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

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

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

238 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 2021.

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

240 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>241</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>242</sup> Witnesses who had already taken the stand earlier were also examined.<sup>243</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 also issued an indictment against Predrag Vuković<sup>244</sup>, a former member of the 177<sup>th</sup> Peć VTO, for the criminal offence of war crime against the civilian population committed in the villages of Ljubenić/Lubeniq and Čuška/Qyshk.<sup>245</sup>

He is charged with attacking civilians in the village of Ljubenić/Lubeniq, namely, searching the houses of Albanians, threatening them with weapons, expelling them from their houses, shooting in the direction of civilians and their houses from an automatic weapon and killing four civilians as a result. Having rounded up the villagers in the centre of the village, the accused VTO members singled out a group of 60 men, and drove out most of the civilians, forcing them to head in the direction of Albania. Vuković is also charged with the large-scale destruction of the property of Albanian civilians, namely setting family houses and other buildings on fire, as well as with participation in the infliction of bodily injuries on and the killing of civilian men, by shooting together with other VTO members at the group of men they had separated from the crowd, killing 42 men and wounding 11 on that occasion.

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The same indictment charges Vuković with having participated, on 14 May 1999, together with the other accused and some unidentified members of the VTO, in an attack on the civilian population of the village of Čuška/Qyshk, killing 17 civilians, expelling other civilians, massively destroying their property and committing murders of civilians; namely, he and the late Milojko Nikolić and Ranko Momić forced a group of 12 civilians into the house of Azem Gaši 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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241 Transcript of the main hearing held on 25 January 2016.

242 Ibid.

243 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.

244 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.

245 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 conducted against the accused Predrag Vuković.<sup>246</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>247</sup>

### **Overview of the proceedings in 2021**

In 2021, not a single main hearing was held of the seven scheduled ones. The hearings were postponed in four instances owing to the failure of summoned witnesses to appear, in two instances because no videoconference link could be established with the location of the witness, and once due to job action on the part of lawyers.

## **HLC Findings**

### **Protracted proceedings**

This trial has been going on for over eleven years now, with it being uncertain when the proceedings will end in a final decision. During the retrial, a small number of main hearings were held annually, with five court days held in 2016, six in 2017, three in 2018, three in 2019, and not a single court day in either 2020 or 2021. Up to 2020, hearings were not held principally owing to the failure of witnesses from Kosovo to appear. Nonetheless, even though aware that the proceedings would be prolonged if witnesses failed to appear, the court of first instance continued to summon them as it was required to do so under the ruling of the Court of Appeal. To wit, in its ruling quashing the trial judgment, the Court of Appeal found that *"the court of first instance did not abide by the principle of directness when examining witnesses from Kosovo and Metohija as they did not appear before the court of first instance in person but testified via video link. ...This Court, however, maintains that efforts should have been redoubled to secure the presence of witnesses and injured parties before the court"*.<sup>248</sup> In 2020 and 2021, it was impossible to secure either the presence or examination via video link of two witnesses who were abroad. That was partly owing to the Covid-19 pandemic but also due to difficulties with locating one of the witnesses and operating a video link with his place of residence.

### **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 Ćuška/Qyshk, that the OWCP amended the indictment to also include the crimes

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

247 Ibid.

248 Ruling of the Court of Appeal Kž1 Po2 6/14 of 26 February 2015.



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 after such a long time justice will finally be served.

### **Incomplete OWCP indictment**

#### Non-prosecution of senior military personnel

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

The Chairperson of the Chamber addressed this matter when pronouncing the first trial judgment in February 2014, stressing that: “The rules of military hierarchy warrant the conclusion that there must have been other persons there besides Toplica Miladinović; however, we have only dealt with what these defendants stand accused of in the indictment.” This was confirmed by the prosecutor himself in his closing arguments: “...it has not been determined at what level all this had been organised, nor is that the subject of these proceedings...”<sup>249</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>250</sup>

#### 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>251</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>

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

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

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



VTO. Furthermore, several injured parties, and in fact the defendants, testified that in addition to military personnel there had also been a large number of police officers in their village when the crimes were being committed. The Chairperson of the Chamber also stressed this upon the pronouncement 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>252</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>253</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>254</sup> The HLC analysed this problem comprehensively in its *Report on War Crimes Trials in Serbia in 2011*<sup>255</sup> and *Analysis of the Prosecution of War Crimes in Serbia*.<sup>256</sup>

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

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

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

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

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



### XIII. The Brčko – Rasadnik Camp Case<sup>257</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> first instance proceedings	
<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> 11 <b>Number of court days in the reporting period:</b> 6 <b>Number of witnesses heard in the reporting period:</b> 12 <b>Number of court experts heard:</b> 0
<b>Key developments in the reporting period:</b>  Main hearing	

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<sup>257</sup> The Brčko – Rasadnik Camp Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/rasadnik.html> accessed on 27 December 2021.



## Course of the proceedings

### **Overview of the proceedings up to 2021**

#### **Indictment**

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

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

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

- 4) On an unspecified date in June 1992, he took detained injured party, civilian Rado Simić, out of the chamber and physically maltreated him, striking and kicking him repeatedly on the body and head until the injured party went limp from the blows and was then taken back to the chamber.<sup>258</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 at the detention unit.

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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.

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<sup>258</sup> OWCP Indictment KTO 1/20 of 21 February 2020, available at [https://www.tuzilastvorz.org.rs/public/indictments/kto\\_1\\_20\\_cir.pdf](https://www.tuzilastvorz.org.rs/public/indictments/kto_1_20_cir.pdf) accessed on 27 December 2021.





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

He has no idea why the injured parties are accusing him, but supposes that it has to do with the lawsuit for damages for defamation of character which he had won against the paper "Press RS". The magazine had published an article in which his colleague Novalija Fazović accused him of torturing Serbs in the camp at Gornji Rahić, and the vice-president of the Association of Former Camp Inmates of Republika Srpska confirmed it. In his view, another reason why they were accusing him was the job he did after the war. He was the Chief of the Department for Fighting Organised Crime in the Ministry of the Interior (MUP) of the Tuzla Canton, and had, among other, conducted an investigation against the government. Investigated were ministers, heads of municipalities and directors of public companies. He had also conducted investigations in Brčko against a number of department heads while he served as director of the Public Revenue Office, and one of them, who had actually been prosecuted, vowed that he would exact revenge on him. The people he had conducted investigations against had certainly brought their influence to bear on the witnesses so that the latter would accuse him.<sup>259</sup>

### **Witnesses in the proceedings**

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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>260</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 her

<sup>259</sup> Transcript of the main hearing held on 1 June 2020.

<sup>260</sup> Transcript of the main hearing held on 27 July 2020.



father called this metal container “the refrigerator”. On the very day of his arrest, her father was brought before the accused; Galib Hadžić was in the same room and he threatened him with a knife. Her father was a civilian, he had neither a uniform nor a weapon. He was trying to save himself, as there had been an attempt on his life once before. He had set off in a car with his next-door neighbour Suad Kurtović, with whom they had always been on very good terms, and still were. Kurtović had meant well and wanted to help her father but they were stopped in the village of Gornji Rahić by HOS men; after that her father was taken to a house and brought before the accused. On that occasion they seized her father’s car, and the accused seized his identity card. Kurtović tried to protect him then, vouching for him. The next day they transferred her father to the camp. Her father told her that he had seen the accused again only once, or rather that the accused was present when an inspector kicked him in the knee. Her father told her that he had gained the impression that Galib Hadžić and the accused were persons in charge wielding authority over the other guards, and also that the detainees were beaten the most by HOS members and the “Cobras”, and that the accused had been present all the while.<sup>261</sup>

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>262</sup>

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Witness Zora Simić, the wife of the late Rado Simić, stated that her husband had been stopped as a civilian in his vehicle, which was seized on that occasion 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>263</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 Rahić was in the centre of the village, so that tortured people would be heard screaming. Among the

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

262 Ibid.

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



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>264</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>265</sup>

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Defence witnesses Hazim Mujkić and Novalija Fazlović had no knowledge that the accused had maltreated detained civilians.<sup>266</sup>

### **Overview of the proceedings in 2021**

Of the eleven main hearings scheduled in the reporting period, six were held, during which twelve defence witnesses were examined. Hearings were postponed twice because summoned witnesses failed to appear before the court, once due to the absence of a member of the Trial Chamber and once because the defendant was ill.

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>267</sup>

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

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

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

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



Defence witnesses Esad Bando, Hadžaga Hodžić and Niko Salatović had no knowledge that the accused had mistreated prisoners.<sup>268</sup>

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>269</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>270</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>271</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>272</sup>

Defence witness Momir Zec stated that he did not know the accused<sup>273</sup>, and witness Amir Sudar that he had never seen him at Okrajci where he had been detained for a while.<sup>274</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

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268 Ibid.

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

270 Ibid.

271 Ibid.

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

273 Transcript of the main hearing held on 28 May 2021

274 Ibid.



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 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>275</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>276</sup>

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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>277</sup>

## HLC Findings

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

The OWCP Indictment in this case, which is publicly accessible on the OWCP homepage under “Indictments”<sup>278</sup>, has been anonymised by publishing only its operative part, with data on the names

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<sup>275</sup> Ibid.

<sup>276</sup> Transcript of the main hearing held on 5 November 2021.

<sup>277</sup> Ibid.

<sup>278</sup> OWCP Indictment KTO no. 1/2020 of 21 February 2020, available at [https://www.tuzilastvorz.org.rs/upload/Indictment/Documents\\_sr/2020-07/kto\\_1\\_20\\_lat.pdf](https://www.tuzilastvorz.org.rs/upload/Indictment/Documents_sr/2020-07/kto_1_20_lat.pdf) accessed on 16 January 2021.



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>279</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>280</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>281</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>282</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, in whose interest it is 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>283</sup>, and some have published his photograph as well.<sup>284</sup>

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

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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>285</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

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279 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 7 December 2021.

280 Ibid, Article 1, paragraph 2.

281 Ibid, Article 5, paragraph 1.

282 Ibid, Article 5, paragraph 2.

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

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

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



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>286</sup>

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

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<sup>286</sup> Law on Organisation and Jurisdiction of State Authorities in Prosecuting War Crimes, Articles 2 and 3.



## XIV. The Srebrenica Case<sup>287</sup>

<b>CASE FACTS</b>	
<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>Number of scheduled court days in the reporting period:</b> 8
<b>Defendants' rank:</b> low rank	<b>Number of court days in the reporting period:</b> 4
<b>Number of victims:</b> 1,313	<b>Number of witnesses heard in the reporting period:</b> 4
<b>Number of witnesses heard:</b> 29	<b>Number of expert witnesses heard:</b> 2
<b>Key developments in the reporting period:</b>	
Main hearing	

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<sup>287</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 2021.





## Course of the proceedings

### **Overview of the proceedings up to 2021**

#### **Indictment**

The accused are charged with having killed, on 14 July, 1995, as members of the Jahorina Training Centre of the Special Police Brigade of the Ministry of the Interior (MUP) of Republika Srpska, at least 1,313 Bosniak civilians inside and in the immediate vicinity of an agricultural cooperative warehouse in the village of Kravica (Bratunac municipality, Bosnia and Herzegovina).<sup>288</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 who were still showing signs of life

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

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

#### **Defences of the accused**

The accused Nedeljko Milidragović, Aleksa Golijanin, Vidosav Vasić and Aleksandar Dačević did not present a defence, i.e. continued to exercise their right to remain silent.<sup>289</sup> The accused Bora 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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288 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 2021.

289 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 Neđo handed over to a group of soldiers. They continued searching the area all day.<sup>290</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>291</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. Neđo brought a boy, between 12 and 13 years old, and ordered him to call out to his relatives to give themselves up. Half an hour later, some Muslim civilians surrendered. The civilians who surrendered were transported by trucks in groups of 20-30, and the accused believes that two groups surrendered that day. The accused went on to say that the boy whom Neđo brought was with them also the next day when they deployed to comb the terrain, and that at a certain point Neđo took him behind some shrubs by the road and then a pistol went off. The following day, they remained in position. An UNPROFOR personnel carrier also arrived that day, from which they called out to the people to surrender, over a bullhorn and in the Serbian language. Quite a few men surrendered, all of them civilians. They were taken somewhere in trucks. The accused Milidragović and Golijanin issued orders for guarding a group of 20-30 men who had surrendered, and demanded of them that they hand over the money they had on their persons. After

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<sup>290</sup> Transcript of the main hearing held on 7 February 2017.

<sup>291</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>292</sup>

114 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 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>293</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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292 Transcript of the main hearing held on 31 May 2017.

293 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, they were unarmed. The men who had surrendered were picked up by a truck on board which were VRS members. From the truck they kept calling over a loud hailer to Muslims to surrender. Members of his unit only guarded those who had surrendered. Early in the afternoon they returned to Bjelovac, and on the following day they headed through the forest in the direction of Konjević Polje to search the area, looking for members of the BIH Army who had not surrendered. He had never been to Kravica and he had never heard of the warehouse before.<sup>294</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>295</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>296</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>294</sup> Transcript of the main hearing held on 7 February 2017.

<sup>295</sup> Ruling of the Court of Appeal in Belgrade Kž2 Po2 7/17 of 5 July 2017.

<sup>296</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>297</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>298</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.

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### **Witnesses in the proceedings**

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

Witness and injured party Saliha Osmanović recounted how in July 1995 she had left Srebrenica with her husband and son and that they parted at the place called Kazani (The Pit). She went to Potočari while her husband and son headed in the direction of Tuzla through a forest. She never saw them again.<sup>299</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>300</sup>

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

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

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

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

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



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>301</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>302</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>303</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 Kravica<sup>304</sup>, while witness Ljubisav Simić, mayor of Bratunac at the relevant time, had no first-hand

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301 Ibid.

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

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

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



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>305</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>306</sup>

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Witness Veljko Budimir, describing the movements of the accused Milidragović in the critical period, stated that on 12 July 1995 he and his brother drove an UNPROFOR personnel carrier to Zvornik and that the accused Milidragović and his *kum* followed behind them in a passenger vehicle. In Zvornik they spent the night at Milidragović's home and in the morning of the next day, 13 July 1995, returned to Bjelovac. The witness and his brother were then ordered by Duško Jević to go and check another personnel carrier and drive it to Janja. They headed for Janja, again followed by the accused Milidragović, and returned to Bjelovac on 14 July 1995 at around midday.<sup>307</sup>

At the time of the critical event defence witness Duško Jević<sup>308</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 of 12 July 1995, they went there together with members of the Zvornik Public Security Station. They were tasked firstly with guarding civilians up to the moment of their evacuation and, secondly, with

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

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

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

308 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).





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>309</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 he was an expert for armoured personnel carriers in the Special Police Unit and an instructor at the Police Training Centre at Jahorina. On 14 July 1995, the witness travelled from the direction of Zvornik towards Srebrenica, his task being to set up a police station in Srebrenica. On the way, in the section of the road between Bratunac and Konjević Polje, he observed the defendants’ unit deployed along the road. On arrival at the warehouse in Kravica at around 1 p.m. he noticed the accused Milidragović some 300 to 500 metres from the warehouse, but did not know when he had arrived at the location or what his movements had been. He did not see the bodies of the executed captives in front of the warehouse. He believed Kravica to have been an event unassociated with the events in Srebrenica, that actually “an incident happened” there. He knew nothing about the involvement of any members of the Jahorina unit in this event. The order “to go ahead and kill the prisoners” had been given by Ljubiša Beara, Chief of Security of the VRS Main Staff at the time<sup>310</sup>. He had issued such an order to all of his security personnel, and his deputy Popović<sup>311</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>312</sup>

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Neđo 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

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

310 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).

311 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).

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





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>313</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>314</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>315</sup>

### **Overview of the proceedings in 2021**

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Of the eight main hearings scheduled in the reporting period, four were held. Trial hearings were not held in two instances because of the absence of the defendants, on one occasion because of a lawyers' job action, and once because the new defence counsel for the accused Nedeljko Milidragović had asked for adequate time to acquaint himself with the case file. Two expert witnesses and four defence witnesses were examined.

Court sworn expert, professor Dr. Ljubica Laposavić, 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>316</sup>

On account his unfitness to stand trial, The Trial Chamber ruled to dismiss the indictment against the accused Dragoslav Parović .

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

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

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

315 Ibid.

316 Transcript of the main hearing held on 8 February 2021.



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 unit 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. 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 took him to a doctor in Bratunac. The officer explained to him that he got burned trying to wrest away the weapon from a person who had shot and killed Krsto Dragičević from Skelani. Krsto's body was brought soon afterwards, and the detachment from Skelani also arrived. Borovčanin ordered the witness to go to Skelani and make arrangements for Krsto's funeral, and the witness did so. The funeral took place in Skelani on 14 July 1995. After the funeral, summoned by Borovčanin, the witness went to Zvornik and was assigned a detachment from Šehovići which he then took to the frontline at Baljkovica. 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 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>317</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>318</sup>

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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>319</sup>

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317 Ibid.

