Humanitarian Law Center

REPORT
ON WAR CRIMES TRIALS IN SERBIA
DURING 2019

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Contents

Abbreviations used in the text

BIH	Bosnia and Herzegovina
CC FRY	Criminal Code of the Federal Republic of Yugoslavia
ZKP	The Criminal Procedure Code
ECHR	The European Convention on Human Rights
ECtHR	The European Court of Human Rights
EU	The European Union
HLC	The Humanitarian Law Center
ICRC	The International Committee of the Red Cross
ICTY	The International Criminal Tribunal for the former Yugoslavia
IHL	International humanitarian law
JNA	The Yugoslav People's Army
KLA	The Kosovo Liberation Army
Law on War Crimes	The Law on Organization and Jurisdiction of State Authorities in Prosecuting Perpetrators of War Crimes
MUP	The Ministry of the Interior
OWCP	The Office of the War Crimes Prosecutor of the Republic of Serbia
RPPO	The Office of the Republic Public Prosecutor
VJ	The Yugoslav Army
VRS	The Army of the Republic of Srpska

Introduction and methodology

This is the eighth 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 during 2019, namely a total of 24 cases conducted before the War Crimes Departments of the Higher Court and the Court of Appeal in Belgrade. The Report provides a brief overview of all the cases and of the HLC's basic findings in respect of proceedings 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 Reports on war crimes trials may also be consulted for a full grasp of the course of the proceedings and the relevant HLC findings.

The Report focuses on the work of the Office of the War Crimes Prosecutor (OWCP) and the courts in sessions open to the public, primarily analysing the indictments and 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, could not be undertaken in respect of the individual cases, as no information on their activities was publicly available.

In the reporting period, the War Crimes Department of the Higher Court in Belgrade handed down first-instance judgments in eight cases.[1] The War Crimes Department of the Court of Appeal in Belgrade handed down four judgments and one ruling, two of the judgments and the ruling being on appeals lodged against judgments of the Higher Court in Belgrade,[2] and the two other judgments on appeals against judgments of the Court of Appeal in Belgrade in proceedings in which the Department decided at third instance.[3] Over the reporting period, the OWCP filed three indictments against three individuals.[4]

Since it began working in 2003 until the end of 2019, the OWCP brought indictments in 76 war crimes cases, indicting a total of 198 persons and encompassing 2,454 victims who lost their lives. Three of the cases were joined with cases instituted earlier, and final rulings were rendered in 49 out of 73 cases; one case was terminated on account of the death of the defendant; in three cases the indictments were dismissed because the defendants had been found unfit to stand trial; and 20 cases are ongoing. In those cases which have been finally concluded, a total of 70 defendants have been convicted and 52 acquitted. Also, indictments were dismissed against 20 out of the total number of the accused, either on account of their incapacity to stand trial, or because proceedings were terminated on account of their deaths. In the finally concluded cases, the indictments listed a total of 925 victims

1 The *Lovas, Trnje, Bosanski Petrovac – Gaj, Bratunac, Brčko, Ključ – Rejzovići,Bosanska Krupa II* Cases and *Gornje Nerodimlje*

2 Judgments were rendered in the *Ključ – Šljivari* and *Bosanska Krupa* Cases, and the Ruling in the *Bosanski Petrovac – Gaj* Case.

3 The *Ključ –Kamičak* and *Skočić* Cases.

4 Indictment KTO 1/19 of 10 May 2019 against Dalibor Maksimović, Indictment KTO 2/19 of 26 September 2019 against Dalibor Krstović, Indictment KTO 3/19 of 3 July 2019 against Predrag Vuković.

who had lost their lives, while the final judgments listed 722 victims who had perished. In war crimes proceedings up until the end of 2019, a total of 52 first-instance judgments were rendered, 20 of which have been quashed.

Preceding the analyses of the cases in the Report is an overview of general findings on war crimes trials in 2019, and of important socio-political developments which have had some bearing on war crimes trials.

General findings and 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. Account being taken of the fact that, according to the November 2019 OWCP records[5], 2,557 cases were in the preliminary investigation stage and only 15 cases in the investigation stage, at this pace only a negligible number of war crime cases will be dealt with in the forthcoming period.

1. Paucity of indictments

In 2019, the OWCP issued three indictments against three persons.[6] Two of the indictments are actually cases transferred by the BiH judiciary, and these are less complex cases with one defendant each and a smaller number of victims.[7] It should be noted that in these cases the competent BiH authorities had carried out the entire investigation, and issued and confirmed the indictments, and that criminal prosecution was transferred to the Republic of Serbia only because of the accused's inaccessibility to the prosecution authorities and their consequent impossibility to act. The third indictment, which was also issued against one suspect, did not result from a new OWCP investigation. In question is a suspect investigation against whom the procedures had been completed as far back as 2010, but who, being on the run, was not included in the indictment issued against his co-perpetrators[8]. Although in 2019 the OWCP had nine deputy prosecutors and eight assistant prosecutors,[9] with the number of deputy prosecutors in fact increasing to ten at the beginning of December 2019, so far this has not impacted on its performance for the better. On the contrary, the number of indictments brought in 2019 is considerably lower than in 2018, when nine new indictments were issued.[10]

5 OWCP reply to the HLC's request for access to information of public importance PI. no. 29/19 of 25 November 2019.
6 Indictment KTO 1/19 of 10 May 2019 against Dalibor Maksimović, Indictment KTO 2/19 of 26 September 2019 against Dalibor Krstović, Indictment KTO 3/19 of 3 July 2019 against Predrag Vuković.
7 Indictment KTO 1/19 involves four victims, and Indictment KTO 2/19 one victim.
8 Indictment KTO 3/19 of 3 July 2019 against Predrag Vuković, who had been charged as a co-perpetrator for the crime in the village of Ćuška. As he was on the run, he was not included in Indictment KOWCP 4/10 brought against the other co-perpetrators on 9 September 2010, but was only mentioned in it.
9 OWCP reply to the request for access to information of public importance PI.no. 28/19 of 20 November 2019.
10 *Report on War Crimes Trials in Serbia*, HLC, May 2019, pp. 17-18.

2. Indictments for crimes committed against Albanian civilians in Kosovo

During the reporting period, the OWCP did not issue a single indictment for as yet unprosecuted crimes committed against Albanian civilians in Kosovo. The last such indictment, brought in 2019, concerns an accused who was among the identified co-perpetrators in the *Ćuška* Case, ongoing since 2010, but who had been on the run. Likewise, the indictment in the *Ljubenić* Case, which was raised earlier, in 2014, concerned three newly identified perpetrators of the same crime. In contrast, since the beginning of 2013 the HLC has filed nine criminal complaints for crimes committed in Kosovo, namely in Peć,[11] Mala Kruša,[12] Savine Vode,[13] Vučitrn,[14] Goden,[15] Kraljani,[16] Landovica[17] Poklek and Đakovica.[18] However, by the end of 2019, the OWCP had not opened an investigation against a single one of the listed suspects. To the HLC's reminders related to the criminal complaints filed, the OWCP gave only very generalised replies. Thus, their answer to the reminder concerning the criminal complaint filed for the crime committed in the village of Kraljani was that "*they were acting upon the criminal complaint the HLC filed with the Prosecutor's Office on 10 October 2013"*,[19] without specifying, however, what concrete procedural measures they had taken over the past six years. To the reminder concerning the criminal complaint filed for the crime in Landovica, despite the fact that the complaint listed the suspects by name and surname, the OWCP replied that *„it was still conducting an investigation against unidentified perpetrators,* and that "*activities were under way concerning cooperation with the EULEX Mission in Kosovo and Metohija".*[20] Such an answer on the part of the OWCP is absolutely inappropriate, given that the mandate of the EULEX Mission was amended in

11 HLC press release of 8 March 2013, *Criminal Complaint for the Murder of Two Albanian Civilians in Peć on 26 March 1999,* on the occasion of the filing of the criminal complaint, available at http://www.hlc-rdc.org/?p=22643, accessed on 10 January 2020.

12 HLC press release of 15 March 2013 *Criminal Complaint for the Murder of Two Albanian Civilians in Mala Kruša on 28 March 1999*, on the occasion of the filing of the criminal complaint, available at http://www.hlc-rdc.org/?p=22679, accessed on 10 January 2020.

13 HLC press release of 4 June 2013, *Criminal Complaint for a Crime against Three Albanian Civilians in May 1999,* on the occasion of the filing of the criminal complaint, available at http://www.hlc-rdc.org/?p=23090, accessed on 10 January 2020.

14 HLC press release of 19 June 2013, *Criminal Complaint for the Murder of Nine Albanian Civilians in Vučitrn in April and May 1999,* available at http://www.hlc-rdc.org/?p=23342, accessed on 10 January 2020.

15 HLC press release of 4 July 2013, *Criminal Complaint against Officers, Non-commissioned Officers and Soldiers for the Murder of 21 Albanian Civilians on 25 March 1999*, available at http://www.hlc-rdc.org/?p=23483, accessed on 10 January 2020.

16 HLC press release of 10 October 2013, *Criminal Complaint against Officers and Members of VJ and MUP for a Crime Committed against 78 Kosovo Albanians,* on the occasion of the filing of the criminal complaint, available at http://www.hlc-rdc.org/?p=25046, accessed on 10 January 2020.

17 HLC press release of 27 December 2013, *Criminal Complaint against Officers of the VJ for a Crime Committed against 17 Kosovo Albanians and One Ashkali,* on the occasion of the filing of the criminal complaint, available at http://www.hlc-rdc.org/?p=26011, accessed on 10 January 2020.

18 HLC press release of 17 August 2015, *Criminal Complaint against Police Officers for a Crime Committed against 53 Albanian Civilians in Poklek,* on the occasion of the filing of the criminal complaint, available at http://www.hlc-rdc.org/?p=29803, accessed on 10 January 2020.

19 OWCP letter, KTR 116/13 of 26 February 2019.

20 OWCP letter KTNI no. 1/16 of 27 February 2019.

June 2018. According to a decision of the EU Council[21], the mandate of the EULEX Mission now consists of monitoring and mentoring the justice system, i.e./including the Correctional Service, as well as support to the Kosovo Specialist Chambers and the implementation of agreements reached as part of the dialogue on the normalisation of relations between Kosovo and Serbia[22]; it is therefore obvious that as regards the submission of evidence for the prosecution of perpetrators of war crimes, cooperation with the EULEX Mission has no longer been possible as of that date.

3. Absence of cooperation with Kosovo

During the reporting period the OWCP had no cooperation with institutions in Kosovo. Since in June 2018 the mandate of the EULEX Mission was redefined and confined to just monitoring and mentoring, the HLC is of the view that a mechanism should be put in place to enable communication and cooperation between the OWCP and prosecutorial offices in Kosovo.

4. Absence of charges against high-level perpetrators

All the three indictments brought in 2019 were against direct perpetrators of crimes having no rank whatsoever. Evidently the practice has continued of non-prosecution of perpetrators who held senior positions in the former military, police and political hierarchies of Serbia and/or the Federal Republic of Yugoslavia (FRY). The only high-ranking suspects that the OWCP has indicted in its practice to date have been members of the armed forces or civilian officials of the Republic of Bosnia and Herzegovina and the Republic of Croatia.[23]

It was only in 2014 that the OWCP opened its first publicly known investigation against a high-ranking figure from Serbian or FRY armed forces - General Dragan Živanović;[24] but on 1 March 2017 it ordered that the investigation be dropped, having found that there was not sufficient evidence to prosecute.[25] A complaint against this order was filed with the Office of the Republic Public Prosecutor (ORPP),

21 Decision of the EU Council of 8 June 2018, amending the EULEX mandate: *Council decision CFSP 2018/856 of 8 June 2018 amending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO*, Article 2, paragraph 5, available at: https://www.eulex-kosovo.eu/eul/repository/docs/CouncilDecision-203336.pdf, accessed on: 28 December 2019.

22 *Brnabić: Ništa dobro od najava kosovskih suđenja za ratne zločine/Nothing good from the announced Kosovo war crimes trials/*, news item, Radio Free Europe, 1 April 2019, available at: https://www.slobodnaevropa.org/a/29854626.html; *EULEX Kosovo: new role for the EU rule of law mission*, press release, Council of the EU, 8 June 2018, available at https://www.consilium.europa.eu/en/press/press-releases/2018/06/08/eulex-kosovo-new-role-for-the-eu-rule-of-law-mission/, accessed on 28 December 2019.

23 Proceedings against: Ejup Ganić, member of BiH Wartime Presidency; Jovan Divjak, BiH Army General; Vesna Bosanac, Director of the General Hospital in Vukovar; Vladimir Šeks, Vice-Speaker of the Croatian Parliament; Naser Orić, Bosnian Army Commander in Srebrenica, et al.

24 OWCP announcement of 5 August 2014, available at http://www.tuzilastvorz.org.rs/sr/vesti-i-saop%C5%A1tenja/saop%C5%A1tenja/naredba-za-sprovo%C4%91enje-istrage-protiv-generala-%C5%BEivanovi%C4%87a-za-ratne-zlo%C4%8Dine-na-kim, accessed on 17 February 2017.

25 OWCP order to drop the investigation KTI. no. 01/14 of 1 March 2017.

but the ORPP rejected it as unfounded.[26] On 14 December 2017, the HLC lodged a constitutional complaint with the Constitutional Court against the ORPP's ruling, contending that the order to drop the investigation and the ORPP's ruling violated the right of the injured parties to a fair trial and an efficient investigation, guaranteed by the Constitution of the Republic of Serbia; but no decision on it has as yet been given.[27]

Non-prosecution of high-ranking figures runs counter to the adopted National Strategy for the Prosecution of War Crimes, in which the Republic of Serbia has undertaken that "*in his work in the 2016-2020 period, the Prosecutor should accord priority to cases against de iure or de facto high-ranking suspects*".[28]

Criminal complaint against the Commander of the 2nd Proletarian Guards Mechanised Brigade of the Yugoslav People's Army (JNA)

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.[29] The HLC based its criminal complaint on Lončar's order for attacking Lovas, which it enclosed in the complaint, as well as on other documentation which had long been in the OWCP's possession, as reference to them had already been made in the OWCP's 2007 indictment in the *Lovas* Case, brought against lower-ranking perpetrators.[30] Since the filing of the criminal complaint and up to the end of 2019, the HLC had sent repeated reminders to the OWCP to act on it, to which the OWCP replied that the case was in the preliminary investigation stage and that the allegations in the criminal complaint were being examined.[31] A complaint to the ORPP about the OWCP's inaction in respect of the criminal complaint was rejected by the former as unfounded.[32] On 14 December 2017, the HLC filed a constitutional complaint with the Constitutional Court against the decision of the ORPP, submitting that the order to drop the investigation and the ORPP's ruling violated the right of the injured parties to a fair trial and an efficient investigation, rights guaranteed by the Constitution of the Republic of Serbia[33]; however, a decision on it is still pending. The HLC maintains that the OWCP is disinclined to prosecute Dušan Lončar, particularly bearing

26 ORPP Ruling no. 58/17 of 7 December 2017, available at http://www.hlc-rdc.org/wp-content/uploads/2018/02/Resenje_o_odbijanju_prigovora_protiv_naredbe_Tuzilastva_za_ratne_zlocine_o_obustavi_istrage,_Dragan_Zivanovic,_Cuska.pdf?subject=http://www.hlc-rdc.org/wp-content/uploads/2018/02/Resenje_o_odbijanju_prigovora_protiv_naredbe_Tuzilastva_za_ratne_zlocine_o_obustavi_istrage,_Dragan_Zivanovic,_Cuska.pdf, accessed on 24 December 2019.

27 RS Constitution, Articles 32, 24 and 25.

28 National Strategy for the Prosecution of War Crimes, *Official Gazette of the RS* no. 19/2016, pt. 1.3, available at http://aler.rs/files/NACIONALNA_STRATEGIJA_za_procesuiranje_ratnih_zlocina_Sl_gl_RS_br_19_2016.pdf, accessed on 24 December 2019.

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

30 OWCP Indictment KOWCP 7/07 of 28 November 2007, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2016-05/o_2007_11_28_lat.pdf accessed on 24 December 2019.

31 OWCP letter KT. no. 6/16 of 27 February 2019.

32 RPPO reply nnumber KTR. 1245/18 of 22 November 2018.

33 RS Constitution, Articles 32, 24 and 25.

in mind the fact that on 5 January 2017 it amended the previous indictment in the *Lovas* Case from 2015[34], excluding the allegation that the attack on the village of Lovas was carried out on Lončar's orders.[35] In this way, the OWCP has sought to avoid the fact that Dušan Lončar ordered the attack on Lovas from featuring in the judgment, making Dušan Lončar' s position in any future proceedings against him much easier. As opposed to such an intention of the OWCP, the court of first instance explicitly stated in the operative part of its judgment upon retrial that *"the attack was carried out on the orders of the Commander of the 2nd Proletarian Guards Mechanised Brigade of the JNA, Str. conf. number 350-01 of 09 October 1991."* [36].

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 that either.

Rulebook on Anonymisation of Personal Data in Indictments of the OWCP

On 20 March 2019, the OWCP adopted the Rulebook on Anonymisation of Personal Data in Indictments of the Office of the War Crimes Prosecutor (Rulebook), regulating more specifically the anonymisation of personal data contained in OWCP indictments which are published or made publicly available.[37]

A number of provisions in this Rulebook are inconsistent with the RS Constitution, the generally accepted rules of international law and ratified international treaties, and also, in fact, with the provisions of the Law on Personal Data Protection and the Law on Free Access to Information of Public Importance.

Namely, the Rulebook provides that "*indictments which have been confirmed by the court or which have been taken over from other competent prosecutorial offices, either in written or electronic form, shall as a rule be published in their entirety on the webpage of the Office of the War Crimes Prosecutor, 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*".[38]

34 OWCP Indictment KT 7/07 of 1 December 2015, available at http://www.hlc-rdc.org/wp-content/uploads/2015/12/Izmenjena_optuznica_01.12.2015.pdf accessed on 24 January 2019.

35 OWCP Indictment KT 7/07 of 5 January 2017, available at http://www.hlc-rdc.org/wp-content/uploads/2017/01/Izmenjena_optuznica_05.01.2017..pdf, accessed on 14 January 2018.

36 Judgment K.Po2 1/2014 of the Higher Court in Belgrade of 20 June 2019.

37 Rulebook on Anonymisation of Personal Data in Indictments of the Office of the War Crimes Prosecutor A.no. 82/2019 of 20 March 2019, available at http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document_sr/2019-05/%D0%9F%D1%80%D0%B0%D0%B2%D0%B8%D0%BB%D0%BD%D0%B8%D0%BA_%D0%9B%D0%B0%D1%82.pdf, accessed on 3 February 2020.

38 Rulebook, Article 1.

It also stipulates that *"Anonymised in indictments shall be personal data which relate to: a natural person's name, surname and nickname, the address (domicile and residence), date and place of birth, parents' names, unique personal identification number, identity card number, passport number, driver's licence number, vehicle licence plates number, or to other personal documents which might reveal the identity of a natural person, the telephone number, email address or other web addresses of a natural person, and/or any other personal particulars of a participant in the proceedings, as well as other data on the basis of which the person may be identified or identifiable".* [39]

These provisions of the Rulebook run contrary to the provisions of Articles 42, 46 and 51 of the RS Constitution, the provisions of the European Convention on the Protection of Human Rights and Fundamental Freedoms, Opinion 4/2007 on the Concept of Personal Data (01248/07/EN) of the Working Party on Data Protection, the Global Principles on National Security and the Right to Information (the *Tshwane* Principles), and the provisions of the Law on Personal Data Protection and the Law on Free Access to Information of Public Importance.

Under the Rulebook, "*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 shall be substituted or omitted in a consistent manner.*"

In the context of this provision of the Rulebook, the HLC calls attention to the fact that the issue of gaining access to indictments, judgments and similar has been regulated by the Law on Free Access to Information of Public Importance (LFAIPI), whereby information of public importance is information held by a public authority body, and/or generated during or related to the work of a public authority body. OWCP indictments are evidently covered by this definition. Article 4 of the LFAIPI lays down the legal assumption of justified public interest to know, but this right is subject to limitations to the extent necessary in a democratic society, to prevent a serious violation of an overriding interest based on the Constitution or Law (Article 8 of the LFAIPI).

On the other hand, the Law on Personal Data Protection (LPDP) sets out the conditions for personal data collection and processing, the rights and protection of the rights of persons whose data are collected and processed, as well as limitations to personal data protection. Observed from the angle of the OWCP's work, indictments as well as other documents generated in the work of this body indubitably contain personal data, and the collection and processing of such data is covered by the concept of data processing as defined under the LPDP.

In view of the substance of the foregoing laws which the Rulebook is not in agreement with, the provisions of the OWCP's Rulebook unquestionably exceed the maximum of anonymisation, i.e. of omission of personal data, which warrants the conclusion that the OWCP has overstepped its legal powers in terms of the data that it is not required to make publicly available.

39 Rulebook, Article 5.

The Commissioner for Information of Public Importance and Personal Data Protection has determined in numerous decisions that the names and surnames of war crimes prosecutors and deputy prosecutors, of the accused i.e. defendants and their counsel and deputy counsel, court experts, sworn interpreters, the chairperson and members of the Chamber, legal officers working in the court and prosecutorial offices and legal trainees in law firms are not to be classified as protected data, and are therefore not subject to anonymisation.[40]

In addition, since the Rulebooks on Anonymisation of the Supreme Court of Cassation and the Court of Appeal in Belgrade explicitly provide that data on accused and convicted persons in judicial decisions in war crimes cases are not to be anonymised, the OWCP Rulebook at issue has overstepped the constitutionally defined scope of permissible anonymisation for the purpose of protecting the personal data of natural persons.

Account being taken of the long-standing and established case law of the mentioned courts as well as of the position of the Commissioner, it remains unclear why the OWCP chose to completely ignore established personal data anonymisation standards, overstep the bounds of its legal powers and act in direct contravention of the provisions of Articles 42, 46 and 51 of the RS Constitution.

Indubitably, data like the date and place of birth, habitual residence, occupation, educational background, marital status or personal identification numbers should be anonymised, not being information of public importance, and also because their disclosure could invade the privacy of the persons in question. That does not mean, however, that other particulars, such as, for example, their names, surnames and nicknames, as well as other data listed in the OWCP Rulebook, may in any way be subject to anonymisation.

By the same token, the names of the victims and the injured parties in OWCP documents should not be subject to anonymisation for the same reason as in the case of data on the defendants. Anonymisation of the names of the victims of war crimes makes them publicly invisible, in wanton violation of the right to the truth of the victims, their families and society at large.

Victims of war crimes are persons of public interest, and war crimes are occurrences or events of public interest, and the names of the victims must be publicly available accordingly.

Moreover, not only is the systematic violation of human rights and international humanitarian law an occurrence or event of public interest, but the general public have the right to know the truth about such events, the circumstances surrounding them, the motives behind them and their consequences. Where war crimes are concerned, it is a public right and in the public interest to know the identities of the victims, besides the identities of the accused. Only when the victims' identity has been disclosed do they cease to be mere statistical figures and become known to the public as persons who fell victims to crimes solely on account of their ethnicity or religious affiliation.

40 Decision of the Commissioner for Information of Public Importance and Personal Data Protection no. 07-00-01088/2014-03 of 9 December 2015.

In the light of the foregoing, it is absurd to employ the protection mechanism envisaged in the Rulebook in a situation when it is contrary to the interests of the very individuals for whom it was established, and even more absurd when to do so is detrimental to the goal and purpose of trials for past crimes – finding out the truth about the crimes (which inevitably implies the identity of the victims as well), precisely in order for the objective of general prevention to be achieved.

The HLC maintains that, apart from in situations barred to the public with justification (cases involving minors, rape victims and similar), there does not exist a single rational, justifiable and compelling reason grounded in the law for withholding the names of the victims of war crimes from the public.

Additionally, the OWCP's routine anonymisation of the names of all victims, in disregard of the public interest to know who the victims of the perpetrators of the most grievous crimes are, without additionally assessing on a case-by-case basis whether the names of the victims should or should not be anonymised, particularly when the victims have already testified publicly, severely breaches the earlier cited provisions of the RS Constitution, the mentioned international treaties and standards, as well as the provisions of the LPDP and the LFAIPI.

Due to the above-mentioned, on 13 June 2019, the HLC filed an application with the Constitutional Court requesting an assessment of the constitutionality and legality of the Rulebook on Anonymisation of Personal Data in Indictments of the Office of the War Crimes Prosecutor.

Efficient work of the Higher Court in Belgrade

During 2019, the Higher Court in Belgrade War Crimes Department, handed down first-instance judgments in eight cases.[41] Bearing in mind that all six judges in the War Crimes Department also hear organised crime cases in addition to war crime cases, this result can be considered to be quite successful. Particularly so, bearing in mind the fact that since the beginning of the work of the War Crimes Department, it was only in 2010 that a larger number of first-instance judgments was rendered, namely a total of ten.[42]

Deciding on associated action for damages in war crimes proceedings

Injured parties have never been awarded damages in war crimes proceedings so far, despite the existence of a statutory provision to that effect. Namely, the CPC Criminal Procedure Code (CPC) entitles injured parties to file a claim for damages before the court of first instance by the end of the trial, i.e. to seek compensation during the criminal proceedings for damage arising from the

41 The *Lovas, Trnje, Bosanski Petrovac – Gaj, Bratunac, Brčko, Bosanska Krupa I, and Ključ – Rejzovići and Gornje Nerodimlje* Cases.

42 The *Lički Osik, Vukovar, Tenja, Prijedor, Medak, Stara Gradiška, Banski Kovačevac, Podujevo, Zvornik II, Suva Reka* Cases.

commission of a criminal offence, if that would not significantly delay the criminal proceedings.[43] This means that the sole reason for not deciding such a claim would be the considerable delaying of the criminal proceedings.

However, this legal avenue has never been exploited, with in fact the court having made the exception the rule, and having never considered an associated action for damages or endeavoured to provide the reasons why it felt that such an action would delay the criminal proceedings. Injured parties have always been referred to civil action in order to exercise their right to damages.

The court has advised injured parties claiming damages to exercise their right to compensation of damage in civil litigation, even in the case of a victim of the crime of rape who had been granted the protective measure of hidden identity during the criminal proceedings.[44]

Not only in war crimes trials but also in general, victims have been treated primarily as important sources of factual information, with other matters pertaining to their status in the criminal proceedings, as for instance the issue of their right to indemnification, remaining neglected.

The result of such an approach is that after lengthy and emotionally exhausting criminal proceedings, the victims (injured parties) are additionally victimised, being compelled to file damage claims in yet another and very expensive legal action. For this reason, the majority of the victims have been reluctant to venture another lawsuit, practically abandoning their right to claim compensation.

The untenability of this practice and the need to change it was observed by the Supreme Court of Cassation of Serbia (SCC), which in October 2019 presented the "Guidelines for the Improvement of Jurisprudence in Proceedings for the Compensation of Damage to Victims of Serious Criminal Offences in Criminal Proceedings" (The Guidelines).[45] The SCC Guidelines offer concrete solutions to both public prosecutors and judges as to how to decide on associated actions for damages in the most economical and most efficient way.

The HLC is of the opinion that by bringing the Guidelines the SCC has made a step forward towards promoting the rights of crime victims, as this document spells out the specific steps to be taken by both prosecutorial offices and the courts in Serbia in order for the victims to be able to exercise their right to compensation during the actual course of criminal trials.

Therefore, the HLC believes that the OWCP should assume a more active role in gathering evidence for the adjudication of claims for damages, in order to enable the victims to exercise this right in criminal proceedings. The CPC applied in war crimes proceedings since 15 January 2012 has significantly altered the concept of criminal proceedings, assigning to public prosecutors a role in collecting

43 CPC, Articles 252 through 260.

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

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

evidence in support of claims for damages, and giving the OWCP a key role in the efficient exercise of the right to compensation of damages. The HLC also calls upon the courts to apply the solutions set out in the Guidelines and to decide during the criminal trial on all concrete cases involving claims for damages supported by corroborating evidence, and thus spare the victims the additional exhaustion of having to seek redress in civil litigation.

Public promotion of convicted war criminals

The "Ratnik "(Warrior) series of the Ministry of Defence

In 2019, the public promotion continued of persons convicted of war crimes, through the "Ratnik" (Warrior) series of the Ministry of Defence, inaugurated in October 2018 at the 63rd Belgrade Book Fair.[46] Presented again in April 2019 at the Army Hall in Belgrade were "War Log of the Commander of the VJ 3rd Army – Third Army in Merciful Angel's Embrace" by Nebojša Pavković, in four volumes, "The Priština Corps 1998 - 1999 – Testimonies of Wartime Commanders", "The Battle for Košare, 1999", and "Paštrik – Recollections of Participants, 1999".[47]

During the promotional event Nebojša Pavković also addressed the gathering, greeting them via a video recording from Finland, where he is serving his prison sentence.[48] As the news item on the Ministry of Defence's home page states that Pavković "was incarcerated following a judgment passed on him by the Hague Tribunal for successfully defending his country from the NATO aggression"[49], the HLC would like to call attention to the fact that Nebojša Pavković, a retired general of the Yugoslav Army (VJ), was, together with Nikola Šainović, former Vice-Premier of the FRY, Sreten Lukić, Chief of Staff of the MUP in Kosovo and Vladimir Lazarević, another retired VJ general, finally convicted on all five counts of an ICTY indictment– the forcible transfer, deportation, murder and persecution of the Albanian population in Kosovo.[50]

46 At the 63rd Belgrade Book Fair, on 22 October 2018, a promotion was held of four volumes of the war log of Nebojša Pavković, Commander of the VJ 3rd Army during the war in Kosovo, Hague convict, entitled "Third Army in the Merciful Angel's Embrace for Seventy-eight Days", "The Battle for Paštrik – Recollections of the Participants, 1999", "The Priština Corps 1998 -1999 – Testimonies of Wartime Commanders" and "The Battle for Košare – Recollections of Participants, 1999".

47 See the official website of the Ministry of Defence: *The "Ratnik" series promoted at the Army Hall*, news, 10 April 2019, available at: http://www.mod.gov.rs/cir/13814/edicija-ratnik-promovisana-u-domu-vojske-13814, accessed on 5 December 2019.

48 *Ibid.*

49 *Ibid.*

50 See the *Šainović et al.* Case (IT-05-87), at the official ICTY website: http://www.icty.org/bcs/case/milutinovic/4, accessed on: 5 July 2019.