318 Ibid.

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



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 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>320</sup>

## HLC Findings

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### **Regional cooperation**

The Prosecutor's Office of Bosnia and Herzegovina 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 Bosnia and Herzegovina 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, the Office of the War Crimes Prosecutor and the Prosecutor's Office of Bosnia and Herzegovina 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 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>321</sup> and are accessible to the state

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320 Ibid.

321 See, e.g. Milorad Pelemis' guest appearance in the programme "Goli život/Bare Life/" 2014, available at <https://www.youtube.com/watch?v=BPQUIH78yhI>, accessed on 31 December 2021.



authorities.<sup>322</sup> The complaint, among others, was against Petar Salapura, formerly a VRS Colonel and Chief of Intelligence of the VRS Main Staff, Milorad Pelemiš, Commander of the 10th Sabotage Unit of the VRS Main Staff, for whom an international wanted notice has been issued, and Dragomir Pećanac, a VRS Major and Deputy Commander of the Military Police of the Bratunac Light Brigade, which was comprised within the VRS Drina Corps. Nonetheless, none of these individuals have been indicted so far.

### **Protracted proceedings**

The trial in this case began on 12 December 2016, being five years later in the evidentiary procedure stage, namely the examination of defence witnesses. Main hearings have been postponed a number of times due to the absence of some of the defendants and motions for recusal of the Chamber, but no hearings could be held between July 2017 and 1 March 2018 either, as the indictment had been dismissed and because the Court of Appeal failed on two occasions to promptly return the case file which had been referred to it for deciding on appeals against decisions of the Trial Chamber seized of the case. In 2020, due to the Covid-19 epidemic, trials were not held during the state of emergency.

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322 HLC release “Criminal Charges for the Genocide in Srebrenica”, 16 August 2010, available at <http://www.hlc-rdc.org/?p=13072>, accessed on 31 December 2021.



## XV. The Zvornik – Standard Case<sup>323</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 Vera Vukotić Judge Vinka Beraha-Nikićević
<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> 15	<b>Number of scheduled court days in the reporting period :</b> 8 <b>Number of court days in the reporting period:</b> 5 <b>Number of witnesses heard in the reporting period:</b> 7 <b>Number of court experts heard:</b> 0
<b>Key developments in the reporting period:</b> Main hearing	

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<sup>323</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 2021.



## Course of the proceedings

### Overview of the proceedings up to 2021

#### Indictment

The accused Dalibor Maksimović<sup>324</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, Bosnia and Herzegovina), where the Zvornik Serbian Public Security Station, and military formations including his unit were stationed on the upper and ground floors respectively, on learning that a fellow combatant had been killed in Zvornik that day, and as the apprehended and handcuffed Bosniak civilians, the brothers Iljaz, Nijaz and Nedžad Karaosmanović, and Fadil Čirak and an unidentified person, were escorted downstairs from the police station on the upper floor, he discharged his firearm at their backs, killing Fadil Čirak and Iljaz and Nijaz Karaosmanović on the spot, while the unidentified person managed to escape. Then the defendant and an unidentified soldier walked up to Nedžad Karaosmanović, who at that moment was still giving signs of life, and the two of them kicked him to death.<sup>325</sup>

#### Defence of the accused

At this stage of the proceedings the accused exercised his right to remain silent.<sup>326</sup>

#### Witnesses in the proceedings

Witnesses and injured parties Fehrija Čirak, whose husband Fadil had been killed, Alija Handžić, whose brothers Ilijaz, Nijaz and Nedžad Karaosmanović had been killed, Zilha Karaosmanović, whose husband Ilijaz Karaosmanović had been killed, and Mila Karaosmanović whose husband Nedžad Karaosmanović had been killed, had no first-hand knowledge of the critical event. Witness Fehrija Čirak stated that on 7 April 1992, when war operations started in Zvornik, she and her husband Fadil and their children went to Belgrade to stay with a friend of hers. On television they saw that the newly established Serbian authorities in Zvornik were publicly calling upon Zvornik inhabitants to return to the city and report their property, and her husband Fadil decided to go back. He did not manage to enter Zvornik on the first attempt, but went there again two days later, after which all trace of him was lost. She received word that her husband had been detained at the “Alhos” for interrogation, that a Serb soldier had perished in Zvornik, and that someone had killed her husband Fadil and the three Karaosmanović brothers in retaliation.<sup>327</sup>

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

325 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 2021.

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

327 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>328</sup>

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Witness Božo Drmonjić, a fellow combatant of the defendant, stated that on the critical day he had heard some shooting on the ground floor of the building in Zvornik where they were stationed, and had later learned that a man had been killed. He did not know anything about the defendant's whereabouts at the time of the shooting. He said that on 17 December 2009 he gave a statement to the State Investigation and Protection Agency of Bosnia and Herzegovina (SIPA) under duress, and that he was threatened while giving it. SIPA personnel threatened him and even his daughter, who lives in France. They blackmailed him by saying that he would be "put away for 20 years if he did not sign". Therefore the allegations in that statement, to the effect that he had witnessed the critical event and that he was the person who had wrested the rifle away from the defendant after the latter had shot at the civilians, are untrue.<sup>329</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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328 Ibid.

329 Ibid.



he was not sure whether the defendant had also returned with the unit. He said that he had given an earlier statement regarding this event before the competent authorities of Bosnia and Herzegovina, and that no one had ever exerted any pressure on him in that connection.<sup>330</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>331</sup>

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Witness and injured party Mila Karaosmanović gave an identical statement.<sup>332</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,

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

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

332 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>333</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>334</sup>

### **Overview of the proceedings in 2021**

In 2021, five main hearings were held at which seven witnesses were examined, and three main hearings were postponed due to the failure of summoned witnesses to appear.

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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 was 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>335</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 recognized 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>336</sup>

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

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

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

336 Ibid.



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 Milići had been killed in town and that, in retaliation, members of that unit killed the Karaosmanović brothers and Fadil Čirak.<sup>337</sup>

Witness Vaso Erić was the president of the court in Zvornik at the time of the critical event. He had an office in the “Standard” building, and the police and the Territorial Defence were also stationed in that building. His task had been to organise the work of the court. He does not know that members of paramilitary units were also stationed in that building. He had heard about the killing of the Karaosmanović brothers, but not how many of them had been killed. He only knew them by sight and he does not know any details in connection with their killing. Having been shown by the chairman of the Chamber the statements he gave when testifying in 2017, the witness confessed that he knew Ilijaz Karaosmanović, and that he had stated that he heard that members of the unit from Milići had killed them in “Standard”.<sup>338</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>339</sup>

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

338 Ibid.

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



## HLC Findings

### **Regional cooperation**

These proceedings are a result of the cooperation between Serbia and Bosnia and Herzegovina in the prosecution of war crimes, which was intensified after the Office of the War Crimes Prosecutor and the Prosecutor's Office of Bosnia and Herzegovina signed in 2013 the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide. Namely, the confirmed indictment against the accused was transferred by the Prosecutor's Office of Bosnia and Herzegovina, given that the accused, who is a national and resident of the Republic of Serbia, was not accessible to the authorities of Bosnia and Herzegovina. This is the second transferred indictment against the same defendant.<sup>340</sup>

### **Excessive Anonymisation of the indictment**

130 The OWCP (Office of the War Crimes Prosecutor) Indictment in this case, which is publicly accessible on the OWCP homepage under "indictments"<sup>341</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>342</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>343</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>344</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>345</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

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340 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.

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

342 Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes of 20 March 2019, available at [http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document\\_sr/2019-05/%D0%9F%D1%80%D0%B0%D0%B2%D0%B8%D0%BB%D0%BD%D0%B8%D0%BA\\_%D0%9B%D0%B0%D1%82.pdf](http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document_sr/2019-05/%D0%9F%D1%80%D0%B0%D0%B2%D0%B8%D0%BB%D0%BD%D0%B8%D0%BA_%D0%9B%D0%B0%D1%82.pdf), accessed on 7 December 2021.

343 Ibid, Article 1, paragraph 2.

344 Ibid, Article 5, paragraph 1.

345 Ibid, Article 5, paragraph 2.



and their families and is a prerequisite for the recognition of the sufferings they had gone through, primarily on account of their identity.

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

In 2021, witnesses called by the court failed to appear at four of the eight scheduled main hearings. The reasons they adduced for not showing up were the precarious epidemiological situation, poor health and lack of resources, although the impression is gained that the basic reason was a lack of willingness to testify and an awareness of the fact that there was no way the court handling the case could take measures to secure their presence.



## XVI. The Sanski Most–Lušci Palanka Case<sup>346</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> first instance proceedings (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>	

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<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 court experts heard:</b> 0
<b>Key developments in the reporting period:</b> retrial	

<sup>346</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 11 December 2021.



## Course of the proceedings

### Overview of the proceedings up to 2021

#### 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>347</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 (Bosnia and Herzegovina). He locked them up in the building of the “Simo Miljuš” Memorial Museum in Lušci Palanka, where, in order to extract information about the possession of weapons or the alleged organising of resistance to the Serbian army, he punched and kicked them, hit them with a rifle and various other objects, tied them to a chair or a beam in the ceiling and then beat them viciously, as a result of which one civilian died. He also forced the civilians to cross themselves, crawl on the floor and kiss his boots.<sup>348</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>349</sup>

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#### Dismissal of the indictment

On 27 October 2017, the Trial Chamber ruled to dismiss the indictment on the grounds that it had been filed by an unauthorised prosecutor.<sup>350</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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<sup>347</sup> Slavko Vuković died in the meantime.

<sup>348</sup> 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 11 December 2021.

<sup>349</sup> Transcript of the main hearing held on 12 July 2017.

<sup>350</sup> 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>351</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>352</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>353</sup> Witness Mesud Avdić also stated that the accused had beaten him while he was being held captive<sup>354</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>355</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>356</sup>

Witness Ramiz Ramić, another detainee, stated that the accused had beaten Sadržir Alibegović.<sup>357</sup>

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Witnesses Drago Predojević,<sup>358</sup> Duško Grujić,<sup>359</sup> Željko Marković,<sup>360</sup> Marko Praštalo, Duško Vranješ and Milan Dekić,<sup>361</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 he had come to harm.<sup>362</sup>

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

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

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

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

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

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

357 Transcript of 22 May 2019.

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

359 Ibid.

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

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

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



Witness Amor Mašović, Chairman of the Board of Directors of the Missing Persons Institute of Bosnia and Herzegovina, explained the discrepant dates of death in the documentation pertaining to victim Dedo Dervišević. He said that the Institute maintained personal records on missing persons, and that data on the time of their disappearance was obtained from the members of their families. Often different data is given, namely family members report the date when they last saw the missing person as the date of their disappearance. Additionally, in non-contentious procedures conducted in order to pronounce a missing person dead, courts do not deal with the issue of ascertaining the exact date of death. As an example, he said that 16 December 1996 is stated as the date of death in numerous decisions declaring missing persons dead. That is so because under the law missing persons shall be pronounced dead if they went missing during the war and if there had been no news about their fate for a year after the cessation of hostilities, and the hostilities ceased on 15 December 1995. That is why the date of death entered for Dedo Dervišević in the register of deaths is 9 June 1992, because that was given as the date of his disappearance, although the actual date of death can be a different one. In respect of Dervišević, an official memo was also obtained stating that he had succumbed to his injuries towards the end of June 1992 on the premises of the “Brano Miljuš” building in the village of Lušci Palanka. The document does not indicate the source of information on the date of his death.<sup>363</sup>

Witness Boško Petrović was the patrol unit leader in the Police Station (SM) in Lušci Palanka in June and July 1992. Together with the patrol, he brought in injured party Džafer Kugić on the orders of the police station commander Slavko Vuković. People were always apprehended on his orders, and it was always stated that they would be brought in for interrogation. Kugić was brought in and duly handed over to the commander, after which the witness went about his other tasks. As he was about to leave, two military policemen came to the station and rushed into the commander’s office where Kugić was and then a racket ensued. It was only after he had returned from the field that the officer on duty told him that Džafer Kugić had been beaten up in the commander’s office and had died. He did not see the accused when Kugić was brought in. The witness asked the commander who had allowed that, to which the latter replied “that it was none of his business as he was the commander”. Injured party Dedo Dervišević was brought to the station a couple of days later. The witness left for field duty and on the following day he heard people talking in the station mentioning Dedo. The accused Jovanović was also present on that occasion, and he said that Dedo had left. When he asked him whether Dedo had gone home, the accused replied that “he had left in a car boot”, and that he had slit his throat. He asked the commander about Dedo Dervišević, and commander Vuković told him that the accused had beaten up Dedo and that he died. He knows that Sado Kaltak was also brought in, as he saw him when he arrived at the station. Sado was wearing white trousers and a shirt. He was brought by Drago Predojević. He does not know what happened with him later. He described the defendant as a good comrade and as obedient and fair while they were on patrol duty together. He believes that commander Vuković is principally responsible for everything that went on in the police station, because he allowed apprehended persons to be beaten up, and in fact himself encouraged the police to do so.<sup>364</sup>

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<sup>363</sup> Transcript of the main hearing held on 2 July 2020.

<sup>364</sup> Transcript of the main hearing held on 1 September 2020.





On 2 July 2020, the Office of the Prosecutor particularized the indictment, namely specified that the part of the indictment stating that the accused “tied some of the detained civilians by the feet or hands to a chair or a beam in the ceiling with a rope” referred to injured parties Refik Handanagić and Šefik Handanagić.<sup>365</sup>

## **Overview of the proceedings in 2021**

### **First instance judgment**

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>366</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.

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On the basis of the testimonies of the injured parties, the court determined that the accused had maltreated and tortured the detained Bosniaks, and on the basis of the testimony of a witness, a police officer, that Jovanović was also responsible for Dervišević’s death.

In determining the sentence, the court, as up to now, assessed as mitigating circumstances Jovanović’s family situation, the absence of a criminal record, as well as the fact that he was very young at the time the criminal offence was perpetrated. The court assessed as aggravating circumstances the gravity of the consequence of and his manifest persistence in committing the crime.<sup>367</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>368</sup>

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

366 Judgment of the Higher Court in Belgrade K.Po2 7/17 of 2 February 2021.

367 Ibid.

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



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>369</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 judgments and decisions from proceedings that have not yet resulted in a final ruling.

The scheduled main hearing at retrial was not held owing to job action on the part of lawyers.

## HLC Findings

### **Regional cooperation**

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

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

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

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

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<sup>369</sup> Ibid.



## XVII. The Hrasnica Case<sup>370</sup>

<b>CASE FACTS</b>	
<b>Current stage of the proceedings:</b> first instance proceedings	
<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 Dejan Terzić (Chairperson) Judge Mirjana Ilić Judge Zorana Trajković
<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> 7 <b>Number of court days in the reporting period:</b> 2 <b>Number of witnesses heard in the reporting period:</b> 4 <b>Number of court experts heard:</b> 0
<b>Key developments in the reporting period:</b> Main hearing at retrial	

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<sup>370</sup> The Hrasnica Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/hrasnica.html>, accessed on 27 December 2021.



## Course of the proceedings

### Overview of the proceedings up to 2021

#### Indictment

#### Indictment

The accused Husein Mujanović is charged with detaining, in the period from 8 July to 15 October 1992, as a member of the Army of Bosnia and Herzegovina and the warden of the military prison in Hrasnica (Ilidža municipality, Bosnia and Herzegovina), about 30 Serbian civilians who had been unlawfully deprived of liberty, and treating them inhumanely, failing to provide a bare minimum standard of accommodation conditions, and keeping them in rooms without water or a lavatory. He would issue orders for the prisoners to be beaten up, and six prisoners died from their injuries. He himself took part in the infliction of bodily injuries on the prisoners, beating, for example, the prisoner Mirko Vuković in his office, and the prisoner Savo Pejić in the atomic shelter.<sup>371</sup>

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

#### Defence of the accused

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Presenting his defence, the defendant denied having committed the offence he stands accused of. He explained that military police, whose commander was Munir Hodžić, would bring persons to the prison and order him to guard them. The orders were issued by the brigade commander. As stated in the orders, they were being apprehended because of treason, draft evasion or some other reason, but always in connection with the war. Serbs were brought there because they were fit for military service. He never checked the identity of the persons brought in. There had been women as well, brought there on account of collaboration with the enemy. There had also been Croats and Muslims among the incarcerated. No one left the prison unless a warrant was issued. It was difficult to run the prison because everything was in very short supply. There was no electricity or water in Hrasnica, and food was scarce too. He had not beaten anyone, and witness Vuković had not mentioned him in his previous statement. He noted that none of the witnesses had recognised him in 1994 and 1995, but that then in 2018 everybody recognised him. He had not done any of the acts he is charged with in the indictment.<sup>372</sup>

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371 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 2021.