As stated on the web page of the Ministry of Defence, "the idea behind starting the 'Ratnik' series is an effort to preserve the experiences of our war commanders during the 1999 NATO aggression, their art of warfare, their decision-making method, deployment of units, everything that they have done to defend the country and make us proud – as a contribution to the culture of remembrance". At the same time, the organisers of the promotional event totally ignored the fact that their "art of warfare" had left in its wake several thousand civilians dead, torched houses, and several hundred thousand Albanians expelled from Kosovo.

The Ministry of Defence spent about four million dinars of Serbia's budget to publish the volumes of the "Ratnik" series.[51]

At the 64th Belgrade Book Fair the Ministry of Defence presented Nebojša Pavković's new book "The Smell of Gunpowder and Death in Kosovo and Metohija, 1998". In addition to that, the Ministry of Defence organised a panel discussion at the Book Fair on the subject, "Experiences from Operations during the NATO Aggression – REMEMBERED THROUGH BOOKS",[52] at which convicted war criminals Vladimir Lazarević[53] and Vinko Pandurević[54] were among the speakers.

Reacting to the HLC's press release[55] alleging that the Book Fair was being used as a venue for promoting convicted war criminals, the Ministry of Defence issued a communiqué stating that "for far too long others have written Serbia's history and decided what is and what is not true, and this is the way to tell the truth about the wars that Serbia had neither wanted nor provoked".[56]

The HLC asserts that the promotions of convicted war criminals at the Book Fair, sponsored by the Ministry of Defence, have relativised the crimes and refuted the facts established before the ICTY. When the sources of such relativisations are none other than the institutions, it raises serious doubts as to the existence of any real intention to prosecute war crimes or to upgrade society's overall attitudes towards war crimes trials, particularly those before national courts.

51 Reply of the Ministry of Defence of the Republic of Serbia to the HLC request for access to information of public importance, number 32-128, of 3 October 2019.

52 See the official website of the Ministry of Defence, news, *Panel discussion on "Experiences in Recruiting the Capacities of the VJ Medical Service during the NATO Aggression on the FRY in 1999".*
available at ww.mod.gov.rs/lat/14612/na-sajmu-knjiga-odrzana-tribina-iskustva-u-angazovanju-kapaciteta-sanitetske-sluzbe-vj-u-toku-agresije-nato-na-srj-1999-godine-14612, accessed on 5 December 2019.

53 See the *Šainović et al.* Case (IT-05-87).

54 See the *Popović et al.* Case (IT-05-88) at the official ICTY website: https://www.icty.org/bcs/case/popovic, accessed on 5 December 2019.

55 The *Belgrade Book Fair – Venue for the Promotion of War Criminals*, HLC press release, 25 October 2019, available at: http://www.hlc-rdc.org/?cat=221, accessed on 5 December 2019.

56 *Ministry of Defence to the Humanitarian Law Center: For far too long Serbia has kept silent and allowed others to write her history*, Newsreel , 25 October 2019, RTV, available at: http://www.rtv.rs/sr_lat/drustvo/ministarstvo-odbrane-fondu-za-humanitarno-pravo-srbija-dugo-cutala-i-pustala-druge-da-pisu-njenu-istoriju_1060685.html, accessed on 5 December 2019.

Commemoration of the Victory over Fascism Day

The Victory over Fascism Day (Victory Day) is commemorated every year on 9 May, to mark the end of World War II, and in celebration of the victory over Nazism and Fascism. Rather than being a promotion of antifascism, this year's commemoration of Victory Day turned into a promotion of convicted war criminals. In Niš, for example, a day before the Victory Day celebrations, a parade was organised for the "Immortal Regiment" led by Vladimir Lazarević, retired VJ general.[57] The HLC would like to draw attention to the fact that the ICTY finally convicted Vladimir Lazarević and sentenced him to 14 years of imprisonment for a crime against humanity committed during the war in Kosovo.[58]

57 *Convicted General Lazarević leads the "Immortal Regiment" in Niš: Serbia Promotes War Criminals on Victory Day*, news, 9 May 2019, Insajder.net Portal, available at: https://insajder.net/sr/sajt/vazno/14379/, accessed on: 4 July 2019.

58 See the *Šainović et al.* Case (IT-05-87), at the official ICTY website: http://www.icty.org/bcs/case/milutinovic/4, accessed on 5 July 2019.

Pending war crime cases in the War Crimes Department of the Higher Court in Belgrade as the court of first instance

I. The Bratunac – Suha Case[59]

CASE FACTS
Current stage of the proceedings: first-instance proceedings
Date of indictment: 22 October 2018
Trial commencement date: 5 November 2019
Prosecutor: Svetislav Rabrenović
Defendant: Jovan Novaković
Criminal offence charged: war crime against civilian population under Article 142 of the FRY Criminal Code

Chamber	Judge Vladimir Duruz (Chairperson) Judge Vera Vukotić Judge Vinka Beraha Nikićević

Number of defendants: 1	
Defendant's rank: no rank	**Number of court days in the reporting period**: **2**
Number of victims: 300	**Number of witnesses heard in the reporting period**: **0**
Number of witnesses heard: **0**	**Number of expert witnesses heard**: 0
Key developments in the reporting period: Main hearing	

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

Course of the proceedings

Indictment

The accused Jovan Novaković is charged with having, as the Commander of the Moštanica Company of the Bratunac Territorial Defence, on 10 June 1992, forcibly uprooted approximately 300 Bosniak civilians from the village of Suha (Bratunac municipality, Bosnia and Herzegovina), among them women and children, by ordering, during an attack on the village, Bosniak civilians out of their houses, participating in their displacement and threatening to kill individual civilians unless they found and brought out other members of their families as well ; after which he ordered them to set off in a column towards the Bratunac football stadium, where civilians from other places had also been brought under armed escort, and whence women, children and elderly people were deported aboard buses to Kladanj, while men fit for military service were escorted to and detained at the "Vuk Karadžić" Primary School in Bratunac.[60]

Defence of the accused

In the course of the proceedings to date the accused has not presented a defence. The accused failed to appear at the first scheduled main hearing, citing health reasons.[61] The court granted the defence motion for the accused to undergo a medical assessment of his fitness to stand trial. As the Chairman of the Board of Experts which was to undertake this evaluation was unable to participate in its work for health reasons, another court expert was appointed Board Chairman.[62]

The findings of the Board of Experts will be submitted to the court in early 2020. Should the expertise find the accused fit to stand trial, the proceedings will continue, but in the case of a negative expert report, the Chamber will dismiss the Indictment.[63]

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

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

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

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

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

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

Excessive anonymisation of the indictment

The Office of the War Crimes Prosecutor's Indictment in this case, which is publicly accessible on the OWCP homepage under „Indictments"[64] 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.[65] 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*".[66] 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 .....*".[67] 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*".[68] Since the name of the accused has been anonymised, as indeed have the names of the victims, 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.

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

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

66 Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes, Article 1, paragraph 2.

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

68 Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes, Article 5, paragraph 2.

II. The Brčko II Case[69]

CASE FACT
Current stage of proceedings: first-instance proceedings
Date of indictment: 22 October 2018
Trial commencement date: 28 May 2019
Prosecutor: Mioljub Vitorović
Defendant: Miloš Čajević
Criminal offence charged: war crime against civilian population under Article 142 of the FRY Criminal Code

Chamber	Judge Zorana Trajković (Chairperson) Judge Mirjana Ilić Judge Dejan Terzić

Number of accused: 1	
Defendant's rank: no rank	**Number of court days in the reporting period**: **1**
Number of victims: **13**	**Number of witnesses heard in the reporting period**: **3**
Number of witnesses heard: **3**	**Number of expert witnesses heard**: 0
Key developments in the reporting period: Main hearing	

69 The *Brčko II* Case trial reports and case file documents available at http://www.hlc-rdc.org/Transkripti/brckoII.html accessed on 2 December 2019.

Course of the proceedings

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. Accordingly, 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 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.

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.[70]

Defence of the accused

Presenting his defence, the accused denied having committed the crime of which he stands accused. He explained that he had been a member of an intervention platoon tasked with manning the front line and securing positions, organising the emptying of freezers in abandoned flats around town, because there was no electricity, and collecting information about weapons from the inhabitants. They also took individuals detained at the "Luka" camp to the Secretariat of the Interior (SUP) for interrogation and returned them to the camp afterwards. Because they came from the surrounding villages, some members of the Intervention Platoon were billeted at Faruk Rejzović's house, and actually stayed there overnight. He lived in town and never spent the night at Rejzović's house, but he did visit every morning, as meetings were being held there. At that time he had two dogs, Dobermans, which he held at Sinkovac, in an army compound with depots and vehicles. He supposes that he knew the injured 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 Rejzović house, nor does he recall having seen her there.

70 OWCP Indictment KTO no. 7/2019 of 22 October 2018, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents_sr/2019-04/kto_7_18_lat~1.pdf accessed on 5 December 2019.

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 Rejzović house he saw a brunette around 30 years of age and not too tall.[71]

Witnesses in the proceedings

During the reporting period only one court day was held, during which three witnesses, former members of the Brčko Reserve Police Force Intervention Platoon, were examined.

Witness Stevo Knežević 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.[72]

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, for instance, would be scared when he encountered them, as they were large and vicious dogs. The accused would come with these dogs to the Rejzović 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 Rejzović 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.[73]

Witness Aleksandar Lajić explained that the task of the Intervention Platoon had been maintaining

71 Transcript of the main hearing held on 28 May 2019.
72 Ibid.
73 Ibid.

law and order in Brčko. He had heard that the accused had been involved in a number of incidents, but did not know what exactly had been in question. He had seen several women at the Rejzović house who did the cleaning there. He had heard that the accused would come to the "Luka" camp and that some beating had taken place there, but could not remember who he had heard it from.[74]

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

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 proof that the accused Miloš Čajević had committed a criminal offence, given that the accused is a national and resident of the Republic of Serbia and was not accessible to the authorities of Bosnia and Herzegovina.

Cancellation of main hearings due to technical reasons

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

74 Ibid.

III. The Ćuška/Qyshk Case[75]

CASE FACT	
Current stage of the proceedings: first-instance proceedings (retrial)	
Date of indictment: 10 September 2010	
Trial commencement date: 20 December 2010	
Prosecutor: Bruno Vekarić	
Defendants: Toplica Miladinović, Abdulah Sokić, Srećko Popović, Siniša Mišić, Slaviša Kastratović, Boban Bogićević, Veljko Korićanin, Vladan Krstović, Lazar Pavlović, Milan Ivanović and Predrag Vuković	
Criminal offence charged: war crime against civilian population under Article 142 of the FRY Criminal Code	
Chamber	Judge Vladimir Duruz (Chairperson) Judge Vinka Beraha-Nikićević (member) Judge Vera Vukotić (member)
Number of defendants: 11 **Defendants' rank**: **middle and lower rank** **Number of victims**: 141 **Number of witnesses heard**: 116	**Number of court days in the reporting period**: 6 **Number of witnesses heard in the reporting period**: **6**
Key developments in the reporting period: Retrial main hearing	

75 The Ćuška Case, trial reports and case file documentation available at http://www.hlc-rdc.org/Transkripti/cuska.html, accessed on 13 December 2019.

Course of the proceedings

Overview of the proceedings up to 2019

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 Bogićević, Zvonimir Cvetković, Radoslav Brnović, Vidoje Koričanin, Veljko Koričanin and Abdulah Sokić.[76]

The accused were charged with having, as members of the 177th Peć Military-Territorial Detachment (VTO) and the active and reserve police forces, together with their Commander, the late Nebojša Minić, attacked on 14 May 1990 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.[77]

The War Crimes Prosecutor' s Office brought indictments for this crime against Zoran Obradović[78], Milojko Nikolić[79], Ranko Momić[80], Siniša Mišić[81] and Dejan Bulatović[82] 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.[83]

The OWCP dropped criminal charges against the accused Zvonimir Cvetković and, on 17 December 2012, issued a single amended indictment against 13 accused persons: Toplica Miladinović, Srećko

76 OWCP Indictment no. TRZ 4/10 of 10 September 2010, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2016-05/o_2010_09_10_lat.pdf, accessed on 8 January 2019.
77 Ibid.
78 OWCP Indictment , KTRZ 4/10 of 1 April 2011.
79 OWCP Indictment, KTRZ 07/11 of 27 April 2011.
80 OWCP Indictment, KTRZ 9/11 of 31 May 2011, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2016-05/o_2011_05_31_lat.pdf, accessed on 8 January 2019.
81 OWCP Indictment, KTRZ 19/11 of 7 November 2011.
82 OWCP Indictment, KTO no. 5/2012 of 26 September 2018.
83 OWCP Indictment, KTRZ 4/10 of 27 September 2012.

Popović, Slaviša Kastratović, Boban Bogićević, Radoslav Brnović, Vidoje Korićanin, Veljko Korićanin, Abdulah Sokić, Zoran Obradović, Milojko Nikolić, Ranko Momić, Siniša Mišić and Dejan Bulatović.[84]

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, namely on 2 October[85], 16 October[86] and 5 December 2013[87], 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[88] rendered a judgment pronouncing nine defendants guilty of the commission of the criminal offence of a war crime against a civilian population and sentencing them to imprisonment terms ranging from between two and twenty years, and acquitting two of the defendants – Radoslav Brnović and Veljko Korićanin – on account of lack of evidence.[89]

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

84 Amended OWCP Joint Indictment KTRZ 4/10 of 17 December 2012, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2016-05/o_2012_12_17_lat.pdf, accessed on 13 December 2019.
85 Amended OWCP Indictment , KTRZ 4/10 of 2 October 2013.
86 Transcript of the main hearing held on 16 October 2018.
87 Amended OWCP Indictment, KTRZ 4/10 of 5 December 2013.
88 Composition of the Chamber: Snežana Nikolić-Garotić, Chairperson, Judges Vinka Beraha-Nikićević and Rastko Popović, members.
89 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[90] 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, or the facts were erroneous or substantially contradictory. The Court also found that the facts had not been fully established.[91]

Retrial

The retrial commenced before a new chamber[92] 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.[93]

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

30 In his testimony, the previously protected witness Zoran Rašković 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.[94]

On 22 December 2015, the OWCP brought a joint indictment against 12 accused – Toplica Miladinović, Srećko Popović, Milojko Nikolić, Siniša Mišić, Slaviša Kastratović, Boban Bogićević, Dejan Bulatović, Abdulah Sokić, Vladan Krstović, Lazar Pavlović, Milan Ivanović and Veljko Korićanin.[95]

90 Composition of the Chamber: Judge Sonja Manojlović, Chairperson, Judges Nada Hadži-Perić, Vučko Mirčić, Bojana Paunović and Jasmina Vasović, members.

91 Decision of the Court of Appeal in Belgrade number Kž1 Kpo2 6/14 of 26 February 2015, available at http://www.bg.ap.sud.rs/cr/articles/sudska-praksa/pregled-sudske-prakse-apelacionog-suda-u-beogradu/krivicno-odeljenje/ratni-zlocini/kz1-po2-6-14.html, accessed on 8 January 2019.

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

93 OWCP Indictment number KTO 8/13 of 7 April 2014, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2016-05/o_2014_04_07_lat.pdf, accessed on 8 January 2018.

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

95 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.[96]

During the evidentiary procedure, two defence witnesses for the defendants Vladan Krstović and Lazar Pavlović were examined, who stated that the defendants had been in their company in catering establishments at the critical time.[97] Witnesses who had already taken the stand earlier were also examined.[98]

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

Overview of the proceedings in 2019

Three of the five scheduled main hearings were held in the course of 2019, at which six witnesses were examined. These were witnesses from Kosovo who had already testified in these proceedings and who stood by their previous statements.[99]

New indictment

In July 2019, the OWCP also issued an indictment against Predrag Vuković[100], a former member of the 177th Peć VTO, for the criminal offence of war crime against a civilian population committed in the villages of Ljubenić/Lubeniq and Ćuška/ Qyshk.[101]

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, VTO members singled out a group of 60 men, and drove out most of the civilians, forcing them to head in the direction of Albania. Vuković is also charged with the large-scale destruction of the property of Albanian civilians, namely setting family houses and other buildings on fire, as well as with participation in the infliction of bodily injuries on and killing of civilian men, by shooting together with other VTO members at the group of men they had separated from the crowd, killing 42 men and wounding 11 on that occasion.

The same indictment charges Vuković with having participated, on 14 May 1999, together with the other accused and some unidentified members of the VTO, in an attack on the civilian population of the village of Ćuška, killing 17 civilians, expelling other civilians, massively destroying their property

96 Transcript of the main hearing held on 25 January 2016.
97 Ibid.
98 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.
99 Transcript of the main hearing held on 26 February 2018; Transcript of the main hearing held on 25 April 2018; Transcript of the main hearing held on 24 September 2018.
100 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.
101 OWCP Indictment, KTO 3/19 of 3 July 2019.

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.

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.[102]

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.[103]

HLC Findings

Excessive duration of the proceedings

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

Flawed indictment

Over the course of the trial, the OWCP repeatedly brought charges 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 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 traumatisation, as they do not know when the proceedings will finally end and whether after such a long time justice will finally be served.

102 Transcript of the main hearing held on 22 November 2019.
103 Ibid.

Incomplete OWCP indictment

Non-indictment 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 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 was that the subject of these proceedings ..."[104]

There seemed to be some progress towards establishing the responsibility of other persons, including senior military personnel, for the crimes charged in the indictment for the *Ćuška/Qyshk* Case, when in August 2014 the OWCP decided to initiate an investigation against the Commander of the 125th VJ Motorised Brigade, Dragan Živanović, whose zone of responsibility encompassed these villages. However, on 1 March 2017, the OWCP issued an order ending the investigation, having established that insufficient evidence existed to charge him. The grounds for such a decision on the part of the OWCP can be seriously challenged, 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.[105]

Unclarified role of the Ministry of the Interior

The role of the Ministry of the Interior (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 defence.[106] Apart from that, inspection of the war diary of the Peć Military Recruitment Office in the course of the evidentiary proceedings revealed entries relating to the 177th VTO. One of the entries registers that two MUP companies had been attached to the 177th VTO. Furthermore, several injured parties as well as 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..."[107] Nonetheless, all this evidence notwithstanding, the OWCP failed

104 Transcript of the delivery of judgment on 11 February 2014.
105 For more, see: Humanitarian Law Center, *Report on War Crimes Trials in Serbia 9* (Belgrade, HLC, 2019), pp. 23-25.
106 Witnesses M.J, M.V. and Z.R, as well as the accused Toplica Miladinović, Srećko Popović and Radoslav Brnović.
107 Transcript of the delivery of judgment on 11 February 2014.

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 openly and repeatedly 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.[108] 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.[109] The HLC has analysed this problem comprehensively in its *Report on War Crimes Trials in Serbia in 2011*[110] and *Analysis of the Prosecution of War Crimes in Serbia*.[111]

The Court of Appeal's biased interpretation of the evidence intended to raise doubts the involvement of the VJ in the crimes

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

However, the Court of Appeal did not contest the fact that the late Nebojša Minić had transmitted Miladinović's alleged order saying: "Guys, get ready, we are leaving in 10 minutes, it is the village of Ćuška, we are to drive out some Germans, torch some houses, tear up some documents and do whatever else needs to be done." Neither did the Court of Appeal infer an alternative conclusion to the effect that, for example, as he was leaving the meeting with Miladinović, Nebojša Minić might himself have conceived the order that he passed on. Nevertheless, the Court of Appeal did question the content of the alleged order transmitted in this way, stating: "It is unclear how the court of first instance became satisfied that these orders pertained to the mounting of an attack on and displacement of Albanian civilians in the villages in question, and why it ruled out the possibility that

108 Transcript of the main hearing held on 25 January 2012.
109 Transcript of the main hearing held on 23 November 2015.
110 For details see: Humanitarian Law Center, *Report on War Crimes Trials in Serbia in 2011*, (Belgrade: HLC, 2012), pp. 99, 100 and 101.
111 *Analysis of the Prosecution of War Crimes in Serbia in the Period from 2004 to 2013.*

the orders might have referred to a legitimate military operation targeting members of the adversary in the armed conflict, namely possibly uncovering KLA members and seizing their weapons."[112]

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

The Court of Appeal also contested the finding of the court of first instance that Toplica Miladinović had first-hand knowledge of the crime because at the time of the attack on the village of Ljubenić/Lubeniq he was stationed at the very entrance to the village. The Court of Appeal based this conclusion on two findings. Firstly, the statement of the witness who said that Miladinović had been present was not corroborated by other evidence. Secondly, "none of the injured parties, women, children and elderly people heard during the proceedings, who, being forced to leave the village, had had to pass through the village entrance, noticed that the defendant Toplica Miladinović was present at the entrance to the village of Ljubenić/Lubeniq, nor did they notice anyone holding a rank superior to that of the late Nebojša Minić participating in the attack on the village…"[113] The HLC maintains that attributing decisive weight to the capacity of victims to observe such details as the presence at the village entrance of a person they did not know or of his insignia, at a time when they were struggling to survive, constitutes in effect an attempt to shift the burden of proof onto the victims and traumatise them further, and is yet more evidence of the Court of Appeal's bias in arriving at its conclusions.

The Court of Appeal also found that, as the court of first instance "failed to conclusively establish the organisational structure of the 177th Peć VTO"[114], it remained unclear whether the 177th VTO Intervention Platoon had existed at all, whether it had been under Miladinović's command, and whether he had actually had the authority to issue orders for military action.[115] The "uncertainties" that the Court of Appeal found are questionable in many respects. Namely, it is absolutely of no consequence for establishing Miladinović's criminal responsibility whether the order was issued to the 177th VTO Intervention Platoon or to an armed group of another designation. However, the suggestion that the existence of the Intervention Platoon had not been proven could mislead one to conclude that the crimes in Ljubenić/Lubeniq, Ćuška/Qyshk, Pavljane/Pavlane and Zahać/Zahaq had been committed by informal armed units, i.e. not by official forces, although it was conclusively established in the first-instance proceedings that they were affiliated with the VJ. It is equally irrelevant for determining Miladinović's criminal responsibility whether he had been in a commanding position and had had the authority to issue orders, because issuance of orders as a mode of criminal responsibility for a war crime does not require that they be issued in any official capacity.

112 Ruling of the Court of Appeal in Belgrade number Kž1 Kpo2 6/14 of 26 February 2015.
113 Ibid.
114 Ibid.
115 Ibid.

IV. The Doboj – Kožuhe Case[116]

CASE FACT	
Current stage of the proceedings: first-instance proceedings	
Date of indictment: 13 July 2018	
Trial commencement date: 19 February 2019	
Prosecutor: Dušan Knežević	
Defendant: Nebojša Stojanović	
Criminal offence charged: war crime against prisoners of war under Article 144 of the FRY Criminal Code	

Chamber	Judge Vera Vukotić (Chairperson) Judge Vladimir Duruz Judge Vinka Beraha Nikićević

Number of defendants: 1	
Defendant's rank: no rank	**Number of court days in the reporting period**: **6**
Number of victims: 1	**Number of witnesses heard in the reporting period**: **6**
Number of witnesses heard: **6**	**Number of expert witnesses heard**: 0
Key developments in the reporting period: Main hearing	

116 The *Doboj – Kožuhe* Case, trial reports and case file documentation available at http://www.hlc-rdc.org/Transkripti/doboj-kozuhe.html, accessed on 2 December 2019.

Course of the proceedings

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.[117]

Defence of the defendant

The defendant has denied having committed the crime. He has 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 Bubanj 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 has 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 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 is a case of mistaken identity, as there was a person there who physically resembled him, his hairstyle in particular.[118]

Witnesses in the proceedings

Injured party Ružica Miloš, the sister of the murdered Ivan Sivrić, has said she has 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.[119]

117 OWCP Indictment KTO no. 3/2018 of 13 July 2018, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2019-04/kto_3_18_lat~0.pdf accessed on 5 December 2019.
118 Transcript of the main hearing held on 19 February 2019.
119 Ibid.

Witness Miroslav Marković has 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.[120]

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.[121]

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".[122]

120 Transcript of the main hearing held on 16 May 2019.
121 Transcript of the main hearing held on 19 September 2019.
122 Ibid.

Witness Ivo Senković stated that as an inspector of the Odžaci (Bosnia and Herzegovina) Police Department (PU) 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 Doboj–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.[123]

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.[124]

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.

Excessive anonymisation of the indictment

123 Ibid.
124 Transcript of the main hearing held on 18 October 2019.

The OWCP Indictment in this case, which is publicly accessible on the OWCP homepage under "Indictments"[125], 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.[126] 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*".[127] Instead of the entire indictment, only the operative part was posted, making it impossible to ascertain on what evidence the OWCP based the indictment. Also, the Rulebook envisages anonymisation of the personal particulars of the participants in the proceedings, such as "*the names and surnames and nicknames of physical persons, the address, date and place of birth ....*".[128] 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*".[129]Since the name of the accused has been anonymised, as indeed have the names of the victims, 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 also that of the victims, public reference to whom provides a form of redress for them and their families, and is a prerequisite for the recognition of the sufferings they have gone through, primarily on account of their identity.

125 OWCP Indictment KTO no. 3/2018 of 13 July 2018, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2019-04/kto_3_18_lat~0.pdf accessed on 16 January 2020.

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

127 Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes, Article 1, paragraph 2.

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

129 Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes, Article 5, paragraph 2.

V. The Hrasnica Case[130]

CASE FACT
Current stage of the proceedings: first-instance proceedings
Date of indictment: 24 December 2018
Trial commencement date: 22 March 2019
Prosecutor: Mioljub Vitorović
Defendant: Husejin Mujanović
Criminal offence charged: war crime against civilian population under Article 142 of the FRY Criminal Code

Chamber	Judge Dejan Terzić (Chairperson) Judge Mirjana Ilić Judge Zorana Trajković

Number of defendants: 1	
Defendant's rank: low rank	**Number of court days in the reporting period**: 7
Number of victims: 8	**Number of witnesses heard in the reporting period**: 11
Number of witnesses heard: 11	**Number of expert witnesses heard**: 0
Key developments in the reporting period: Main hearing	

130 The *Hrasnica* Case, trial reports and case file documentation available at http://www.hlc-rdc.org/Transkripti/hrasnica.html accessed on 25 December 2019.

Course of the proceedings

Indictment

The accused Husejin 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.[131]

The accused Husejin 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

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. [132]

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. For drinking water, they had to fill a bottle. Not even a minimum of sanitary conditions existed, and they relieved themselves inside the cells using some cans. After

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

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

his imprisonment in the cells, it was not until November that he had his first bath, when they were taken out for forced labour to build a bridge over the River Železnica. At the witness's request, the guard allowed him to wash himself in the river. Food in the prison was insufficient and very poor in quality, and meals were dispensed only once a day. During his time in prison he was beaten up once, in September 1992. A guard, Senad Gadžo, took him out of the cell and beat him up outside the cell door, and when he fell to the floor, another guard, Zaim, kicked him in the kidney area. The defendant, whom he recognised by his voice, was also present and kept saying "Hit the Chetnik! Hit him! Let him have it!"[133]

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.[134]

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.[135]

HLC Findings

Circumvention of regional cooperation in prosecuting war crimes

Although under the Law on Organisation and Jurisdiction of State Authorities in Prosecuting War Crimes the state authorities of the Republic of Serbia shall have jurisdiction in proceedings for war crimes committed on the territory of the former Socialist Federal Republic of Yugoslavia, regardless of the citizenship of the perpetrator or the victim[136] (the principle of universal jurisdiction), 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.[137] 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.[138] 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

133 Transcript of the main hearing held on 6 May 2019.
134 Transcript of the main hearing held on 10 June 2019.
135 Ibid.
136 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.
137 In 2018 the request of the Bosnia and Herzegovina Ministry for extraditing the accused Husein Mujanović was refused.
138 Transcript of the main hearing held on 22 March 2019.

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.[139]

Excessive anonymisation of the indictment

The OWCP Indictment in this case, which is publicly accessible on the OWCP homepage under "Indictments"[140], 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.[141] 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*".[142] Instead of the entire indictment, only the operative part was posted, making it impossible to ascertain on what evidence the OWCP based the indictment. Also, the Rulebook envisages anonymisation of the personal particulars of participants in proceedings, such as "*the names and surnames and nicknames of physical persons, the addresses, dates and places of birth .....*".[143] 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*".[144] 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. 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,[145] as was the issuance of the indictment immediately

139 Veljko Marić is a former member of the Croatian Armed Forces. Veljko Marić, a national of Croatia, 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.

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

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

142 Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes, Article 1, paragraph 2.

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

144 Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes, Article 1, paragraph 2.

145 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 16 December 2019.

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 16 January 2020.

afterwards.[146] 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.

146 RTS, 20 January 2019 *"New Indictments for Crimes against Serbs"*, available at http://www.rts.rs/page/stories/sr/story/135/hronika/3402508/nove-optuznice-zbog-zlocina-nad-srbima.html, accessed on 16 January 2020.

VI. The Ključ – Velagići Case[147]

CASE FACT
Current stage of the proceedings: first-instance proceedings
Date of indictment: 27 November 2018
Starting date of trial: 8 March 2019
Prosecutor: Ognjen Đukić
Defendant: Željko Maričić
Criminal offence charged: war crime against civilian population under Article 142 of the FRY Criminal Code

Chamber	Judge Vinka Beraha Nikićević (Chairperson) Judge Vera Vukotić Judge Vladimir Duruz

Number of defendants: 1	
Defendant's rank: no rank	**Number of court days in the reporting period**: **5**
Number of victims: 6	**Number of witnesses heard in the reporting period**: **5**
Number of witnesses heard:	**Number of expert witnesses heard**: 0
Key developments in the reporting period: Main hearing	

147 The *Ključ-Velagići* Case, trial reports and case file documentation available at http://www.hlc-rdc.org/Transkripti/kljuc-velagici.html accessed on 2 December 2019.

Course of the proceedings

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 by renewing his threats 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.[148]

Defence of the accused

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 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 a stick or something. 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".[149]

148 OWCP Indictment KTO no. 8/2018 of 27 November 2018, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2019-04/%D0%9A%D1%82%D0%BE_8_18_%D0%9B%D0%B0%D1%82~2.pdf accessed on 25 December 2019.

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

Witnesses in the proceedings

During the reporting period five witnesses and injured parties were examined, who incriminated the defendant in their statements.