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



### 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 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, 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>373</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>374</sup>

Injured party Ljeposava Stojanović, whose husband died from the injuries he sustained in prison, and Branislav Nikolić and Zoran Stjepanović, whose fathers also died after having been beaten up in the prison, had no first-hand knowledge of the critical events.<sup>375</sup>

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### First instance judgment

On 6 July 2020, the Higher Court in Belgrade rendered a judgment pronouncing the accused Husein Mujanović guilty of a war crime against the civilian population and sentenced him to a term of imprisonment of 10 years.<sup>376</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 the armed conflicts, 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

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

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

375 Ibid.

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



case file also contains written documents to that effect. These are official memoranda and an order relieving the defendant of his post of prison warden. In the relevant period about 30 Serb civilians had been incarcerated solely on account of their ethnicity. None had been issued any detention warrants, nor did such decisions exist. Decisions on leaving the detention unit to go out for labour are not proof that decisions to detain them had also existed, but only served to the defendant as a security measure because he was responsible for the head count of the prisoners. The poor conditions in detention were testified to by all the witnesses who had been held there. All of them said that food and water had been insufficient, that the food had been of poor quality and the meals 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>377</sup>

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## **Overview of the proceedings in 2021**

### **Second instance decision**

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 procedural error and erroneous and incomplete factual findings and remanded the case for retrial<sup>378</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>379</sup>

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<sup>377</sup> Ibid.

<sup>378</sup> Ruling of the Court of Appeal in Belgrade number Kž1 Po2 7/20 of 3 February 2021.

<sup>379</sup> Ibid.



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 judgments and decisions from proceedings that have not yet resulted in a final ruling.

## Retrial

In the reporting period seven main hearings were scheduled at retrial, of which two were held at which four witnesses were heard. Main hearings were postponed twice owing to the absence of a Trial Chamber member and in three instances because summoned witnesses failed to appear before the court.

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 on a typewriter. 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>380</sup>

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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 and 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>381</sup>

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

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380 Transcript of the main hearing held on 13 September 2021

381 Ibid.



accused would submit requisition claims to the brigade asking for food and clothing for the detainees. Soldiers and detainees ate the same food.<sup>382</sup>

Defence witness Hazim Pašić stated that he had lived in Hrasnica before the war too, 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 and water. There were civilian authorities. Husein Mahmutović was the president of the 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>383</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 whole territory of the former Yugoslavia, regardless of the citizenship of the perpetrator or the victim (the principle of universal jurisdiction)<sup>384</sup>, the HLC maintains that the accused Mujanović should have been extradited to Bosnia and Herzegovina, of which he is a national, for criminal proceedings to be conducted against him there.<sup>385</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>386</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>387</sup>

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382 Ibid.

383 Ibid.

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

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

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

387 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 Office of the War Crimes Prosecutor's Indictment in this case, which is publicly accessible on the OWCP homepage under "Indictments"<sup>388</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 OWCP Indictments for War Crimes.<sup>389</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>390</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>391</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>392</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. This is even more the case, in that the identity of the accused had been publicly known even before the indictment was filed, i.e. from the moment of his arrest, which was reported in the media<sup>393</sup>, as was the issuance of the indictment immediately afterwards.<sup>394</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.

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388 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\\_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 2021.

389 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 7 December 2021.

390 *Ibid*, Article 1, paragraph 2.

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

392 *Ibid*, Article 5, paragraph 2.

393 RTS, 31 July 2018 "Husein Mujanović in Custody for Crimes against Serbs", available at <http://www.rts.rs/page/stories/sr/story/11/region/3216550/pritvor-za-huseina-mujanovica-zbog-zlocina-nad-srbima.html>, accessed on 26 December 2021.

The Telegraf, 31 July 2018, "Former Warden of a Sarajevo War Camp Arrested at Border Crossing: Charged with Crimes against Serb Civilians", available at <https://www.telegraf.rs/vesti/jugosfera/2979617-na-granicnom-prelazu-uhapsen-nekadasnji-upravnik-ratnog-logora-u-sarajevu-tereti-se-za-zlocine-prema-srpskim-civilima>, accessed on 26 December 2021.

394 RTS, 20 January 2019 "New Indictments for Crimes Committed against Serbs", available at <http://www.rts.rs/page/stories/sr/story/135/hronika/3402508/nove-optuznice-zbog-zlocina-nad-srbima.html>, accessed on 26 December 2021.



### **Failure of witnesses to appear at retrial**

The retrial hearings were postponed in three instances because summoned witnesses failed to show up. Such conduct on the part of witnesses is not customary, as in question are defence witnesses, who as a rule duly respond to the call to appear before the court.



# FIRST INSTANCE JUDGMENTS

## I. The Bosanska Krupa II Case<sup>395</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> appellate proceedings	
<b>Date of indictment:</b> 26 December 2017	
<b>Trial commencement date:</b> 7 June 2018	
<b>Prosecutor:</b> Bruno Vekarić	
<b>Defendants:</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>Chamber</b>	Judge Mirjana Ilić (Chairperson) Judge Zorana Trajković Judge Dejan Terzić
<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> 6 <b>Number of court days in the reporting period:</b> 5 <b>Number of witnesses heard in the reporting period:</b> 7 <b>Number of expert witnesses heard:</b> 0
<b>Key developments in the reporting period:</b> First instance judgment at retrial	

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<sup>395</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 15 December 2020.



## Course of the proceedings

### Overview of the proceedings up to 2021

#### Indictment

The accused Joja Plavanjac is charged with murdering 11 Bosniak civilians in the first half of August 1992 in the “Petar Kočić” elementary school in Bosanska Krupa (BiH), and the accused Zdravko Narančić with aiding in the murder. The accused Zdravko Narančić, a member of the military police of the 11th 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 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>396</sup>

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#### Defences of the accused

Presenting their defence, the defendants denied committing the crimes they were charged with. The accused Joja Plavanjac claimed that the murders had been committed by his father, Lazo Plavanjac (now deceased). He explained that a 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 recognized 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

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<sup>396</sup> OWCP Indictment KTO 4/17 of 26 December 2017, available at [http://www.tuzilastvorz.org.rs/upload/Indictment/Documents\\_sr/2018-03/kto\\_4\\_17\\_latinnica~3.pdf](http://www.tuzilastvorz.org.rs/upload/Indictment/Documents_sr/2018-03/kto_4_17_latinnica~3.pdf), accessed on 8 January 2020.



prisoners. Narančić grabbed Plavanjac's father to prevent him from shooting again and pushed him out of the school. After that, father and son left.<sup>397</sup>

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>398</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>399</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>400</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>401</sup>

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 "Joksovci" were imprisoned, and opened fire at them.<sup>402</sup>

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

398 Ibid.

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

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

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

402 Ibid.



Witness Kasim Kaluzović stated that he had seen the accused Plavanjac coming to the school, that the door to the room where the witness was detained swung open, and that he then saw the guard Narančić with Plavanjac. Plavanjac pointed at Tofik Sedić, who was imprisoned in the same room, and took him out and to the gym. He heard Plavanjac asking Tofik where his brother Zijad was, as well as why he, as a reserve policeman, had halted Plavanjac's uncle, and who was he to dare do that. Then, a single 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>403</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 7 years respectively.<sup>404</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 11th Krupa Light Infantry Brigade, while on guard duty on the school premises, enabled [...] the accused Joja Plavanjac, a member of the Army of Republika Srpska, to enter the prison premises armed with an automatic rifle, who in the prison first looked for the detained Predrag Praštalo, who had killed his mother several days before. Although Praštalo had already been taken to a detention facility in Banja Luka, the accused Narančić first unlocked and opened the door to the room where the person named Tofik Sedić was held, and called him to come out. When he came out, the accused Plavanjac took him to the school gym and first asked him why he had stopped his uncle Mićo Plavanjac and then killed him by shooting from his automatic rifle. Afterwards, the accused Narančić unlocked and opened the door to a second room where Bosniaks, members of the "Joks" group, were detained. Plavanjac opened fire from his automatic rifle at them immediately after the door swung open, murdering Rasim Kaltak, Nezir Kaltak, Enes Kaltak, Emsud Kaltak, Ferid Kaltak, Fadil Alijagić, Edin Alijagić, Mirsad Omić, Rasim Nasić and Ismet Čehajić".

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

<sup>403</sup> Transcript of the main hearing held on 8 April 2019.

<sup>404</sup> Judgment K.Po2 no. 11/17 of the Higher Court in Belgrade of 15 November 2019.



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.

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>405</sup>

### **Second instance decision**

On 22 September 2020, the Court of Appeal in Belgrade<sup>406</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>407</sup> The HLC has been unable to analyse the decision of the Court of Appeal as it was unavailable at the moment of drafting this report.

### **Overview of the proceedings in 2021**

Five court days were held in the first instance proceedings at retrial during which seven defence witnesses for the accused Joja Plavanjac were heard.

Defence witness Gojko Škondrić stated that he knew the accused and his family well as they hailed from the same village. He had found out about the critical event from the defendant's father, the late Laza Plavanjac. He had told him, just before the bombing campaign, when he was in Belgrade, that he had done "something wrong". He explained that in 1992 Predrag Praštalo had killed his wife Savka, and, having heard that he had been taken to Bosanska Krupa and detained in a facility, he went there to look for him. When he arrived at the facility that he thought Praštalo was detained in, he "lost it" and fired a burst of fire, killing innocent people who were detained there. He did not recount to him the details of the incident, except that the accused had driven him there.<sup>408</sup>

Defence witness Nada Vojinović stated that the accused was her cousin. She said that in 1995 she was living in Hrtkovci, while her father was in BiH. Her father died, and, having received a call from her uncle Laza Plavanjac, now deceased, she went to Prijedor for the funeral. At that time Laza Plavanjac lived in the village of Jasenica near Bosanska Krupa. While they were transporting the body of her late father, she asked uncle Laza how her aunt Savka had come to grief. He then told her that he had killed

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405 Ibid.

406 Chamber composition: Judge Rastko Popović, Chairperson, Judges Miodrag Majić, Ph.D., Aleksandar Vujičić, Nada Hadži-Perić and Omer Hadžiomerović, members.

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

408 Transcript of the main hearing held on 26 March 2021.



some innocent people because he had “gone to pieces” after his wife was murdered. He stated that he had gone to the school by himself to look for Predrag Praštalo who had killed his wife, but had not found him; he was beside himself and he “killed innocent people”.<sup>409</sup>

Sveto Mamić, defence witness for the accused Joja Plavanjac, stated that he knew the accused and his family as they had lived in neighbouring villages in BiH. The witness and his family moved to Serbia in 1976. He met the father of the accused, Laza Plavanjac, at the bus station in Sremska Mitrovica in 1995 when people were massively fleeing BiH. The witness went to the bus station to meet his relatives who had fled Bosnia, and it was then that he saw Laza Plavanjac. On that occasion Laza told him that his wife had been killed, that he had gone to Bosanska Krupa to find the killer and that once there “he saw red” and killed some people without even knowing who they were.<sup>410</sup>

Witness Nada Plavanjac, sister-in-law of the accused Joja Plavanjac, stated that in 1995 her late father-in-law Lazo Plavanjac came to see them in Irig and told her and her husband Mirko that he had killed some imprisoned people during the war in Bosnia. He told them on that occasion that he had asked his son Joja to drive him to Bosanska Krupa, as he was searching for the person who had killed his wife, and also that he had killed a number of persons there. It was hard for him to talk about it.<sup>411</sup>

Witness Mirko Zorić said that he knew both defendants and that he and Joja Plavanjac were in-laws, namely that Joja was married to his sister. He explained that in the summer of 1992 he was a VRS soldier and was on the front line when he heard from soldiers who had been on furlough in Bosanska Krupa that prisoners had been killed on the premises of the “Petar Kočić” elementary school. People said that the accused Joja Plavanjac and his father Lazo Plavanjac had come to the school to look for Praštalo who had killed Joja’s mother, and that Lazo killed some people who were imprisoned in the school. Some time later, five or six days after the critical event, he heard from police commander Mile Čazić that Lazo Plavanjac had killed the prisoners, and that Joja had also been present. Mile told him that he had heard it from the accused Zdravko Narančić. A Muslim neighbour of his confirmed this information in 1996 when he was visiting Bosanska Krupa, who also said that Laza could no longer come to Krupa. After they fled to Serbia in 1995, Lazo Plavanjac came to see the witness’s father in Futog and told him about the killing of his wife, but also that he had done an act that had brought great pain upon his children.<sup>412</sup>

A defence witness stated that in 1995 during the funeral of his father Gojko in the village of Gornji Petrovići in BiH, Lazo Plavanjac came by. He talked to the witness’s brother, now deceased, and the witness heard Lazo say to him that he had killed some people and that he should not have done it. After the funeral, his brother told him that Lazo had told him that his wife had been killed and that in those days on account of that he was beside himself and had killed some people in such a state. In Bosnia everybody said that those men had been killed by Lazo Plavanjac. Neither the witness nor his brother ever reported to anyone that they knew who the perpetrator was.<sup>413</sup>

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409 Ibid.

410 Ibid.

411 Transcript of the main hearing held on 21 April 2021.

412 Ibid.

413 Ibid.





Witness Branislav Mandić stated that he knew both the accused from Bosanska Krupa from before the war. In 1992, he heard that prisoners had been killed on the school premises, and there was talk around town that the men had been killed by Lazo Plavanjac. This story was told by neighbours Nikica Tavulj, the Škorić family, and “all over town”. He was present when in 1998 in Futog his father talked with Laza Plavanjac. On that occasion Laza told him that he was the one who had killed the prisoners in Bosanska Krupa during the war.<sup>414</sup>

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

On 16 June 2021, the Higher Court in Belgrade 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>415</sup>

The Court did not accept the testimonies of the defence witnesses, as they were unable to specify who they had heard it from, and it assessed that their statements had been fabricated subsequently

Assessing the statements of these witnesses, the Court established that, even though claiming that Laza Plavanjac had told them that he had killed the prisoners, they failed to provide a single detail associated with that incident. Additionally, there are no surviving witnesses who could corroborate their accounts, or, in point of fact, that confession was even then made before some unknown persons. None of those witnesses had reported this incident to the responsible authorities, not even the witness who was a police officer. The court did not lend credence to these statements because they were unconvincing and implausible. Namely, the accused Joja Plavanjac had himself said that he had never discussed the critical incident with his father. It is highly implausible that Laza Plavanjac had reportedly talked about this event with many people, and not with his son. The testimonies of these witnesses are contradictory in respect of the fact whether the accused had himself been present during the critical incident. The implausibility of their statements is reflected in the fact that none of these witnesses had shared this information with the accused, although they had met a number of times in the meanwhile. The court assessed the statements of these witnesses as given with the sole intention of helping the accused Joja Plavanjac. As for the order of the Court of Appeal for a medical evaluation to be undertaken of the accused Joja Plavanjac to establish his state of mind at the moment of the critical event and whether he had been in a position to prevent Laza Plavanjac, the Court assessed it as superfluous, the reason being that the indictment does not charge the accused Plavanjac with failure to prevent Laza Plavanjac to kill the prisoners.

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414 Ibid.

415 Judgment K.Po2 no. 7/20 of the Higher Court in Belgrade of 16 June 2021.



## HLC Findings

### **Regional cooperation**

These proceedings are a good example of the cooperation between Serbia and Bosnia and Herzegovina in the prosecution of war crimes, which was intensified after the Prosecutor's Office for War Crimes 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 to 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 15 and 7 years imposed on the accused Joja Plavanjac and Zdravko Narančić respectively, are just and appropriate to the gravity of the committed criminal offence. Nonetheless, the HLC maintains that the lapse of time should not be considered as a mitigating circumstance in determining 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>416</sup> – as well as to contemporary jurisprudence.<sup>417</sup>

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416 ICTY Judgment *Dragan Nikolić* – item 273.

417 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.



# Final Judgments

## I. The Bosanski Petrovac – Gaj Case<sup>418</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> final judgment rendered	
<b>Date of indictment:</b> 10 October 2014	
<b>Trial commencement date:</b> 15 June 2015	
<b>Prosecutor:</b> Mioljub Vitorović	
<b>Defendant:</b> Milan Dragišić	
<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>	
Trial Chamber	Judge Rastko Popović (Chairperson)
	Judge Nada Hadži Perić
	Judge Olivera Anđelković
	Judge Aleksandar Vujičić
	Judge Miodrag Majić, Ph.D.
<b>Number of defendants:</b> 1	<b>Number of court days in the reporting period:</b> 2
<b>Defendant's rank:</b> low - no rank	<b>Number of witnesses heard in the reporting period:</b> 0
<b>Number of victims:</b> 6	<b>Total number of expert witnesses heard:</b> 3
<b>Total number of witnesses heard:</b> 26	
<b>Key developments in the reporting period:</b>	
Final judgment rendered	

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<sup>418</sup> The Bosanski Petrovac – Gaj Case, trial reports and case file documents available at [http://www.hlc-rdc.org/Transkripti/bosanski\\_petrovac\\_gaj.html](http://www.hlc-rdc.org/Transkripti/bosanski_petrovac_gaj.html), accessed on 6 October 2021.