Thus, witness and injured party Mujaga Selman stated that in late May 1992 he had been arrested as a civilian and brought to Ključ, to the gym of the „Nikola Mačkić"elementary school. They were subjected to physical abuse in the gym, but he did not see the accused, whom he knew, on that occasion. He explained that whilst in the gym he had to keep his head bowed and was therefore unable to see who exactly was there. They took them out of the gym and led them to some buses which were parked outside the school. A gauntlet had been formed leading from the school building to the buses and he saw the defendant in it. The defendant swung at him with a wooden pole intending to whack him on the back, but the witness cushioned the blow with his arm. After that blow, he had problems with his arm for a long time. He saw five or six buses in which they were waiting for them. He did not see the accused in the bus on which he was travelling, but he noticed him when they reached the village of Sitnica, where they were placed in the school gym. There he again saw the accused, threatening a colleague of his. From Sitnica they were transported to the camp at Manjača. He does not know whether the defendant drank habitually before the war nor whether he was drunk on the relevant day.[150]

Witness and injured party Mirsad Dervišević was also taken to the gym of the „Nikola Mačkić" elementary school. There were many people in the gym who, like the witness, had been brought there and were beaten. The witness was beaten so viciously that he lost consciousness several times. The accused beat him the most, but others beat him as well. He could see the accused clearly, and he knew him from before. He is certain that he attacked him in the gym - in fact, he kicked him, because the strong blows knocked him down to the floor and he could then clearly see who had delivered the kick. He beat others too on that occasion. They were ushered out of the gym and loaded into buses, and the accused boarded the bus on which the witness was and continued to beat him. He is positive that it was precisely the accused who stabbed him with a knife, as before that he had been beating him and swearing at him. He thinks that he stabbed him with an army knife, as he wore one on the hip. Trying to shield himself from the blows he sought shelter under a bus seat, and then the accused stabbed him in the kidney. Presently they reached the village of Sitnica, where they were taken off the buses and led into the school gym. While they were in the gym the accused entered and said: "Just so you know who beat you, my name is Željko Maričić, son of father Miloš and mother Mara". Some soldiers ushered the accused out of the gym in Sitnica, while the witness was transported together with other male prisoners to the Manjača camp. His stab wound bled profusely, and he was not fully alive to the goings on over the following several days. The accused was an alcoholic, he said.[151]

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

150 Transcript of the main hearing held on 11 April 2019.
151 Transcript of the main hearing held on 22 May 2019.

incarcerated in the gym of the elementary school in Ključ, together with a large number of Bosniak men. He saw the defendant in the gym in Ključ and in Sitnica, where he introduced himself stating his name and even the names of his parents for the sole reason that „they would know who beat them ". During his detention in the gym, the defendant had twice put a knife to his throat and asked him when 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.[152]

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.[153]

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.[154]

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.

Excessive anonymisation of the indictment

The Office of the War Crimes Prosecutor Indictment in this case, which is publicly accessible on the OWCP homepage under "indictments"[155], 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

152 Ibid.
153 Transcript of the main hearing held on 4 November 2019.
154 Ibid.
155 OWCP Indictment KTO no. 8/2018 of 27 November 2018, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2019-04/%D0%9A%D1%82%D0%BE_8_18_%D0%9B%D0%B0%D1%82~2.pdf accessed on 16 January 2020.

the OWCP Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes.[156] 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*".[157] Instead of the entire indictment, only the operative part was posted, making it impossible to ascertain on what evidence the OWCP based the indictment. Also, the Rulebook envisages anonymisation of the personal particulars of the participants in the proceedings, such as "*the names and surnames and nicknames of physical persons, the addresses, dates and places of birth .....*".[158] 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*".[159] As the name of the accused has been anonymised, as indeed have the names of the victims, the OWCP is evidently in breach of a provision of its own Rulebook, in total disregard of the public interest, which is the 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 them and their families, and is a prerequisite for the recognition of the sufferings they have gone through, primarily on account of their identity.

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

157 Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes, Article 1, paragraph 2.

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

159 Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes, Article 5, paragraph 2.

VII. The Sanski Most – Lušci Palanka Case[160]

CASE FACT
Current stage of the proceedings: first-instance proceedings
Date of indictment: 3 April 2017
Trial commencement date: 12 July 2017
Prosecutor: Bruno Vekarić
Defendant: Milorad Jovanović
Criminal offence charged: war crime against the civilian population under Article 142 of the FRY Criminal Code

Chamber	Judge Vinka Beraha-Nikićević (Chairperson) Judge Vladimir Duruz Judge Vera Vukotić

Number of defendants: 1	
Defendant's rank: low rank	**Number of court days in the reporting period**: 5
Number of victims: 15	**Number of witnesses heard in the reporting period**: 7
Number of witnesses heard: 14	**Number of expert witnesses heard**: 0

Key developments in the reporting period:

Main hearing

160 The *Sanski Most – Lušci Palanka* Case, trial reports and case file documentation available at http://www.hlc-rdc.org/Transkripti/Sanski_Most_Lusci_Palanka.html, accessed on 11 December 2019.

Course of the proceedings

Overview of the proceedings up to 2019

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 of the Ministry of the Interior of Republika Srpska (SJB), together with his commander Slavko Vuković[161] 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 butt 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.[162]

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 captives several times, but not so hard as to cause him any suffering.[163]

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.[164] 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. In the meantime, not even an acting prosecutor was appointed, 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.

161 Slavko Vuković died in the meantime.

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

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

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

Continuation of the proceedings

Following the dismissal of the indictment, the Chamber granted the motion submitted by the new war crimes prosecutor for the continuation of the criminal proceedings, and they were resumed in March 2018 from the point where they had been interrupted, namely, by continuing the evidentiary procedure.[165]

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 of whether the accused had beaten Bosniak civilians detained on the premises of the "Simo Miljuš" Memorial Museum in Lušci Palanka.[166] Witness Ejup Beširević, who lived in the village of Modra, Sanski Most municipality, described how he had been taken with a group of villagers to the "Simo Miljuš" building in Lušci Palanka. The defendant was among the police officers who escorted them there, and he later beat him as well as another captive.[167] Witness Mesud Avdić also stated that the accused had beaten him while he was being held captive[168], and witnesses Sadmir 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.[169]

Overview of the proceedings in 2019

Five trial days were held in 2019, during which a total of seven witnesses were examined.

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.[170]

Witness Ramiz Ramić, another captive, stated that the accused had beaten Sadmir Alibegović.[171]

Witnesses Drago Predojević,[172] Duško Grujić,[173] Željko Marković,[174] Marko Praštalo, Duško Vranješ and Milan Dekić,[175] 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.

165 Transcript of the main hearing held on 28 March 2018.
166 Ibid; Transcript of the main hearing held on 9 May 2018.
167 Transcript of the main hearing held on 28 March 2018.
168 Transcript of the main hearing held on 20 September 2018.
169 Transcript of the main hearing held on 8 November 2018.
170 Transcript of the main hearing held on 18 March 2019.
171 Transcript of 22 May 2019.
172 Transcript of the main hearing held on 28 June 2019.
173 Ibid.
174 Transcript of 4 November 2019.
175 Transcript of 13 December 2019.

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 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 injuries sustained in detention, but he did not know how he had come to harm.[176]

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.

The proceedings were impossible to follow

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

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

VIII. The Srebrenica Case[177]

CASE FACT
Current stage of the proceedings: first-instance proceedings
Date of indictment: 21 January 2016
Trial commencement date: 12 December 2016
Prosecutor: Mioljub Vitorović, Bruno Vekarić
Defendants: Nedeljko Milidragović, Milivoje Batinica, Aleksandar Dačević, Boro Miletić, Jovan Petrović, Dragomir Parović, Aleksa Golijanin and Vidosav Vasić
Criminal offence charged: war crime against civilian population under Article 142 of the FRY Criminal Code

Chamber	Judge Mirjana Ilić (Chairperson) Judge Zorana Trajković Judge Dejan Terzić

Number of defendants: 8	
Defendant's rank: lower rank	**Number of court days in the reporting period**: 11
Number of victims: 1,313	**Number of witnesses heard in the reporting period**: 11
Number of witnesses heard: 22	**Number of expert witnesses heard**: 0

Key developments in the reporting period:

Main hearing

177 The *Srebrenica – Kravica* Case, trial reports and documentation available at http://www.hlc-rdc.org/Transkripti/srebrenica.html, accessed on 20 December 2019.

Course of the proceedings

Overview of the proceedings up to 2019

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 of Republika Srpska (MUP), 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).[178]

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

In the early morning of 14 July 1995, Nedeljko Milidragović ordered Golijanin, Batinica, Dačević, Miletić, Parović and Vasić, as well as other members of his company, to kill about a hundred civilians who were detained in a warehouse in Kravica. Complying with the order, they formed a firing squad, took the civilians out of the warehouse, forced them to sing Chetnik songs, and then, 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.

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 Pusmulići.

Defences of the accused

The accused Nedeljko Milidragović, Aleksa Golijanin, Vidosav Vasić and Aleksandar Dačević did not present a defence, i.e. exercised their right to remain silent.[179] 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; and therefore the audio recordings of their questioning before the OWCP were played. In his statement given before the OWCP, the accused Boro Miletić stated that he was a refugee from Croatia when he was arrested in Belgrade on 29 June

178 OWCP Indictment KTO no. 2/2015 of 21 January 2016, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2016-10/kto_2_15_dopuna_optuznice_od_21_01_2016_1.pdf, accessed on 20 December 2019.

179 Ibid.

1995 and then transferred to Mt. Jahorina and told that he was now assigned to the police force of Republika Srpska. There were many people at Jahorina who, just like him, had been forcibly brought there. The defendant Neđo Milidragović was the commander of his platoon. 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.[180] 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.[181]

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 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 a couple of thousand civilians, mostly women and children, with a few men. That evening they were driven away by buses and trucks. The next morning, the accused Milidragović lined them up and said that they would be going on a mission. They were to watch a section of the road in case anyone surrendered. 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 men over a bullhorn to surrender, 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

180 Transcript of the main hearing held on 7 February 2017.
181 Transcript of the main hearing held on 13 April 2017.

they hand over the money they had on their persons. After that, they were marched to a house by the road and ordered to lie on the ground face down, next to one another. Milidragović signalled to him and another man, whose name he could not remember, and told them to shoot them. According to the defendant's words, the other man 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 into 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.[182]

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

As they were retreating through the woods, they came across two bodies. He said that one body belonged to a man who had hanged himself, which he concluded from the suicide note they found in his pocket. He explained that the other man had been killed by his fellow citizens, 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.[183]

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

182 Transcript of the main hearing held on 31 May 2017.
183 Ibid.

Police Brigade of the Ministry of the Interior of Republika Srpska at Mt. Jahorina, and assigned him to the 3rd Platoon of the 1st Company of the Brigade. Company commander Tomislav Krstović was his immediate superior. He saw the accused Nedeljko Milidragović and Aleksa Golijanin at Jahorina, but did not know the other defendants at the time. Most of the members of his unit had been forcibly recruited, just like him. They were treated like traitors and deserters. On 11 or 12 July 1995, they were all bussed from Jahorina to the village of Bjelovac, to be billeted at the local school where they spent the night. The next day they went to Potočari. They came close to the UNPROFOR base, but did not enter it. There were several thousand people outside by the base. They were civilians – women, children, elderly people and perhaps about ten middle-aged men. These people were frightened, but no one prevented them from moving around. His unit was tasked with maintaining order and ensuring that the assembled people did not come to any harm. In Potočari he also noticed VRS troops. While he was in Potočari, buses arrived, which he believed came to take away the civilians. At about 13.00 or 14.00 hours, his unit received orders to return to Bjelovac; so he did not know what happened to the civilians later. That evening or the next, they set off from Bjelovac, tasked with securing the Bratunac–Konjević Polje road. They were to ensure the safe passage of buses transporting women and children from Bratunac towards Konjević Polje and further on to Tuzla. There was a forest along the section of the road they were manning; the road was winding and there was shooting from all directions all night. The shooting abated just before daybreak, and members of the BiH Army started to surrender that day - some 20 or 30 surrendered. Some of them wore uniforms, others were in plain clothes, and they were unarmed. The men who had surrendered were picked up by a truck, on board which were members of the VRS. 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 farm warehouse before.[184]

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.[185] 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.[186] Consequently, deputy public prosecutors could not act in that period or file indictments on behalf of the Office.

184 Transcript of the main hearing held on 7 February 2017.
185 Ruling of the Court of Appeal in Belgrade Kž2 Po2 7/17 of 5 July 2017.
186 Law on Public Prosecution Service, Article 36.

Continuation of the proceedings

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

Deciding on the OWCP appeal against the ruling dismissing the indictment, on 19 September 2017 the Court of Appeal ruled[187] that the proceedings could continue on the same 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.[188] The indictment was dismissed because it was not 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 preliminary hearing. The Court determined that the records from the preliminary hearing could be used, even though it had been held in the absence of an authorised prosecutor, since, not being trial records, their reading did not amount to a substantial procedural error.

Witnesses in the proceedings

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

Witness and injured party Saliha Osmanović recounted how in July 1995 she 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.[189]

Two of the witnesses heard, Krsto Simić and Ostoja Stanojević, were drivers who were dispatched to Kravica to transport the bodies of killed civilians. They described in detail how the bodies were transported first to a primary mass grave and subsequently to a secondary mass grave, but they did not know who had perpetrated the killings in Kravica.[190]

187 Ruling of the Court of Appeal in Belgrade of 19 September 2017.
188 Criminal Procedure Code, Article 417, paragraph 1, item 1.
189 Transcript of the main hearing held on 25 September 2018.
190 Transcript of the main hearing held on 26 September 2018.

Witness Zoran Erić stated that on 11 July 1995 he was sent from Bratunac to the agricultural cooperative in Kravica, to feed the cattle kept in a cattle shed behind the warehouse. From the shed he could not see what was going on in front of the warehouse. In the afternoon of 13 July 1995, he was in the shed, when he heard the shouts "Allahu Akbar!", and then, "Let's strangle the Chetniks with our bare hands!" He later heard that four prisoners from the warehouse had caught a guard, dragged him 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, the survivors were summoned 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 saw about ten slaughtered people whose bodies were lying by the roadside. He did not know how many people had been killed inside the warehouse, as he did not go inside.[191]

Other witnesses 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.[192]

Overview of the proceedings in 2019

Eleven witnesses were examined in 2019, ten of whom were defence witnesses. 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 onto trucks. By his estimation, there were some 200 bodies in the warehouse. The next day, again on Mirković's orders, he excavated another, larger grave across from the first one. That same day he again went to Kravica to load bodies onto trucks. Buried at Glogova were the bodies of the men killed in Kravica, but the trucks also hauled in the bodies of men killed elsewhere, for instance, at the attempted breakthrough point on the front. Namely, there was fighting in the forests below Crni Vrh with the BiH Army, which was trying to breach the line and break through. 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

191 *Ibid.*
192 Transcript of the main hearing held on 13 November 2018.

order to remain unseen. The bodies were transported towards Bratunac, to a location unknown to him.[193]

Defence witnesses who were 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,[194] while witness Ljubisav Simić, mayor of Bratunac at the relevant time, had no first-hand knowledge of the critical events, but had heard from the director of the Agricultural Cooperative in Kravica and other fighters that they had seen dead bodies around the warehouse.[195]

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, they 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 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.[196]

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.[197]

At the time of the critical event, defence witness Duško Jević[198] 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

193 Transcript of the main hearing held on 19 March 2019.
194 Transcript of the main hearing held on 26 February 2019.
195 Transcript of the main hearing held on 12 December 2019.
196 Transcript of the main hearing held on 9 April 2019.
197 Transcript of the main hearing held on 16 May 2019.
198 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).

forcibly brought to Jahorina from Serbia in the beginning of summer 1995, referred to as deserters. On 11 July 1995, Ljubiša Borovčanin (Deputy Commander of the RS Special Police Brigade at the time) ordered them to deploy to the area of Srebrenica. He set out with the 1st Company and they arrived in the village of Bjelovac and were billeted at the primary school there. That same evening they received orders that the following day they were to go to Potočari to secure civilians. In the morning of 12 July 1995 they went there together with members of the Zvornik Public Security Station. They were tasked firstly with guarding civilians up to the moment of their evacuation and, secondly, with securing the Bratunac–Konjević Polje road. The 2nd Company from Jahorina also arrived to secure the road. The evacuation of civilians from Potočari began that day and continued until the afternoon of 13 July 1995. They guarded the civilians in Potočari so that nobody would harm them. Also manning the road were RS Army soldiers. In the evening of 13 July 1995, he went to Bijeljina and returned on 14 July. He reported to Borovčanin, who informed him that there had been an incident. About midday he inspected the road and, driving along, noticed a pile of hay, a truck and a loader outside the warehouse in Kravica. He did not see members of his unit in the vicinity of the warehouse on that occasion – but he saw them on the road together with members of the Zvornik Special Police Unit (PJP). None of his platoon commanders had informed him that there had been an incident, nor was he aware that any of them had ordered the killing of the prisoners. He heard about the critical incident only later. While on field duty they came across two broken-down UNPROFOR personnel carriers, and he ordered the accused Milidragović to repair them with his men and move them to the RS Police base in Janja. He entrusted Milidragović with this task because he was an expert on armoured vehicles. He did not know when the personnel carrier was transferred.[199]

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 nor 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 it had in fact been a separate incident. He knew nothing about the involvement of any members of the Jahorina unit in this event. The order for killing the prisoners had been given by Ljubiša Beara, Chief of Security of the VRS Main Staff at the

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

time[200]. He had issued such an order to all of his security personnel, and his deputy Popović[201] was put in charge of the operation. According to information he had obtained by September 1995, there had been 320 victims in Kravica.[202]

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 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 authorisation to address the President of the International Residual Mechanism for Criminal Tribunals in order to obtain information on the specific decision and types of ICTY protective measures in respect of witness Neđo Jovičić, and to seek identification and confirmation of these measures, or possibly apply to the International Residual Mechanism for Criminal Tribunals for the cancellation or variation of the protective measures.[203]

The evidentiary procedure will continue in 2020 with the examination of witnesses.

HLC Findings

Regional cooperation

The Prosecutor's Office of BiH issued an indictment against Milidragović and Golijanin for genocide, which was confirmed by the BiH Court back in July 2012. However, they could not be tried in Bosnia and Herzegovina, as they have been living in Serbia ever since the end of the war in Bosnia and Herzegovina in 1995. On the basis of the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide, signed in 2013 between the OWCP and the Prosecutor's Office of BiH, the two prosecutorial offices efficiently exchanged information and evidence, as a result of which proceedings were initiated before the domestic judiciary for the crime in Srebrenica.

Selective indictment

True to its customary practice, in this case as well the OWCP indicted lower-ranking individuals only. Namely, the first accused and highest ranking individual 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

200 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).

201 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).

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

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

Serbia, are seen in public, receive media coverage[204] and are accessible to the state authorities.[205] The complaint was against, among others, 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 three years later in the evidentiary procedure stage, namely the examination of defence witnesses. Main hearings have been postponed a number of times owing to the absence of some of the defendants and motions for recusal of the Chamber, but no hearings could be held between July 2017 and 1 March 2018, as the indictment had been dismissed, and because the Court of Appeal failed on two occasions to promptly return the case file which had been referred to it for deciding on appeals against the decision of the Trial Chamber entrusted with the case. Under the Protocol on Cooperation between the OWCP and the Prosecutor's Office of BiH, evidence and information pertaining to a specific case may not be forwarded to the prosecutorial office of another state without the consent of the victims. In the case at hand, representatives of the victims' families consented, in other words, placed their confidence in the judiciary of the Republic of Serbia to conduct this trial, and are regularly following the proceedings in the courtroom. Three years into the trial, with the final ruling a long way off, the families of the victims are increasingly under the impression that Serbia has no intention of convicting war criminals and that its legal system is non-functional.

204 See, e.g. Milorad Pelemiš' guest appearance in the programme "Goli život/Bare Life/" 2014, available at https://www.youtube.com/watch?v=BPQUlH78yhI, accessed on 2 February 2018.

205 HLC release "Criminal Charges for the Genocide in Srebrenica", 16 August 2010, available at http://www.hlc-rdc.org/?p=13072, accessed on 20 December 2018.

IX. The Štrpci Case[206]

CASE FACT
Current stage of the proceedings: first-instance proceedings
Date of indictment: 10 May 2018
Trial commencement date: 29 January 2019
Prosecutor: Mioljub Vitorović
Defendants: Gojko Lukić, Jovan Lipovac, Ljubiša Vasiljević, Duško Vasiljević, Dragana Đekić
Criminal offence charged: war crime against the civilian population under Article 142 of the FRY Criminal Code

Chamber	Judge Vera Vukotić (Chairperson) Judge Vladimir Duruz Judge Vinka Beraha Nikićević

Number of defendants: 5	
Defendant's rank: no rank	**Number of court days in the reporting period**: 14
Number of victims: 20	**Number of witnesses heard in the reporting period**: 31
Number of witnesses heard: 31	**Number of expert witnesses heard**: 0
Key developments in the reporting period: Main hearing	

206 The *Štrpci* Case, trial reports and case file documentation available at http://www.hlc-rdc.org/Transkripti/strpci.html accessed on 30 December 2019.

Course of the proceedings

Indictment

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

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 to the house where two members of the armed group awaited them, and then killed them with two shots to the back of the head. Eighteen of the civilians were killed in this way, and two of them while attempting to flee - one of these was shot by an unidentified member of the group, and the other was first wounded by a member of the group (Nebojša Ranisavljević, who has finally been convicted of this crime), after which another member of the unit slit his throat with a knife.[207]

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

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.[208] The accused Ljubiša Vasiljević stated that while in the reserve police force in Višegrad he was gravely wounded in the left leg on 2 January 1992 and taken to hospital in Užice, where he underwent treatment until the end of May 1993. At the time of the critical event he was only able to walk supporting himself with crutches. After the treatment, he was declared unfit for military service for the next five years.[209] 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 there 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.[210] 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 positioned in his native village of Rujište and towards the border with Serbia.[211] The accused Dragana Đekić stated that she had had nothing to do with the critical event whatsoever, except that she was in Višegrad at 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.[212]

Witnesses in the proceedings

During the 14 main hearings held in 2019, 31 witnesses were heard. Witnesses and injured parties Nail Kajević, Selma Čolović, Ragip Ličina,[213] Alija Kapetanović, Etem Softić, Misin Rastoder, Edin Bakija,[214] Islam Sinančević,[215] Đorđije Vujović and Izudin Hanić,[216] did not have first-hand knowledge of the critical event. Witnesses Marko Palzinić and Radenko Grujičić, train conductors, and witness Vladan Tucović, train engineer, stated that on the critical day the train stopped at the station in Štrpci and that uniformed men took 15-20 male passengers off the train and led them somewhere towards the station building.[217]

208 Transcript of the main hearing held on 4 March 2019.
209 Ibid.
210 Ibid.
211 Ibid.
212 Ibid.
213 Transcript of the main hearing held on 3 April 2019.
214 Transcript of the main hearing held on 4 April 2019.
215 Transcript of the main hearing held on 13 May 2019.
216 Transcript of the main hearing held on 14 May 2019.
217 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, 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 wore a fur cap. 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.[218] Witnesses Zoran Bogetić, Zoran Pantović,[219] Ljubiša Radomirović and Nenad Cvetić, [220] testified that the trained stopped at Štrpci, that soldiers unknown to them boarded the train and checked the passengers' ID's and then took some of them off the train.

Witness Damljan Mitrašinović was the commander of the VRS Goražde Brigade at the critical period. 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 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 ejected 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.[221]

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, commander of a Višegrad Brigade battalion, stopped him beside 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

218 Ibid.
219 Transcript of the main hearing held on 24 September 2019.
220 Transcript of the main hearing held on 28 October 2019.
221 Ibid.

surrounding them. He was told that he was to drive their bodies to the bank of the nearby River Drina. It was other people who 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, and he too had been given similar orders.[222]

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 this process but sat in the car all the while. The witness had changed his previous 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 elementary school in Prelovo, asserting that he had given that statement under duress.[223]

Witness Krsto Papić was a battalion commander in the Višegrad Light Infantry Brigade. 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 indoors, 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 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 from Bosnia and Herzegovina Džermin Pašalić had exerted pressure on him, whereas there had not been any pressures exerted on him by the OWCP.[224]

222 Transcript of the main hearing held on 26 November 2019.
223 Ibid.
224 Transcript of the main hearing held on 9 December 2019.

Witness Nebojša Ranisavljević[225] changed the statement he had given in the investigation stage, because the deputy prosecutor assigned to the case had come to his house and promised him all sorts of things in order for him "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 he had not dared 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 elementary 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 orders from Lukić, 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 started to try to flee, they fired shots at them, including 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.[226]

The Chamber ordered a forensic expert analysis to ascertain the causes of death of those injured parties whose bodies have been found[227], as well as a ballistic analysis.

HLC Findings

Excessive anonymisation of the indictment

The Office of the War Crimes Prosecutor (OWCP) Indictment in this case, which is publicly accessible on the OWCP homepage under "Indictments"[228], has been anonymised by the publication of its operative part only, 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.[229] Namely, the Rulebook provides that OWCP indictments "*shall as a rule be published*

225 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.

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

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

228 OWCP Indictment KTO 1/15 of 10 May 2018, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2019-08/kto_1_15_lat.pdf, accessed on 16 January 2020.

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

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".[230] Instead of the entire indictment, only the operative part was posted, making it impossible to ascertain on what evidence the OWCP based the indictment. Also, the Rulebook envisages anonymisation of the personal particulars of the participants in the proceedings, such as "*the names and surnames and nicknames of physical persons, the address, date and place of birth .....*".[231] 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*".[232] As the names of both the accused and the victims have been anonymised, the OWCP is evidently in breach of a provision of its own Rulebook, in total disregard of the public interest, which is the 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 them and their families, and is a prerequisite for the recognition of the sufferings they have gone through, primarily on account of their identity. Not a single reason existed for anonymising the names of the victims in the indictment. To wit, they had been publicly known a long time before the indictment was issued, as the media had reported on the abduction of the passengers in Štrpci soon after the event, almost all the abducted passengers were nationals of the then SFRY, and great public pressure was being exerted on the authorities in Serbia and Montenegro to shed light on their fate; the names of the abductees were also mentioned in reports on commemorations of the anniversaries of their ordeal.[233] Neither was there any reason to anonymise the names of the defendants, as they too had already been publicly known, given that the OWCP had itself announced, at the end of February 2015, that it had completed investigations against five persons, stating their full names;[234] although it posted the anonymised indictment on its webpage only following its confirmation, namely in October 2018, considerably after the names of both the victims and the defendants had been published in the media.[235]

Good regional cooperation

This case is a very good example of regional cooperation. On the basis of the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes Against Humanity and Genocide that the BiH Prosecutor's Office and the Office of the War Crimes Prosecutor of the Republic of Serbia

230 Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes, Article 1, paragraph 2.
231 Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes, Article 5, paragraph 1.
232 Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes, Article 5, paragraph 2.
233 Mondo, *"Godišnjica otmice u Štrpcima /Anniversary of the Abduction in Štrpci/"*, 27 February 2010, available at https://mondo.ba/Info/Region/a73400/Godisnjica-otmice-u-Strpcima.html, accessed on16 January 2020.
234 SD Serbia Today *"Da se ne zaboravi: Pre 23 godine zaustavili voz u Štrpcima i oteli 20 putnika/ Lest it Be Forgotten: Train Stopped in Štrpci 23 Years Ago and 20 Passengers Abducted"*, 27 February 2016, available at https://www.srbijadanas.com/clanak/da-se-ne-zaboravi-pre-23-godine-zaustavili-su-voz-u-strpcima-i-oteli-20-putnika-27-02-2016, accessed on16 January 2020.
235 Radio Television Vojvodina, "*Osumnjičenima za zločin u Štrpcu određen pritvor od 30 dana /Suspects for the Crime in Štrpci Remanded in Custody for 30 Days/"*, 5 December 2014, http://rtv.rs/sr_lat/hronika/osumnjicenima-za-zlocin-u-strpcu-odredjen-pritvor-do-30-dana_544211.html, accessed on 16 January 2020.

signed in 2013, the BiH Prosecutor's Office and the OWCP set up a joint investigative team for this case which gathered evidence on the crime in Štrpci, which resulted in the simultaneous arrest on 5 December 2014 of five suspects in Serbia and ten suspects in 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, because, although it brought the first indictment as far back as 3 March 2015, 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.[236] 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.

236 **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 authorised prosecutor). The War Crimes Department of the Higher Court in Belgrade brought a second decision (K.Po2 no. 3/15, Kv-Po2 no. 29/17 of 16 June 2017) confirming the same indictment but the Court of Appeal reversed the decision again and remanded it to the court of first instance for review (Ruling Kž2 Po2 8/17 of 24 July 2017). The War Crimes Department of the Higher Court in Belgrade brought a decision for a third time (K-Po2 no. 3/2015, Kv-Po2 no. 41/17 of 21 August 2017) confirming the indictment of 6 April 2017, but the Court of Appeals by its decision (Kž2 Po2 12/17 of 2 October 2017) reversed that decision and dismissed the indictment for its not having been issued by an authorised 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.

X. The Zvornik – Standard Case[237]

CASE FACT
Current stage of the proceedings: first-instance proceedings
Date of indictment: 10 May 2019
Trial commencement date: 27 September 2019
Prosecutor: Ognjen Đukić
Defendant: Dalibor Maksimović
Criminal offence charged: war crime against civilian population under Article 142 of the FRY Criminal Code

Chamber	Judge Vladimir Duruz (Chairperson) Judge Vera Vukotić Judge Vinka Beraha Nikićević

Number of defendants: 1	
Defendant's rank: no rank	**Number of court days in the reporting period**: **3**
Number of victims: 4	**Number of witnesses heard in the reporting period**: 4
Number of witnesses heard: 4	**Number of expert witnesses heard**: 0

Key developments in the reporting period:

Main hearing

237 The *Zvornik – Standard* Case, trial reports and case file documentation available at http://www.hlc-rdc.org/Transkripti/zvornik.html accessed on 2 December 2019.