## Course of the proceedings

### Overview of the proceedings up to 2021

#### Indictment

The accused Milan Dragišić is charged with having killed, as a member of the Army of Republika Srpska (VRS), on 20 September 1992, in the Bosanski Petrovac Gaj district (Bosnia and Herzegovina), Bosniak civilian Asim Kavaz and attempting to kill Muhamed Kavaz, Asmir Lemeš and Šaćir Hujčić, inflicting on that occasion bodily injuries on Muhamed Kavaz and Šaćir Hujčić, and then killing in the centre of the town Bosniak civilians Elvir Zajkić and Safet Terzić. Namely, after the body of his deceased brother Dragan Dragišić, who had died on the battlefield, had been brought back, the accused, armed with an automatic rifle and in uniform, ran out into the street swearing at his Bosniak neighbours and cursing their “Turkish and Moslem mothers”, and opened fire at them.<sup>419</sup>

#### Defence of the accused

Presenting his defence, the accused Milan Dragišić pleaded not guilty. He stated that when the body of his brother had been brought in he took an automatic rifle with a bullet in the chamber out from the car boot. Then he heard a burst of fire, but could not recall what happened. He was “beside himself”, and “everything had turned black” before his eyes when he saw the mangled body of his dead brother. Consequently, he did not know if he had killed his neighbours.<sup>420</sup>

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#### Witnesses in the proceedings

During the evidentiary proceedings, a total of 26 witnesses and three court expert witnesses were examined. Injured party Muhamed Kavaz described how on the critical day the accused wounded him and killed his father, Asim Kavaz.<sup>421</sup> Witness Branko Srdić, an eyewitness to the critical event, also confirmed that the accused had killed Asim Kavaz.<sup>422</sup>

Witnesses Mirko Velaga and Edin Bašić had not witnessed the critical event, but their second-hand knowledge corroborated the allegations of injured party Muhamed Kavaz about the killing of his father Asim, and that, after killing Asim Kavaz, the accused went around the Gaj district shooting at Bosniak civilians.<sup>423</sup>

Witness Milorad Radošević, who was present when the bodies of killed combatants were brought to Bosanski Petrovac, stated that he saw the accused among the assembled people, crying and wailing

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419 OWCP Indictment TRZ number KTO 7/14 of 10 October 2014, available at [https://www.tuzilastvorz.org.rs/public/indictments/kto\\_7\\_14\\_%D0%9E%D0%9F%D0%A2%D0%A3%D0%96%D0%9D%D0%98%D0%A6%D0%90.pdf](https://www.tuzilastvorz.org.rs/public/indictments/kto_7_14_%D0%9E%D0%9F%D0%A2%D0%A3%D0%96%D0%9D%D0%98%D0%A6%D0%90.pdf), accessed on 6 October 2021.

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

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

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

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



over the death of his brother, and that friends and relatives were holding him and escorted him into a car with great difficulty. Witnesses Željko Kuburić and Duško Karanović, who came to the Dragišić family home to express their condolences, testified that the accused had seemed lost, abstracted and “oblivious to their presence”.<sup>424</sup>

Defence witness Milorad Dragišić, the defendant’s full brother, stated that he had not witnessed the critical events. As soon as he had heard in town about the death of his brother he rushed home, where he saw the dead body of their neighbour Asim Kavaz nearby. Friends and relatives told him that the defendant had killed Asim and wounded his son Muhamed Kavaz, and had set off armed for the town. He followed him and soon, with the help of some friends, managed to overpower him and bring him back home. Having seen the mutilated body of their dead brother, the accused was beside himself – he struck the witness “as being stuffed”. He believed that the accused had not been of sound mind when he killed their neighbour Asim, and that he was in fact unaware of who he was shooting at, as there had been no reason whatsoever for him to have done anything of the kind, seeing that they had been on very good terms with the Kavaz family. He had heard that another three persons were killed that day near the hotel, but was convinced that it had not been done by the accused, as they had managed to get him back home before he reached town.<sup>425</sup>

Defence witnesses Nenad Dragišić, a relative of the accused, Brankica Dragišić, the wife of the accused, and Drena Latinović, a neighbour of the accused, stated that they had no first-hand knowledge of the killing and wounding of Bosniak civilians. The accused had impressed them as being “totally lost” because of his brother’s death.<sup>426</sup>

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Witness Semira Mešić-Pašalić stated that in her capacity of court expert, as a forensic medicine and pathology specialist, she had provided her findings and opinion on the injuries sustained by injured parties Muhamed Kavaz, Eldin Zajkić and Safet Terzić to the Cantonal Prosecutor’s Office in Bihać. However, she explained that at the time she submitted her findings she was not on the expert witness roster, because owing to her extensive duties related to exhumations, in addition to her regular work, she had not found the time to register.<sup>427</sup>

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

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

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

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

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

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



## Expert witness findings

Forensic expert Branimir Aleksandrić established that the late Asim Kavaz, Eldin Zajkić and Safet Terzić had sustained grave and fatal bodily injuries inflicted by projectiles fired from small arms. He also established that Muhamed Kavaz had sustained grave life-threatening injuries but survived, having been adequately treated.<sup>428</sup>

Court experts Branko Mandić<sup>429</sup> and Ana Najman<sup>430</sup> found that at the time of the commission of the criminal offence he is charged with, the accused had been temporarily mentally incompetent as a consequence of a breakdown of his defensive psychological mechanisms, and that his capacity to appreciate the significance of his acts and control them had been substantially diminished.

## First instance judgment

On 24 April 2019, the Higher Court in Belgrade<sup>431</sup> rendered a judgment pronouncing the accused Milan Dragišić guilty of having, in a state of substantially diminished mental competence, deprived of life one Bosniak civilian and attempting to deprive of life another two Bosniak civilians, and sentenced him to four years of imprisonment.<sup>432</sup>

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

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

It also concluded that there was no proof that the accused had killed Safet Terzić and Eldin Zajkić, since the witnesses who claimed to have observed this event describe it in different ways. Although the accused was charged with having killed Terzić and Zajkić using an automatic rifle, the court was

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

429 Ibid.

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

431 Composition of the Trial Chamber: Judge Vladimir Duruz, member, Judges Vinka Beraha Nikićević and Vera Vukotić, members.

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



unable to arrive at such a conclusion. This was primarily owing to the fact that a number of witnesses alleged that there had been more shooting around town on that particular day as well as in the days that followed, and that more people had been killed, as well as that rumour had it that some of the killings had been committed by a person nicknamed “Rambo”.

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

In determining the sentence, the court considered as mitigating circumstances in favour of the accused the lack of a prior criminal record, his poor state of health and his family situation. It assessed as an aggravating circumstance the fact that in addition to depriving Asim Kavaz of life the accused had attempted to deprive another two persons of life. As the accused had committed the criminal offence in a state of substantially diminished mental competence, where statutory provision for leniency exists,<sup>433</sup> the court sentenced the accused to a term of imprisonment below the statutory minimum, deeming that such a penalty would also accomplish the purpose of the punishment.

### **Second instance decision**

Deciding on the appeals of the defence counsel for the accused and of the Office of the War Crimes Prosecutor, on 25 November 2019, the Court of Appeal in Belgrade<sup>434</sup> overturned the judgment of the Higher Court in Belgrade on account of a substantial procedural error and remanded the case to the court of first instance for retrial.<sup>435</sup>

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The Court of Appeal concluded that substantial procedural errors had been made in rendering the first instance judgment in respect of the criminal acts of the accused to the detriment of Asmir Lemeš, Safet Terzić and Eldin Zajkić. Namely, the court of first instance failed to provide clear reasons for its conclusion that the accused had attempted to murder injured party Asmir Lemeš, or for its contention that it had not been proven that the accused had killed Safet Terzić and Eldin Zajkić. That is because it failed to analyse the presented evidence regarding these acts of the accused with sufficient attention.<sup>436</sup>

### **First instance judgment upon retrial**

On 1 July 2020, the Higher Court in Belgrade rendered a judgment at retrial by which it again found the accused Milan Dragišić guilty of having, in a state of substantially diminished mental competence, deprived of life Asim Kavaz and attempting to deprive of life Muhamed Kavaz and Asmir Lemeš, all Bosniak civilians, and sentenced him to a term of imprisonment of four years.<sup>437</sup>

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

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

435 Decision of the Court of Appeal in Belgrade Kž1 Po2 6/19 of 25 November 2019.

436 Ibid.

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



Upon a detailed analysis of all presented evidence, the Court found that the accused had definitely wanted to kill Asmir Lemeš, because he, apart from other things, tried to jump over the fence darting towards the injured party, demonstrating a clear intention to kill him. As regards the murders of injured parties Terzić and Zajkić, the Chamber stood by its position that there was no evidence that the accused had killed them, particularly taking account of the testimonies of witnesses which are contradictory, so that it could not be determined on their basis either who had fired at the injured parties or what weapon had been used or what vehicle had been used to reach them.

## **Overview of the proceedings in 2021**

### **Second instance judgment**

On 1 February 2021, the Court of Appeal in Belgrade<sup>438</sup>, having upheld the appeal of the prosecutor only in respect of the decision on the criminal sanction, ruled to reverse the first instance judgment and increased the penalty of the accused Milan Dragišić, sentencing him to a term of imprisonment of five years, while affirming the remainder of the trial judgment<sup>439</sup>

The Court of Appeal assessed that the court of first instance had correctly determined the mitigating circumstances in favour of the accused Milan Dragišić, but had not sufficiently appraised the aggravating circumstances, such as the severity of the committed crime and of its consequences, as well as the circumstances under which the crime was committed. To wit, the injured parties had been the defendant's neighbours and acquaintances who had in no way contributed to nor had in any way been responsible for the death of his brother. It also assessed that in determining the sentence, the court of first instance had attached too much weight to the substantially diminished mental capacity of the accused during the commission of the crime.<sup>440</sup>

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## HLC Findings

### **Regional cooperation**

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

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438 Chamber composition: Judge Rastko Popović, Chairperson, Judges Olivera Anđelković, Nada Hadži Perić, Aleksandar Vujičić and Miodrag Majić, Ph.D., members.

439 Judgment of the Court of Appeal in Belgrade, War Crimes Department, Kž1 Po2 5/20 of 1 February 2021.

440 Ibid.





### **Lengthy proceedings**

The trial in this case started on 15 June 2015, ending in final ruling on 1 February 2021. Account being taken of the fact that there was only one defendant, that the case involved a small number of victims, that 26 witnesses and three expert witnesses were heard during the trial, the proceedings lasted too long. Protracted proceedings in this case were also due to the fact that the Bihać Cantonal Office of the Prosecutor allowed a person not on the roster of court experts to perform an expert evaluation. Namely, main hearings were repeatedly postponed because, citing health reasons, the alleged court expert was unable to appear, with the expert evaluation ultimately having to be repeated when it was established that the person in question was not in fact a court expert.

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

The Higher Court declined to submit to the HLC the first instance judgment, explaining that the proceedings in this case had not yet resulted in a final ruling. Such an action on the part of the court is in direct contravention of the final decision of the Commissioner for Access to Information of Public Importance and Personal Data Protection who has already assessed this position of the court to be unlawful.<sup>441</sup> Notwithstanding the fact that the HLC submitted the Commissioner's decision to the court, the authorised official entrusted with the matter adhered to his stance. This practice, established in the Higher Court in the previous period, unnecessarily and greatly hinders access to information of public importance, which certainly had not been the legislator's intention. On the contrary, the purport of the Law on Free Access to Information of Public Importance<sup>442</sup> is accessibility of such information to the public. Declining to submit the first instance judgment just because the proceedings have not yet ended in a final ruling is at the same time in contravention of the 2021 – 2026 National Strategy for the Prosecution of War Crimes.<sup>443</sup> Namely, it provides for promoting overall societal attitudes to the issue of war crimes trials, primarily by facilitating access to relevant information.

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

442 Law on Free Access to Information of Public Importance (*“Official Gazette of RS” nos. 120/2004, 54/2007.104/2009 and 36/2010*)

443 2021-2026 National Strategy for the Prosecution of War Crimes, available at <https://www.tuzilastvorz.org.rs/public/documents/2021-10/Nacionalna%20strategija%20za%20procesuiranje%20ratnih%20zlocina%20od%202021.%20do%202026.%20godine.pdf>, accessed on 15 November 2021.



## II. The Doboj – Kožuhe Case <sup>444</sup>

<b>CASE FACTS</b>	
<b>Current stage of the proceedings:</b> final judgment rendered	
<b>Date of indictment:</b> 13 July 2018	
<b>Trial Commencement date:</b> 19 February 2019	
<b>Prosecutor:</b> Dušan Knežević	
<b>Defendant:</b> Nebojša Stojanović	
<b>Criminal offence charged:</b> war crime against prisoners of war under Article 144 of the FRY Criminal Code	
<b>Case transferred from BIH</b>	
<b>Trial Chamber</b>	Judge Rastko Popović (Chairperson) Judge Nada Hadži Perić Judge Olivera Anđelković Judge Aleksandar Vujičić Judge Miodrag Majić, Ph.D.
<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> 11	<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> 2
<b>Key developments in the reporting period:</b> Final judgment rendered	

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<sup>444</sup> The Doboj – Kožuhe Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/doboj-kozuhe.html>, accessed on 15 November 2021.



## Course of the proceedings

### Overview of the proceedings up to 2021

#### Indictment

The accused Nebojša Stojanović is charged with having, one evening in early May 1992, in the village of Kožuhe (Doboj municipality, Bosnia and Herzegovina), as a member of a volunteer unit attached to Serbian armed units, taken Croatian Defence Council (HVO) member Ivan Sivrić, captured earlier, from the compound of the “Energoinvest” factory where he was held, to the locality of Djelovačke Bare near the Bosna River, and killing him in a pre-dug grave with two pistol shots to the head.<sup>445</sup>

#### Defence of the accused

The defendant denied having committed the crime. He stated that he had participated in the war in Bosnia and Herzegovina, having gone to the battlefield from Serbia as a volunteer. He had reported at Bujanj Potok, where he was issued with a rifle, and he already had a uniform from his stint at the Vukovar theatre of war. He went to the Bosnia battlefield in May 1992 and returned towards the end of June or in July that same year, having sustained an arm injury. At the critical time he was in the village of Kožuhe, where there were prisoners of war, HVO members. He had seen them being brought in –between seven and nine of them, some of them in black uniforms. Some inhabitants of Kožuhe were engaged by the Serbian military to stand guard. He was a guard shift leader, but had no military function whatsoever. He would take the guard shift to a guard post located at Djelovačke Bare, and they always went there on foot. He denied having claimed to be the village commander and introducing himself as “Neša Četnik”, or ordering one of the locals to dig a grave at the Djelovačke Bare site. There had been no ill feelings between him and any of the villagers, and he had in fact been in contact with some of them, but at the moment he was giving his statement could not recall their names, except for a certain “Buca”. He did not personally know the injured party Ivan Sivrić – he had never established contact with the captured HVO members, and he had never led the injured party around the village. He believes this to be a case of mistaken identity, as there was a person there who physically resembled him, his hairstyle in particular.<sup>446</sup>

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#### Witnesses in the proceedings

Injured party Ružica Miloš, the sister of the murdered Ivan Sivrić, said that she had no first-hand knowledge about his killing. Her deceased father had been trying for years and years to find out who killed Ivan. He found out that it had been Dušan Pašić, nicknamed “Luis”. She had last seen her brother about a month and a half before he was killed. On 21 November 1998, she went with her father to the town of Odžaci to identify the mortal remains of her brother, and they recognised parts of his clothes.<sup>447</sup>

445 OWCP Indictment KTO no. 3/2018 of 13 July 2018, available at [https://www.tuzilastvorz.org.rs/public/indictments/kto\\_3\\_18\\_cir~0.pdf](https://www.tuzilastvorz.org.rs/public/indictments/kto_3_18_cir~0.pdf), accessed on 7 October 2021.

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

447 Ibid.



Witness Miroslav Marković testified about the circumstances under which Ivan Sivrić had been killed. He said that on the critical day he, a person nicknamed “Buca”, the defendant, and their prisoner Ivan Sivrić, rode in a passenger vehicle to the site of a pre-dug grave. On arriving at their destination, they all alighted from the vehicle. Ivan Sivrić greeted Nebojša Stojanović, who then shot him, emptying the magazine of his pistol into him. The witness claims that only Nebojša Stojanović shot at Ivan Sivrić on the critical occasion, and that the person nicknamed “Buca” then gave him his pistol also in order for Nebojša to “finish him off”. Then the witness and “Buca” covered the body lying in the pre-dug pit with earth. About a month later, they returned to the spot where Ivan Sivrić was buried to dig up the murdered man’s body and make sure that Ivan Sivrić was really dead, as stories were being circulated around the village that it had all been a trick and that Nebojša Stojanović had fired blanks at Ivan Sivrić.<sup>448</sup>

Witness Siniša Nedić was around seventeen at the time of the critical event. There was talk in the village that someone had been captured and shot somewhere in the area. Out of curiosity he and his friends Miroslav Marković and Željko Mirković sat on a tractor and rode to the execution site. In fact, his friend Miroslav told them on that occasion that he had been present during the shooting, and he was the one who took them to the place in question. This spot is about two kilometres away from the River Bosna. They started to dig, but then two or three guards arrived and so they stopped. His friend Miroslav had not told them any details, but only that the prisoner had been killed by one Nebojša.<sup>449</sup>

Witness Dušan Tošić, nicknamed “Luis”, stated that he knew the person who went by the name of “Neša Četnik”, but could not recognise him among the persons present in the courtroom. Nor did he know any person called Nebojša Stojanović. He explained that he had set off for Bosnia and Herzegovina from Serbia as a volunteer of the Serbian Radical Party. On arriving in Modriča, they reported to the Territorial Defence Headquarters. He remained in the village of Koprivna, where they were billeted at the old post office building. The remainder of his group did not go all the way to Modriča, but remained in the village of Kožuhe. He provided all the necessities for his group, which numbered six men, such as weapons, ammunition and cigarettes. One day, a group of the men who were staying in Kožuhe drove by in a “Pinzgauer”, with a lad in a black Croatian National Guard Corps (ZNG) uniform. The lad was young and skinny and his long hair was tied in a ponytail. Accompanying him were Neša Četnik, Bane a.k.a. Žvaka, Dik and Tuta. He later heard from Neša himself that they had led this young man from café to café for several days, and that eventually Neša had killed him. Neša was around twenty years of age at the time and sported what is known as a “Cherokee” hairstyle, and he was of shorter stature than the witness. He belonged to a group from the Belgrade area, he hailed from Kučevo, and he said that he had been to Vukovar. Later he heard people say that Neša and the young captive had been in Switzerland together before the war and had moved in the same circles. Giving his testimony, the witness said that he knew the defendant from Bubanj Potok, but as Neša Četnik.<sup>450</sup>

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

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

450 Ibid.



Witness Ivo Senković stated that as an inspector of the Odžaci (Bosnia and Herzegovina) Police Department he had attended the exhumation of the mortal remains of the victim Ivan Sivrić, carried out in 1998. The exhumation was performed in the village of Kožuhe by the Bosnia and Herzegovina Commission on Missing Persons, and the actual location was shown them by a lad who had been ordered to bury the victim. The mortal remains were found in water-logged woods near the Doboј–Modriča road. During the exhumation, the mortal remains were found with a part of a uniform. The family had provided a description of the clothing in which Ivan had last been seen, and it was precisely the jersey which they had described and which was found during the exhumation that had helped identify him. It was a jersey with a distinctive pattern that Ivan’s sister recognised immediately. Pathologist Anto Blažanović performed a post-mortem examination and found two penetrating wounds and a fracture of the left lower arm on the mortal remains of the victim. The pathologist established that a male between 20 and 23 years of age and about 184 cm in height was in question, which corresponded to the description given by the victim’s family. He also found a bone malformation on a leg joint, and the victim’s father stated that the victim had been badly burnt on that part of the leg as a child. Strands of black hair were also recovered, and, on the basis of everything found, the police concluded that these were indeed the mortal remains of Ivan Sivrić.<sup>451</sup>

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Witness Ante Blažević explained that as a pathologist he had undertaken an autopsy of the mortal remains of the murdered Ivan Sivrić. Examining his bodily remains, he found projectile entry points on the occiput. Two projectiles with an almost parallel trajectory had penetrated the right occipital region. He concluded that the muzzle of the barrel had been perpendicular to the head of the injured party. Death was instantaneous. He was unable to determine the shooting distance, the calibre of the weapon or the position of the body at the time the projectile was expelled. He was working with skeletal remains, on the basis of which he concluded that a young male about 23 years of age and more than 180 cm in height was in question.<sup>452</sup>

Witnesses Željko Živković and Slobodan Krulj had heard that a prisoner had been brought to the village and that he had been brought there by a person who went by the name of “Neša Četnik” and “his team” who had come to Kožuhe from some place as volunteers. They found out what had happened from witness Miroslav Marković. Namely, that they had taken the prisoner out of the village, dug a hole and that then Nebojša (Neša Četnik) shot him with a pistol killing him. There was talk around the village that after the murder the dead prisoner had been taken somewhere, so that out of curiosity the witnesses, together with Miroslav Marković and Siniša Nedić, went to check if the body was in its original place of burial. As they started to dig they saw a body covered with a coat.<sup>453</sup>

Witness Mira Starčević stated that at the critical time she had been working in a café in the village of Kožuhe, when a soldier came in with a prisoner and threatened to kill him, only to say afterwards that he was joking; then he untied the prisoner so that he could have a drink and smoke a cigarette.

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451 Ibid.

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

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



This soldier had a distinctive haircut – the sides of his head were clean shaven and there was a strip of hair running through the middle of the top of his head.<sup>454</sup>

Witness Bogdan Živković stated that the injured party had been brought to Kožuhe and then killed. He saw someone being led around – leading him were a young man who introduced himself as “Neša Četnik” and another two or three persons in his company. This Neša guy had a somewhat strange hairdo, it seemed as if he had a queue on his head.<sup>455</sup>

Witness Slobodan Despotović explained that after the war he was a member of the Commission on Missing Persons. During an exhumation in Modriča, carried out on 12 November 1998, Mijo Matanović, the Croatian representative, proposed to him that an exhumation be performed in Kožuhe as well. Matanović told him that Miroslav Marković from Kožuhe had information about the location of the body to be exhumed. They went to Kožuhe, and together with Marković and two policemen proceeded to the place where the body was. The body was dug up and documents issued in the name of Ivan Sivrić were also recovered on that occasion.<sup>456</sup>

### **Expert witness findings**

The court expert, forensic medicine specialist professor Zoran Stanković, Ph.D., established that the injured party had sustained two penetrating wounds to the head, with entry wounds in the occipital region and that the wounds had been fatal. It was a violent death but the distance from which the injured party had been shot or the calibre of the ammunition were impossible to ascertain.<sup>457</sup>

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Court expert and ballistics specialist Milan Kunjadić determined that during the exhumation nothing had been found *in situ* that could indicate the type of weapon with which fatal wounds had been inflicted on the injured party. The location at which the wounds had been inflicted or the position of the injured party at the moment of wounding were not possible to establish either. Depending on the base underneath, he could have been either standing or kneeling. His rear left side had been turned towards the person who inflicted the injuries on him.<sup>458</sup>

### **First instance judgment**

On 15 October 2020, the Higher Court in Belgrade<sup>459</sup> rendered a judgment<sup>460</sup> pronouncing the accused Nebojša Stojanović guilty of a war crime against prisoners of war under Article 144 of the FRY Criminal Code and sentenced him to a term of imprisonment of eight years. Concurrently, the measure of confinement to RS territory was imposed on him.

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454 Ibid.

455 Ibid.

456 Ibid.

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

458 Ibid.

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

460 Judgment of the Higher Court in Belgrade K.Po2 no. 4/18 of 15 October 2020.



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

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

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

The court referred the injured party to claim damages in civil action, not being able to consider her associated action for damages because it was not quantified.<sup>461</sup>

## Overview of the proceedings in 2021

### Second instance judgment

On 22 March 2021, the Court of Appeal in Belgrade<sup>462</sup> rendered a judgment<sup>463</sup> denying the appeals of the War Crimes Prosecutor and of the defence counsel for the accused and affirming the first instance judgment.

<sup>461</sup> Ibid.

<sup>462</sup> Chamber composition: Judge Rastko Popović, Chairperson, Judges Nada Hadži Perić, Olivera Anđelković, Aleksandar Vujičić and Miodrag Majić, Ph.D., members.

<sup>463</sup> Judgment of the Court of Appeal in Belgrade Kž1 Po2 8/20 of 22 March 2021.



Defence counsel for the accused challenged the first instance judgment on account of substantial violations of criminal procedure, contending that the impugned judgment was based on conflicting statements of witnesses that were both self-contradictory and inconsistent with the statements of other witnesses and the presented physical evidence. However, the Court of Appeal concluded that the court of first instance had provided clear and valid reasoning in respect of all facts of relevance to its determination, and that there was nothing ambiguous regarding the decisive facts. It also concluded that the court of first instance had correctly and fully established the facts upon which it based its decision.

Considering the parts of the OWCP and defence appeals contesting the first instance judgment in respect of the decision on the criminal sanction, the Court of Appeal assessed that the court of first instance had correctly appraised the mitigating and aggravating circumstances in regard to the accused and that the imposed prison sentence of eight years was adequate to the type and severity of the committed criminal offence.

## HLC Findings

### **Regional cooperation**

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

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

The OWCP Indictment in this case, which is publicly accessible on the OWCP homepage under "Indictments"<sup>464</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 OWCP Indictments for War Crimes.<sup>465</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

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464 OWCP Indictment KTO no. 3/2018 of 13 July 2018.

465 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 7 October 2021.





omitted in a consistent manner”.<sup>466</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>467</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>468</sup> Since the name of the accused has been anonymised, as indeed has the name of the victim, the OWCP is evidently in breach of a provision of its own Rulebook, in total disregard of the public interest, which is public disclosure of the identity of persons who stand accused of war crimes the commission of which poses a grave danger to society, and equally of the identity of the victims, public reference to whom provides them and their families with a form of redress and is a prerequisite for the recognition of the sufferings they have undergone, primarily on account of their identity.

### **Efficient conduct of the proceedings**

The trial in this case started in February 2019, and the first instance judgment was rendered in October 2020, and, despite the interruption of the trial on account of the Covid-19 pandemic, the final judgment was rendered in March 2021. Therefore these proceedings are an example of an efficiently conducted trial.

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### **Inadequate informing of injured parties**

The first instance judgment referred the injured party to civil action for her associated action for damages. The reason the court gave for not being able to decide on the associated action for damages in the context of the criminal proceedings was that the injured party had not quantified her damage claim, i.e. specified the amount claimed. Namely, for the court to be able to decide upon an associated action for damages as part of the criminal proceedings, the damage claim must be quantified.<sup>469</sup> This demonstrates the lack of adequate support to injured parties during the proceedings. It is the obligation of both the Office of the War Crimes Prosecutor and the Witness and Injured Parties Assistance and Support Unit to inform injured parties not only that they are entitled to damages, but also that their claims must be quantified, i.e. the exact sum specified by the end of the proceedings. Because of the inactivity of the competent bodies in this case, rather than exercise her right during the criminal proceedings, the injured party is compelled to venture another lawsuit in pursuit of her entitlement, whereby she is being additionally exhausted and victimised.

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466 Ibid, Article 1, paragraph 2.

467 Ibid, Article 5, paragraph 1.

468 Ibid, Article 5, paragraph 2.

469 CPC, Article 253.



### III. The Ključ – Velagići Case<sup>470</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> final judgment rendered	
<b>Date of indictment:</b> 27 November 2018	
<b>Trial commencement date:</b> 8 March 2019	
<b>Prosecutor:</b> Ognjen Đukić	
<b>Defendant:</b> Željko Maričić	
<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 Rastko Popović (Chairperson) Judge Nada Hadži Perić Judge Olivera Anđelković Judge Miodrag Majić, Ph.D. Judge Aleksandar Vujičić
<b>Number of defendants:</b> 1 <b>Defendant's rank:</b> no rank <b>Number of victims:</b> 6 <b>Number of witnesses heard:</b> 9	<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> Final judgment rendered	

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<sup>470</sup> The Ključ-Velagići Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/kljuc-velagici.html>, accessed on 2 December 2021.



## Course of the proceedings

### **Overview of the proceedings up to 2021**

#### **Indictment**

The accused Željko Maričić is charged with having, as a member of the Army of Republika Srpska, after his arrival towards the end of March 1992 at the “Nikola Mačkić” Elementary School where a large number of Bosniak male civilians from the villages of Velagići, Pudin Han, Sanica and Krasulje and several villages in the Ključ Municipality area were detained, among them Mirsad Dervišević, Latif Salihović, Mujaga Selman, Senad Draganović, Hamdija Kumalić and Rifet Kalabić, physically maltreated the detainees, punching them and kicking them with his military boots, hitting them with a stick and other objects all over the body, putting a knife to Senad Draganović’s throat with threats to slit it, which caused Mirsad Dervišević and Hamdija Kumalić to faint repeatedly, and continuing to maltreat them in a similar way when they regained consciousness. When, having been maltreated all day long, the civilians were then put on buses which set off towards a camp, the defendant approached Mirsad Dervišević and continued beating him all over the body with a stick, and when Mirsad Dervišević sought cover under a bus seat, he produced a knife and stabbed him in the back.<sup>471</sup>

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

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The defendant partially confessed to the commission of the criminal offence he was charged with, stating that he had beaten the injured parties but not to such an extent as alleged in the indictment. He felt very sorry for these people and sincerely regretted having treated them in such a way, which he had done solely because he had been under the influence of alcohol. He drank heavily in the period in question, especially when his one-and-a-half-year-old son was diagnosed with epilepsy and autism. He had quite a few Muslim friends in Ključ, there was no bad blood between him and anyone, and he had had no reason whatsoever to maltreat the incarcerated civilians, but he did so because he was drunk and not in control of his actions. He wore an olive drab uniform and carried an automatic rifle, but did not have a knife or a baton. He was unable to explain why he had gone to the “Nikola Mačkić” elementary school, as he had been drinking in a bar before arriving at the school. On entering the school, he went into the gym where about 200 men were detained. He punched and kicked the detained civilians, but he did not have anything in his hands and he did not carry a knife. His blows were not so hard as to make them faint. He is positive that he did not board the bus which took the civilian prisoners to the camp at Manjača. He was outside the gym when the people were being led out towards the buses, and then he hit several of them with some kind of a stick. He knew some of the injured parties - Mirsad Dervišević and Mujaga Selman, whom he had hit. He could not explain why the injured party Dervišević alleged that he had stabbed him with a knife because they “had been on good terms”.<sup>472</sup>

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471 OWCP Indictment KTO no. 8/2018 of 27 November 2018, available at [https://www.tuzilastvorz.org.rs/public/indictments/%D0%9A%D0%A2%D0%9E\\_%D0%91%D1%80\\_8\\_18\\_%D0%8B%D0%B8%D1%80.pdf](https://www.tuzilastvorz.org.rs/public/indictments/%D0%9A%D0%A2%D0%9E_%D0%91%D1%80_8_18_%D0%8B%D0%B8%D1%80.pdf), accessed on 16 November 2021.

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



## Witnesses in the proceedings

Witness and injured party Mujaga Selman stated that in late May 1992 he had been arrested as a civilian and brought to Ključ, to the gym of the “Nikola Mačkić” elementary school. They were subjected to physical abuse in the gym, but he did not see the accused, whom he knew from before, on that occasion. He explained that while in the gym he had to keep his head bowed and was therefore unable to see who exactly was there. They took them out of the gym and led them to some buses which were parked outside the school. A gauntlet had been formed leading from the school building to the buses and he saw the defendant in it. The defendant swung at him with a wooden pole intending to whack him on the back, but the witness cushioned the blow with his arm. After that blow, he had problems with his arm for a long time. He saw five or six buses in which they were waiting for them. He did not see the accused in the bus on which he was travelling, but he noticed him when they reached the village of Sitnica, where they were placed in the school gym. There he again saw the accused, threatening a colleague of his. From Sitnica they were transported to the camp at Manjača. He does not know whether the defendant drank habitually before the war or whether he was drunk on the relevant day.<sup>473</sup>

Witness and injured party Mirsad Dervišević was also taken to the gym of the “Nikola Mačkić” elementary school. There were many people in the gym who, like the witness, had been brought there and were beaten. The witness was beaten so viciously that he lost consciousness several times. The accused beat him the most, but others beat him as well. He could see the accused clearly, and he knew him from before. He is certain that he assaulted him in the gym - in fact, he kicked him, because the strong blows knocked him down to the floor and he could then clearly see who had delivered the kick. He beat others too on that occasion. They were ushered out of the gym and loaded into buses, and the accused boarded the bus on which the witness was and continued to beat him. He is positive that it was precisely the accused who stabbed him with a knife, as before that he had been beating him and swearing at him. He thinks that he stabbed him with an army knife, as he wore one on the hip. Trying to shield himself from the blows he sought shelter under a bus seat, and then the accused stabbed him in the kidney. Presently they reached the village of Sitnica, where they were taken off the buses and led into the school gym. While they were in the gym the accused entered and said: “Just so you know who beat you, my name is Željko Maričić, son of father Miloš and mother Mara”. Some soldiers ushered the accused out of the gym in Sitnica, while the witness was transported together with other male prisoners to the Manjača camp. His stab wound bled profusely, and he was not fully alive to the goings-on over the following several days. The accused was an alcoholic, he said.<sup>474</sup>

Witness and injured party Senad Draganović stated that he knew the accused and, as he worked as a waiter in a restaurant frequented by the defendant, knew that he drank. He explained that he had been incarcerated in the gym of the elementary school in Ključ, together with a large number of Bosniak men. He saw the defendant in the gym in Ključ and in Sitnica, where he introduced himself stating his name and even the names of his parents for the sole reason that “they would know who beat them”.