Course of the proceedings

Indictment

The accused Dalibor Maksimović[238] 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 whilst 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.[239]

Defence of the accused

In this stage of the proceedings, the defendant exercised his right to remain silent.[240]

Witnesses in the proceedings

Witnesses and injured parties Fehrija Čirak, whose husband Fadil had been killed, and Alija Handžić, whose brothers Ilijaz, Nijaz and 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. They saw on television 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 number of Serb soldiers had perished in Zvornik, and that someone had killed her husband Fadil and the three Karaosmanović brothers in retaliation.[241] 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 on television Branko Grujić, the then mayor of Zvornik, calling the people to come back and report their property. Therefore, her

238 The defendant was sentenced by a judgment nisi of the Higher Court in Belgrade, K.Po2 8/2017 of 23 September 2019 to a term of imprisonment of 15 years for the criminal offence of war crime against the civilian population committed on 9 May 1992 in the Bratunac and Milići municipality areas.

239 OWCP Indictment KTO no. 1/2019 of 10 May 2019, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2019-09/kto_1_19_lat.pdf accessed on 5 December 2019.

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

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

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 saying 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 Crnogaća, from Zvornik, who came to see her sometime in 2007 and told her that he had been apprehended and tied to the radiator in the building in which a soldier from Milići killed her brothers. He also said that Fadil Čirak had been killed with her brothers.[242]

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 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.[243]

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 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.[244]

242 Ibid.
243 Ibid.
244 Transcript of the main hearing held on 18 December 2019.

HLC Findings

Regional cooperation

These proceedings are a result of the cooperation between Serbia and Bosnia and Herzegovina in the prosecution of war crimes, which was intensified after the Office of the War Crimes Prosecutor and the Prosecutor's Office of Bosnia and Herzegovina signed in 2013 the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide. Namely, the confirmed indictment against the accused was transferred by the Prosecutor's Office of Bosnia and Herzegovina, given that the accused, who is a national and resident of the Republic of Serbia, was not accessible to the authorities of Bosnia and Herzegovina. This was the second transferred indictment against the same defendant.[245]

Excessive anonymisation of the indictment

The OWCP (Office of the War Crimes Prosecutor) Indictment in this case, which is publicly accessible on the OWCP homepage under "Indictments"[246] ,has been anonymised by the publication of its operative part only, 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.[247] 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*".[248] Instead, out of the entire indictment, only the operative part was posted, making it impossible to ascertain on what evidence the OWCP based the indictment. Also, the Rulebook envisages anonymisation of the personal particulars of the participants in the proceedings, such as "*the names and surnames and nicknames of physical persons, the address, date and place of birth ....*".[249] 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*".[250]As the name of the accused has been anonymised, as indeed have the names of the victims, the OWCP is evidently in breach of a provision of its own Rulebook, in total disregard of the public interest, which is the public disclosure of the identity of persons who stand accused of war crimes the commission of which poses a grave danger to

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

246 OWCP Indictment KTO no. 1/2019 of 10 May 2019, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2019-09/kto_1_19_lat.pdf accessed on 16 January 2020.

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

248 Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes, Article 1, paragraph 2.

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

250 Rulebook on Anonymisation of Personal Data in OWCP Indictments for War Crimes, Article 5, paragraph 2.

society, and equally that of the victims, public reference to whom provides a form of redress for them and their families and is a prerequisite for the recognition of the sufferings they have gone through, primarily on account of their identity.

First-instance judgments before the Higher Court in Belgrade

I. The Bosanski Petrovac – Gaj Case[251]

CASE FACT
Current stage of the proceedings: first-instance proceedings (retrial)
Date of indictment: 10 October 2014
Trial commencement date: 15 June 2015
Prosecutor: Mioljub Vitorović
Defendant: Milan Dragišić
Criminal offence charged: war crime against civilian population under Article 142 of the FRY Criminal Code

Chamber of the Higher Court in Belgrade	Judge Vladimir Duruz (Chairperson) Judge Vera Vukotić Judge Vinka Beraha-Nikićević

Number of defendants: 1	
Defendant's rank: low – no rank	**Number of court days in the reporting period**: 4
Number of victims: 5	**Number of witnesses heard in the reporting period**: 0
Number of witnesses heard: 26	**Number of expert witnesses heard**: **3**

Key developments in the reporting period:

Second-instance decision

251 The *Bosanski Petrovac – Gaj* Case, trial reports and case file documents available at http://www.hlc-rdc.org/Transkripti/bosanski_petrovac_gaj.html, accessed on 11 December 2018, accessed on 16 October 2019.

Course of the Proceedings

Overview of the proceedings up to 2019

Indictment

The accused Milan Dragišić is charged with having killed, as a member of the Army of Republika Srpska (VRS), on 20 September 1992, in the Bosanski Petrovac Gaj district (Bosnia and Herzegovina), Bosniak civilians Asim Kavaz, Eldin Zajkić and Safet Terzić, and attempting to kill Muhamed Kavaz, Asmir Lemeš and Šaćir Hujić, inflicting bodily injuries on Muhamed Kavaz and Šaćir Hujić. Namely, after the body of his brother Dragan Dragišić, who had died on the battlefield, had been brought back, the accused, armed with an automatic rifle and in uniform, ran out into the street swearing at his Bosniak neighbours and cursing their "Turkish and Moslem mothers", and shot several of them.[252]

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.[253]

Witnesses in the proceedings

During the evidentiary proceedings, a total of 26 witnesses were examined. Injured party Muhamed Kavaz described how on the critical day the accused wounded him and killed his father, Asim Kavaz.[254] Witness Branko Srdić, an eyewitness to the critical event, also confirmed that the accused had killed Asim Kavaz.[255]

Witnesses Mirko Velaga and Edin Bašić had not witnessed the critical event, but their second-hand knowledge corroborated the statement of the injured party Muhamed Kavaz about the killing of his father Asim, and the allegation that, after killing Asim Kavaz, the accused went around Gaj shooting at Bosniak civilians.[256]

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

252 OWCP /Office of the War Crimes Prosecutor/ Indictment no. KTO 7/14 of 10 October 2014, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents_sr/2016-05/o_2014_10_10_lat.pdf, accessed on 16 October 2019.
253 Transcript of the main hearing held on 15 June 2015.
254 Transcript of the main hearing held on 14 July 2015.
255 Transcript of the main hearing held on 18 November 2015.
256 Transcript of the main hearing held on 8 October 2015.

a car with great difficulty. Witnesses Željko Kuburić and Duško Karanović, who came to the Dragišić family home to express their condolences, testified that the accused had seemed lost, abstracted and "oblivious to their presence".[257]

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.[258]

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. [259]

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.[260]

Following the statement of this witness, the court ordered a forensic medical evaluation to be undertaken to establish the type, severity and components 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.

257 Transcript of the main hearing held on 15 September 2016.
258 Transcript of the main hearing held on 21 June 2017.
259 Transcript of the main hearings held on 8 March 2018 and 10 September 2018.
260 Transcript of the main hearing held on 20 January 2018.

Course of the proceedings in 2019

Expert witness findings

The court-appointed experts were heard in 2019. 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.[261]

Court experts Dr Branko Mandić[262] and Ana Najman[263] found that at the time of the commission of the criminal offence he is charged with, the accused had been temporarily mentally incompetent as a consequence of a breakdown of his defensive psychological mechanisms, and that his capacity to appreciate the significance of his acts and control them had been substantially diminished.

First-instance judgment

On 24 April 2019, the Higher Court in Belgrade rendered a judgment pronouncing the accused Milan Dragišić guilty of having, in a state of substantially diminished mental competence, deprived of life one Bosniak civilian, and of having attempted to deprive of life another two Bosniak civilians, and sentenced him to four years of imprisonment.[264]

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 Petrovac VP 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 Hujić, owing to the extremely general nature of the accounts of the witnesses describing this incident.

261 Transcript of the main hearing held on 14 January 2019.
262 Ibid.
263 Transcript of the main hearing held on 1 March 2019.
264 Judgment of the Higher Court in Belgrade K.Po2 13/2014 of 4 April 2019.

It also concluded that there was no proof that the accused had killed Safet Terzić and Eldin Zajkić, since the witnesses who claimed to have observed this event describe it in different ways. Although the accused was charged with having killed Terzić and Zajkić using an automatic rifle, the court was unable to arrive at such a conclusion. This was primarily owing to the fact that a number of witnesses 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,[265] 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[266] overturned the judgment of the Higher Court in Belgrade on account of a substantial procedural error and remanded the case to the court of first instance for retrial and reconsideration.[267]

At the time of drawing up this report, the decision of the Court of Appeal was not publicly available, making it impossible for a legal analysis to be undertaken of the reasons the Court of Appeal had been guided by in overturning the Higher Court judgment and remanding the case for retrial.

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

265 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.

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

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

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

Unacceptable expertise

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

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

The Higher Court declined to submit to the HLC the first-instance judgment explaining that the relevant proceedings had not yet resulted in a final ruling. Such an action on the part of the court is in direct contravention of the final decision of the Commissioner for Access to Information of Public Importance and Personal Data Protection who has already assessed this position of the court to be unlawful.[268] Notwithstanding the fact that the HLC submitted the Commissioner's decision to the court, the authorised official entrusted with the matter adhered to his stance. This is invariably the practice with every newly appointed Higher Court official authorised to handle requests for access to information of public importance, reflecting their failure to adequately familiarise themselves with existing standards prior to assuming duty.

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

II. The Bosanska Krupa II Case [269]

CASE FACT
Current stage of the proceedings: appeal proceedings
Date of issue of the indictment: 26 December 2017
Date of commencement of the trial: 7 June 2018
Acting prosecutor: Bruno Vekarić
Accused: Joja Plavanjac and Zdravko Narančić
Offence: war crime against civilian population, the Criminal Act of the Federal Republic of Yugoslavia, Article 142

Chamber	Judge Mirjana Ilić (Chairperson of the panel) Judge Zorana Trajković Judge Dejan Terzić

Number of accused: 2	
Rank of accused: lower rank	**Number of court days in the reporting period:** 9
Number of victims: 11	**Number of witnesses heard in the reporting period:** 8
Number of victims heard: 16	**Number of court experts heard:** 0

Key events in the reporting period:

First instance judgment

269 The *Bosanska Krupa II* Case, the reports from the trial and the documentation from the case file available at http://www.hlc-rdc.org/Transkripti/bosanska_krupa_II.html, accessed on 15 December 2019.

Course of the proceedings

Course of the proceedings until 2019

Indictment

The accused Joja Plavanjac was charged for the murder, and the accused Zdravko Narančić for assistance in the murder of 11 Bosniak civilians in the first half of August 1992, at the "Petar Kočić" Primary School in Bosanska Krupa (Bosnia and Herzegovina). The accused Zdravko Narančić, as a member of the military police of the 11th Krupa Light Infantry Brigade of the Army of Republika Srpska, while he was performing the duty of guard in the prison in the school premises, enabled Joja Plavanjac, a member of the Army of Republika Srpska, to enter into the prison premises, armed with an automatic rifle. At first, the accused looked through the prison for the detainee Predrag Praštalo, who had in the previous days deprived his mother of life. Notwithstanding that Praštalo had already been taken to detention in Banja Luka, the accused Narančić at first unlocked and opened the door of the room where some imprisoned Bosniaks, members of the "Joks" group, were held, upon whom the accused Plavanjac immediately opened fire after the opening of the room, thereby murdering Rasim Kaltak, Nezir Kaltak, Enes Kaltak, Emsud Kaltak, Ferid Kaltak, Fadil Alijagić, Edin Alijagić, Mirsad Omić, Rasim Nasić and Ismet Ćehajić. Afterwards, the accused Narančić unlocked and opened the door of another room and loudly requested that the person named Tofik Sedić come out of it. When this person came out, the accused Plavanjac took him to the gym of the school, at first asking him why he had stopped his uncle Mićo Plavanjac, and then murdering him by shooting from the automatic rifle.[270]

Defences of the accused

Presenting their defence, the accused denied that they had committed the criminal offence for which they had been charged. The accused Joja Plavanjac claimed that the said murders were committed by his now late father Lazo Plavanjac.

Namely, the Republika Srpska soldier Predrag Praštalo had killed his mother on 31 July 1992, and his father Lazo came to him on 3 August 1992 and insisted that he drive him to Krupa, to the "Petar Kočić" Primary School, because he had heard that Praštalo was imprisoned there. Both men were armed. The door was unlocked for them by the guard, the accused Narančić, whose superior his father was. Narančić explained to them that Praštalo had been transferred to Banja Luka, but the father insisted that the doors of the rooms where Bosniaks were imprisoned be unlocked, in order that he could verify this for himself. When Narančić opened one room, the father recognised Tofik Sedić amongst the imprisoned persons and spoke with him. Meanwhile, the accused went to the office with Narančić in order to review the logbook and establish whether Praštalo had really been transferred to

270 The Indictment by the Prosecutor's Office for War Crimes KTO 4/17 of 26 December 2017, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2018-03/kto_4_17_latinica~3.pdf, accessed on 8 January 2019.

Banja Luka. At one point a shot was heard, and when they left the office, they saw that Tofik Sedić was lying dead on the floor, after which they returned to the office to see the documentation. They soon heard gun shots again, after which they ran to the father and saw that he had shot at the prisoners. It is not known to him how his father had opened the door of the room where the prisoners were. Narančić caught hold of his father to prevent him shooting any more and pushed him out of the school, after which the two left.[271]

The accused Zdravko Narančić stated in his defence that he had let the accused Palvanjac into the school premises because the said man had been his superior, because of which reason he had had to obey him; and at the same time he confirmed the allegations of the defence of the accused Joja Palvanjac pertaining to the critical event.[272]

Witnesses in the proceedings

The witnesses/ aggrieved parties Asim Nasić, Mirela Rekić, Osma Alijagić, Fatima Kaltak and Safija Kaltak were examined by a video-conference call with the Cantonal Court in Bihać. They had not had any direct knowledge of the critical event, but, owing to the bad sound quality, their examination could not be monitored.[273]

Neither of the witnesses Duško Jakšić and Zdravko Marčeta, both members of the army of Republika Srpska, had any direct knowledge of the critical event. They stated that they had heard, that in the murders of the persons imprisoned on the premises of the "Petar Kočić" Primary School, the late Lazo Plavanjac, father of the accused Joja Plavanjac, has also participated, although they had not mentioned the father of the accused Plavanjac at all when witnessing before the competent authorities in Bosnia and Herzegovina.[274]

Course of the proceedings in 2019

During 2019, six days of trial were held, during which Mehmed Gerzić, Šefkija Kozlica, Sabit Alijagić, Miralem Selimović and Kasim Haluzović were also examined as witnesses. At the time of the critical event, they were all imprisoned on the premises of the "Petar Kočić" Primary School in Bosanska Krupa. At the time of the critical event, none of them had seen the late Lazo Plavanjac, the father of the accused Joja Plavanjac. The witness Šefkija Kozlica confirmeded 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 who had been a guard at the school, and afterwards he had heard at first ten, and then one more shot.[275]

271 The transcript from the main hearing of 7 June 2018.
272 *Ibid.*
273 The transcript from the main hearing of 3 October 2018.
274 The transcript from the main hearing of 25 December 2018.
275 The transcript from the main hearing of 5 March 2019.

The witness Sabit Alijagić, a neighbour of the accused Plavanjac, stated that it was known to him that the mother of the accused Plavanjac was killed a few days prior to the critical event, and that he thought this was the cause of the critical event. Namely, Plavanjac's mother was killed by a neighbour brought to the school premises, but taken somewhere shortly afterwards. The day after, the accused Plavanjac, who was drunk, came to the school, looking for his mother's killer. He entered the room where a witness was also imprisoned, and brought out Teofik Sejdić. He took Teofik to the gym and murdered him there, after which he entered the room where the men named "Joksovci" were imprisoned, and shot them.[276] The witness Kasim Kaluzović stated that he had seen the accused Plavanjac coming to the school, that the door of the room where he had been imprisoned had opened, and that he had then seen the guard Narančić with Plavanjac. Plavanjac pointed at Tofik Softić, who was imprisoned in the same room, and brought him out to the gym. He heard Plavanjac asking Tofik where his brother Zijad was, as well as why he, as a reserve policeman, had stopped Plavanjac's uncle, and who was he to dare to do that. Then, a single shot was heard from that direction. After this, from the room where the "Joksovci" were imprisoned, 10 separate distinct shots were also heard.[277]

First instance judgment

On 15 November 2019, the Higher Court in Belgrade rendered a judgment by which it declared the accused Joja Plavanjac and Zdravko Narančić guilty of the criminal offence of a war crime against a civilian population, and sentenced them – Joja Plavanjac to a prison sentence of 15 years, and Zdravko Narančić to a prison sentence of seven years.[278]

The judicial panel amended the enacting terms of the indictment of 26 December 2017 in accordance with the statements of the examined witnesses, in such a manner that the chronological order of the victims' sufferings was changed. Namely, during the proceedings the court established, based on the corroborating statements of the witnesses, established that: "… the accused Zdravko Narančić, as a member of the military police of the 11th Krupa Light Infantry Brigade, during the time he was performing the duty of a guard on the school premises, enabled Joja Plavanjac, a member of the Army of Republika Srpska, to enter the prison premises armed with automatic rifle, and who at first looked in the prison for the detained Predrag Praštalo, who had deprived his mother of life during the previous days. Notwithstanding that Praštalo had already been taken to detention in Banja Luka, the accused Narančić at first unlocked and opened the door of the room where the person named Tofik Sedić was imprisoned, and called the same to come out. When this person came out, the accused Plavanjac took him to the school gym, asking him first 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 of a second room where Bosniaks were imprisoned, members of the "Joks" group. Plavanjac shot at them immediately after the room was opened, murdering Rasim Kaltak, Nezir Kaltak, Enes Kaltak, Emsud Kaltak, Ferid Kaltak, Fadil Alijagić, Edin Alijagić, Mirsad Omić, Rasim Nasić and Ismet Ćehajić".

276 Ibid.
277 The transcript from the main hearing of 8 April 2019.
278 The judgment by the Higher Court in Belgrade K.Po2 no. 11/17 of 15 November 2019.

The Court assessed that the allegations of Joja Plavanjac, that the said criminal offence was committed by his late father Lazo Plavanjac, were not proven, for the reason that the defence did not provide adequate evidence for the same, with the court considering that this was stated only in order to avoid criminal liability. In support of this conclusion by the court also stands the allegation of the witnesses who were imprisoned in the school premises at the time when the criminal offence was committed, who stated that none of them had seen Lazo Plavanjac then. Also, the court did not accept the allegations of the defence of Zdravko Narančić that he let Joja Plavanjac onto the premises of the school where he was a guard out of fear, because Plavanjac was his commander and he had to obey him. Namely, the court established that Narančić had been a guard, whose duty had been to guard prisoners and to prevent third parties' access to prisoners. From the witnesses' statements during the proceedings, it was established that Narančić had not attempted at any moment to prevent Plavananjac from committing the criminal offence, and that he had not only willfuly enabled him to commit the offence, but had also enabled him to leave the school undisturbed after committing the offence.

When weighing the penalty for the defendant Joja Plavanjac, the court assessed as aggravating circumstances, the death of 11 persons of Bosniak nationality, and as mitigating circumstances, his family situation, the absence of a previous criminal record and the lapse of time since the perpetration of the offence. With respect to the accused Zdravko Narančić, the court also assessed as mitigating circumstances the absence of a criminal record and the lapse of time since the perpetration of the offence.[279]

Findings of the HLC

Regional cooperation

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

Level of penalty and mitigating circumstances

The prison sentences imposed on the accused - Joja Plavanjac 15 years, and Zdravko Narančić seven - are just and proportional to the seriousness of the criminal offence committed. However, the HLC considers that a lapse of time should not be assessed as a mitigating circumstance when determining penalties for this type of criminal offence. That a lapse of time is not a circumstance which may be

279 Ibid.

considered when weighing penalties is also indirectly pointed to by the universal provision stipulating that this type of criminal offence is not subject to a statute of limitations. The opinion of the court was therefore contrary to the established jurisprudence of the ICTY - that the length of the period between the offending conduct and the judgment should not be considered a mitigating circumstance[280] -, as well as contrary to contemporary international jurisprudence in general.[281]

280 ICTY judgment Dragan Nikolić – item 273.

281 BGH, 2 StR 538/01, the judgment of 21 February 2002 – the Federal Supreme Court of Germany, in a murder case, mentioned that the length of time from the offending conduct until the judgment is a possible mitigating factor, but also pointed out that, given the seriousness of the offence (committed in 1943-44, during World War II) by the accused, now 90 years old, such circumstances could not be taken into account.

III. The Bratunac Case[282]

CASE FACT
Current stage of the proceedings: appeal proceedings
Date of issue of the indictment: 14 April 2016
Date of commencement of the trial: 29 June 2016
Acting prosecutor: Bruno Vekarić
Accused: Dalibor Maksimović
Criminal offence: war crime against civilian population, the Criminal Act of the Federal Republic of Yugoslavia, Article 142.

Chamber	Judge Vladimir Duruz (Chairman of the panel) Judge Vera Vukotić Judge Vinka Beraha-Nikićević

Number of accused: 1	**Number of court days in the reporting period:** 2
Rank of accused: lower rank	**Number of witnesses heard in the reporting period:** 0
Number of victims: 5	**Number of court experts heard :** 0
Number of witnesses heard: 20	

Key events in the reporting period:

First instance judgment rendered

282 The *Bratunac* Case, the reports from the trial and the documentation from the case file available at http://www.hlc-rdc.org/Transkripti/bratunac.html, accessed on 29 October 2019.

Course of the proceedings

Course of the proceedings until 2019

Indictment

The indictment by the Prosecutor's Office of 14 April 2016 charges that Dalibor Maksimović , on 9 May 1992, as a member of the Army of Republika Srpska, in the villages Repovac and Glogova (the municipality of Bratunac, Bosnia and Herzegovina), together with unknown members of the Army of Republika Srpska, murdered four Bosniak civilians – Huso Salkić, Omer Salkić, Nezir Salkić and Mujo Šaćirović -, and unlawfully imprisoned two Bosniak women, the protected witnesses VS1 and VS2, raping VS1 several times.[283]

Defence of the accused

The accused Dalibor Maksimović denied that he had committed the criminal offences for which he is charged, stating that he was at another location during the critical period. When the chairman of the panel pointed out that the protected witness VS1 had described in her statement the accused's family house in Bratunac in detail (stating that she had been raped there), and also the household members, and that this description matched his to a large extent, the defendant could not explain the reason.[284]

Medical expertise

Prior to the testimony by the aggrieved party (protected witness VS1), psychiatric evaluation with respect to the circumstances of her procedural capacity was performed, during which it was established that the witness was capable of witnessing in these proceedings. However, the court rejected the proposal of the Prosecutor's Office for War Crimes to conduct simultaneously an expert evaluation to establish the level of the witness's anguish and suffering, and whether the aggrieved party had post-traumatic stress syndrome as a consequence of the event, as well as the causal connection between the harmful action and the consequences which have occurred in her mental sphere, which now afflict her life.[285] The proposal was rejected because the court expert explained that the exercise of such expertise would require a certain time, i.e. that he was not able to perform it immediately; and the court referred to the provision of Article 252 of the Criminal Procedure Code (which stipulates that an associated action for damages can be discussed in criminal proceedings, if this does not delay the proceedings), as well as to other provisions requiring that criminal proceedings be conducted urgently. The court's stance was that such a decision did not mean that the aggrieved party would not

283 The indictment by the Prosecutor's Office for War Crimes KTO no. 4/16 of 14 April 2016, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents_sr/2016-05/o_2016_04_14_lat.pdf, accessed on 18 October 2019. This case was assigned to the Prosecutor's Office for War Crimes by the Court of Bosnia and Herzegovina, based on the Act on Provision of International Legal Assistance in Criminal Matters, given that Dalibor Maksimović is a citizen of the Republic of Serbia, where he also has his residence.

284 The transcript from the main hearing of 29 June 2016.

285 The transcript from the main hearing of 9 September 2016.

be able to carry out her associated action for damages at some stage - *"and, of course, in accordance therewith, possibly to be the subject of expertise in some other proceedings".*[286]

During the proceedings, the attorney for the aggrieved party, the protected witness VS1, also proposed that a medical expertise of the protected witness be conducted, by which the level of mental suffering during the critical event could be established, as well as the consequences which had occurred; having in mind that the aggrieved party was wishing to raise an associated action for damages, which the party had to specify, and for which she was, according to the provisions of the Criminal Procedure Code, also obliged to submit evidence.[287]

Given that the court did not decide on the proposal to conduct medical expertise of the aggrieved party (the protected witness VS1), the aggrieved party, in order to file a specified associated action for damages and to provide the court with evidence of its groundedness, had to hire experts privately. The aggrieved person's specified associated action for damages, corroborated by evidence, was filed with the court on 7 September 2017.

Witnesses in the proceedings

The aggrieved person (the protected witness VS1) described in detail how Huso Salkić, the Hadji of the village, and Nezir Salkić and Omer Salkić had been murdered. The accused murdered them by shooting them, and also slaughtered Huso Salkić afterwards.[288] She did not know him then, but she had heard that the other soldiers called him "Dačo". He was young, of medium height, in a camouflage uniform, with a band around his head. Later, a bus arrived, which was supposed to drive them to Kladanj; but the aggrieved party, along with the aggrieved party VS2, were stopped by "Dačo" and another soldier, whose identity is unknown, and ordered by them to come in a passenger vehicle with them, in which they set off, following behind the bus. When the bus came to the place called Glogovo and stopped in order that a man and a woman with children could enter it, the accused came out from the vehicle and murdered the man, whose name was Mujo Šaćirović. They then continued the journey.[289] Somewhere between Milići and Vlasenica, they turned from the main road into a forest, where they stopped and ordered the two aggrieved parties to descend from the vehicle. The soldier who was with the accused took aggrieved party VS2 to the forest, whilst Dačo raped aggrieved party VS1 there. Afterwards, they continued the journey through the forest, until the vehicle became stuck. Then they separated, and the other soldier went in an unknown direction with VS2, whilst VS1 went with Dačo towards Milići. He told her they were going to his house.[290]

286 *Ibid.*
287 The transcript from the main hearing of 15 December 2016.
288 *Ibid.*
289 *Ibid.*
290 *Ibid.*

She described the defendant's house as a two-floor house built from concrete blocks, where she saw, on arrival, two men, two boys and the defendant's mother. He took her to a room on the floor and warned her not to leave the room without his approval. During the night, he raped her two more times; and in the morning he told her to go to the bus station, because she had a bus for Bratunac.[291]

When giving the statement before the competent authorities of Bosnia and Herzegovina, the aggrieved party recognised the defendant from the photographs presented to her.[292]

The protected witness VS3, the spouse of the murdered Mujo Šaćirović, stated, when describing the critical event, that she, her husband and three children were picked up by a bus, behind which a passenger vehicle was driving. The bus stopped, as well as the passenger vehicle, from which a man of medium height in a multicoloured uniform with a band around his head came out, and told her to go into the bus with the children, but for her husband to stay. When her husband wanted to enter into the bus as well, the man with the headband murdered him. She thinks that in the vehicle were one more man and a woman, whom she recognised as her neighbour, and who appears in these proceedings as witness VS1.[293]

The murders of Huso Salkić, Omer Salkić and Nezir Salkić were described by the witnesses Zuhra and Zumra Salkić, who were witnesses. On the photographs presented to them, they recognised specifically the accused as the perpetrator.[294]

The witnesses Mensur Salkić, the son of the murdered Omer Salkić, Amir Salkić[295], and Nermin Salkić[296] described the murder and the perpetrator in the same manner as the witnesses Zumra and Zuhra Salkić.[297]

The defence witnesses Aleksandar Cvetković, Jovica Tešanović, Mile Lalić[298] and Ranko Đukanović[299], fellow soldiers and close friends of the accused, witnessed that at the time of the critical event it was not possible at all to go from Milići towards Bratunac and the surrounding villages, because that territory was controlled by Bosniak forces.

Dismissal of the indictment and continuation of the proceedings

On 1 November 2017, the judicial panel adopted a decision dismissing the indictment, having in mind that it had not been issued by an authorised prosecutor.[300] Namely, in the period from 1 January 2016 until 31 May 2017 there was no Prosecutor for War Crimes, nor a person acting in that capacity, and

291 *Ibid.*
292 *Ibid.*
293 The transcript from the main hearing of 5 October 2016.
294 The transcript from the main hearing of 15 December 2016.
295 The transcript from the main hearing of 20 January 2017.
296 The transcript from the main hearing of 9 March 2017.
297 The transcript from the main hearing of 20 January 2017.
298 The transcript from the main hearing of 21 April 2017.
299 The transcript from the main hearing of 31 May 2017.
300 The Criminal Procedure Code, Article 416, paragraph 1, item 2.

the said indictment was issued in that period, i.e. on 14 April 2016.[301] At the request of the authorised prosecutor (the newly elected Prosecutor for War Crimes), the judicial panel adopted, on 12 January 2018, the decision that the criminal proceedings were to be continued.[302]

Course of the proceedings in 2019

During 2019, the parties' closing arguments were made and the first instance judgment was rendered.

First instance judgment

On 23 September 2019, the Higher Court in Belgrade adopted the judgment by which it declared the accused Dalibor Maksimović to be guilty, and sentenced him to a prison sentence of 15 years duration, whilst it referred the aggrieved persons to litigation in order to exercise their right to associated actions for damages.

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

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

The accused acted intentionally, and the final decision to deprive a person of life was confirmed by the accused when he slaughtered Huso Salkić.

When weighing the penalty, the court assessed as mitigating circumstances on the side of the accused that he is a family man, and the father of two children, and that at the time of the perpetration of the offence he was less than 20 years old; whereas it assessed as aggravating circumstances the number of victims who lost their lives, the ruthlessness exhibited when committing the offences, manifested particularly in the slaughter of Huso Salkić, as well as the persistence demonstrated when raping the aggrieved party VS1.

301 The transcript from the main hearing of 1 November 2017.
302 The transcript from the main hearing of 12 January 2018.

The court trusted the statement of the aggrieved VS1 because, inter alia, at the presentation of the site she recognised the house of the accused from a panoramic perspective, when she noticed that the same had earlier been constructed of brick only, and with a pink façade. The court assessed that in the witnesses' statements there were certain differences and inconsistencies with respect to certain facts concerning the description of the accused, but it particularly assessed the fact that the witnesses Zumra and Zuhra Salkić recognised him on the photographs presented to them during the main hearing. This was highly significant, because the court had formed a new album by changing the arrangement of photographs in comparison with the order which had existed earlier. Therefore, the witnesses' statements, although different in some parts, substantially convinced the court that the accused was the perpetrator of the criminal offence for which he was charged.

HLC Findings

Regional cooperation

These proceedings are a good example of 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 the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes Against Humanity and Genocide, in 2013. Namely, this case was assigned to the Prosecutor's Office for War Crimes by the Prosecutor's Office of Bosnia and Herzegovina, given that the accused, who is a citizen of the Republic of Serbia and has his residence in Serbia, was not accessible to the authorities of Bosnia and Herzegovina.

Adequate sentence

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

Associated action for damages of the victim of sexual violence

The HLC considers that the court was wrong in not deciding upon the associated action for damages of the aggrieved party VS1 in these criminal proceedings. In the proceedings for war crimes conducted in Serbia so far, the court has never decided on aggrieved parties' associated actions for damages, although the matter has been raised. It has always referred them to litigation,[303] stating, in a general manner, that dealing with the issue itself would lead to "delay in the proceedings"[304], or arbitrarily referring them to those provisions of the Criminal Procedure Code which speak of the associated action for damages, without giving explanations for its decision. Although the Criminal Procedure Code sets forth that an associated action for damages is to be discussed before the court "if this would

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

304 *Ibid*.

not significantly delay the proceedings",[305] which clearly indicates that deciding should be a rule, and that the possibility not to discuss an exception to that rule, the court has acted exactly to the contrary. In these proceedings, because of the reception from Bosnia and Herzegovina of the documentation related to the conduct of the proceedings for declaring those persons who had lost their lives to be dead, the acquisition of which was not of more significance to a decision in this legal matter, scheduled main hearings were delayed eight times over the period from 7 May 2018 to 12 June 2019.[306] In that period, there was more than enough time to discuss in detail all the particulars of the associated action for damages by the protected witness VS1, specified and corroborated by evidence, given that the same was filed with the court on 7 September 2017. This indicates that although the court had the time, it did not consider it necessary to deal with a decision on the associated action for damages.

Such a decision by the court was disastrous for the aggrieved party, because she was a victim of sexual violence receiving certain measure of protection in the criminal proceedings, i.e. a hidden identity, but the Civil Procedure Act does not allow for the possibility of conducting proceedings without revealing parties' identities. Therefore, when a criminal court refers an aggrieved person to litigation, it in fact places the victim before an impossible choice: either the preservation of the personal protection or the damage compensation to which the victim is entitled.

A referral of aggrieved parties, testifying under protection measures of hidden identity, to litigation in order to exercise the right to the compensation of damage, which means that in such a case they would have to reveal their identity, is a violation of their right to a fair trial[307], their right to effective remedy[308], and their right to respect of human dignity[309], as well as the right to respect of private and family life.[310]

Contrary to the domestic jurisprudence, Bosnia and Herzegovina have recognised the problems faced by victims of sexual violence in war when exercising the right to the compensation of damage outside of criminal proceedings, and it has changed its jurisprudence, and begun to award associated actions for damages to them in criminal proceedings.[311]

The jurisprudence with respect to avoidance of awards for associated actions for damages in criminal proceedings, not only by the War Crimes Department of the Higher Court in Belgrade, but criminal courts in Serbia in general, shows as inadequate sensitivity to the needs of victims. Such jurisprudence is also contrary to ratified international treaties and accepted international standards. Consequently,

305 The Criminal Procedure Code, Article 252, paragraph 1.
306 The transcripts from the main hearings scheduled for: 7 May 2018, 22 June 2018, 3 September 2018, 22 October 2018, 3 December 2018, 14 January 2019, 25 February 2019, 10 April 2019.
307 The Constitution of the Republic of Serbia, Article 32.
308 The Constitution of the Republic of Serbia, Article 36.
309 The Constitution of the Republic of Serbia, Article 23.
310 The European Convention, Article 8.
311 The first instance judgment by the Court of Bosnia and Herzegovina S1 1 K 012024 14 Kri in the *Ostoja and Bosiljko Marković* Case, the first instance judgment by the Court of Bosnia and Herzegovina S1 1 K 019771 15 Kri in the *Krsto Dostić* Case, the second instance judgment by the Court of Bosnia and Herzegovina S1 1 K 017213 14 Krž in the *Slavko Savić* Case.

the need for change in this area was recognised by the Supreme Cassation Court of Serbia, which, in August 2019, adopted the Guidelines for the Improvement of Jurisprudence in Proceedings for Compensation of Damage to Victims of Serious Criminal Offences in Criminal Proceedings.[312] Therefore, the HCL hopes and expects that the jurisprudence with respect to deciding upon associated actions for damages will be changed in the nearest future, particularly when it comes to victims of sexual violence and victims appearing in proceedings under protection measures.

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

IV. The Brčko Case[313]

CASE FACT
Current stage of the proceedings: appeal proceedings
Date of issue of the indictment: 12 September 2018
Date of commencement of the trial: 3 December 2018
Acting prosecutor: Svetislav Rabrenović
Accused: Nikola Vida Lujić
Criminal offence: war crime against civilian population, the Criminal Act of the Federal Republic of Yugoslavia, Article 142.

Chamber	Judge Dejan Terzić (Chairman of the panel) Judge Mirjana Ilić Judge Zorana Trajković

Number of accused: 1	
Rank of accused: without rank	**Number of court days in the reporting period: 5**
Number of victims: 1	**Number of witnesses heard in the reporting period: 12**
Number of witnesses heard: 12	**Number of court experts heard:** 0

Key events in the reporting period:

First instance judgment rendered

313 The *Brčko* Case, the reports from the trial and the documentation from the case file available at http://www.hlc-rdc.org/Transkripti/brcko2.html, accessed on 16 October 2019.

Course of the proceedings

Course of the proceedings until 2019

Indictment

The accused Nikola Vida Lujić was charged that he, on 20 June 1992 in Brčko (Bosnia and Herzegovina), as a member of the "Red Berets" unit, uniformed and armed, together with two unknown soldiers, came to the family house of the victim, a woman of Bosniak nationality, whom he ordered, under threat of arms, to give him the gold and the money she possessed; and that after she did that, he raped the same several times.[314]

Defence of the accused

Presenting his defence, the accused denied that he had committed the offence for which he was charged. He stated that during the war in Bosnia and Herzegovina he was not a member of any armed formation, that he did not know the aggrieved person, and that he had never been to her house.

Course of the proceedings in 2019

Witnesses in the proceedings

During 2019, 12 witnesses were examined, amongst them the aggrieved party, during whose examination the public was excluded. The aggrieved party's husband stated that on 20 June 1992 a group of Serbian soldiers came to his house in Brčko, and took him away for interrogation. He recognised the accused, who was in a uniform, and who at that time was a member of so-called "Red Berets" unit. After he had come back, a neighbour told him that his wife had been raped in the meantime.

A witness Joca Rakić stated that on the critical day he had been called, as a member of the police, by his acquaintance Zeir, who was known as "Željko", and asked to come to the aggrieved party's house. When he arrived, he found there his acquaintance, the aggrieved party and her husband, and they told him that members of the "Red Berets" had been there and that the aggrieved party had been raped.[315] The witnesses Radojica Božović, Dragoslav Popović and Goran Pantić stated that in the critical period they were members of the "Red Berets" unit which was stationed at the customs office in Brčko, and that the accused was their fellow soldier.[316] The witness Zeir Salihović stated that on the critical day he was at his neighbour Zvonko Katanić's home for coffee, when Zvonko's wife told him that there was a military van in front of his house. He left and went to see what it was all about, and amongst the soldiers who were present he recognised the accused too, who told him to come in the van, which he

314 The indictment of the Prosecutor's Office for War Crimes KTO no. 4/2018 of 1 September 2018, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2018-10/redigovana_optuznica_kto_4_18_lat.pdf, accessed on 16 October 2019.

315 The transcript from the main hearing of 25 March 2019.

316 The transcript from the main hearing of 27 May 2019.

did. Then, one of the men asked why the witness was in the van when his name was Željko, after which he was told to go out. Afterwards, he went to the aggrieved party to see what was happening with her brother. While he was in her house, three uniformed persons came in, amongst them the accused, and told him to leave. So he went home. After an hour, he came back to the aggrieved party's house, and then he saw the accused leaving her yard. The accused noticed him and chased him away, after which the witness returned to his home. Soon after, the aggrieved party came to his house and told that she had been molested and raped by "Vida's son". She was very upset, and was weeping. When Joca, a reserve policeman, came by, he told him what had happened, and Joca called the police, who came soon afterwards. A police inspector named Dragiša then took statements from all the persons who were present.[317]

First instance judgment

On 10 September 2019, the Higher Court in Belgrade rendered the judgment by which it declared the accused Nikola Vida Lujić guity and sentenced him to a prison sentence of eight years duration.

The court established that the accused had committed the criminal offence for which he was charged, in the manner as stated in the indictment. Namely, all the essential elements of a criminal offence of war crime against a civilian population are met, i.e. that in the incriminated period there was an armed conflict, that in this specific case there was a serious violation of the rules of the international humanitarian law, that there was a connection between the actions of the accused and the armed conflict, i.e. that the accused committed the offence by using the pretext of armed conflict, and that the criminal offence was committed against a person who did not actively participate in hostilities, i.e. against a person protected by the provision of international humanitarian law. The existence of armed conflict enabled the accused to wear a uniform and bear weapons, which the fellow soldiers of the accused, Radojica Božović and Goran Panić, confirmed in their statements, and the accused exercised that to his advantage over the aggrieved. The existence of a serious violation of the provisions of international humanitarian law in the specific case exists, because the accused is charged for a war crime against a civilian population as referred to in Article 142 of the Criminal Act of Yugoslavia, originating from Article 3 of the Geneva Conventions, where rape is explicitly provided for as an action in perpetration of this criminal offence. For the existence of rape, it is not necessary to exercise physical force on the victim, and in the specific case it was proven that the victim had been under psychological coercion, given that the accused, with the aim to intimidate her, had loaded his pistol in front of her.

The court accepted the aggrieved party's statement in its entirety. Immediately after the offence had been committed, and notwithstanding the fact that it was a small and patriarchal environment, she mustered up the strength to report what had happened to her within the first hours after the event, to all persons she encountered. She reported the event to the witness Zeir Salihović, to her husband, to her neighbour, to the policeman Joca Rakić who came first to the site, as well as to the police inspector

317 Ibid.

Dragiša Tešić. Finally, she mustered the strength to go for a medical examination. Her statement was confirmed by the statements of the witnesses Salihović and Rakić, as well as of the aggrieved party's husband. The accused was recognised on the site by the witness Salihović, who described him as the person who entered in the aggrieved person's house and identified him as "Vida's son". The aggrieved person's husband also identified the accused as Vida's son, who took him from the house for examination prior to the critical event. The accused was to some extent identified by the aggrieved party too, when at the trial she noticed a detail distinguishing the accused from other persons, i.e. that he had a certain twitch to his face, because his "one eye blinks". The witness Radojica Božić corroborated these allegations of the aggrieved party, by saying that one side of the accused man's face had an appearance of stiffness.

When determining the sentence, the court found that there were no mitigating circumstances on the accused man's side, whereas it assessed as aggravating circumstances not only the painful consequences which occurred for the aggrieved party, but also that the accused had earlier been convicted for a criminal offence of the same type. Another aggravating circumstance was the callous ruthlessness displayed by the accused when committing the offence. Namely, after having raped the aggrieved party, the accused gave a mimed performance of the crime for another soldier and incited him to do the same, which the latter refused. The court considered that such a gesture by the accused was particularly degrading for the aggrieved party, and that it was only directed at doing harm to her dignity.

HLC Findings

Regional cooperation

These proceedings are a result of the cooperation of 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 the Protocol on Cooperation in the Prosecution of Perpetrators of Criminal Offences of War Crimes, Crimes against Humanity and Genocide, in 2013. Namely, this case was assigned to Serbia by the District Court in Doboj, given that the accused, who is a citizen of the Republic of Serbia and has his residence in Serbia, was not accessible to the authorities of Bosnia and Herzegovina.

Prosecution of sexual violence

This is only the second indictment issued exclusively for sexual violence committed during armed conflicts. In the jurisprudence of the domestic judiciary so far, sexual violence has rarely been prosecuted, and then most often as a war crime appearing alongside murders and other types of physical violence.[318] Prior to this case, only one indictment related exclusively to rape as a form of sexual violence was issued, in the *Bijeljina II* Case.[319]

Efficient conduct of the proceedings

These have been amongst the most swiftly completed proceedings before the War Crimes Department of the Higher Court. The main hearing commenced on 3 December 2018, and the first instance judgment was rendered on 19 September 2019. With the examination of 12 witnesses and two delays of main hearings due to absence of witnesses, the first instance proceedings were completed within nine months. In the jurisprudence of the Higher Court so far, only the first instance proceedings in the Čelebići Case were completed within a shorter period.[320]

Adequate protection of the aggrieved party during the testimony

During the aggrieved party's testimony, the Chairman of the judiciary panel, having in mind the level of sensitivity of that party as a witness, reacted very decisively in the prevention of any additional retraumatisation, by prohibiting the accused and the attorney to ask her questions which might lead to that. This manner of protecting aggrieved parties should become a regular practice, but has been absent in some earlier proceedings.

Adequate penalty

The first instance court imposed on the accused a prison sentence of eight years duration, which is just and adequate. With this sentence, and particularly with the assessment of mitigating and aggravating circumstances, the court's position that this type of criminal offences must be sanctioned was clearly demonstrated.

318 See the cases of *Lekaj*, *Skočić*, *Ćuška*, *Bratunac* etc.

319 The indictment by the Prosecutor's Office for War Crimes of 4 June 2014 against Miodrag Živković, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2016-05/o_2014_06_04_lat.pdf, accessed on 5 January 2019.

320 The *Čelebići* Case, the reports from the trial and the documentation from the case file available at http://www.hlc-rdc.org/Transkripti/celebic.html, accessed on 16 October 2019.

V. The Ključ – Rejzovići Case[321]

CASE FACT
Current stage of the proceedings: appeal procedure
Date of issue of the indictment: 1 February 2018
Date of commencement of the trial: 19 April 2018
Acting prosecutor: Mioljub Vitorović
Accused: Željko Budimir
Criminal offence: war crime against civilian population under Article 142 of the Criminal Code of the FRY

Chamber	Judge Vinka Beraha-Nikićević (Chairperson of the panel) Judge Vladimir Duruz Judge Vera Vukotić

Number of accused: 1	
Rank of accused: lower rank	**Number of court days in the reporting period:** 5
Number of victims: 2	**Number of heard witnesses in the reporting period:** 6
Number of witnesses heard: 9	**Number of court experts heard:** 0

Key events in the reporting period:

First instance judgment rendered

321 The *Ključ – Rejzovići* Case, the reports from the trial and the documentation from the case file available at http://www.hlc-rdc.org/Transkripti/kljuc-rejzovici.html, accessed on 18 October 2019.

Course of the proceedings

Course of the proceedings until 2019

Indictment

The accused Željko Budimir is charged with the crime that on 21 November 1992 at around 11pm, in the settlement Rejzovići (the municipality of Ključ, Bosnia and Herzegovina), together with Predrag Bajić and Mladenko Vrtunić[322], armed with automatic rifles, a rifle called a "shotgun" and a knife, entered, by breaking a glass barrier on the entrance door, into the house of the aggrieved party Ale Štrkonjić, where he was together with his wife Fatima Štrkonjić and his mother-in-law Fata Koljić. Requesting money from him, they beat, stabbed and cut with the knife the aggrieved party Ale Štrkonjić, as a result of which he received injuries in the form of slashes to the head, left forearm and left lower leg. When they had obtained DM 800, but unsatisfied with that amount, they requested more, after which the aggrieved party said that he also had some money buried in the garden. The accused Budimir and Bajić took the aggrieved party out to the garden, where he dug up and handed over to them DM 5,500 more, and then seized the opportunity to run away while they counted the money. After this, one of the perpetrators murdered Fatima Štrkonjić by firing a shot to her head, and then also murdered Fata Koljić by cutting her larynx, oesophagus and major blood vessels.[323]

Defence of the accused

Presenting his defence, the accused denied that he had committed the offence for which he was charged. He stated that he did not know the family of the aggrieved, and that he had been at another location at the time of the critical event.

Witnesses in the proceedings

During these proceedings, nine witnesses were examined.

The the witness and aggrieved party Ale Štrkonjić categorically asserted that on the critical day the accused had been in his house and that he had cursed, insulted and beaten him. He could not recognise the accused on the photographs presented to him when he was giving his testimony, although he had managed to do so when the same had been presented in the Cantonal Court in Bihać, where had given his statement in 2010.[324]

322 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' duration, and Mladenko Vrtunić in case number 01 0 K 007438 13 K to a prison sentence of 10 years' duration.

323 The indictment by the Prosecutor's Office for War Crimes KTO 2/18 of 1 February 2018, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2018-03/redigovana_budimir_zeljkodoc~0.pdf, accessed on 18 October 2019.

324 The transcript from the main hearing of 20 June 2018.

The witness Mladen Vrtunić, who had been finally sentenced for the same criminal offence, denied his participation, stating that he had been at another location at the critical period. He considered that he had been sentenced owing to false statements by witnesses and by the statement of Predrag Bajić, which he gave on 8 May 2014 before the Cantonal Court in Bihać, in which he admitted his participation in the perpetration of the offence and specified him and the accused Željko Budimir as co-perpetrators. On the basis of such a statement, Bajić concluded an agreement of admission of guilt with the Prosecutor's Office. Later, during the trial of Milan Lukić for a criminal offence of the same type before the Cantonal Court in Bihać, he testified in a completely different manner, i.e. he mentioned neither him nor the accused in relation to the critical event. Then, he stated that Mijo Stančević and Draško Krajcer had been with him in the house of the aggrieved party Štrkonjić.[325]

The witness for the defence, the wife of the accused, stated that on the critical day the accused had celebrated slava in the village of Sanica, and that in the evening hours he had come to her house and asked her to marry him, and that he was staying there in the house until the next morning. Her allegations were also corroborated by the witness Dane Dobrić.[326]

First instance judgment

On 23 September 2019, the Higher Court in Belgrade passed a judgment by which it declared the accused Željko Budimir guilty of the criminal offence of a war crime against a civilian population, and sentenced him to a prison sentence of two years' duration.[327]

The Court assessed that during the proceedings it was established without any doubt that the critical event took place in the manner as described in the indictment. Thus, the existence of an armed conflict of an internal character was established, and that during the same conflict, two persons were deprived of life in the attack at the house of Ale Štrkonjić on 21 November 1992, in the settlement Mali Rejzovići in Ključ.

The court accepted the statement of the aggrieved party Ale Štrkonjić in its entirety, whereas it did not accept the changed statement of Bajić, nor the statements of the witnesses for the defence, assessing that they had been directed to help the accused.

The accused, together with Predrag Bajić and Mladenko Vrtunić, entered the house of Ale Štrkonjić, where he was with his wife Fatima S˘ trkonjić and mother-in-law Fata Koljić.

Requesting money, they beat, stabbed and cut with a knife Ale Štrkonjić. After having received 800 German marks, they requested more, after which 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 5,500 German marks more, and then seized the opportunity to run away. Afterwards, one of the co-perpetrators murdered Fatima Štrkonjić by firing a shot at her head, and then also murdered

325 The transcript from the main hearing of 4 September 2018.
326 The transcript from the main hearing of 24 May 2019.
327 The judgment by the Higher Court in Belgrade K.Po2 no. 1/2018 of 23 September 2019.

Fata Koljić by cutting her larynx, oesophagus and major blood vessels with a knife.

The judicial panel sentenced the accused for harming bodily integrity and for robbery, omitting the charges for murders, stating that there was no evidence that the accused Budimir had committed them. This was because the Prosecutor's Office did not specify the participation of the accused in the killing of Fatima Štrkonjić and Fata Koljić, so that it could not be established which, if any, of the actions contributing to the deprivation of their lives, had been taken by the accused.

When weighing the penalty, the court assessed as mitigating circumstances the fact that the same was 21 years of age at the time of the perpetration of the criminal offence, that he was a family man and the father of three children, and that much time had passed since the perpetration of the offence. As for aggravating circumstances, the court assessed the accused's earlier convictions, given that Budimir had been sentenced in absentia in Bosnia and Hercegovina, to 20 years of prison for murder.

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 the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes Against Humanity and Genocide, in 2013. Namely, this case was assigned by the Court in Bihać, given that the accused, who is a citizen of the Republic of Serbia and has his residence in Serbia, was not accessible to the authorities of Bosnia and Herzegovina.

Impossibility to monitor the course of the proceedings

The main hearings in these proceedings were held in a court room lacking technical conditions for the use of headphones by the public. Therefore, the audio-monitoring of the statements of witnesses being examined via the video-conference call was severely hindered for the public, given that the sound quality was very bad. The audio-monitoring of statements with the use of headphones is enabled only for the judicial panel and the participants in the proceedings. Given that trials are public, the HLC considers that the court is also obliged to enable the use of headphones for persons who are in the audience, in order for them to monitor testimonies via video-conference calls in an adequate manner.

Assessment of mitigating circumstances

The court's consideration of the time lapse since the perpetration of the offence when weighing the penalty for the accused is not justified. Time lapse as a mitigating circumstance when weighing a penalty may in principle be taken into account concerning criminal offences of classic criminality, where the perpetrator's abstention from repeated perpetration 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 a civilian population, where the existence of an armed conflict is an objective condition of incrimination, the time lapse has no significance at all, because the offence cannot be committed any more after the end of the armed conflict. That the time lapse is not a circumstance that may be considered when weighing penalties for this type of criminal offence is also indirectly pointed to by the universal provision stipulating that this type of criminal offence is not subject to the statute of limitations. Such an opinion of the court is contrary to the established jurisprudence of the ICTY – that the length of the period between the offending conduct and the judgment shall not be considered as a mitigating circumstance[328] -, and contrary also to contemporary jurisprudence.[329]

Level of penalty

The court imposed a prison sentence of two years on the accused Željko Budimir. Having in mind that the statutory minimum stipulated for this criminal offence is a prison sentence of five years' duration,[330] for the reduction of the sentence below the statutory minimum it is necessary that particularly mitigating circumstances should exist. At the time of drafting the report, it was not possible to establish which circumstances were assessed by the court as particularly mitigating, given that the same were not mentioned when the judgment was pronounced, and the first instance judgment was not made in written form.

328 ICTY judgment Dragan Nikolić – item 273.

329 BGH,2 StR 538/01, Judgment of 21 February 2002 – the Federal Supreme Court of Germany, in a murder case, mentioned that the length of time from the offending conduct until the judgment is a possible mitigating factor, but it pointed out that, given the seriousness of the offence, committed in 1943-44 during World War II, by the accused, now 90 years old, such circumstances cannot be taken into account.

330 Article 142 of the Criminal Act of the Federal Republic of Yugoslavia.

VI. The Lovas Case[331]

CASE FACT
Current stage of the proceedings: appeal proceedings (retrial)
Date of issue of the indictment: 28 November 2007
Date of commencement of the trail: 17 April 2008
Acting prosecutor: Dušan Knežević
Accused: Milan Devčić, Željko Krnjajić, Darko Perić, Radovan Vlajković, Radisav Josipović, Jovan Dimitrijević, Saša Stojanović and Zoran Kosijer
Criminal offence: war crime against civilian population, the Criminal Act of the Federal Republic of Yugoslavia, Article 142

Chamber	Judge Zorana Trajković (Chairperson of the panel) Judge Mirjana Ilić Judge Dejan Terzić

Number of accused: 8	
Rank of accused: lower and middle rank	**Number of court days in the reporting period:** 6
Number of victims: 70	**Number of witnesses heard in the reporting period:** 0
Number of witnesses heard: 195	

Key events in the reporting period:
First instance judgment in the retrial rendered

331 The Higher Court in Belgrade, the *Lovas* Case, K.Po2 1/14, available at http://www.hlc-rdc.org/Transkripti/lovas.html, accessed on 21 October 2019.

Course of the proceedings

Course of the proceedings until 2019

Indictment

Under the original indictment, 14 accused were charged that, during October and November of 1991, in Lovas (Republic of Croatia), they as members of different military formations attacked the civilian population, treated them in an inhumane manner, tortured them, occasioned bodily harm to them and murdered them, which had as a consequence the death of 69 civilians in total, whilst 12 other civilians suffered major or minor body injuries.

The accused were: Ljuban Devetak, Milan Devčić and Milan Radojčić, as members of an independently established civilian-military authority; Željko Krnjajić, as the commander of the Tovarnik Militia Station (MS); Miodrag Dimitrijević, Darko Perić, Radovan Vlajković and Radisav Josipović, as members of the Valjevo Territorial Defence (TD), the units of which were, by re-subordination, introduced into the composition of the Second Proletarian Guards Mechanised Brigade (2nd pgmbr) of the Yugoslav People's Army; and Petronije Stevanović, Aleksandar Nikolajidis, Dragan Bačić, Zoran Kosijer, Jovan Dimitrijević and Saša Stojanović, as members of the "Dušan Silni" volunteer group.[332]

By the amended indictment of 28 December 2011, the number of civilians stated to have lost their lives was reduced from 69 to 44.[333]

First instance judgment

On 26 June 2012, the Higher Court in Belgrade[334] passed a judgment by which it declared all the accused guilty of the criminal offence of war crime against a civilian population in co-perpetration, and sentenced them to prison sentences ranging from four to twenty years of imprisonment.[335] The HLC gave a detailed analysis of the first instance judgment in the *Report on Trials for War Crimes in Serbia in 2012*.[336]

332 The indictment by the Prosecutor's Office for War Crimes, KTRZ 7/07 of 28 November 2007, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2016-05/o_2007_11_28_lat.pdf, accessed on 28 November 2018.

333 Specified indictment of the Prosecutor's Office for War Crimes, KTRZ 7/07 of 28 December 2011.

334 The composition of the panel: Judge Olivera Anđelković, Chairperson of the panel, Judges Tatjana Vuković and Dragan Mirković, members of the panel.

335 The judgment by the Higher Court in Belgrade, K.Po2 22/2010 of 26 June 2012.

336 Please see a detailed analysis of the first instance judgment in: Humanitarian Law Center, *Report on Trials for War Crimes in Serbia in 2012* (Belgrade, HLC, 2013), pp. 53-63.

Second instance decision

On 9 December 2013, the Appellate Court in Belgrade[337], deciding in the appeal proceedings, rendered a decision by which it overturned the judgment of the Higher Court and returned the case for retrial and a second decision.[338]

The HLC gave a detailed analysis of the decision of the War Crimes Department of the Appellate Court in the *Report on Trials for War Crimes in Serbia in 2013*.[339]

Retrial

The retrial[340] commenced on 4 March 2014, before the new Chairperson of the panel, but by the completion of the retrial, there had been two more changes of the Chairperson of the panel. [341] The case was adjourned with respect to the accused Ljuban Devetak, Aleksandar Nikolaidis, Petronije Stevanović, Dragan Bačić and Milan Radojčić, who had all died in the meantime. With respect to the accused Miodrag Dimitrijević, the proceedings were separated from the case for reasons of expediency.

On 5 January and 28 March 2017, the Prosecutor's Office for War Crimes amended the indictment. Due to the reduced number of the accused, the amended indictment also reduced the number of victims, so that only 27 victims who had lost their lives were encompassed. Also, the Prosecutor's Office excluded from the indictment that the attack on the village of Lovas was performed at the order of the commander of the 2nd pgmbr of the Yugoslav People's Army, Dušan Lončar, the composition of which included, during the attack, the Tovarnik TD and the "Dušan Silni" volunteer detachment[342]

Course of the proceedings in 2019

First instance judgment in the retrial

On 20 June 2019, the Higher Court in Belgrade, in the retrial, rendered a judgment by which it declared the accused guilty of a war crime against a civilian population and sentenced them to prison sentences: Milan Devčić to eight years, Saša Stojanović to seven years, Zorana Kosijer, Željko Krnjajić and Jovan Dimitrijević to six years each, Darko Perić and Radovan Vlajković to five years each, and Radisav Josipović to four years.[343]

337 The composition of the panel: Judge Sonja Manojlović, Chairperson of the panel, Judges Sretko Janković, MA, Miodrag Majić, PhD, Omer Hadžiomerović and Vučko Mirčić, members of the panel.

338 Decision by the War Crimes Department of the Appellate Court in Belgrade, number Kž1 Po2 3/13 of 9 December 2013, available at http://www.bg.ap.sud.rs/cr/articles/sudska-praksa/pregled-sudske-prakse-apelacionog-suda-u-beogradu/krivicno-odeljenje/ratni-zlocini/kz1-po2-3-13.html, accessed on 28 October 2019.

339 Please see a detailed analysis in: Humanitarian Law Center, *Report on Trials for War Crimes in Serbia in 2013* (Belgrade, HLC, 2014), pp. 66-75.

340 The Higher Court in Belgrade the *Lovas* Case, retrial, case number: K. Po2 1/14.

341 The HLC gave a detailed analysis of the reasons for the delay of the proceedings, in: HLC - *Report on Trials for War Crimes in Serbia* (Belgrade, HLC 2019) pp. 54-64.

342 The indictment by the Prosecutor's Office for War Crimes KT 7/07 of 5 January 2017.

343 The judgment by the Higher Court in Belgrade K.Po2 1/2014 of 20 June 2019.

The Court established that on 10 October 1991 an attack on Lovas was carried out which took place at the order of Dušan Lončar, commander of the Second Proletarian Guards Mechanised Brigade of the Yugoslav People's Army since 9 October 1991. During the attack, the defendant Željko Krnjajić commanded the members of the armed group composed of members of the Tovarnik MS, the Tovarnik TD and the "Dušan Silni" volunteer armed group, all of which groups had contributed to the composition of the Brigade's forces. He ordered them to open fire from infantry weapons and to throw bombs at the houses of locals of Croatian nationality, as a result of which the houses of Ivan Ostrun, Vid Krizmanić, Amalija Martinović, Josip Kraljević, Ivan Conjar and Ivica Gračanac went up in flames, and Vid Krizmanić, Ivan Ostrun, Mirko Grgić, Cecilija Badanjak, Danijel Badanjak, Josip Poljak and Pavo Đaković were killed by gunshots. The defendant Krnjajić personally applied intimidation measures against civilians of Croatian nationality by pointing his rifle at Tomislav Šelebaja and pushing and threatening to kill him, by pointing his rifle at the back of Marica Hodak, and by kicking Josip Jovanović.