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

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



During his detention in the gym, the defendant had twice put a knife to his throat and asked him at which hour he wished to be slaughtered. He supposes that the defendant was drunk at the time. He saw Mirsad Dervišević only in the gym in Sitnica, he was all covered in blood and disoriented.<sup>475</sup>

Witness and injured party Latif Salihović stated that he knew the defendant from before, and that the latter had beaten him on the critical day in the bus transporting the witness and other detained Bosniak civilians from the elementary school in Ključ to the camp at Manjača.<sup>476</sup>

Witness and injured party Safet Kabrić stated that he had been detained in the gym of the “Nikola Mačkić” elementary school in Ključ together with a large number of Bosniak men. The detainees would be beaten up both in the gym and later as they were being transported by buses to the camp at Manjača. The witness was also beaten, but he does not know who beat him. He saw injured party Mirsad Dervišević covered in blood, and heard that the defendant had beaten him and stabbed him with a knife.<sup>477</sup>

Witness Rifet Kalabić stated that he did not know the defendant, while witness Hamdija Kumalić stated that he had not seen who beat him in the gym of the “Nikola Mačkić” elementary school in Ključ, but that later a neighbour of his and his brother told him that he had been beaten by the accused.<sup>478</sup>

Defence witness Ljiljana Maričić, the defendant’s wife, stated that after they had learned that their son had a grave disease, the accused simply “hit the bottle” and that things only got worse during the war. She also said that the accused had told her that he had maltreated some Muslim men in the gym, but that he did not recall the incident in the bus, of which he also stands accused.<sup>479</sup>

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### **First instance judgment**

On 7 July 2020, the Higher Court in Belgrade<sup>480</sup> rendered a judgment pronouncing the accused Željko Maričić guilty of a war crime against the civilian population and sentenced him to a term of imprisonment of two years.<sup>481</sup>

The Chamber established that the accused arrived towards the end of March 1992, as a member of the Army of Republika Srpska, at the “Nikola Mačkić” Elementary School in Ključ where a large number of Bosniak male civilians from villages in the Ključ Municipality were detained, among them Mirsad Dervišević, Latif Salihović, Mujaga Selman, Senad Draganović, Hamdija Kumalić and Rifet Kalabić. He physically maltreated them, punching them and kicking them with his military boots,

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475 Ibid.

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

477 Ibid.

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

479 Transcript of the main hearing held on 18 February 2020

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

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



hitting them with a stick and other objects all over the body, putting a knife to Senad Draganović's throat with threats to slit it, which caused Mirsad Dervišević and Hamdija Kumalić to faint repeatedly, and continuing to maltreat them in a similar way when they regained consciousness. When, having been maltreated all day long, the civilians were then put on buses about to set off towards a camp, the defendant boarded the bus, approached Mirsad Dervišević and continued beating him all over the body with a stick, and when Mirsad Dervišević sought cover under a bus seat, he produced a knife and stabbed him in the back. It was conclusively established during the proceedings that there had been an armed conflict, that the accused had been a member of the Army of Republika Srpska as one of the sides to the conflict and that the injured parties had been civilians.

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

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

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

In determining the sentence, the court assessed the absence of a prior criminal record, his family situation and the fact that he was the father of two children, one of whom was sick, as mitigating circumstances in favour of the accused. In this context the court took into consideration all of them, found that the existence of extraordinary mitigating circumstances satisfied the requirement for leniency, and sentenced the accused to a term of imprisonment of two years.<sup>482</sup>

## Overview of the proceedings in 2021

### Second instance judgment

On 5 February 2021, the Court of Appeal in Belgrade<sup>483</sup> rendered a judgment rejecting as groundless the appeals of the War Crimes Prosecutor and of the defence counsel for the accused, and affirmed the first instance judgment by which the accused Željko Maričić was sentenced to a term of imprisonment of two years<sup>484</sup>.

The War Crimes Prosecutor and the defence counsel for the accused had appealed only the decision on the criminal sanction. The War Crimes Prosecutor proposed that a harsher penalty be imposed on the defendant, in view of his relentlessness and ruthlessness in committing the crime. Defence counsel for the accused proposed that a lesser sentence be meted out on the defendant, namely a term of imprisonment of one year which the accused would serve in his place of residence.

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482 Ibid.

483 Chamber composition: Judge Rastko Popović, Chairperson, Judges Nada Hadži Perić, Olivera Anđelković, Miodrag Majić, Ph.D. and Aleksandar Vujičić, members.

484 Judgment of the Court of Appeal in Belgrade Kž1 Po2 6/20 of 5 February 2021.



The Court of Appeal assessed that the court of first instance had correctly appraised all circumstances of bearing on the sentencing decision and had attributed adequate weight to each individual circumstance, and found the pronounced sentence of two years of imprisonment adequate to the severity of the committed crime and its consequences and to the level of criminal liability.

## HLC Findings

### **Regional cooperation**

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

### **Excessive Anonymisation of the indictment and judgment**

The Office of the War Crimes Prosecutor's Indictment in this case, which is publicly accessible on the OWCP homepage under "Indictments"<sup>485</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 OWCP Indictments for War Crimes.<sup>486</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>487</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>488</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

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485 OWCP Indictment KTO no. 8/2018 of 27 November 2018, available at [http://www.tuzilastvorz.org.rs/upload/Indictment/Documents\\_\\_sr/2019-04/%D0%9A%D1%82%D0%BE\\_8\\_18\\_%D0%9B%D0%B0%D1%82~2.pdf](http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2019-04/%D0%9A%D1%82%D0%BE_8_18_%D0%9B%D0%B0%D1%82~2.pdf), accessed on \_\_\_\_ December 2020.

486 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 7 December 2021.

487 Ibid, Article 1, paragraph 2.

488 Ibid, Article 5, paragraph 1.



protection of the identity of the physical person in question”.<sup>489</sup> Since the name of the accused has been anonymised, as indeed has the name of the victim, the OWCP is evidently in breach of a provision of its own Rulebook, in total disregard of the public interest, which is public disclosure of the identity of persons who stand accused of war crimes the commission of which poses a grave danger to society, and equally of the identity of the victims, public reference to whom provides them and their families with a form of redress and is a prerequisite for the recognition of the sufferings they have undergone, primarily on account of their identity.

The judgment of the Court of Appeal, which was submitted to the HLC by the Higher Court together with the first instance judgment, was anonymised by redacting the names of the judges, members of the Appeals Chamber, of the recording clerk, and in places also of the defence counsel.<sup>490</sup> Such anonymisation is contrary both to the Rulebook on Substitution and Omission of Data in Judicial Decisions of the Court of Appeal,<sup>491</sup> and to the Rulebook on Substitution and Omission of Data in Judicial Decisions of the Higher Court,<sup>492</sup> as Article 4 of both Rulebooks expressly specifies that *“Personal data pertaining to judges, lay judges, recording clerks, public prosecutors and their deputies, public attorneys and their deputies, court sworn experts, court sworn interpreters and translators, notaries public and their deputies, public enforcement officers and their deputies, attorneys-at-law and legal trainees as legal representatives or defence counsel, shall not be pseudonymised or anonymised”*. Such conduct on the part of the Court demonstrates that anonymisation is undertaken quite arbitrarily and perfunctorily, without due regard for its own Rulebook.

### **Efficient conduct of the proceedings**

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The trial in this case started in March 2019, ending in a final ruling on 5 March 2021. These proceedings are therefore also an example of an efficient trial, especially if account is taken of the standstill in judicial proceedings owing to the Covid-19 pandemic.

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489 Ibid, Article 5, paragraph 2.

490 Judgment of the Court of Appeal in Belgrade Kž1 Po2 6/20 of 5 February 2021, available at [http://www.hlc-rdc.org/wp-content/uploads/2021/03/Drugostepena\\_presuda\\_05.02.2021.pdf](http://www.hlc-rdc.org/wp-content/uploads/2021/03/Drugostepena_presuda_05.02.2021.pdf), accessed on 16 November 2021.

491 Rulebook of the Court of Appeal in Belgrade on Substitution and Omission (pseudonymisation and anonymisation) of Data in Judicial Decisions of 12 October 2017.

492 Rulebook of the Higher Court in Belgrade on Substitution and Omission (pseudonymisation and anonymisation) of Data in Judicial Decisions of 5 July 2017.





#### IV. The Bogdanovci Case<sup>493</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> 16 January 2020	
<b>Prosecutor:</b> Dušan Knežević	
<b>Defendant:</b> Boško Soldatović	
<b>Criminal offence charged:</b> war crime against the civilian population under Article 142 of the FRY Criminal Code	
<b>Trial Chamber</b>	Judge Rastko Popović (Chairperson) Judge Nada Hadži Perić Judge Olivera Anđelković Judge Miodrag Majić, Ph.D. Judge Aleksandar Vujičić
<b>Number of defendants :</b> 1  <b>Defendant's rank:</b> low rank  <b>Number of victims:</b> 9  <b>Number of witnesses heard:</b> 5	<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>  Final judgment rendered	

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<sup>493</sup> The Bogdanovci Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/bogdanovci.html> accessed on 15 November 2021.



## Course of the proceedings

### Overview of the proceedings up to 2021

#### Indictment

The accused Boško Soldatović is charged with having, around noon on 11 November 1991, in the village of Bogdanovci in the Republic of Croatia, as a member of a military police company comprised within the 2<sup>nd</sup> Proletarian Guards Mechanised Brigade of the Yugoslav People's Army, of his own accord and without anyone's orders or approval, taken out from the local community hall civilians Ljulje Barlecaj, Vera Barlecaj, Krista Lešaj, Manika Lešaj, Mrika Barlecaj, Đulja Barlecaj, Pren Krasnići, Zef Paljušaj and Nikola Paljušaj, leading them behind the said building, lining them up against the wall and killing them all with bursts fired from an automatic weapons.<sup>494</sup>

#### Defence of the accused

Presenting his defence, the accused staunchly denied having committed the criminal offence that he is charged with. He stated that at the relevant time he had been in Bogdanovci as a member of the military police of a Valjevo unit of the Yugoslav People's Army, that he wore an olive drab uniform and was armed with an automatic rifle and a pistol. However, at the time of the murder of the civilians he was not at the local community hall, but at a different location altogether. During his stay in Bogdanovci he had had no contact with civilians. He could not recall the name of a single member of his unit. The names Lazar Aleksić, Gojko Lazić and Dušan Vukajlović rang no bells at all.<sup>495</sup>

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#### Witnesses in the proceedings

Witness for the prosecution Gojko Lazić stated that on 31 October 1991 he had been mobilized by the military police of the Valjevo Brigade and that the accused had also been a military police member. They went to Croatia, the area of the village of Marinci, and then some 8 to 9 days prior to the fall of Vukovar were dispatched to Bogdanovci, where fighting was going on. They spent the first night in a house across from which there was a post office – a storeyed building. About 10:00 hours the next morning he was summoned together with other soldiers to go and help 2<sup>nd</sup> Lieutenant Lazić, who was blocked, together with several soldiers, in a building about 100 metres away from the spot where the post office and a small shop were. When he returned after two hours he saw the bodies of murdered civilians on a clearing by the store. There were several bodies, but he could not recall how many exactly. Among them he noticed an old woman and a very short man. He later heard, there was talk among the soldiers, that the civilians had been killed by the defendant.<sup>496</sup>

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494 OWCP Indictment KTO 1/18 of 21 December 2018.

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

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



Witness for the prosecution Dušan Vukajlović stated that on 4 November 1991 in Valjevo he had been mobilized by the military police of the 2<sup>nd</sup> Proletarian Guards Mechanised Brigade whose commander was Dušan Lončar. They arrived in the area of the village of Petrovci in Croatia on 8 November 1991. The next day they were told that there would be an attack on the village of Bogdanovci, a strategically important point. They were told that the village would be putting up a defence and that the objective was to capture it in order to cut off supplies to Vukovar. The attack started around 08:00 hours on 10 November 1991. That day they advanced as far as the village centre and remained there over the night. On the following day, 11 November 1991, they assembled in the centre of the village by a building which the witness thought was the local community hall and which was on the Bršadin – Petrovci junction. They were issued the task to go through the houses to check whether there still were any enemy soldiers in them, and someone requested that civilians be brought to the centre of the village so as not come to harm during possible military operations. Between 10 and 11 a.m. a group of civilians was brought numbering between seven and nine persons, mostly elderly – more men than women. He was positive that they had been civilians, which he concluded on the basis of their clothes and conduct. Namely, they had been calm and had accepted to go to the centre of the village without any objections. One of the civilians, an Albanian man, which he concluded from his accent, was in a Croatian police shirt, but said that the shirt belonged to his son. The civilians were in a group by the local community office, within the witness's field of vision, standing sort of half-left, and he was some 10 metres away from them. He heard the sound of a weapon being repeated and immediately afterwards a burst of fire. He first saw a group of persons teetering and falling down and then also a man wielding an automatic rifle – he saw the person who had shot the civilians. This person was not in a standard uniform but wore a brown jacket and was about 30 years old. He did not see him again that day. At the time of this incident there were some fifty soldiers near the building as they were waiting for relief troops and to go back to Petrovci. Among them were soldiers Miodrag Marković and Lazar Aleksić. He then asked what had happened and one of the soldiers told him that the person who had shot the civilians was one "Sole". The soldiers talked about it. Immediately after the shooting no one approached the civilians nor was there any reaction in terms of intervening against the perpetrator. The next time he met the person who had shot the civilians was a couple of days later, in the military police company. Someone from the company told him that his last name was Soldatović. The witness ruled out the possibility that someone else and not the defendant had shot the civilians. The witness was shown two photo arrays with the photographs of a number of persons, and the witness recognized the accused in both.<sup>497</sup>

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

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



community office building. He heard the accused shout at civilians in rooms on the upper floor of the community hall – he was asking them how many soldiers there were in the village and was threatening to kill them. The accused took a group of civilians behind the building. There were women in that group as well – one of them was quite young, and he also noticed a very short man. He had the feeling that “what happened would happen,” and turned his head the other way because he did not want that image to be etched in his memory. At that moment there were no other soldiers around the accused. He heard the accused order the civilians to go into a corner and kneel and then he heard a burst of fire. At the time of this event, witness Dušan Vukajlović was also in the immediate vicinity. The soldiers talked about this event later – the story was that the accused had killed the civilians in Bogdanovci. No one else was mentioned as the perpetrator.<sup>498</sup>

Witnesses/injured parties did not have first-hand knowledge about the ordeal of their family members. Thus witness and injured party Atler Antonio Paljušaj stated that he had not been in Bogdanovci when his father Nikola Paljušaj and his brother Zef Paljušaj came to grief. He was present during the exhumation of the mortal remains of victims from the mass grave in Bogdanovci, and he saw the body of his brother Zef, as well as his identity card which was found in the grave.<sup>499</sup>

Witness and injured party Mreco Barlecaj stated that his mother Mrika Barlecaj and his paternal grandmother Đulja Barlecaj had been killed in Bogdanovci. He was present during the exhumation of the mortal remains of victims from the mass grave in Bogdanovci, among whom were found his mother and his grandmother.<sup>500</sup>

In the evidentiary proceedings the court had the statement of witness Miodrag Marković<sup>501</sup> read out; in it the witness stated that he had been a member of the Valjevo Brigade Military Police Company and that he had been in the village of Bogdanovci in the first half of November 1991. He saw soldiers, among whom the accused Soldatović, interrogating a group of civilians comprising women and a very short man. The civilians were being threatened with death unless they said whether there were members of the Croatian armed forces in the village. He was not present when these civilians were killed, but there was talk among the troops that it had been done by the accused.<sup>502</sup>

### **First instance judgment**

On 7 December 2020, the Higher Court in Belgrade<sup>503</sup> rendered a judgment pronouncing the accused Boško Soldatović guilty of a war crime against the civilian population and sentenced him to a term of imprisonment of 15 years.<sup>504</sup>

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498 Ibid.

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

500 Ibid.

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

502 Ibid.

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

504 Judgment of the Higher Court in Belgrade KPo2 3/14 of 7 December 2020.



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

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

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

In determining the sentence the court considered his personal and family situation as mitigating circumstances in favour of the accused Boško Soldatović and assessed as aggravating the circumstances in which the crime had been committed, his ruthlessness in committing the offence and his prior criminal record.<sup>505</sup>

## **Overview of the proceedings in 2021**

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### **Second instance judgment**

Deciding on the appeals of the OWCP and of the accused and his defence counsel, on 11 June 2021, the Court of Appeal in Belgrade<sup>506</sup> rendered a judgment rejecting their appeals as groundless and affirmed the first instance judgment by which the accused was sentenced to a term of imprisonment of 15 years.<sup>507</sup>

Denying the appeal of the defendant's defence counsel, lodged for all statutory reasons, the Court of Appeal found it to be groundless because the court of first instance had correctly and fully established all the key facts and had on their basis correctly applied the law, since the acts of defendant Boško Soldatović featured all the elements of the criminal offence he was charged with.