In relation to the defendant Milan Devčić, the court established that the same, in the period commencing on 10 October and continuing until the end of October 1991, in Lovas in the capacity of commander of the Lovas militia and a representative of the autonomously established local authorities of civilian-military character, together with the defendant Ljuban Devetak, the commander of the village and the Director of the Lovas Agricultural Cooperative, and Milan Radojčić, the commander of the Lovas TD, against whom the criminal proceedings were adjourned owing to their deaths, had treated the civilian population of Croatian nationality in an inhumane manner. He participated in their imprisonment in insanitary and spatially restricted prisons improvised by the autonomously established local authority. The bodies of the prisoners Marko Filić, Petar Badanjak, Josip Jovanović, Ivan Vidić, Andrija Devčić, Marko Damjanović, Zoran Krizmanić, Đuro Krizmanić, Alojz Krizmanić, Darko Pavlić, Željko Pavlić, Stipe Dolački and Franjo Panđa were found at different sites in Lovas after 18 October 1991. The accused Milan Devčić also treated civilians of Croatian nationality in an inhumane manner by imposing degrading and discriminatory measures against Branka Balić, Ana Conjar and Josip Luketić, by ordering them to mark their houses with white fabrics and to wear white stripes around their arms. In the premises of the MS in Lovas, he occasioned bodily injuries to the apprehended and imprisoned Petar Vuleta, Marko Gračac and Đuro Antolović, hitting them with his legs and arms, and with a Knuckle-duster.

The court established that the defendant Darko Perić, in the capacity of commander of the Anti-Diversion detachment of the Valjevo TD, inflicted inhumane treatment on the civilian population, by issuing the order to his subordinate commanders, the defendants Radovan Vlajković and Radisav Josipović, that the civilians who had been imprisoned and tortured during the previous night should on 18 October 1991 be taken on a search of the terrain/reconnaissance mission as a human shield, following orders he had received from Lieutenant-Colonel Miodrag Dimitrijević, the most senior military commander in Lovas, with respect to whom the proceedings have been separated. Acting on these orders, the defendants Radovan Vlajković and Radisav Josipović treated civilians in an inhumane manner by bringing in approximately fifty members of the Anti-Diversant company and, together with the defendants Zoran Kosijer, Saša Stojanović and Jovan Dimitrijević as members of the

"Dušan Silni" detachment, and with other members of the same detachment, forming a column of the imprisoned civilians to go and reconnoitre the terrain in the direction of the plant of the "Borovo" factory. While the column was moving, one of members of the armed escort killed Boško Bođanac, who had previously been seriously injured. On coming to a clover field which was mined, unknown persons ordered the civilians to turn into the field and, holding each other's hands, to walk across it and attempt to move the clover away with their legs, while the defendants Vlajković, Josipović, Dimitrijević, Kosijer and Stojanović, all armed, moved behind them at a safe distance. After the civilian Ivan Kraljević stumbled over a planted mine which activated, some members of the armed escort opened gunfire at the civilians, as a result of which Marijan Marković, Tomislav Sabljak, Darko Solaković, Ivan Palijan, Zlatko Panjik, Slavko Kuzmić, Ivan Sabljak, Mijo Šalaj, Ivan Kraljević, Petar Badanjak, Zlatko Božić, Antun Panjik, Marko Vidić, Marko Sabljak, Mato Hodak, Ivan Conjar, Slavko Štrangarević, Josip Turkalj and Luka Balić lost their lives, whilst Stjepan Peulić, Stanislav Franjković, Ivan Mujić, Zlatko Toma, Ljubo Solaković, Josip Gerstner, Mato Kraljević, Josip Sabljak, Emanuel Filić, Milko Keser, Milan Radmilović and Marko Filić were wounded. After the explosions and gunfire had terminated, the defendant Stojanović started ordering the civilians Đuka Radočaj, Tomilsav Šelebaj and Dragutin Krizmanić to defuse the remaining mines which had not exploded, by giving them instructions how to do this, notwithstanding that they had not been trained for that.

These facts were established by the court on the basis of an assessment of all the evidence presented. The facts concerning the organisation and the attack at Lovas were established by the court on the basis of the defence of the defendant Željko Krnjajić, the witnesses' statements and the defence of the accused who were members of the armed group during the attack at Lovas, as well as by the documentation of the Yugoslav People's Army, amongst which is the Order for Attack of 9 October 1991 signed by the commander of the Second Proletarian Guards Mechanised Brigade, Lieutenant-Colonel Dušan Lončar. It is indicated in the same document that the brigade commander Dušan Lončar decided for the attack on Lovas to be carried out, by blocking off the boundaries of the village and encircling it, and likewise with the buildings within it, and by clearing the village, by means of his auxiliary forces, of members of the Croatian National Guard and Ministry of Interior Affairs, as well as from the enemy population. The commanding role of the defendant Krnjajić, as an inhabitant of Lovas who knew the place and its locals well, was established by the court from the defences of the defendants and from numerous witnesses' statements. The fact that in the order for attack it was stated that the village was to be cleared from any hostile population – an order which was communicated to the armed group prior to going into the attack -, and that Krnjajić was designated as the commander of the armed group given that he knew well the inhabitants of Lovas, their family situations and political orientations, and that he had also participated in the plans pertaining to the attack on Lovas, also confirms his role in the specific situation. Some of the defendants, as well as witnesses who were Lovas inhabitants who had met him on that day, made statements on his treatment of civilians when entering Lovas. The court accepted their statements because they were mutually consistent with respect to the relevant facts. On the basis of the statements of some of the defendants and witnesses, the court also established the position in the autonomously declared local authority in Lovas of the defendant Milan Devčić, as well as his treatment of civilians . From the defences of the accused

Darko Perić, Radovan Vlajković, Radisav Josipović, Saša Stojanović, Jovan Dimitrijević and Zoran Kosijer, and the statements of the witnesses who had survived the events on the minefield, the court established the events of 18 October 1991. Their defences in those parts where they minimised their roles on the specific occasion were not accepted by the court, which found that they were directed at avoiding criminal liability.

The court changed the factual description of the actions for which it declared the defendants guilty, by reducing the description to the characteristics of the criminal offence prescribed by the law and adjusting it to the established facts. It omitted some of the actions of perpetration for which the accused Krnjajić and Devčić were charged, because the Prosecutor's Office had not provided evidence for some of them. At the same time, it was bound by the fact that the defendant Krnjajić had not been declared guilty for certain actions by the previous first instance judgment, which the Prosecutor's Office for War Crimes had not appealed, so those also had to be omitted. This was because the court was restricted by the existence of the prohibition of change for the worse with respect to this accused person.

When weighing the penalties for the defendants, the court assessed as mitigating circumstances on the side of the defendants their family situations and the absence of previous criminal records, and as aggravating circumstances, the consequences that had occurred i.e. the number of the persons who had lost their lives or who had been injured, and the capacity that the accused had had. But it was limited by the prohibition of change for the worse when weighing penalties, given that the Prosecutor's Office for War Crimes had not appealed the first instance judgment.

After the first instance judgment in the retrial had been rendered, the court dismissed the indictment with respect to the accused Miodrag Dimitrijević, given that the same did not have procedural capacity anymore.

HLC Findings

Delay of the proceedings

These proceedings were amongst the most complex and the most extensive conducted before the War Crimes Department, because they encompassed numerous accused, belonging to different armed formations, several different events and numerous witnesses. Notwithstanding the complexity of the case, which in itself led to its longer duration, these proceedings were additionally delayed by omissions in the work of the Prosecutor's Office for War Crimes and the Court.

The original indictment by the Prosecutor's Office for War Crimes encompassed 69 victims who had lost their lives, but it provided enough evidence as to the manner of their sufferings. For this reason, the court summoned and examined numerous witnesses ex officio, with the aim of establishing the circumstances of the individual victims' sufferings. The Prosecutor's Office for War Crimes was required to clear up more efficiently during the investigation itself, the facts regarding the

circumstances of the suffering and the responsibility of the accused persons for such offences, and to provide evidence with respect thereto.

It was only after more than three years of trial that, in December 2011, the Prosecutor's Office for War Crimes specified the indictment and reduced the number of victims to 44. However, the Prosecutor's Office for War Crimes did not completely specify the manner of suffering of all the civilians, nor the liability of the accused persons for the suffering of individual civilians. Therefore, the court, by the judgment of 26 June 2012, established without doubt the accused persons' liability for the loss of only 41 victims' lives.

Also contributing to the undue delay of the proceedings was the action of the Judge Vinka Beraha-Nikićević, who was the Chairperson of the judicial panel during one period. She submitted the request for her exemption only five months after taking over the case, notwithstanding that the reasons for her exemption had already existed at the moment of the assignment of the case. For this reason, the case had to be assigned to the new Chairperson of the panel, and the main hearing had to be recommenced. However, this chairperson of the panel was later changed because the President of the Court, by the Annual Schedule of Tasks, transferred her to another department.

The decision of the President of the Court to change the Chairperson of the panel in a case lasting eight years already, and this just before the closing arguments, can only be understood as a conscious and deliberate attempt to delay the proceedings, when one considers that a president of a court should take care of "the efficiency and the costs of proceedings" when preparing the Annual Schedule of Tasks.[344]

Owing to the long duration of the proceedings, for which both the Prosecutor's Office for War Crimes and the Court were responsible, this trial failed to a large extent to achieve its elementary purpose – to prosecute at least the most responsible persons and to provide justice for victims. Namely, owing to the illness of the first accused, Ljuban Devetak, the indictment with respect to him had to be at first dismissed, and later, after his death, the criminal proceedings were also adjourned. In the course of the proceedings up to then, this accused person was described, by numerous witnesses as well as by some defendants, as the one most responsible for the offences which were the subject of the indictment.

Also, because the proceedings were adjourned with respect to the accused Ljuban Devetak, Aleksandar Nikolaidis, Milan Radojčić, Zoran Bačić and Petronije Stevanović, the Prosecutor's Office for War Crimes had to omit from the indictment all the victims for whose suffering these accused persons had been charged, so that the last indictment encompassed only 27 victims who had lost their lives. At the same time, owing to the long duration of the proceedings and the dismissal of the indictment against Ljuban Devetak, the victims and their families, as well as numerous witnesses from Lovas, lost their confidence in the domestic judiciary, and did not wish to testify in the retrial.

344 The Court Rules of Procedure (*Official Gazette of the Republic of Serbia* nos. 110/09, 70/11, 19/12 and 89/13), Article 46, paragraph 3.

Selective indictment

Omission and protection of superiors

Notwithstanding that it was obvious during the proceedings that many more persons had participated in the perpetration of the crimes which are the subject of the indictment than encompassed by the indictment, the Prosecutor's Office for War Crimes did not invest any effort in the collection of evidence regarding their responsibility. The consequence of the Prosecutor's Office for War Crimes' inactivity is that the final version of the indictment did not encompass all the victims who had suffered in the events described in the indictment. Namely, it was indisputable, as became apparent during the entire proceedings, that 70 civilians in total had suffered in Lovas in the period encompassed by the indictment.[345]

It was also characteristic of these proceedings that, with respect to the responsibility of high-ranking members of the Yugoslav People's Army for the events in Lovas, the opinions of the Prosecutor's Office for War Crimes and of the judicial panels which rendered the first instance judgments differed completely. In the first proceedings, in the closing arguments, the Deputy Prosecutor for War Crimes stated that during the proceedings there was no evidence providing grounds for the existence of a reasonable doubt that the "incriminated events in Lovas at the said time were inspired, organised and carried out by certain persons at responsible political, police or military levels, and the said conclusion stands for the command and for other structures, beginning with the 1st Proletarian Guards Motorised Division andthe 2nd Proletarian Guards Mechanised Brigade, and continuing to members of territorial defence forces in the composition of the Zone Headquarters of the TD Valjevo TD".[346] On the other hand, when pronouncing the judgment, the Chairperson of the panel stated that "as regards the attack at Lovas, the manner in which it was carried out and all that happened during the same, the largest liability ,according to the findings of this panel, is borne by the command of the 2nd Brigade."[347]

The opinion of the court seems completely justified, bearing in mind the evidence presented during the proceedings. Namely, during the proceedings evidence was presented pointing to the liability of the commander of the 2nd Brigade, Colonel Dušan Lončar, who issued the order to attack Lovas, when, among other things, he stated that the village was to be "cleared of the hostile population", and during which 22 civilians lost their lives. The professional military expert, in his findings and during his testimony at the main hearing, stated that this part of the order had been contrary to Article 13 of the Second Additional Protocol to the Geneva Conventions.[348] The colonel's liability was also discussed by the expert advisor of the accused Miodrag Dimitrijević. However, notwithstanding the evidence presented and the conclusions of the court, the Prosecutor's Office for War Crimes

345 E.g. the civilian M.L., who has never been encompassed by the indictment, suffered from effects of the artillery fire which was opened at Lovas by the Yugoslav People's Army on 10 October 1991, as was also stated in the original indictment, p. 14, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2016-05/o_2007_11_28_lat.pdf, accessed on 28 November 2018.

346 The transcript from the main hearing of 24 April 2012.

347 The transcript from the pronouncement of the judgment of 26 June 2012.

348 The transcript from the main hearing of 16 November 2011.

prosecuted neither Lončar, who had issued this order, nor any of the members of the Yugoslav People's Army in the command chain.

Owing to the absence of an initiative from the Prosecutor's Office for War Crimes , in November 2016 the HLC pressed charges against Dušan Lončar for crimes in Lovas.[349] By the date of publication of this report, the Prosecutor's Office for War Crimes has not issued an indictment against him, notwithstanding that it had disposed with evidence against the same since the commencement of the criminal proceedings.

Instead, with the last amendment to the indictment, the Prosecutor's Office for War Crimes has continued to protect the former Yugoslav People's Army and its officer Dušan Lončar to an even greater extent, insofar as it omitted from the indictment the earlier allegation that the attack at Lovas was performed under his orders. In this way, the Prosecutor's Office for War Crimes has attempted to remove the possibility that in the *Lovas* Case files allegations of his complicity in this crime should appear.

In opposition to such an attempt by the Prosecutor's Office for War Crimes, the first instance court explicitly stated in the retrial, in the enacting terms of the judgment, that the *"attack took place on the orders of the commander of the Second Proletarian Guards Mechanised Brigade of the Yugoslav People's Army Str. povr. no. 350-01 of 9 October 1991", as well as that "members of the Tovarnik Police Station and the Tovarnik Territorial Defence and the "Dušan Silni" volunteer armed group contributed to the composition of the Second Proletarian Guards Mechanised Brigade of the Yugoslav People's Army".* By this, it clearly showed that it was guided only by the available evidence when establishing the key facts.

Omission of crimes of sexual violence

The indictment in this case does not encompass the cases of rape in Lovas. Notwithstanding that the witnesses Vikica Filić,[350] Snežana Krizmanić[351] and Josip Sabljak[352] stated during their testimonies that there had been rapes in Lovas in the critical period, the Prosecutor's Office for War Crimes has not investigated these allegations. In the case of *Croatia vs. Serbia* before the International Court of Justice in relation to the implementation of the Convention for the Prevention and Punishment of the Crime of Genocide, Croatia was inter alia also proving the cases of rape in Lovas. However, the court did not have enough evidence to adjudicate.[353]

Omission of the crime of expulsion

The expulsion of the Croatian civilian population from Lovas was not encompassed by the indictment either, notwithstanding that numerous inhabitants of Lovas had testified to it, amongst them Đuro

349 The communication by the HLC, "Charge for the Crimes in Lovas in 1991", 3 November 2016.
350 The transcript from the main hearing of 27 March 2009.
351 The transcript from the main hearing of 30 June 2009.
352 The transcript from the main hearing of 27 November 2009.
353 The judgment by the International Court of Justice in the case of *Croatia vs. Serbia* in relation to the implementation of the Convention for the Prevention and Punishment of the Crime of Genocide, 3 February 2015, paras. 325-330.

Filić,[354] Lovro Gerstner,[355] Vikica Filić,[356] Josip Sabljak,[357] Josipa Balić[358] and others. To the expulsion of civilians the commander of the 2nd Detachment of the Pančevo TD also testified, by saying that on arriving at Lovas he found a form which was being distributed to locals of Croatian nationality who were being expelled from Lovas, the signing of which would confirm that they had left all their properties to the municipality of Lovas[359] To the existence of the intention to expel the Croatian population from Lovas,, the witness Petr Kypr testified before the Hague Tribunal in the case of *The Vukovar Three*, after visiting Lovas on 16 October 1991 as a member of the Observer Mission of the European Community.[360] The need for the Prosecutor's Office for War Crimes to deal with the matter of the expatriation of the Croatian population was also pointed to by the court when pronouncing the first instance judgment.[361]

Expert advisor

In the *Lovas* Case, the legal concept of the "expert advisor" introduced by the new Criminal Proceedings Code was applied for the first time in proceedings for war crimes.[362] An expert advisor is a person having expert knowledge in the field in which it is decided to carry out an expertise. His role is to enable the party who has engaged him to effectively discuss with the court expert the latter's findings and opinion, and thereby assist in their assessment during the proceedings.

In this case, an expert advisor was engaged by the accused Miodrag Dimitrijević. This was a retired colonel of the Yugoslav People's Army, an MA in military sciences, and a person with extensive practical experience. Notwithstanding that this was an expert in the relevant field, his statement may be assessed as having been biased. Namely, during his statement the expert advisor expressed unacceptably subjective opinions. For example, he assessed one witness' statement as "a conscious manipulation".[363] He also transferred the entire culpability for the events that occurred on the minefield for which the Prosecutor's Office for War Crimes was charging Dimitrijević, to the accused Perić – for which the accused Perić had never been charged, and about which no on during the proceedings had made such allegations.[364] In this way, the expert advisor de facto performed the role of the defendant Miodrag Dimitrijević's second attorney, which was not his role.

354 The transcript from the main hearing of 16 December 2008.
355 The transcript from the main hearing of 23 February 2009.
356 The transcript from the main hearing of 27 March 2009.
357 The transcript from the main hearing of 27 November 2009.
358 The transcript from the main hearing of 26 May 2011.
359 The transcript from the main hearing of 24 June 2010.
360 The transcript from the open meeting in the Hague Tribunal *Vukovar Three* Case **(IT-95-13)** of 24 March 2006.
361 The transcript from the pronouncement of the judgment of 26 June 2012.
362 The Criminal Procedure Code, Article 125.
363 The transcript from the main hearing of 2 July 2015.
364 The transcript from the main hearing of 24 September 2015.

First instance judgment in the retrial

The first instance judgment in the retrial brilliantly processed the extensive materials in the case files, which were of approximately 30,000 pages in length, where inter alia were the statements of the 195 witnesses examined during the proceedings, the statements of the 36 witnesses who in the meantime had died or become ill, and the defences of the 14 accused. The court performed a very detailed analysis of all the evidence presented and gave clear and valid reasons on the basis of conclusive facts.

Final judgments in cases before the Higher Court in Belgrade

I. The Trnje/Tërrnje Case[365]

CASE FACT	
Current stage of the proceedings: final judgment rendered	
Date of indictment: 4 November 2013	
Trial commencement date: 24 February 2015	
Prosecutor: Mioljub Vitorović	
Defendants: Pavle Gavrilović and Rajko Kozlina	
Criminal offence charged: war crime against the civilian population under Article 142 of the FRY Criminal Code	
Chamber	Judge Omer Hadžiomerović (Chairperson) Judge Miodrag Majić (member) Judge Nada Hadži Perić (member) Judge Rastko Popović (member) Judge Aleksandar Vujičić (member)
Number of defendants: 2	
Defendants' rank: middle and lower ranks	**Number of court days in the reporting period**: 6
Number of victims: 37	**Number of witnesses heard in the reporting period**: 0
Number of witnesses heard: 33	**Number of court experts heard**: 0

Key developments in the reporting period:

Final judgment rendered

365 The *Trnje/Tërrnje* Case, trial reports and case file documentation available at http://www.hlc-rdc.org/Transkripti/trnje.html, accessed on 22 October 2019.

Course of the proceedings

Overview of proceedings up to 2019

Indictment

The first OWCP indictment charged Pavle Gavrilović, as the Commander of the Rear Battalion of the VJ 549th Motorised Brigade, on 25 March 1999, in the village of Trnje/Tërrnje (the municipality of Suva Reka/Suharekë, Kosovo), with having assembled his subordinate officers, including the defendant Kozlina, immediately prior to the attack on the village, and, pointing in the direction of the village, gave them the order that "There must be no survivors", which resulted in the deaths of at least 27 Albanian civilians and the infliction of grave bodily injuries on another six. Rajko Kozlina, a sergeant and combat group leader at the time, is charged that, acting on Gavrilović's orders, he first killed Voci Maljići/Voci Maliqi by firing a shot at him from his automatic rifle, and then killed Ali Voci/Ali Voci in the yard of Musli Gaši /Musli Gashi's house, and then ordered the soldiers present from his group to open fire at the group of civilians assembled in the same yard, shooting at them himself, leaving 16 civilians dead.[366]

On 23 April 2018, the OWCP amended the indictment, increasing the number of casualties by four new victims, listing a minimum of 31 fatalities and six wounded, and now listing the injured party Maljić Voci/Maliq Voci, who had been listed as killed in the previous indictment, as a wounded civilian. Also, the locations of the killing and wounding of the civilians were specified.[367]

Defence of the defendants

The defendants denied having committed the criminal offence they were charged with. Gavrilović stated that his battalion had participated in a larger-scale task which included "sealing off the territory of the Trnje/Tërrnje village area", but that he had never entered the village nor issued an order to the effect that there were to be no survivors. Kozlina's defence was identical.[368]

Witnesses in the proceedings

Thirty-three witnesses were examined during these proceedings. Witnesses who were injured injured parties described the attack on their village and the killing of their family members and other villagers.[369] All the witnesses stated that the military had entered their village, but were unable to recognise the defendants as persons who had been in Trnje/Tërrnje on the relevant day.[370] A number of witnesses stressed there had also been police forces in the village on the day of the attack, as well

366 First OWCP Indictment, number KTO 7/2013 of 4 November 2013, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2016-05/o_2013_11_04_lat.pdf, accessed on 22 October 2019.
367 OWCP Indictment KTO 7/2013 of 23 April 2018.
368 Transcript of the main hearing held on 24 February 2015.
369 Transcript of the main hearing held on 27 October 2015, transcript of the main hearing held on 28 October 2015.
370 Transcript of the main hearing held on 27 October 2015, transcript of the main hearing held on 28 October 2015.

as that some police officers had participated in the killing of civilians. Although several witnesses identified a police officer who had taken part in the crime, he was not covered by this indictment.[371]

A number of witnesses, former members of the Rear Battalion of the VJ 549th Motorised Brigade, who testified about the role of the defendants in the attack on Trnje/Tërrnje, stated that the accused Rajko Kozlina was the one who killed the civilians. Witness Dejan Milošević, for instance, said that Kozlina took an old man of about 70 out of his house and shot him in the head in the yard. He also said that they had come across 25-30 civilians sitting on the ground by the river. The accused Kozlina ordered the women from the group to get up and run. The men did the same, but fire was opened on them. The order to shoot these civilians was given by the accused Kozlina.[372] Witnesses Ervin Markišić[373] and Bojan Gajić,[374] former members of the VJ 549th Motorised Brigade, also confirmed in their statements the killing of the old man and of the other civilians in the yard.

Witness Radivoje Mirković, another former member of the Rear Battalion, was the only one who implicated the accused Pavle Gavrilović in his statement. He stated that the accused Gavrilović, while they were on a hillock above the village of Trnje/Tërrnje, assembled his officers and at a certain point turned towards the village and said that "There must not be any survivors". The witness's immediate superior, the accused Kozlina, led a group of about twenty of his soldiers towards the village. On their way down to the village they came across an elderly man, whom the accused Kozlina shot. On entering the village, at Kozlina's orders, they set out on a "house-mopping" task. They drove between 10 and 15 civilians – men, women and children - out of their houses into a yard. They were ordered to sit down on the ground in the yard, and then the accused Kozlina ordered that they be shot. The accused, the witness and several soldiers, whose names he cannot recall, gunned them down. After this event, they went on further through the village, and at a certain point took an elderly man out of a house. The accused Kozlina ordered the soldiers to kill him and as none of them would do it, Kozlina shot and killed him himself, saying "This is how it should be done".[375]

Request to expedite proceedings

As the main hearings were constantly postponed owing to the absence of the defendants, only nine court days were held from the opening of the trial in February 2015 to September 2017. Consequently, the attorney for nine injured parties filed on 7 September 2017 a request for expediting the proceedings.[376]

On 27 September 2017, the Higher Court in Belgrade dismissed as inadmissible the request in relation to injured party Nedžad Bitići/Nexhat Bytyqi, and as unfounded in relation to the other injured

371 Transcript of the main hearing held on 27 October 2015.
372 Transcript of the main hearing held on 7 June 2016.
373 Ibid.
374 Transcript of the main hearing held on 6 June 2016.
375 Transcript of the main hearing held on 20 March 2018.
376 Injured parties: Nedžad Bitići/Nexhat Bytyqi, Bekim Gaši/Bekim Gashi, Arife Gaši/Arife Gashi, Đile Gaši/Xhule Gashi, Miljaim Gaši/Milaim Gashi, Husein Gaši/Husein Gashi, Elizabeta Krasnići/Elizabete Krasniqi, Hamide Gaši/Hamide Gashi and Ilmi Gaši/Ilmi Gashi.

parties.[377] Dissatisfied with the decision of the Higher Court, the injured parties lodged an appeal with the Court of Appeal, which, on 27 October 2017 rejected the appeal as unfounded [378], having accepted the arguments and stance of the Higher Court in their entirety.[379]

Constitutional complaint

As the decision dismissing the injured party Nedžad Bitići/Nexhat Bytyqi's request for expediting the proceedings was not appealable under procedural law, and given the statutory 30-day period for the filing of a constitutional complaint, the injured party filed a complaint before the Constitutional Court within the set deadline, on 17 October 2017. As the Court of Appeal in Belgrade had rejected their appeal as unfounded, the injured parties filed a constitutional complaint before the Constitutional Court, alleging infringements of their right to a fair hearing, of the reasonable time requirement[380], and of the right to an effective remedy.[381]

Overview of the proceedings in 2019

First-instance judgment

On 1 April 2019, the Higher Court in Belgrade pronounced its judgment on the case, finding the accused Rajko Kozlina guilty and sentencing him to a term of imprisonment of 15 years, and acquitting the accused Pavle Gavrilović.[382]

The Court established that on 25 March 1999, in the village of Trnje/ Tërrnje, the accused Rajko Kozlina, Sergeant of the Technical Company of the Rear Battalion of the VJ 549th Motorised Brigade, executing the order of his superior command to seal off the territory in order to prevent the pullout of enemy forces, but contravention of the content of the issued order, which was to take up specified positions along the perimeter of the village, entered the village with his subordinate soldiers. On entering the village, he shot at and wounded Maljić Voci/Maliq Voci, and then, in Musli Gaši/Musli Gashi's yard, ordered three of his soldiers to shoot at the gathered civilians who had previously been ordered to sit down. Then all of them together shot at the civilians, killing Šefka Gaši/Shefke Gashi, Habibe Gaši/Habibe Gashi, Šućeri Gaši/Shuqeri Gashi, Hirje Gaši/Hirje Gashi, Ljuljeta Gaši/Luleta Gashi, Selvete Gaši/Selvete Gashi, Šćipe Bitići/Shqipe Bytyqi and Đuzide Bitići/ Gjyzide Bytyqi as well as the minors Fisnik Gaši/Fisnik Gashi, Nature Gaši/Nature Gashi, Sedat Gaši/Sedat Gashi, Bljerta Gaši/Blerta Gashi, Emir Gaši/Emir Gashi, Ljumturije Gaši/Lumturije Gashi and Altion Bitići/Altion Bytyqi, and wounding Nedžat Bitići/Nexhat Bytyqi.

377 Decision R4 K Po2 no. 1/2017 of the Higher Court in Belgrade, dismissing the request to expedite the proceedings of 27 September 2017.
378 Decision Rž k –Po2 1/17 of the Court of Appeal of 27 October 2017 on the appeal against the dismissal of the request for expediting the proceedings.
379 For details on the request for expediting the proceedings, court decisions and the constitutional complaint see: HLC - *Report on War Crimes Trials in Serbia* (Belgrade, HLC 2019) pp. 100-114.
380 Article 32 of the Constitution and Article 6 of the European Convention.
381 Article 36 of the Constitution and Article 13 of the European Convention.
382 Judgment K-Po2 no. 10/2013 of the Higher Court in Belgrade, of 1 April 2019.

Because of lack of evidence, the allegations of the indictment that the accused Kozlina had deprived Musli Gaši/Musli Gashi of life and inflicted a bodily injury on Ismet Gaši/Ismet Gashi were omitted from the judgment.

Deliberating the sentence, the Court considered as aggravating circumstances the large number of civilians murdered, amongst them children, and assessed as extenuating circumstances the lapse of time since the commission of the crime, the defendant's family situation the fact that he was married and had a minor child, and that he worked and contributed towards the support of his family, that he had no prior criminal record and no other criminal proceedings were being conducted against him, and the fact that at the time of the crime he had been 23 years of age.

In respect of the acquitting element of the judgment, the Court found that there was no evidence that the accused Pavle Gavrilović actually had, as commander of the Rear Battalion of the VJ 549th Motorised Brigade, ordered the attack on the civilians of the village of Trnje/ Tërrnje and the killing of civilians, which resulted in the deaths of at least 31 Albanian civilians and bodily injury to six others, by issuing an order to his subordinate officers, including the accused Kozlina, that there must not be any survivors.

In the assessment of the Court, given that under the Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) ordering that there shall be no survivors is prohibited, it was hardly plausible that Gavrilović would issue an order to precisely that effect and before a large number of soldiers at that. Also, as not all the villagers of Trnje/ Tërrnje were killed on that day, but some of them went to a neighbouring village two days after the event, no such order by Pavle Gavrilović can be considered to have been executed. Assessing the statements of all the witnesses examined, the court did not accept the statement of witness Radivoje Mirković that the accused Gavrilović, pointing in the direction of the village of Trnje, had said that there must be no survivors. To wit, his statement was contradictory, as he stated that when Gavrilović had said that there must not be any survivors in the village there had been many soldiers around him, but he was unable to remember the name of a single one of them, even though he later remembered the soldier Miloš Babović, who, however, said that the accused Gavrilović had not been near them. In his testimony, witness Mirković stated that the soldiers had headed for the village together with the accused Kozlina, and that he had understood that the "mopping up" of the village was an order to kill – that this had "dawned on him while advancing". The court assessed these allegations as illogical if the accused Gavrilović had already issued the order that there must be no survivors. No evidence was presented during the proceedings to demonstrate that other groups of soldiers, with other commanding officers of the Rear Battalion, apart from Kozlina, had participated in the killing of civilians in the village of Trnje/Tërrnje. The court also determined that no grounds existed to establish the responsibility of the accused Gavrilović for the killing of 16 civilians by unidentified servicemen, because he could not be charged with responsibility for the acts of his subordinates, which in fact he did not stand accused of, but only of the issuance of an order.

Decision of the Constitutional Court

On 17 October 2019, the Constitutional Court ruled to dismiss the constitutional complaints of the injured parties, asserting that the Higher Court and the Court of Appeal had acted in conformity with constitutional law in dismissing as inadmissible the complaint of Nedžad Bitići/Nexhat Bytyqi and rejecting as unfounded the complaints of the other nine injured parties.[383]

Second-instance judgment

On 12 December 2019, the Court of Appeal in Belgrade[384] rendered a judgment rejecting as unfounded the appeals of the OWCP and of the defence counsel for the accused Rajko Kozlina, and affirming the first-instance judgment by which the accused Pavle Gavrilović was acquitted of charges and the accused Rajko Kozlina found guilty and sentenced to a term of imprisonment of 15 years for a war crime against the civilian population.[385]

The Court of Appeal established, in respect of the guilty finding in the first-instance judgment, that the court of first instance had rightly concluded that the accused Rajko Kozlina had committed the criminal offence he was charged with, and had imposed on him a penalty appropriate to the type and severity of the crime committed and the resultant harmful consequences. As to the acquitting part of the judgment, the Court of Appeal upheld the stance of the court of first instance that in the trial the OWCP had failed to prove that the accused Pavle Gavrilović had committed the crime he stood accused of. To wit, that a conviction could not be based solely on the statement of witness Radivoje Mirković that Gavrilović had ordered that "There must not be any survivors" in the village of Trnje/Tërrnje, the rationale being that the statement as such was neither sufficiently precise and logical nor corroborated by any other piece of evidence.[386]

383 Decision of the Constitutional Court, number Už -8841/2017, of 17 October 2019.
384 Composition of the Chamber: Judge Omer Hadžiomerović, Chairperson, Judges Miodrag Majić, Nada Hadži Perić, Rastko Popović and Aleksandar Vujičić, members.
385 Judgment of the Court of Appeal in Belgrade, Kž1 Po2 5/19 of 12 December 2019.
386 Ibid.

HLC Findings

Passivity of the OWCP

The indictment in this case was brought eleven years after information about the involvement of the two defendants in the crime in Trnje/Tërrnje had become publicly available. It was brought only at the end of 2013, whereas as early as 2002 protected witnesses K-41[387] and K-32[388] had testified about the responsibility of the defendants before the ICTY in the case against Slobodan Milošević, and the HLC had already filed a criminal complaint for the crime in Trnje/Tërrnje in 2008.

Unprepared case by the OWCP

It was evident from the course of the proceedings that the indictment had not been prepared diligently enough. Namely, it failed to include all the victims of the crime alleged in the indictment, while at the same time listing as a victim of the killing a person who was still alive. Nor was any evidence provided in support of the allegations that the victims had perished. There were no records of exhumations and autopsies of the persons whose mortal remains had been found, and no evidence that those whose mortal remains had not been found were registered in the records of the competent authorities as missing from 25 March 1999 from the Trnje/Tërrnje village area. In October 2015, the Chairperson of the Chamber rightly criticised the OWCP for being remiss in its work, as well as the non-trial chamber for confirming the indictment in the absence of key evidence, and enjoined upon the OWCP to amend the indictment and submit supporting evidence.[389] As the OWCP did not submit the requested evidence to the court for almost three years, in March 2018 the Chairperson of the Chamber issued a warning about this to the deputy prosecutor assigned to the case.[390] The OWCP amended the indictment only in April 2018, encompassing more victims and indicating the places of their ordeal more specifically.[391]

In respect of the accused Pavle Gavrilović, the OWCP offered the statement of one witness only as evidence in support of the allegations in the indictment, which in itself was not sufficiently precise and logical. The OWCP must have been aware of the insufficiency of its case for a finding of guilty, because the position enshrined in case law as to the basing of a conviction on just one statement is very clear. Namely, such a statement would have to meet a number of criteria. It must be clear, cogent, precise and unaltered, and corroborated by a series of details making it possible to distinguish between genuinely experienced episodes and possibly invented ones. In addition, such a statement must for the most part be verifiable. In other words, it must be demonstrably consistent with other evidence presented, even if circumstantial. If the statement given does not satisfy these criteria, a conviction may not be based on it.

387 Transcript of the testimony of protected witness K-41 of 5 September 2002, transcript of the testimony of protected witness K-41 of 6 September 2002, *Slobodan Milo*šević Case.
388 Transcript of the testimony of protected witness K-32 of 17 July 2002, transcript of the testimony of protected witness K-32 of 22 July 2002.
389 Trial transcript of 28 October 2015.
390 Transcript of the main hearing held on 7 March 2018.
391 Amended OWCP Indictment KTO no. 7/2013 of 24 April 2018.

Delay of the proceedings

Fifteen trial days and a number of pre-trial hearings were delayed in the course of the proceedings,[392] most often on account of the defendants' alleged health issues. The defendants would regularly provide medical certificates from military medical institutions to account for their absences. On most occasions, as the Chairperson of the Chamber also noticed, the defendants would get themselves admitted to hospital a day before or on the day of the main hearing.[393]

Status of the accused in the Serbian Armed Forces

At the moment when the indictment was issued, both defendants were actively serving in the Serbian Armed Forces. The accused Rajko Kozlina is still serving in the SAF, whereas the accused Pavle Gavrilović has now retired.

The HLC addressed an appeal to the then Chief of General Staff of the Serbian Armed Forces, General Ljubiša Diković, to suspend the defendants for the duration of the proceedings, in keeping with the Law on the Serbian Armed Forces. Namely, under the said Law, a member of the military may be suspended from duty if charged with a criminal offence "of such nature that it would be harmful to the interests of the service for such a person to remain on duty".[394] So far the HLC has not received a reply.

The HLC therefore applied to the Ministry of Defence requesting access to information of public importance – as to whether the defendants were still active members of the SAF. The Ministry rejected the request, alleging that the information requested was privileged, being personal data and "data of importance for the defence of the country". Deciding on the HLC's complaint, the Commissioner for Information of Public Importance rejected the arguments of the Ministry of Defence and instructed it to submit the requested information to the HLC. This the Ministry refused to do. Then, between April and June 2016, the Commissioner passed two rulings imposing fines on the Ministry of Defence to the total amount of RSD 200,000. As the Ministry failed to comply with his ruling even after a series of penalties, on 18 June 2016 the Commissioner addressed the Government of the Republic of Serbia requesting it to enjoin upon the Ministry to comply with the Commissioner's ruling. At the time of the publication of this Report, the Government still has not acted upon the Commissioner's request.

Retaining persons accused of war crimes in military service during their trials sends an exceptionally negative message to institutions in charge of prosecuting war crimes, and degrades court proceedings, which should, among other things, restore trust in the institutions of the Republic of Serbia. Taking persons accused of war crimes under the state's wing, as it were, gives rise to mistrust amongst victims from other ethnic communities and affects their readiness to participate in trials before the Higher Court in Belgrade.

392 Transcript of the main hearing held on 20 May 2016.
393 Transcript of the main hearing held on 25 February 2016.
394 Law on the Armed Forces of Serbia, *Official Gazette of the Republic of Serbia* nos. 116/2007, 88/2007, 101/2010 – state law, 10/2015 and 88/2015 – Decision of the Constitutional Court, Article 77.

Command responsibility

Although the accused Pavle Gavrilović was not indicted on the basis of command responsibility, namely for failing to prevent or punish the criminal conduct of his subordinates, but only for issuing an order, in its judgment the court pointed to the legal grounds for establishing such a responsibility as well. This is highly important, as no one in the Republic of Serbia has so far been prosecuted for command responsibility, the most frequently adduced argument being that it was not provided for under domestic criminal law at the time the crime was committed. The Court in fact said so, noting that "*The criminal offence of failure to prevent crimes against humanity and other values protected under international law prescribed by Article 384 of the Criminal Code of Serbia, was introduced into the criminal legislation of Serbia after the adoption of the Rome Statute of the International Criminal Court and its provisions entered into force on 1 January 2006; namely, it did not exist at the time when this criminal offence was committed, for the accused Gavrilović, in his capacity as a military commander, to be liable for the actions of his subordinates if it is established that he had effective control, i.e. the de facto possibility to prevent or punish their criminal conduct*". Nonetheless, the court held that in the specific instance the legal basis for establishing command responsibility could be *"The Order on the Implementation of the Rules of the International Law of War, which was adopted by the Presidency of the SFRY in 1988, and the Instructions on the Implementation of the Rules of the International Law of War in the Armed Forces of the SFRY by the then Federal Secretary for the People's Defence, published in the same year"*[395].

In this way, the court made it clear to the OWCP that it did not anticipate any legal impediments to adjudicating on command responsibility as well, should it be alleged in a future indictment.

395 Responsibility for subordinates' actions –so-called "command responsibility" -, is defined and prescribed by the provisions of section 21 of the Instructions on the Implementation of the Rules of the International Law of War in the Armed Forces of the SFRY – FRY, "Official Military Journal", no. 10/1988 of 10 June 1988. Paragraph 1 of this section prescribes: "The military commander is personally responsible for violations of the rules of the law of war, if he was aware or could have been aware that subordinate or other units or individuals were preparing to commit such violations, and if at a time when it was still possible to prevent their perpetration he fails to undertake actions to prevent such violations. Also shall be personally responsible the military commander who is aware that violations of the rules of the international law of war were committed, and who does not initiate disciplinary or criminal proceedings against the perpetrator, or, if he is not competent to initiate the proceedings, who fails to report the perpetrator to the competent military commander."

II. The Bosanska Krupa Case[396]

CASE FACT
Current stage of the proceedings: finally completed proceedings
Date of issue of the indictment: 26 May 2016
Date of commencement of the trial: 14 October 2016
Acting prosecutor: Miodrag Vitorović
Accused: Ranka Tomić
Criminal offence: war crime against prisoners of war, The Criminal Act of the Federal Republic of Yugoslavia, Article 144

Chamber	Judge Siniša Važić (Chairman of the panel) Judge Omer Hadžiomerović (member of the panel) Judge Rastko Popović (member of the panel) Judge Nada Hadži Perić (member of the panel) Judge Aleksandar Vujičić (member of the panel)

Number of accused: 1	
Rank of accused: lower rank	**Number of court days in the reporting period: 1**
Number of victims: 1	**Number of witnesses heard in the reporting period:** 0
Number of witnesses heard: 15	

Key events in the reporting period:
Finally completed proceedings

396 The *Bosanska Krupa* Case, the reports from the trial and the documents from the case file available at http://www.hlc-rdc.org/Transkripti/bosanska_krupa.html, accessed on 15 October 2019.

Course of the proceedings

Course of the proceedings until 2019

Indictment

The accused Ranka Tomić was, by the indictment[397] of the Prosecutor's Office for War Crimes of 26 May 2016, charged that as a commander (with the rank of captain) of the "Petrovac Women's Front", attached to the Petrovac Brigade of the Army of Republika Srpska, together with other members, amongst whom were Bora Kuburić and Radmila Banjac[398], in mid-July 1992, she tortured the war prisoner Karmena Kamenčić, nurse of the 5th Corps of the Army of Bosnia and Herzegovina, treated her in an inhumane manner, caused great suffering to her, violated her bodily integrity, and participated in the killing of the same. When members of the "Petrovac Women's Front" took the captured Karmena Kamenčić to a vale in Radić (the municipality of Bosanska Krupa), where numerous citizens had gathered, the accused ordered her to undress, to crawl on the ground and to dig her own grave, putting boughs of blackthorn between her legs. She then approached her with other members of the "Petrovac Women's Front", and beat her over her body with a stick, cut her hair with a knife, made a sign of the cross on her head and then along the entire length of her back, cut the lower part of her ear with a knife, pushed her head into cattle manure, hit her on her posterior with a shovel and forced her to sing Serbian songs. After this, they brought the aggrieved party, together with the minor V.Đ., to a neighbouring vale, where they ordered the aggrieved party to continue digging her own grave. Given that the aggrieved party was no longer able to do that, the digging was completed by the minor V.Đ. Afterwards, the aggrieved party was ordered by them to lie on her back in the dug grave, and the minor V.Đ. murdered her, by shooting between 5 and 7 bullets from an automatic rifle[399].

Defence of the accused

Presenting her defence, the accused Ranka Tomić denied that she had committed the offence for which she was charged, stating that she had been in Belgrade in the critical period.

First instance judgment

On 26 December 2018, the Higher Court in Belgrade[400] rendered a judgment by which it declared the accused Ranka Tomić guilty and sentenced her to a prison sentence of five years duration.

397 The Indictment by the Prosecutor's Office for War Crimes KTO no. 05/2016 of 26 May 2016.

398 Bora Kuburić and Radmila Banjac were finally sentenced for the same criminal offence before the Cantonal Court in Bihać, to prison sentences of three years each, available at http://warcrimesmap.ba/bhs/case/kuburi%C4%87-i-banjac-bora-kuburi%C4%87-i-radmila-banjac, accessed on 15 October 2019.

399 The Prosecutor's Office for War Crimes took over the prosecution in this case from the Cantonal Court in Bihać, on the basis of the Act on International Legal Assistance in Criminal Matters and the Agreement between the Republic of Serbia and Bosnia and Herzegovina on Legal Assistance in Civil and Criminal Matters.

400 The composition of the judicial panel: the Judge Vinka Beraha Nikićević (Chairperson of the panel), the Judges Vera Vukotić and Vladimir Duruz, members of the panel.

The court established that members of the Army of Republika Srpska in the area of the place Radić (the municipality of Bosanska Krupa, Bosnia and Herzegovina), in mid-July 1992, captured the wounded nurse Karmena Kamenčić, a member of the Army of Bosnia and Herzegovina, and handed her over to members of the "Petrovac Women's Front".

Members of the "Petrovac Women's Front" took the prisoner to a vale in Radić, and the accused ordered her to undress, crawl on the ground and dig her own grave, putting boughs of blackthorn between her legs. Then the accused approached her with other members of the "Petrovac Women's Front", and beat her with a stick over her body, whilst other members cut her hair with a knife and made a sign of the cross on her head and then along the entire length of her back, cut the lower part of her ear with a knife, pushed her head into cattle manure, hit her on the posterior with a shovel and forced her to sing Serbian songs. Afterwards, they brought the aggrieved party, together with the minor Veselko Đukić, to a neighbouring vale, where they ordered the aggrieved party to dig her burial place again. Given that the aggrieved party was no longer able to do that, the digging was completed by the minor V.Đ. Afterwards, the aggrieved party was ordered by them to lie on her back in the dug grave, and the minor V.Đ. killed her, by shooting between 5 and 7 bullets from an automatic rifle

The court assessed the accused's defence as unconvincing and directed at avoidance of criminal liability, given that the accused stated in her defence that she did not know anything about the critical event, and that she was at another place at the time of the critical event. Having in mind the number of witnesses who confirmed that they had seen the accused in Radić at the critical time, and that all witnesses recognised the aggrieved party, the witnesses' statements contradicted the defence of the accused.

When weighing the penalty, the court assessed as a mitigating circumstance on the side of the accused the absence of a previous criminal record, whereas it assessed as aggravating circumstances the seriousness of the criminal offence, the fact that the same had been committed on a helpless wounded young girl less than 18 years of age, and that during the critical period the accused was the commander of the women's unit "Bosanski Petrovac" women's unit, and had been aware of her position and power in relation to the aggrieved person, whom she had been obliged to protect.[401]

Course of the proceedings in 2019

Second instance judgment

Deciding in the appeal proceedings, the Appellate Court in Belgrade[402] upheld the complaint by the attorney of the accused and reversed the first instance judgment in that part of the decision on the

401 The Judgment by the Higher Court in Belgrade K.Po2 no. 5/2017 of 26 November 2018.

402 The composition of the judicial panel: the Judge Siniša Važić, Chairman of the panel, the Judges Omer Omerović, Rastko Popović, Nada Hadži Perić and Alekandar Vujičić, members of the panel.

criminal sanction by applying the concept of reduction of penalty[403], and reducing the penalty on the accused below the statutory minimum, sentencing her to a prison sentence of three years duration.[404]

The judicial panel concluded that the first instance court had correctly and fully established the facts, for which it had given clear and argumented reasons, but that when deciding on the criminal sanction, it omitted to assess as a mitigating circumstance the lapse of time since the perpetration of the offence. Namely, since the offence was committed more than 26 years had passed, which circumstance, with the circumstance that the accused had not been convicted for any other crime, and that she was born in 1957, justified a lighter punishment, according to the court's assessment. The Appellate Court found mitigating circumstances particularly in the absence of a criminal record for the accused person, as well as in her age, and *"the existing aggravating circumstances, according to the court's opinion, are not of such significance that they have a dominant importance for the court's decision in this specific case."*[405]

Also, the court considered that a prison sentence of three years duration might achieve the purpose of punishment, because the prevention of the perpetrator from committing further criminal offences and her re-education have no particular importance in the case of the accused, for the reason that the same had not committed any further criminal offences until now, and that it was not realistic that circumstances where it would be possible for her to commit war crimes would occur again. Apart from that, the court did not notice the need to re-educate the defendant, because it considered that she had up till now been socially integrated, and gave the impression of being a positive member of society. The adjudicated penalty is, according to the court's finding, *"more directed to others and the correctional impact on them not to commit criminal offences, and mostly to the strengthening of morality and the impact on the development of citizens' social responsibility and discipline".*[406]

Finally, "*by this judgment, the court reacts to the committed crime and the perpetrator ..... Such a penalty is also the clear position of the state and society that it is just to punish a perpetrator of war crimes, because the sense of justice is a key element of the legal order of a state ".*[407]

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 Bosnia and Herzegovina signed the Protocol on Cooperation in the

403 The concept of reduction of the penalty enables the court to impose a penalty lighter than the prescribed penalty for the criminal offence for which the penalty is being weighed – **A**rticle 42 of the Criminal act of the Federal Republic of Yugoslavia.
404 The judgment by the Appellate Court in Belgrade Kž1 .Po2 no. 3/19 of 27 May 2019.
405 *Ibid.*
406 *Ibid.*
407 *Ibid.*

Prosecution of Perpetrators of War Crimes, Crimes Against Humanity and Genocide, in 2013. Namely, this case was, after the confirmation of the indictment, assigned to the Prosecutor's Office for War Crimes by the Cantonal Court in Bihać, given that the accused, who is a citizen of the Republic of Serbia and has her residence in Serbia, was not accessible to the authorities of Bosnia and Herzegovina

Decision on the criminal sanction and inappropriate mitigating circumstances

The HLC considers that the decision of the Appellate Court on the penalty, and particularly in the part of applying particularly mitigating circumstances, is extremely inappropriate and contrary to the very purpose of punishment. When weighing the penaty and assessing mitigating circumstances for this type of criminal offences, the court should have in mind from the first that these are most serious criminal offences, and that they are serious violations of international law, i.e. that these are criminal offences directed against social values defined by the international community. Also, the court should bear in mind the specificity of the offences– that the conditions for proceedings against perpetrators are as a rule met only after a significant lapse of time since their perpetration. The need for trials for these criminal offences, due to their seriousness, as well as the attitude towards the lapse of time after the perpetration, are also expressed through the statutory provisions that they are not subject to the statute of limitations, and that there is a universal competence for acting upon them. Therefore, the lapse of time as a mitigating circumstance should not be assessed with respect to this type of criminal offence. This stance of the court is contrary to both the established jurisprudence of the ICTY – that the length of the period between the offending conduct and the judgment cannot be taken into account as a mitigating circumstance[408] -, as well as to contemporary jurisprudence.[409]

The absence of a criminal record for the accused and her age were, neither individually nor together, circumstances which would represent particularly mitigating circumstances, especially because at the time when the offence was committed she was 35 years old, a grown and mature person, and she committed the criminal offence intentionally, and this as a person who had de facto authority over the other actors in the event, with the obligation to protect the aggrieved party, which she could have done at any moment if she had so wished. Instead of preventing the perpetration of the offence, the accused participated in the same. The manner in which the criminal offence was committed, on a wounded girl less than 18 years of age, who was forced to undress before the gathered crowd who were observing the event, then to crawl on the ground, and to dig her own grave: and that they had put boughs of blackthorn between her legs, beaten her with a stick across the body, cut her hair with a knife and made a sign of the cross on her head and then along the entire length of her back, cut the lower part of her ear with a knife, pushed her head into cattle manure, hitting her posterior with a shovel and forced her to sing Serbian songs, then only to kill her in the end, showed an expectional persistence and bestiality. Such inhumane and extremely degradating conduct by a person who was obliged to protect

408 The ICTY, the judgment Dragan Nikolić – item 273

409 BGH,2 StR 538/01, the judgment of 21 February 2002 – the Federal Supreme Court of Germany mentioned, in a murder case, that the length of time between the offending conduct and the judgment is a possible mitigating factor, but pointed out that, given the seriousness of the offences committed by the accused, now 90 years old, in 1943-44 during the World War II, such circumstances could not be taken into account.

the aggrieved party was conduct which in any case deserved a serious penalty, and not a mitigation of the penalty below the statutory minimum. The court's explanation that *"by this penalty the court reacts to the committed crime and the perpetrator ..... Such a penalty is also a clear stance by the state and society that it is just to punish a perpetrator of war crimes, because the sense of justice is a key element of the legal order of a state",* points however, in the light of the imposed penalty, to the absence of an elementary sense of justice for victims of war crimes and their families. While the stance of the court was that *"the existing aggravating circumstances, according to the court's assessment, are not of such significance as to have a dominant importance for the court's decision in the specific case",* makes senseless the very purpose of punishment. The absence of a criminal record and the lapse of time are given a dominant significance when weighing penalties in relation to the monstruous manner of the offence's perpetration and the persistence with which it was committed, as well as the fact that the accused acted intentionally, as a result of which the purpose of punishment is lost – the educational influence on others not to commit such a criminal offence and the strengthening of morality and the development of citizens' social responsibility and discipline.

Anonymisation of the judgment

The judgment by the Appellate Court which was delivered to the HLC was anonymised by making invisible the names of the judges who were members of the panel, as well as of the acting prosecutor, which is contrary to the Rulebook on Replacement and Omission (pseudoanonymisation and anonymisation) of data in court decisions of the Appellate Court.[410]

The same explicitly sets forth that personal data relating to judges, public prosecutors and attorneys-at-law are not to be anonymised.[411] Such anonymisation turns out as completely unnecessary, particularly because on the court's official website this judgment is anonymised in accordance with the Rulebook on Anonymisation, i.e. with the names of the judges and prosecutor visible.[412]

410 Article 4 of the Rulebook on the Replacement and the Ommission (pseudo-anonymisation and anonymisation) of data in court decisions of the Appellate Court, available at http://www.bg.ap.sud.rs/lt/articles/sudska-praksa/ accessed on 15 October 2019.

411 The judgment by the Appellate Court in Belgrade Kž1 po 2 3/19 of 27 May 2019, available at http://www.hlc-rdc.org/wp-content/uploads/2019/09/Drugostepena_presuda_27.05.2019..pdf, accessed on 15 October 2019.

412 The judgment by the Appellate Court in Belgrade Kž1 po 2 3/19 of 27 May 2019, available at http://www.bg.ap.sud.rs/cr/articles/sudska-praksa/pregled-sudske-prakse-apelacionog-suda-u-beogradu/krivicno-odeljenje/ratni-zlocini/kz1-po2-3-19.html, accessed on 15 October 2019.

III. The Ključ-Šljivari Case[413]

CASE FACT	
Current stage of the proceedings: proceedings finally completed	
Date of issue of the indictment: 5 April 2016	
Date of commencement of the trial: 21 October 2016	
Acting prosecutor: Ljubica Veselinović	
Accused: Milanko Dević	
Criminal offence: war crimes against civilian population, the Criminal Act of the Federal Republic of Yugoslavia, Article 142	
Chamber	Siniša Važić (Chairperson of the panel) Judge Omer Hadžiomerović Judge Nada Hadži Perić Judge Aleksandar Vujičić Judge Rastko Popović
Number of accused: 1 **Rank of accused:** lower rank **Number of victims:** 1 **Number of witnesses heard:** 19	**Number of court days in the reporting period: 1** **Number of witnesses heard in the reporting period:** 0
Key events in the reporting period: Finally completed proceedings	

413 The *Ključ-Šljivari* Case, the reports from the trial and the documentation of the case files available at http://www.hlc-rdc.org/Transkripti/kljuc_sljivari.html, accessed on 14 October 2019..

Course of the proceedings

Course of the proceedings in 2019

Indictment

The accused Milanko Dević, was charged[414], as a member of the Army of Republika Srpska in the second half of July 1992, with coming together with Bogdan Šobota[415] and one more unknown soldier, in uniform and armed with automatic rifle, in the place Donja Sanica (the hamlet of Šljivari, the municipality of Ključ, Bosnia and Herzegovina), to the house of the aggrieved party Ismet Šljivar, and taking him out of his house, threatening him with weapons, and then taking him to the place called "Božin mlin" near the River Sanica, where the three of them fired several shots at him and thereby killed him; after which they threw his body into the river.[416]

Defence of the accused

The accused Milanko Dević denied that he had committed the criminal offence for which he was charged, claiming that he had not been in Donja Sanica and the hamlet of Šljivari at the time of the crime, and that he had not known the murdered Ismet Šljivar.[417]

First instance judgment

On 13 November 2018, the Higher Court in Belgrade[418] rendered a judgment by which it declared the accused Milanko Dević guilty and sentenced him to a prison sentence of seven years' duration.

According to the court's finding, it was established that the accused, together with Bogdan Šobota (who was finally convicted for the same criminal offence) and another unknown member of the Army of Republika Srpska, came to the hamlet of Šljivari, to the house of Ismet Šljivar. Threatening him with arms, they took out Ismet Šljivar and led him in the direction of "Božin mlin", where they murdered him by shooting him from an automatic rifle, and then threw his body into the River Sanica. Such facts were established from the statements of several witnesses who described the abduction of Ismet Šljivar from his house in detail, stating that it had been done by the accused and two more soldiers. They also stated that soon after Ismet Šljivar had been taken away, shooting was heard from the

414 The indictment by the Prosecutor's Office for War Crimes KTO no. 3/16 of 5 April 2016, available at http://www.tuzilastvorz.org.rs/sr/predmeti/optu%C5%BEnice/page:2, accessed on 14 October 2019.

415 By the judgment of the Cantonal Court in Bihać number 01 0 K 011055 16 K of 10 February 2017, Bogdan Šobot was convicted for the same criminal offence to a prison sentence of eight years' duration; and by the judgment of the Higher Court of Bosnia and Herzegovina, number: 01 K 011055 17 Kž of 13 March 2018, the judgment was reversed with respect to the decision on the sentence, by convicting Bogdan Šobot to prison sentence of six years' duration.

416 This case was assigned to the Prosecutor's Office for War Crimes by the Cantonal Court in Bihać on the basis of the provisions of the Act on Provision of the International Legal Assistance in Criminal Matters, given that Milanko Dević is a citizen of the Republic of Serbia, where he also has his residence.

417 The transcript from the main hearing of 21 October 2016.

418 The composition of the judicial panel : Judge Zorana Trajković, Chairperson of the panel, Judges Mirjana Ilić and Dejan Terzić, members of the panel.

direction where he had been taken. The witness Senad Velić stated that his uncle Fahrudin Velić, now deceased, had told him that he had seen the dead body of Ismet Šljivar in the River Sanica.

The court assessed the defence of the accused Milanko Dević, that at the critical time he was at another location, as unconvincing and directed to avoiding criminal liability, having in mind the statements of several witnesses who had confirmed that they had seen the accused in the hamlet of Šljivari at the critical time. The court established that the accused had acted as a co-perpetrator in committing the criminal offence, because he had come together with Bogdan Šobota and one more soldier to the hamlet of Šljivari with the intent to commit the offence. There was an implicit joint decision between them to kill Ismet Šljivar.

When weighing the penalty, the court assessed as an aggravating circumstance on the side of the accused that the aggrieved party had been abducted whilst taking care of his sick wife, and assessed as mitigating circumstances the absence of a previous criminal record and his family situation, i.e. that he was the father of three children.[419]

Course of the proceedings in 2019

Second instance judgment

On 8 April 2019, the Appellate Court[420], deciding upon complaints by the Prosecutor's Office for War Crimes and the attorneys for the accused, rendered a judgment whereby it upheld the complaint by the attorney of the accused, and reversed the first instance judgment in the part of the decision on the penalty, by reducing the penalty imposed on the defendant and sentencing him to a prison sentence of six years' duration.[421] According to the findings of the Appellate Court, the court of first instance did not give sufficient importance to the mitigating circumstances, as well as to the fact that more than 25 years had passed since the perpetration of the criminal offence. In that period, the defendant had not had any conflicts with the law, and had been useful and adapted to society, which pointed to his positive conduct after the perpetration of the criminal offence. Therefore, according to the court's opinion, a prison sentence of a longer duration would have an opposite and detrimental effect to that intended.

419 The judgment by the Higher Court in Belgrade, KPo2 2/18 of 13 November 2018.

420 The composition of the judicial panel: Judge Siniša Važić, Chairman of the panel, judges Omer Hadžiomerović, Nada Hadži Perić, Aleksandar Vujičić and Rastko Popović, members of the panel.

421 The judgment by the Appellate Court in Belgrade, Kž1-Po2 2/19 of 8 April 2019.

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 Bosnia and Herzegovina signed the Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes Against Humanity and Genocide, in 2013. Namely, this case was assigned to the Higher Court in Belgrade by the Cantonal Court in Bihać, given that the accused, who is a citizen of the Republic of Serbia and has his residence in Serbia, was not accessible to the authorities of Bosnia and Herzegovina.