The Court of Appeal reviewed the appeals of the OWCP and of the defendant's defence counsel pertaining to the length of the sentence and assessed them as being without grounds. To wit, it established that the court of first instance had correctly considered all the mitigating and aggravating circumstances in respect of the defendant and that the pronounced sentence of 15 years of imprisonment was adequate to the severity of the committed criminal offence and the level of the defendant's criminal liability and sufficient to accomplish the purpose of punishment.

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<sup>505</sup> Ibid.

<sup>506</sup> Chamber composition: Judge Rastko Popović, Chairperson, Judges Nada Hadži Perić, Olivera Andelković, Miodrag Majić, Ph.D. and Aleksandar Vujičić, members.

<sup>507</sup> Judgment of the Court of Appeal in Belgrade Kž1 Po2 1/21 of 11 June 2021.



## HLC Findings

### **Efficient conduct of the proceedings**

The case against Boško Soldatović was conducted very efficiently and concluded with a final ruling in just a year and a half. Namely, the trial in this case started in January, and the first instance judgment was handed down already in the beginning of December 2020, despite the standstill on account of the Covid-19 pandemic and the imposition of a state of emergency during which no trials were held. The appellate proceedings ended in a final judgment rendered in June 2021.

### **Adequate sentence**

The HLC finds the sentence of 15 years of imprisonment meted out on Boško Soldatović adequate to the severity of the committed crime, taking account of the fact that nine civilians were killed, five of whom were women.

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

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

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

In 2021, the OWCP initiated an investigation against Dušan Lončar for the crime in Lovas, but took no action to address the criminal complaint filed for the crime in Bogdanovci, although instituting single proceedings would be more effective.



## V. The Ključ–Rejzovići Case<sup>508</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> Final judgment rendered	
<b>Date of indictment:</b> 1 February 2018	
<b>Trial commencement date:</b> 19 April 2018	
<b>Prosecutor:</b> Mioljub Vitorović	
<b>Defendant:</b> Željko Budimir	
<b>Criminal offence charged:</b> war crime against the civilian population under Article 142 of the FRY Criminal Code, in co-perpetration, in conjunction with Article 22 of the FRY Criminal Code	
<b>Case transferred from BIH</b>	
<b>Trial Chamber</b>	Judge Rastko Popović (Chairperson) Judge Nada Hadži Perić Judge Olivera Anđelković Judge Miodrag Majić, Ph.D. Judge Aleksandar Vujičić
<b>Number of defendants:</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> 0
<b>Defendant's rank:</b> low rank	
<b>Number of victims:</b> 2	
<b>Number of witnesses heard:</b> 9	
<b>Key developments in the reporting period:</b> Final judgment rendered	

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<sup>508</sup> The Ključ–Rejzovići Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/kljuc-rejzovici.html>, accessed on 18 November 2021.



## Course of the proceedings

### Overview of the proceedings up to 2021

#### Indictment

The accused Željko Budimir is charged that on 21 November 1992 at around 2300 hours in the settlement of Rejzovići (Ključ municipality, Bosnia and Herzegovina), he and Predrag Bajić and Mladenko Vrtunić<sup>509</sup>, armed with automatic rifles, a pump-action shotgun, a pistol and a knife, smashed the glass on the front door and broke into the house of injured party Ale Štrkonjić, who was at home with his wife Fatima Štrkonjić and mother-in-law Fata Koljić. In order to extract money from him, the perpetrators beat, stabbed and slashed injured party Ale Štrkonjić with a knife, inflicting injuries on him in the form of cuts to the head, left forearm and left lower leg. When he gave them 800 German marks, dissatisfied with the amount, they demanded more. The injured party then told them that he had some money buried in the garden. The accused Budimir and Bajić then took him to the garden, and the injured party dug out another 5,500 German marks and gave it to them, and, seizing the opportunity, escaped while they were counting the money. Afterwards, one of the perpetrators killed Fatima Štrkonjić by shooting her in the head, and then killed Fata Koljić too by slitting her larynx, oesophagus and large blood vessels with a knife.<sup>510</sup>

#### Defence of the accused

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

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#### Witnesses in the proceedings

Nine witnesses were heard during these proceedings.

Witness and injured party Ale Štrkonjić was adamant that the accused had been at his house on the critical day and had cursed, insulted and beat him. He could not identify the accused in the photo array shown him during his testimony, although he had recognized him when presented the same while giving his statement before the Cantonal Court in Bihać in 2010.<sup>511</sup>

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

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

510 OWCP Indictment KTO 2/18 of 1 February 2018, available at [https://www.tuzilastvorz.org.rs/public/indictments/kto\\_2\\_18~1.pdf](https://www.tuzilastvorz.org.rs/public/indictments/kto_2_18~1.pdf), accessed on 18 November 2021.

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





his conviction was based on false witness testimonies and on a statement Predrag Bajić gave on 8 May 2014 before the Cantonal Prosecutor's Office in Bihać, confessing to his own participation in the commission of the crime and naming him and the accused Željko Budimir as co-perpetrators. On the basis of that statement Bajić had entered into a plea bargain with the Prosecutor's Office. Subsequently, at the trial of Milan Lukić for the same type of crime before the Cantonal Court in Bihać, he completely altered his statement, i.e. made no reference whatsoever to the accused or to him in the context of the critical event. On that occasion he stated that Mijo Stančević and Draško Krajcer had been with him at the house of injured party Štrkonjić.<sup>512</sup>

The wife of the accused, a witness for the defence, stated that on the critical day the accused had celebrated his Patron Saint's Day in the village of Sanica, and that in the evening he had come to her house and asked her to marry him, and that he remained at her house until the next morning. Her statement was also confirmed by witness Dane Dobrić.<sup>513</sup>

### **First instance judgment**

On 23 September 2019, the Higher Court in Belgrade<sup>514</sup> rendered a judgment pronouncing the accused Željko Budimir guilty of the criminal offence of a war crime against the civilian population, and sentenced him to a term of imprisonment of two years.<sup>515</sup>

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

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

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

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

<sup>512</sup> Transcript of the main hearing held on 4 September 2018.

<sup>513</sup> Transcript of the main hearing held on 24 May 2019.

<sup>514</sup> Chamber composition: Judge Vinka Beraha Nikićević, Chairperson, Judges Vera Vukotić and Vladimir Duruz, members.

<sup>515</sup> Judgment of the Higher Court in Belgrade K.Po2 no. 1/2018 of 23 September 2019.



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

In determining the sentence, the court assessed as mitigating circumstances in favour of the accused the fact that he was 21 years of age at the time of the perpetration of the criminal offence, that he was a family man and the father of three children, one of whom a minor. The court took his relentlessness in the perpetration of the crime as an aggravating circumstance. As well, the court considered the lapse of time since the commission of the offence a mitigating circumstance, and found that all mitigating circumstances qualified as extraordinary mitigation and sentenced him to a term of imprisonment of two years, assessing that the more lenient prison sentence would also achieve the purpose of punishment.

### **Second instance decision**

On 3 March 2020, the Court of Appeal in Belgrade<sup>516</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>517</sup>

### **Retrial at first instance**

In the retrial at the court of first instance the accused again presented his defence, reiterating that at the time of the critical event, i.e. on 21 November 1992, he had been elsewhere.<sup>518</sup> Daliborka Budimir, the defendant's wife, also took the witness stand, and adhered to her earlier statement given in the main hearing. She explained that she clearly remembered the date of 21 November 1992, that being the date when the accused had asked her to marry him.<sup>519</sup>

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## **Overview of the proceedings in 2021**

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

On 23 February 2021, upon retrial, the Higher Court in Belgrade again judged the accused Željko Budimir guilty of the criminal offence of a war crime against the civilian population and sentenced him to a term of imprisonment of two years.<sup>520</sup>

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516 Chamber composition: Judge Nada Hadži-Perić, Chairperson, Judges Miodrag Majić, Ph.D., Rastko Popović, Aleksandar Vujičić and Omer Hadžimerović, members.

517 Ruling of the Court of Appeal in Belgrade Kž1 Po2 1/20 of 3 March 2020.

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

519 Ibid.

520 Judgment of the Higher Court in Belgrade K. Po2 2/20 of 23 February 2021.



This time too the Trial Chamber left out of the enacting terms of the judgment the participation of the accused in the murders of Fatima Štrkonjić and Fata Koljić, deeming those acts unproven.

In determining the sentence, the court assessed as mitigating circumstances the fact that at the time of the commission of the offence the accused was 21 years of age, that he was a family man and the father of three children one of whom was a minor, and his health status, while not finding any aggravating circumstances. It also considered the lapse of time since the commission of the crime and qualified all the circumstances as extraordinary mitigation.

### **Second instance judgment**

On 7 October 2021, the Court of Appeal in Belgrade<sup>521</sup> rendered a judgment rejecting as groundless the appeals of the prosecutor and of the defence counsel for the accused and affirming the first instance judgment.<sup>522</sup> It found that the court of first instance had correctly and fully established the facts and had correctly concluded that the subjective component of the defendant charged with co-perpetration for participating in the murders of Fatima Štrkonjić and Fata Koljić, should have been much more pronounced and much more conspicuously publicly manifested for his conduct to be characterized as co-perpetration, i.e. participation in the act of murder. It also considered the imposed sentence of imprisonment of two years commensurate with the gravity of the committed criminal offence, the level of the defendant's criminal liability, the circumstances under which the crime was committed and with its consequences, holding that the same could fully achieve the purpose of punishment.<sup>523</sup>

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## HLC Findings

### **Regional cooperation**

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

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

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

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521 Chamber composition: Judge Rastko Popović, Chairperson, Judges Nada Hadži Perić, Milena Rašić, Miodrag Majić, Ph.D. and Aleksandar Vujičić, members.

522 Judgment of the Court of Appeal in Belgrade Kž1 Po2 3/21 of 7 October 2021.

523 Ibid.



and the parties were provided headphones to follow the proceedings. As the hearings are public, the HLC maintains that the court has a duty to provide headphones to the gallery as well in order to enable the public observing the trial to adequately follow witness testimonies being given via a video conference link.

### **Assessment of the mitigating circumstances**

The court's consideration of the time lapse since the commission of the offence in weighing the penalty for the accused is not justified. Time lapse as a mitigating circumstance in determining the sentence may in principle be taken into account when classic criminality offences are in question, where the perpetrator's abstention from repeated offending over a protracted period of time is an indicator of his attitude towards the offence and his resocialisation. However, in the case of the criminal offence of a war crime against the civilian population, where the existence of an armed conflict is an objective condition of incrimination, the time lapse is of no significance whatsoever, as after the end of the armed conflict the offence can no longer be committed. That the lapse of time is not a circumstance to be considered in weighing penalties for this type of criminal offence is also implied by the universal provision on the non-applicability of the statute of limitations to this type of criminal offence. This view of the court runs counter to the established jurisprudence of the ICTY – that the length of the time span between the criminal conduct and the subsequent judgment shall not be considered as a mitigating circumstance<sup>524</sup> – as well as to contemporary jurisprudence.<sup>525</sup>

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

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Up until the final ruling in the proceedings, the HLC had been unable to undertake a detailed analysis of the first instance judgment and of the ruling quashing it because the Higher Court declined to submit them. The reason the court gave for its refusal was that the relevant criminal proceedings had not yet resulted in a final decision and that, if submitted, information and documents obtained in this manner might possibly be abused and obstruct the conduct and conclusion of these judicial proceedings, without specifying concretely what would constitute such obstruction of the proceedings or offering evidence to that effect.<sup>526</sup>

Such an act on the part of the court is in contravention of the Law on Free Access to Information of Public Importance. Namely, for the court to deny access to information of public importance in the specific instance, it must prove that the requested access would seriously jeopardize, obstruct or impede the conduct of the proceedings.<sup>527</sup> The reasons for denying access to the requested decisions

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<sup>524</sup> ICTY Judgment *Dragan Nikolić* – item 273.

<sup>525</sup> 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.

<sup>526</sup> Decision of the Higher Court in Belgrade SU II 17 a no. 84/20 of 18 June 2020.

<sup>527</sup> Article 9, item 2 of the Law on Free Access to Information of Public Importance.



cannot be abstract and hypothetical, as those given by the court in its decision, but must be concrete and clear.

On 18 June 2020, the HLC lodged an appeal against this decision of the court with the Commissioner for Information of Public Importance and Personal Data Protection, who by his Decision of 23 August 2021<sup>528</sup> ordered the Higher Court to reconsider HLC's request, which the court did not do. In the meantime the case was finally concluded.

The HLC observes that of late such conduct of the Higher Court in Belgrade has become regular practice, even though the Commissioner for Information of Public Importance and Personal Data Protection has already brought a number of decisions enjoining upon the court to make available judgments and rulings from proceedings which have not yet ended in a final decision. Evidently, the Higher Court is introducing its own, totally unlawful standards, thereby contributing to the ever decreasing public visibility of war crimes trials.

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<sup>528</sup> Decision of the Commissioner for Information of Public Importance and Personal Data Protection, number 071-01-1660/2020-03 of 23 August 2021.



## VI. The Brčko II Case<sup>529</sup>

CASE FACTS	
<b>Current stage of the proceedings:</b> Final judgment rendered	
<b>Date of indictment:</b> 22 October 2018	
<b>Trial commencement date:</b> 28 May 2019	
<b>Prosecutor:</b> Miodjub Vitorović	
<b>Defendant:</b> Miloš Čajević	
<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 Rastko Popović (Chairperson) Judge Olivera Anđelković Judge Nada Hadžo Perić Judge Miodrag Majić, Ph.D. Judge Aleksandar Vujičić
<b>Number of defendants :</b> 1 <b>Defendant's rank:</b> no rank <b>Number of victims:</b> 13 <b>Number of witnesses heard:</b> 11	<b>Number of court days in the reporting period:</b> 5 <b>Number of witnesses heard in the reporting period:</b> 1 <b>Number of expert witnesses heard :</b> 0
<b>Key developments in the reporting period:</b> Final judgment rendered	

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<sup>529</sup> The Brčko II Case, trial reports and case file documents available at <http://www.hlc-rdc.org/Transkripti/brckoII.html>, accessed on 7 December 2021.



## Course of the proceedings

### Overview of the proceedings up to 2021

#### Indictment

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

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

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Between May and June 1992, he took injured party N.A., whom he knew from before, to the house of Faruk Rejzović in Brčko, at which members of the Intervention Platoon were quartered at the time. The injured party was held there for over twenty days doing the cleaning and tidying up the house. She was raped there almost every day.<sup>530</sup>

#### Defence of the accused

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

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530 OWCP Indictment no. 7/18 of 26 October 2018, available at [https://www.tuzilastvorz.org.rs/public/indictments/kto\\_7\\_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/kto_7_18_%D0%9E%D0%BF%D1%82%D1%83%D0%B6%D0%BD%D0%B8%D1%86%D0%B0~0.pdf), accessed on 30 December 2021.



at Sinkovac, in an army compound with depots and vehicles. He supposes that he knew the injured party N.A., as Brčko is a small town and they had probably come across each other, but her name rings no bells. He denies having taken her to the Režović house, nor does he recall having seen her there. He does not know any of the injured parties, and he never went to the “Luka” camp except to escort inmates for interrogation. Among the tasks of his intervention platoon was to inspect apartments, which he also did, but he never hit, insulted or threatened anyone during these inspections. At the Režović house he saw a brunette around 30 years of age and not too tall.<sup>531</sup>

### **Witnesses in the proceedings**

Witness Stevo Knežević, a fellow combatant of the accused, stated that members of the Intervention Platoon had been accommodated in a house near the Secretariat of the Interior. He saw three women in that house, but did not know whether they had been maltreated. He thought that they had been brought there unnecessarily and had therefore asked Commander Zarić to let them go. He confirmed that he had occasionally seen the accused at that house too, but did not know whether he slept there. The Intervention Platoon’s task had been to maintain law and order in the city and deploy to the front line if so required. They would also take people in for interrogation if they received an order to that effect.<sup>532</sup>

Witness Zoran Jović stated that the accused had been a member of the Intervention Platoon, and that two Doberman dogs would walk beside him unrestrained, which he supposed people were afraid of. The witness himself would be scared when he encountered them, as they were large and vicious dogs. The accused would come with these dogs to the Režović home where the members of the Intervention Platoon were quartered. As members of the platoon they were tasked with apprehending specific individuals on the orders of the police station commander. He described the accused as a troublemaker who did whatever he chose, answered to no one, and came and went as he pleased. The members of the platoon were not required to check against specific lists who occupied which flats in town. He had not seen any females at the Režović house, but several colleagues had told him that there were some girls there. He argued with the accused, telling him that those women should not have been brought there, whereas the accused held the opposite view. Once he was dispatched to respond to a situation that the police had been informed had arisen in the Srpska Varoš neighbourhood. When they arrived at the scene, a man he knew as Muris ran up to the police complaining that he had been attacked by some masked individuals, and said that he had recognised one of them as the accused Čajević. They therefore took Čajević into custody. As they were bringing him in, he uttered threats against Muris and the witness, telling them that one of the two of them would not remain in town. Members of the Intervention Platoon would go to the “Luka” camp to pick up inmates and bring them in for interrogation. They had never been tasked with going around town to empty freezers in abandoned flats.<sup>533</sup>

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

532 Ibid.

533 Ibid.





Witness Aleksandar Lajić explained that the task of the Intervention Platoon had been maintaining law and order in Brčko. He had heard that the accused had been involved in a number of incidents, but did not know what exactly had been in question. He had seen several women at the Režović house who did the cleaning there. He had heard that the accused would come to the “Luka” camp and that “some beating” had taken place there, but could not remember who he had heard it from.<sup>534</sup>

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

Giving his testimony, injured party S. A., explained that on 10 May 1992, five soldiers in fatigues came to his house and took him to the Ministry of the Interior (MUP) in Brčko, and that afterwards he was taken to the first shed in the Luka camp. On arrival at the camp he found his father and his brother M. A. there. He knows the accused from before as he had been on very good terms with his father. The accused came to the camp, armed and in a camouflage uniform. He produced a knife, put it to his neck and said “Balija /derogatory term for Muslims/, you motherfucker, I am going to slit your throat right now”. Somewhat later the witness noticed blood on his neck. The accused singled out the witness and his brother and took them to another room and forced them to perform *fellatio* on one another. In addition to the accused, also present during that were Ranko Češić and some soldiers he did not know. They observed the witness and his brother and laughed all the while. On that occasion the accused cracked his head open with a stapler. He also delivered a very strong blow to the witness’s brother who doubled over a desk and broke a flower pot. Then the accused spilled some juice and forced the witness to lick it off the floor.<sup>535</sup> The testimony of his brother, injured party M. A., is identical.<sup>536</sup>

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Injured party Mehmed Čaluković stated that in the critical period, the accused, wearing a uniform and armed with hand grenades and an automatic rifle, often came to the flat in which the witness was staying with numerous members of his family, including Mirela Brodlić, who was a minor at the time. He maltreated the witness’s brother-in-law Goran Hasanović, swore at him for bearing a Serbian name and not taking up arms and going to war, “there was no name that he did not call him”. He would come every now and then, he was under the influence of alcohol and was “a terrible sight to behold”.<sup>537</sup>

Injured party Mirela Brodlić stated that the accused had brought her boyfriend, who was wounded, from the Luka camp to the flat in which she was staying with another 10 members of her family, and threatened everyone that he would kill them unless he found all of them there the following day. On that occasion he insulted and slapped her uncle Goran Hasanović. She was 17 at the time. She feared that she might be separated from her mother, because in that period Bosniak girls would be taken away and raped.<sup>538</sup>

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534 Ibid.

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

536 Ibid.

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

538 Ibid.



Witness Nikica Mitrović stated that he was a policeman with the Brčko Secretariat of the Interior (SUP) before the war as well and that in the critical period he was a member of the police Intervention Platoon just like the accused. Members of the Intervention Platoon were billeted at a privately owned house, where he saw, in passing, a young blonde female who was doing the tidying up there. That was injured party N .A. whom he occasionally saw in Brčko after the war as well. She told him then that she had had some problems, that she had been maltreated, and mentioned the accused. Incidentally, on one occasion the accused brought dogs to the house where the Intervention Platoon was accommodated. The accused answered to no one – on occasion he would be absent from work but would not be held to account.<sup>539</sup>

Witness Dubravko Češić, a fellow combatant of the accused, confirmed that he had seen a tall blonde girl in the house in which his platoon was billeted. Once he also saw two large dogs in the house.<sup>540</sup>

As a particularly sensitive witness, injured party N. A. was examined in the presence of Ana Najman, court expert in the field of medical psychology. She explained that she knew the accused from before the war as they would come across each other socially. During the war she saw him in Brezovo Polje, a place near Brčko, where she had fled, and asked him to take her back to Brčko to her brother's place. The accused did so, but some ten days later he came to the flat in which she was staying and ordered her to go with him because "they needed her". He took her to a family home in Brčko in which the police Intervention Platoon, to which he also belonged, was quartered. Other members of the platoon were also in the house, of whom she remembers Ranko Češić, Mrkulja and a person called Travolta. She was told that she would be cleaning and tidying up the house. At night members of the Intervention Platoon would bring women to the house. On one occasion, the accused ordered her to go to her room and undress and then she had sexual intercourse with him against her will. She was reluctant to go into detail, but she emphasised that she had been forced and that she feared him, because he was armed – on that occasion his rifle was by the bed. She also feared for the life of her brother. The accused also intimidated her with dogs. He had brought two large Dobermans, said that they were hungry and left her alone with them for three days.<sup>541</sup>

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### **Overview of the proceedings in 2021**

Witness for the prosecution Dragomir Jakovljević stated that during the war in Bosnia and Herzegovina he had been stationed at Brčko with his unit, the 2<sup>nd</sup> VRS Semberija Brigade. He explained that he lived in Brčko before the war and that he knew a lot of people from that period. His commander encouraged them to liaise with the people in Brčko, to assure them that they had nothing to fear as nothing bad would happen and to remain in town. For that reason he kept contact with the people. His task was to control this and to notify the command in case it was not complied with, and of any wrongdoings. He first met injured party N.A. when visiting some friends of his. She started crying and then told him that she had been confined to a house used by members of the Police Intervention

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539 Ibid.

540 Ibid.

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



Platoon. She told him that she had been raped there by whoever wanted to and in whichever way they wanted. After a while they let her go home but threatened that she would always have to be there and at their disposal, or else they would kill her and throw her into the Sava River. She wanted to get out of Brčko and go abroad as she had a letter of guarantee from her brother, but she was afraid of the members of the Intervention Platoon. She did not name the persons who had raped and abused her. He wished to help her and so he led her out of Brčko and to Bijeljina, and for reasons of security had her stay with khoja Hasan whom he knew. He departed for the front and on returning to Bijeljina found out that the khoja had left for an exchange and had probably taken N.A. along.

### **First instance judgment**

On 26 April 2021, the Higher Court in Belgrade<sup>542</sup> rendered a judgment finding the accused Miloš Čajević guilty of a war crime against the civilian population and sentenced him to a cumulative sentence of imprisonment of 13 years.<sup>543</sup>

The court omitted acts of rape of injured party N.A from the factual description of the offence as no sufficient evidence had been presented during the proceedings to prove that the accused had committed them. Particularly so, because the injured party gave inconsistent statements during the trial, and also due to the fact that the prosecutor had not tendered other evidence to prove that the accused had subjected the injured party to precisely the act of rape.

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For the committed offence, the court first sentenced him to a term of imprisonment of 7 years and 6 months. Taking into account as adjudicated the sentence of six years of imprisonment imposed on him by a final judgment of the Higher Court in Sremska Mitrovica, K 22/15 of 12 February 2016, the court gave him a cumulative sentence of 13 years in prison.

The Court established that at the critical time there had existed an internal armed conflict, that the accused had been a member of a Brčko Reserve Police Force Intervention Platoon, and that he had intimidated Muslim civilians, as evident from the detailed and cogent accounts of witnesses Mirela Brodlić, Semka Čaluković and Muhamed Čaluković. In its assessment, a situation where, at the time of an armed conflict, an armed individual belonging to one of the conflicting sides enters someone's flat unauthorised, treats the civilians in a way based on religious discrimination, lines them up and threatens to kill them if any of them were absent on the following day, definitely instils a high degree of fear in the persons in question. Additionally, the accused inhumanely treated civilians S.A. and M.A, in disregard for their human rights, subjecting them to inhumane and degrading treatment aimed at stripping them of dignity as human beings, particularly taking into account their kinship, namely that they were full brothers.<sup>544</sup>

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

543 Judgment of the Higher Court in Belgrade K – Po2 9/2018 of 26 April 2021.

544 Ibid.



In determining the sentence, the court considered the defendant's family situation, namely that he is the father of four children, a mitigating circumstance for the accused, and regarded his prior criminal record and the level of jeopardy to the injured parties as aggravating circumstances.

### **Second instance judgment**

On 4 November 2021, the Court of Appeal in Belgrade<sup>545</sup> rendered a judgment reversing the first instance judgment in respect of the sentencing decision, commuted the same and sentenced the accused to a cumulative term of imprisonment of 10 years.<sup>546</sup>

The Court of Appeal found that the court of first instance had correctly and fully established the facts and had applied substantive law to them correctly; in its sentencing decision it properly assessed the mitigating circumstances for the defendant, but also took his prior criminal record as an aggravating circumstance, even though it took the prison sentence from his previous conviction as decided and imposed a cumulative sentence on him for the current criminal offence and for the offence he had already been convicted of. Thus, the Court of Appeal sentenced the accused to a term of imprisonment of five years for the criminal offence of a war crime against the civilian population that he was convicted of by the first instance judgment and then also took as determined the sentence of six years of imprisonment imposed on him by final judgment K 22/15 of the Higher Court in Sremska Mitrovica of 12 February 2016, and gave him a cumulative sentence of 10 years of imprisonment. It held this sentence necessary and appropriate to the severity of the committed crime and the level of the criminal liability of the accused.<sup>547</sup>

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## HLC Findings

### **Regional cooperation**

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

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545 Chamber composition: Judge Rastko Popović, Chairperson, Judges Nada Hadži Perić, Olivera Anđelković, Miodrag Majić, Ph.D. and Aleksandar Vujičić, members.

546 Judgment of the Court of Appeal Kž1-Po2 4/21 of 4 November 2021.

547 Ibid



### **Sentencing decision**

The Court of Appeal imposed a cumulative sentence of ten years of imprisonment on the accused, taking as determined the sentence of imprisonment of 6 years passed on him by a final judgment of the Higher Court in Sremska Mitrovica.

It imposed on him a prison sentence of 5 years for the criminal offence of a war crime against the civilian population. In the assessment of the Court of Appeal, that penalty is proportionate to the severity of the committed crime.

The HLC considers that the prison sentence of 5 years is not proportionate to the severity of the committed crime. To begin with, the defendant was convicted of two criminal acts. In the first one, he intimidated and terrorized nine Bosniak civilians, among whom two children. In the second one, he treated inhumanely two Bosniak civilians, full brothers, ordering them to hit one another in the presence of other soldiers on the premises of the “Luka” camp in which they were detained, and he also hit them himself; he ordered one of them to lick spilt juice off the floor and the two of them to take one another’s penises into their mouths. Such conduct in the presence of other persons speaks of the defendant’s utter cruelty, bestiality and callousness in the perpetration of these offences. Account should be taken of the fact that the victims were subjected to exceptionally humiliating sexual abuse, as well as of the consequences such a situation entails. Therefore the pronounced sentence should have been considerably harsher.



# TERMINATED PROCEEDINGS

## I. The Ključ II Case

CASE FACTS	
<b>Current stage of the proceedings:</b> proceedings terminated	
<b>Date of indictment:</b> 23 December 2020	
<b>Trial commencement date:</b> 22 February 2021	
<b>Prosecutor:</b> Bruno Vekarić, Ph.D.	
<b>Defendant:</b> Drago Samardžija	
<b>Criminal offence charged:</b> war crime against the civilian population under Article 142 of the FRY Criminal Code in conjunction with Article 24 of the FRY Criminal Code	
<b>Case transferred from BIH</b>	
<b>Trial Chamber</b>	Judge Vera Vukotić, Chairperson Judge Vinka Beraha Nikićević, member Judge Vladimir Duruz, member
<b>Number of defendants:</b> 1	<b>Number of scheduled court days in the reporting period:</b> 1
<b>Defendant's rank:</b> VRS colonel	<b>Number of court days in the reporting period:</b> 0
<b>Number of victims:</b> 316	<b>Number of witnesses heard in the reporting period:</b> 0
<b>Number of witnesses heard:</b> 0	<b>Number of expert witnesses heard:</b> 0
<b>Key developments in the reporting period:</b> Proceedings terminated	



## Course of the proceedings

### **Indictment**

The accused Drago Samardžija was charged as having ordered, in his capacity of commander of the 17<sup>th</sup> Ključ Light Infantry Brigade and member of the Crisis Staff and War Presidency of Ključ municipality, an attack, executed on 26 June 1992, on the undefended Muslim villages of Ramići, Krasulje, Hripavci and Ošljak in Ključ municipality, on which occasion at least five villagers were killed, and about 90 men were taken prisoner and detained at the “Nikola Mačkić” elementary school. The detainees were psychologically and physically maltreated and at least four persons died from the consequences of beating, while survivors were later transported to the Manjača camp.

He is also charged with having ordered an attack, carried out on 10 July 1992, on the undefended villages of Donji Biljani, Botonići, Domazeti, Brkići and Jabukovica inhabited by Muslim civilians, on which occasion they took men captive, killing them in the process. The captives were unlawfully detained at the school in Donji Biljani, from which at least 219 persons were taken somewhere and killed and whose mortal remains were later exhumed from the “Lanište 1” and “Crvena zemlja” mass graves and graves in the settlement of Biljani.

Even though aware of these acts and duty-bound to prevent them, the accused did nothing to prevent them from being committed, nor did he, after their commission, initiate any proceedings against the perpetrators, thus enabling the direct perpetrators to go on committing criminal offences at liberty.<sup>548</sup>

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### **Termination of proceedings**

As the accused Drago Samardžija died on 17 February 2021, the Higher Court in Belgrade ruled to terminate the criminal proceedings against him.

## HLC Findings

### **Regional cooperation**

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

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548 OWCP Indictment KTO no. 7/20 of 23 December 2020, available at [https://tuzilastvorz.org.rs/public/indictments/kto\\_%D0%91%D1%80\\_7\\_20\\_%D0%94%D1%81.pdf](https://tuzilastvorz.org.rs/public/indictments/kto_%D0%91%D1%80_7_20_%D0%94%D1%81.pdf), accessed on 4 January 2022.



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

The OWCP posted on its website the indictment it had brought against Drago Samardžija anonymised in such a way as to indicate that instead of the accused, in question was person A.A. 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>549</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 Court confirmed the indictment against Drago Samardžija as far back as 11 December 2013, 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.

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<sup>549</sup> Case BiH S1 1 K 013952 13 Kro of the Court of Bosnia and Herzegovina, available at <http://www.sudbih.gov.ba/predmet/3303/show> accessed on 4 January 2022.





## II. The Bihać IV Case

CASE FACTS	
<b>Current stage of the proceedings:</b> proceedings terminated	
<b>Date of indictment:</b> 11 May 2021	
<b>Trial commencement date:</b>	
<b>Prosecutor:</b> Ognjen Đukić	
<b>Defendant:</b> Nenad Bubalo	
<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>Number of defendants:</b> 1	
<b>Defendant's rank:</b> middle rank	
<b>Number of victims:</b> 5	
<b>Key developments in the reporting period:</b>	
Proceedings terminated	

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## Course of the proceedings

### **Indictment**

The accused Nenad Bubalo was charged with having, in his capacity of deputy commander of the Military Police of the 15<sup>th</sup> VRS Bihać Brigade, on an unspecified date in the period between 24 May and the first half of June 1992, ordered at least three members of the military police known to him who were at the Račić Barracks near Bihać, to accompany him in a truck to Ripač, to the “IMT traktorski servis /tractor service and repair facility/” where Bosniak men from the surrounding places were being held captive; from it they took at least five civilians to a warehouse near the barracks; on the following morning the accused ordered members of the military police whom he knew to take them to the “Bezdan” pit and there, on orders of the accused and together with him, they killed them and threw them into the pit.<sup>550</sup>

### **Termination of proceedings**

As the accused Nenad Bubalo died in the meantime, the Higher Court in Belgrade ruled to terminate the criminal proceedings against him.

## HLC Findings

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### **Regional cooperation**

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

### **Unnecessary Anonymisation of the indictment**

The OWCP posted on its website the indictment it had raised against Nenad Bubalo anonymised in such a way as to indicate that instead of the accused, in question was person A.A. 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 the OWCP’s issuance of the indictment.<sup>551</sup>

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550 OWCP Indictment KTO no. 3/21 of 11 May 2021, available at <https://tuzilastvorz.org.rs/public/indictments/2021-08/%D0%9A%D0%A2%D0%9E%20%D0%B1%D1%80.%203%2021%20%D0%B7..pdf>, accessed on 4 January 2022.

551 Case S1 1 K 026296 17 Kro of the Court of Bosnia and Herzegovina, available at <http://www.sudbih.gov.ba/predmet/3690/show>, accessed on 4 January 2022.



### **Proceedings terminated due to tardiness of the judiciary**

The tardiness of the judiciary and the evidently inadequate regional cooperation are largely to account for the termination of criminal proceedings in this case as well. Namely, the BIH Court confirmed the indictment against Nenad Bubalo on 25 September 2017, 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. Had the judiciary acted more speedily, the case could have been concluded with a final ruling.





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