Good assessment of co-perpetration

The adjudicated first instance judgment is a very good example of the manner in which a court should assess the existence of co-perpetration as a form of participation of the accused in the perpetration of a criminal offence. When assessing the same, the court assessed in a very detailed manner all the existing circumstances related to the critical event, such as e.g. that there had been no armed actions in the hamlet of Šljivari and its immediate surroundings, nor a real need for the accused to come to Šljivari together with the other co-perpetrators. On the basis of such an assessment, it concluded that the accused acted as a co-perpetrator upon an implicit joint decision that they would kill the aggrieved party. Such an assessment by the court of first instance was accepted in its entirety by the Appellate Court. In proceedings for war crimes, where it is the case very often that several persons participate in the perpetration of an offence, the court may come to a conclusion with respect to the existence of co-perpetration only by a comprehensive assessment of all the circumstances. If a court were to base its judgments only on the assessment of actions undertaken by some of actors in an event, without considering the broader context of the event, this would lead to unfounded acquittals, particularly in situations where there were a larger number of participants and mass crimes.

Assessment of mitigating circumstances

The opinion of the Appellate Court that the time lapse of 25 years since the perpetration of the offence, during which the accused has not had any conflict with the law, and that he had been useful and adapted to society, which according to the court's assessment pointed to the accused's positive conduct after the perpetration of the crime, should to be taken into account when weighing the penalty, was not justified. Time lapse as a mitigating circumstance when determining the penalty may in principle be considered when it concerns a criminal offences of classical criminality, where the perpetrator's abstention from repeated perpetration 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 a civilian population, where the existence of an armed conflict is an objective condition of incrimination, the time lapse has no significance at all, because the offence cannot be committed any more after the end of the armed conflict. That the time lapse is not a circumstance that may be considered when weighing

penalties for this type of criminal offences, also indirectly points to the universal provision stipulating that this type of criminal offence is not subject to any statute of limitations. Such an opinion of the court is contrary to the established jurisprudence of the ICTY – that the length of the period between the offending conduct and the judgment shall not be considered as a mitigating circumstance[422] -, as well as to contemporary jurisprudence.[423]

422 ICTY judgment Dragan Nikolić – item 273.

423 BGH,2 StR 538/01, judgment of 21 February 2002 – the Federal Supreme Court of Germany, in a murder case, mentioned that the length of time from the offending conduct until the judgment is a possible mitigating factor, but also pointed out that, given the seriousness of the offence (committed in 1943-44 during the World War II) by the accused, now 90 years old, such circumstances cannot be taken into account.

Final judgments in cases before the Court of Appeal in Belgrade

I. The Skočić Case[424]

CASE FACT
Current stage of the proceedings: proceedings finally completed
Date of issue of the indictment: 30 April 2010
Date of commencement of the trial: 14 September 2010
Acting prosecutor: Dušan Knežević
Defendants: Damir Bogdanović, Zoran Đurđević, Zoran Alić, Đorđe Šević, Tomislav Gavrić and Dragana Đekić
Criminal offence: war crime against a civilian population, the Criminal Act of the Federal Republic of Yugoslavia, Article 142

Chamber	Judge Milimir Lukić (Chairman of the panel) Judge Nada Zec Judge Bojana Paunović Judge Vesna Petrović Judge Dragan Ćesarović

Number of accused: 6	
Rank of accused: lower rank – without rank	**Number of court days in the reporting period:** 1
Number of victims: 32	**Number of witnesses heard in the reporting period:** 0
Number of witnesses heard: 46	

Key events in the reporting period:

Case finally completed

424 The *Skočić* Case, the reports from the trial and the documents of the case file available at http://www.hlc-rdc.org/Transkripti/skocici.html, accessed on 12 October 2019.

Course of the proceedings

Course of the proceedings until 2019

Indictment

The accused were charged that, on 12 July 1992, as members of the paramilitary group "Sima's Chetniks", in the village of Skočić (the municipality of Zvornik, Bosnia and Herzegovina), they demolished the mosque using explosives. And that then they gathered into one house local Roma persons, amongst whom were children, women and adult men, took away from them all valuable items, and afterwards beat them, killing one male person. They ordered two men – a grandfather and a grandson – to undress and mutually perform oral sex, and the accused Sima Bogdanović cut off the grandson's penis using a knife. They also raped several times the aggrieved parties "Alpha", "Beta" and "Gamma", two of whom were minors, and the accused Sima Bogdanović pulled two golden teeth out of the mouth of the aggrieved "Alpha", using claws. Then they drove them all by truck to the village of Malešić, where they separated the aggrieved "Alpha", "Beta" and "Gamma", and drove the others to a pit near the village of Šetići, at the place called "Hamzići", took them out one by one from the vehicle and killed them with knives and firearms. They threw the bodies into the pit. Then, they killed 27 civilians, and wounded Zijo Ribić, who was eight years old at the time. The accused retained by force the aggrieved parties "Alpha", "Beta" and "Gamma" in Malešić, and then took them with them to the villages of Klisa, Petkovci and Drinjača and forced them to work, and beat them, raped them and sexually abused them, until January 1993.[425]

On 23 February 2011, after the identification of three more members of the paramiliary group "Sima's Chetniks", the Prosecutor's Office for War Crimes issued an indictment for the same crime against Zoran Alić[426], and in December 2011 against Zoran Đurđević and Dragana Đekić[427], and single proceedings upon the indictment of 4 December 2012 were conducted against all the accused.[428]

The accused Sima Bogdanović died in August 2012, so criminal proceedings were adjourned with regard to his case.[429]

425 The indictment by the Prosecutor's Office for War Crimes KTRZ 7/08 of 30 April 2010.

426 The indictment by the Prosecutor's Office for War Crimes KTRZ number j11/10 of 23 February 2011, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2016-05/o_2011_02_23_lat.pdf, accessed on 12 October 2019.

427 The indictment by the Prosecutor's Office for War Crimes number KTRZ 11/11 of 22 December 2011.

428 The indictment by the Prosecutor's Office for War Crimes number KTRZ 7/08 of 4 December 2012, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2016-05/o_2012_12_04_lat.pdf, accessed on 12 October 2019.

429 The decision of the Higher Court in Belgrade K-Po2-no. 42/2010 of 3 September 2012.

First instance judgment

On 22 February 2013, the Higher Court[430] rendered a judgment by which it declared the accused guilty and sentenced them to prison sentences, namely: Zoran Stojanović and Zoran Đurđević to 20 years each, Zoran Alić and Tomislav Gavrić to 10 years each, Dragana Đekić to five years, Damir Bogdanović to two years, whereas for Đorđe Šević, who had previously been convicted for a war crime in another case[431], it determined a penalty of five years and sentenced him to a cumulative sentence of 15 years.[432]

In relation to the single indictment, the court found that the inhumane treatment and violation of human dignity for which the defendant Stojanović had been charged were not proven. Namely, he had been charged that in Skočić, in Hamdija's house, he had ordered the aggrieved parties Muhamed Aganović and Esad Aganović (grandfather and grandson) to undress and to mutually perform oral sex. The defendant Đorđe Šević was also omitted from the act of rape of the aggrieved "Alpha" and "Beta" and from participation in the murders of aggrieved parties in the place Hamzići, given that this had not been proven during the proceedings.

The HLC presented a detailed analysis of the first instance judgment in the *Report on Trials for War Crimes in Serbia in 2013*.[433]

Second instance judgment

On 14 May 2014, the Appellate Court[434] rendered a judgment by which it rejected as unfounded the complaint by the Prosecutor's Office for War Crimes, and adjourned the criminal proceedings against the accused Zoran Stojanović, who had died in the meantime. In the remaining part, it overturned the first instance judgment and returned the case to the court of first instance for retrial.[435]

The Appellate Court overturned the first instance judgment because it considered that the enacting terms of the judgment were incomprehensible and contradictory, and that it did not provide adequate and clear reasoning, as a result of which the facts remained wrongly and incompletely established.

It also pointed out that the stance of the court of first instance with respect to defining the co-perpetration as a form of participation by the accused in the perpetration of a criminal offence was unacceptable. According to the opinion of the Appellate Court, the enacting terms of the judgment

430 The composition of the court: Judge Rastko Popović (Chairman of the panel), Judges Vinka Beraha-Nikićević and Snežana Garotić-Nikolić (members of the panel).

431 By the final judgment by the District Court in Belgrade K.no. 1419/04 of 15 July 2005, Đorđe Šević was convicted to a prison sentence of 15 years' duration for the criminal offence of a war crime against a civilian population which he had committed after the crime in Skočić.

432 The judgment by the Higher Court in Belgrade in the *Skočić* Case, numberj K.Po2 42/2010 of 22 February 2013.

433 Please see a detailed analysis of the first instance judgment in: the Humanitarian Law Center (Belgrade, HLC, 2013), the *Report on the Trials for War Crimes in Serbia in 2012*, pp. 53-63.

434 Composition of the panel: Judge Siniša Važić (Chairman of the panel), Judges Sonja Manojlović, Sretko Janković, Omer Hadžiomerović, Miodrag Majić (members of the panel).

435 The judgment by the Appellate Court in the *Skočić* Case, number Kž1 Po2 6/13 of 14 May 2014.

did not, for some of the accused, clearly describe specific actions which they had undertaken, which actions had to be closely connected with the actions of perpetration. The Appellate Court also found that the decisions on maximum criminal penalties determined for the accused Zoran Alić and Dragana Đekić did not have an adequate rationale. Namely, Alić and Đekić were minors at the time when the offence was committed, so the Act on Minor Perpetrators of Criminal Offences and the Criminal Law Protection of Minors applied to them. That Act prescribes that prison for juveniles shall last five years at the maximum, but that for criminal offences for which is prescribed a prison sentence of 20 years' duration or a heavier penalty, juvenile imprisonment may be imposed for the duration of up to 10 years.[436] Given that the court of first instance imposed maximum prison sentences on them, it was, according to the opinion of the Appellate Court, obliged to explain the reasons for such a decision in detail.

Retrial

The retrial commenced on 2 September 2014, and on 16 June 2015 the court passed the acquitting judgment in relation to all the accused. Explaining its decision, the court stated that during the retrial it had been established that there was no evidence that the defendants had committed the criminal offence for which they were charged.[437]

This judgment was appealed by the Prosecutor's Office for War Crimes, and the Appellate Court, deciding upon the complaint, opened the main hearing, during which the protected witnesses "Alpha" and "Beta" were examined again and the statement of the protected witness "Beta" was read.

On 28 March 2018, the Appellate Court rendered a judgment by which it upheld the acquitting judgment in its entirety with respect to the accused Damir Bogdanović, Đorđe Šević and Dragana Đekić. It also upheld the acquitting judgment with respect to the accused Zoran Alić and Zoran Đurđević, in relation to the charges for the events in the village of Skočić, the place called "Hamzići" in the village of Šetići, and the villages Klisa, Petkovci and Drinjača. It upheld the acquitting judgment with respect to the accused Tomislav Gavrić in relation to the events in the villages Klisa, Petkovci and Drinjača. The Appellate Court reversed the acquitting judgment with respect to the accused Zoran Alić, Tomislav Gavrić and Zoran Đurđević, by declaring them guilty for the events in the village of Malešić, i.e. guilty of inhumane treatment, violation of physical integrity, sexual degradation and rape of the protected witnesses, and imposed prison sentences on them - namely, on Zoran Alić a prison sentence of six years' duration, and on Zoran Đurđević and Tomislav Gavrić sentences of ten years' duration each.[438]

436 The Act on Minor Perpetrators of Criminal Offences and the Criminal Law Protection of Minors (*Official Gazette of the Republic of Serbia,* no. 85/2005), Article 29.

437 The judgment by the Higher Court in the retrial in the *Skočić* Case, number K Po2 11/14 of 16 June 2015.

438 The summary of the judgment by the Appellate Court in Belgrade Kž1 Po2 5/15 of 28 March 2018, available at http://www.bg.ap.sud.rs/cr/articles/sluzba-za-odnose-sa-javnoscu/aktuelni-predmeti/ratni-zlocini/rz-donete-odluke/, accessed on 12 October 2019.

Course of the proceedings in 2019

Third instance judgment

Deciding in the third instance upon complaints by the defendants to the convicting part of the judgment, the Appellate Court, in a separate panel, as court of third instance, [439] reversed the judgment with respect to the decision on the penalty, by reducing the penalties on the defendants. The defendant Zoran Alić was sentenced to a prison sentence of five years' duration, and Zoran Đurđević and Tomislav Gavrić to prison sentences of eight years each.[440]

HLC Findings

Long duration of the proceedings

The main hearing in this case commenced in September 2010, and it was finally completed only in the end of February 2019. In this manner, the practice was continued whereby complex war crimes cases are conducted for inappropriately long periods.

Inadequate protection of victims of sexual violence

The first instance proceedings were marked by very shocking testimonies by all the aggrieved parties, as well as by the tumultuous emotional reactions of the aggrieved, protected witnesses "Alpha", "Beta" and "Gamma". During the examination of the aggrieved parties – the protected witnesses -, the accused conducted themselves indecently towards them, by throwing vulgar comments at them and asking questions by which they attempted to degrade and additionally traumatise them. Notwithstanding the statutory obligation to protect the integrity of witnesses, the Chairman of the panel did not impose formal sanctions on the accused, but only informal warnings.

Also, the necessary psychological support to the protected witnesses was not provided during the proceedings, because the Service for Support and Assistance to Witnesses and Aggrieved Parties, attached to the Department of the Higher Court, does not have any psychologists, and the employees working with witnesses had received no special training for work with victims of sexual violence.[441]

439 The Criminal Procedure Code, Article 463, which provides that a complaint may be raised against a second instance judgment in the part in which the court of second instance has reversed a first instance acquitting judgment and declared the accused guilty.

440 The judgment by the Appellate Court in Belgrade Kž3 Po2 1/18 of 13 February 2019, available at http://www.bg.ap.sud.rs/cr/articles/sudska-praksa/pregled-sudske-prakse-apelacionog-suda-u-beogradu/krivicno-odeljenje/ratni-zlocini/kz3-po2-1-18.html, accessed on 12 October 2019.

441 On the support provided to victims and witnesses in the War Crimes Department of the Higher Court in Belgrade, please see more in: HLC, *Ten Years of Prosecution of War Crimes in Serbia – Contours of Justice (Analysis of Prosecution of War Crimes 2004-2013)*, 2014. pp. 54-61.

Existent problem of co-perpetration

By its judgments, the Appellate Court made the conditions for proving co-perpetration in proceedings for war crimes even stricter, and thus, in relation to the accused Zoran Alić, it upheld the stance of the court of first instance that "the presence of the defendant Alić in the proximity of the place where the critical event took place cannot itself represent his material contribution to the perpetration of murder", as well as that with respect to him "there was no proven joint awareness of acting, nor was it proven that the same had accepted his role in the said event, by agreeing with the actions of other members of the unit, all with the intent that such an offence be committed".[442]

The HLC assesses such a conclusion as wrong. The defendant Alić himself stated that he, together with other members of the unit, had been in the truck where the victims from Skočić had been placed. When the truck approached the pit dug in Hamzići, the late Stojanović passed on to him that the late Sima Bogdanović had told him that he, together with unknown members of the unit, should come out from the truck and stand at a distance of 10 to 15 metres. Notwithstanding that Alić protested, saying that there was no need that they "protect" anything, because only Serbs were in the vicinity of Hamzići, he executed the order. By his actions, he showed that at the moment of the perpetration of the offence he had shared a joint awareness that a crime was being committed. Namely, he understood the order that there was a need to keep watch. He executed that order by leaving the truck and staying at the place where he had been told to stand. A watch was also kept in order to conceal the murder of the Roma persons from Serbs too. To this points the fact that they did not leave the body of the murdered Arif Nuhanović in Skočić, where only Serbs were at the time of the perpetration of the offence, but drove with it in the truck too. Coming to Malešić, also a village with locals of Serbian nationality, where the "Sima's Chetniks" unit was stationed at the time, they did not kill the Roma, but simply left there the protected witnesses. They continued their journey further, in order to murder them at night on a hidden terrain which was not inhabited.

In support of the presumption that Alić accepted his role in the perpetration of the crime as a member of the "Sima's Chetniks" unit and agreed with the actions of all its members, also speak the facts that Alić had been in Skočić, that he had seen what had happened there, and that in Malešić he did not leave the truck as did some of members of the unit, but continued on to the place where the civilians were shot. After the murders, he stayed in the unit, and, in Malešić, raped, beat and otherwise degraded the protected witnesses, for which he was convicted by the judgment of the Appellate Court.

The Appellate Court has not assessed at all the manner in which the "Sima's Chetniks" unit carried out their activities. That unit existed over a longer period, during which its members committed numerous crimes. They were a compact entity who acted as such, on the basis of a division of roles. Each member, acting on the basis of this division of roles, carried out his actions for the purpose of achieving the common objective of the unit. The accused Alić was in the unit during a longer period, commencing from May 1992. Prior to the event in Skočić, three girls were brought to that unit in the

442 The judgment by the Appellate Court in Belgrade, Kž1 Po2/15 of 28 March 2018.

same manner as the protected witnesses, and were mistreated by members of the unit in the same way as the protected witnesses. All of this indicates that the unit had its manner of conduct, as well as that Skočić was only a repetition of what had already been done. Also, the unit had been abandoned, not only by other members, but also by the accused, the late Zoran Stojanović, Dragana Đekić and Đorđe Šević, when they wanted to leave, which indicates that staying on was voluntary, i.e. that only one who wanted to and who agreed to all the actions of its members stayed on with the unit.

The agreement with the others' publicly committed actions was assessed in the judgment by the Appellate Court as an indication of Alić acting as a co-perpetrator as regards the rape of the aggrieved persons, and this makes even more surprising the court's opposite opinion as regards the murders of the civilians, which were committed in exactly the same manner.

If the jurisprudence preserves such a standard for proving co-perpetration in war crimes cases, this will lead to serious problems in the prosecution of complex cases. Namely, it is hardly conceivable that the Prosecutor's Office for War Crimes will have to prove each individual action of perpetration by each member of a group acting over a longer period at a certain place where it committed numerous crimes, and the psychological attitude of each member towards each individual action.

The Appellate Court should have assessed the co-perpetration in a broader light, by looking at the entire acting of the "Sima's Chetniks" unit, and in relation to it the psychological attitude of its members towards actions undertaken by the group, as well as their acting on the basis of a division of roles.

Assessment of aggravating circumstances and level of the imposed penalty

A serious objection may be made to the Appellate Court with respect to the assessment of aggravating circumstances in relation to the accused Zoran Đurđević. The court did not even mention, let alone assess, as an aggravating circumstance, his earlier conviction for a criminal offence of the same type.

He was finally convicted for a war crime against a civilian population, where the actions perpetrated also included rape and sexual abuse. It was a crime which he committed in Bijeljina only one month prior to the event in Skočić, and for which he was convicted to a prison sentence of 13 years' duration.[443]

This omission leads to the assessment that the penalty imposed on Zoran Đurđević, of eight years' duration, is too light. If he had already been finally convicted to a prison sentence of 13 years' duration, then he should have been convicted to a heavier penalty for the repetition of a criminal offence of the same type, with same actions of perpetration, particularly when the court bears in mind that he had raped one of the aggrieved parties several times, and that both aggrieved parties were minors at the time of the perpetration of the offences.

Such an omission shows, at the same time, that during the formulation of the decision none of the

443 The judgment by the Higher Court in Belgrade K.Po2 no. 7/2011 fo 4 April 2012, upheld by the judgment of the Appellate Court in Belgrade, Kž1 Po2 6/12 of 25 February 2013.

two panels of the Appellate Court, neither when acting in the second, nor when acting in the third instance, studied the case with sufficient attention. Had the panels acted with due care, then the allegation on the earlier conviction of Zoran Đurđević for a criminal offence of the same type, existing in the judgment of the Higher Court in Belgrade K.Po2 11/14 of 16 June 2016, could not have passed unnoticed.

II. The Ključ-Kamičak Case[444]

CASE FACT
Current stage of the proceedings: finally completed proceedings
Date of issue of the indictment: 26 May 2016
Date of commencement of the trial: 8 September 2016
Acting prosecutor: Dušan Knežević
Accused: Dragan Bajić and Marko Pauković
Criminal offence: war crime against civilian population, the Criminal Act of the Federal Republic of Yugoslavia, Article 142

Chamber	Judge Rastko Popović (Chairman of the panel) Judge Siniša Važić (member of the panel) Judge Omer Hadžiomerović (member of the panel) Judge Nada Hadži Perić (member of the panel) Judge Aleksandar Vujičić (member of the panel)

Number of accused: 2	
Rank of accused: lower rank	**Number of court days in the reporting period:** 1
Number of victims: 5	**Number of witnesses heard in the reporting period:** 0
	Number of experts heard in the reporting period: 0
Number of victims heard: 8	

Key events in the reporting period:
Finally completed proceeedings

444 The *Ključ-Kamičak* Case, the reports from the trial and the documents from the case files available at http://www.hlc-rdc.org/Transkripti/kljuc-kamicak.html accessed on 24 December 2019.

Course of the proceedings

Course of the proceedings until 2019

Indictment

The accused Dragan Bajić[445] and Marko Pauković[446] are charged with the crime that, as members of the Military Police of the Sanska Brigade of the Army of Republika Srpska, on 10 October 1992, in Kamičak (the municipality of Ključ, Bosnia and Herzegovina), on the staircase of the house of Minka Jusić, they killed Hasan Rakić by shooting at him several bullets from automatic rifles, after which they moved away. However, they soon came back to the house of Minka Jusić, entered it and fired several shots from automatic rifles at persons who were in the house, whereby they killed Minka Jusić, Munira Hotić, Džemila Behar and the minor Safeta Behar.[447]

After the Prosecutor's Office for War Crimes had issued individual indictments against the accused persons, it proposed to the court that the proceedings against the accused persons be merged and that single proceedings be conducted.

Defence of the accused

The accused denied that they had committed the offences for which they were charged. The accused Dragan Bajić[448] claimed that he, as a member of the Army of Republika Srpska, had been injured on the front on Gradačac on 13 August 1992, and that at the time of the events referred to in the indictment he was on sick leave, whereas the accused Marko Pauković stated that these proceedings had been "contrived by the judiciary authorities of Bosnia and Herzegovina", and that he had data that all the members of his unit were on the list of war criminals.[449]

Dismissal of the indictment

On 13 October 2017, the judicial panel rendered a decision by which it rejected the indictment, because at the time it was issued there had been no authorised prosecutor.[450] Namely, the Criminal Procedure Code sets forth that the judicial panel will dismiss the indictment in the course of proceedings if it establishes that the proceedings are conducted without a request by the authorised

445 The indictment by the Prosecutor's Office for War Crimes KTO no. 6/16 of 26 May 2016, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2019-04/%D0%9A%D0%A2%D0%9E_6_16_%D0%9B%D0%90%D0%A2.pdf, accessed on 24 December 2019.

446 The indictment by the Prosecutor's Office for War Crimes KTO no. 7/16 of 26 May 2016, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2019-04/%D0%9A%D0%A2%D0%9E_7_16_%D0%9B%D0%B0%D1%82.pdf, accessed on 24 December 2019.

447 This case was assigned from Bosnia and Herzegovina, given that the accused persons are unavailable to the authorities of Bosnia and Herzegovina, and that they are citizens of the Republic of Serbia, where they have their residences.

448 The transcript from the main hearing of 8 September 2016.

449 *Ibid.*

450 The transcript from the main hearing of 13 October 2017.

prosecutor.[451] The office of the former Prosecutor for War Crimes ceased on 1 January 2016, and the new prosecutor assumed office only from 31 May 2017. The indictments against the defendants were issued on 26 May 2016, whereas the amended, single indictment was issued on 28 June 2016. Given that at the time when these indictments were issued there was neither a prosecutor for war crimes nor a person acting in that capacity, these indictments were considered to be indictments issued by an unauthorised prosecutor.

Continuation of the main hearing

After the commencement of the office of the new Prosecutor for War Crimes, the proposal that these criminal proceedings continue was submitted. Therefore, on 22 November 2017, the judicial panel adopted the decision that the criminal proceedings upon the indictments by the Prosecutor's Office for War Crimes against Dragan Bajić and against Marko Pauković, both of 26 May 2016, be continued, by continuing the evidentiary hearing.[452]

First instance judgment

On 25 December 2017, the Higher Court in Belgrade[453] rendered the judgment by which it acquitted the accused Dragan Bajić and Marko Pauković, due to lack of evidence.[454] According to the court's finding, the statements of the key witnesses of the Prosecutor's Office were contradictory, illogical and unsustainable, and at the same time contrary to other presented evidence. Also, the court assessed that there was no witness who had been an eyewitness of the critical event. The documentation to which the Prosecutor's Office for War Crimes referred points to facts contrary to those stated in the indictment. As an example of the existence of such differences, it was pointed out that, in the minutes on the inspection performed after the murder of civilians in Kamičak, it is stated that the murders were committed in the house of Hasan Kazić, whereas it is indicated in the indictment that they were committed in the house of Minka Jusić. In the minutes on the autopsy, which were published later, it is stated that it concerned the bodies of civilians murdered during the summer of 1992 by Serbian paramilitary formations, whereas it is indicated in the indictment that the accused persons were members of the military police of the Army of Republika Srpska. Any evidence offered by the Prosecutor's Office for War Crimes are only indicia, and therefore the court acted in accordance with the rule *in dubio pro reo* – i.e. that if there is a lack of evidence, it adjudicates in favour of the accused persons.[455]

451 The Criminal Procedure Code, Article 416 paragraph 1 (item 2).
452 The transcript from the main hearing of 22 November 2017.
453 The composition of the judicial panel: Judge Vera Vukotić, the Chairperson of the panel, Judges Vinka Beraha Nikićević and Vladimir Duruz, members of the panel.
454 The judgment by the Higher Court in Belgrade, K.Po2 no. 6/17 of 25 December 2017.
455 Ibid.

Second instance judgment

On 1 June 2018, the Appellate Court in Belgrade[456], deciding in the appeal proceedings, rendered a judgment by which it overturned the first instance judgment and returned the case for retrial and a/another decision. According to the court's finding, the first instance judgment contained defects which were a serious breach of the provisions of the criminal procedure, because in the reasoning of the first instance judgment no clear reasons were given for the conclusion that there was no reliable evidence that the accused persons had committed the criminal offence. Namely, the analysis of the witnesses' statements which the first instance court assessed as illogical and contradictory was not complete. Clear and sufficient argumentation as to why the court did not accept those statements is omitted.[457]

First instance judgment in the retrial

On 27 December 2018, the Higher Court in Belgrade rendered, in the retrial, a judgment by which it acquitted the accused persons again due to lack of evidence.[458] According to the court's finding during the retrial, nothing has changed in relation to the first instance judgment rendered earlier. Acting upon the orders of the Appellate Court, the first instance panel endeavoured to clarify all the facts related to the inspection performed after the murder of civilians in the village of Kamičak, but only managed to reach one member of the team who had performed the inspection. However, even that witness could not provide the court with more detailed data, because he could not recall the same owing to the lapse of time.[459]

The court assessed that the statements of the key witnesses were unconvincing and contradictory, so it could not accept them, particularly because they were also contrary to the physical evidence. Thus, the witness Esma Behar said in her statement that she had seen the accused persons and had recognised them in the dark, in a village where there is no electricity, while heavy rain had been falling and at a distance of 50 meters. This was also stated by the witnesses Bajro Behar and Emsud Behar. The witness Emsud Behar stated that the accused persons had been seen by him and the witnesses Esma Behar and Dursum Hotić, and that they had observed them from the house of the witness Esma Behar. The witness Refik Hotić claimed that he had been in the house of Minka Jusić when the murders had been committed, but that he had been in another room. Then, he recognised the accused persons by their voices. The accused had also murdered his wife, who was in the room with the other murdered persons. When giving his statement before the court, the witness Emsud Behar seemed very uncertain – he could not remember that in 2012 he had performed the recognition of the accused persons, whereas he claimed to remember details from 1992. He also claimed in his statement that on the critical evening he had recognised the accused persons in unfavourable weather conditions, whereas in the court room he had addressed the attorney of the accused Dragan Bajić with the words

456 The composition of the judicial panel: the judge Siniša Važić, the Chairman of the panel, the judges Miodrag Majić, Omer Hadžiomerović, Dragan Ćesarević, Nada Hadži Perić, members of the panel.
457 The decision by the Appellate Court in Belgrade Kž1 Po2 1/18 of 1 June 2018.
458 The judgment by the Higher Court in Belgrade K.Po2 no. 2(18 of 27 December 2018.
459 The transcript from the main hearing of 15 November 2018.

"You know what you did", thinking that he was the accused. According to the court's assessment, such a statement could not be trusted. The court could not trust the statement of the witness Refik Hotić either, because the same contained contradictory allegations in relation to the physical evidence, and at the same time seemed very illogical. This witness claimed that he was literate, whereas he had signed all the statements he gave with his fingerprint and not with his signature. He stated that in the house where the civilians had been murdered there had been "blood up to the knees" and that there had been "swarms of bullets", whereas it was stated in the minutes to the inspection that no traces of blood had been found on the items, nor bullet shells. It was illogical that not a single trace of a bullet shell had been found on the walls or items of a room where there had been bursts of gunfire. It was also illogical that after a shooting a witness would be sitting three hours in the adjacent room, and that, when leaving the house, he did not verify at all what had happened to the persons who had been shot at, or whether there are any survivors, particularly when his wife was amongst them. Therefore, the judicial panel adjudicated in favour of the accused persons, owing to lack of evidence.

Course of the proceedings in 2019

Second instance judgment

On 29 May 2019, the Appellate Court in Belgrade[460], deciding upon the complaint by the Prosecutor's Office for War Crimes, rendered a judgment by which it reversed the acquitting judgment of the Higher Court, declaring the accused Dragan Bajić and Marko Pauković guilty of war crimes against a civilian population, and sentenced them to prison sentences of 12 years' duration each.[461]

According to the findings of the Appellate Court, the assessment of the court of first instance with respect to the presented evidence, and first of all the witnesses' statements, could not be accepted, nor the conclusions to which the court of first instance had come to after having assessed the evidence. This was because there were no detailed, complete and comparative analysis and assessment of the examined witnesses' statements, and no clear and sufficient argumentation given for the conclusions reached.

Thus, the Appellate Court assessed the statements of the witnesses who had been present in the village of Kamičak on the critical evening as clear, determined and convincing, stating that the same did not point to instructions and the witnesses' wish to point specifically at the accused as the perpetrators, but instead to the fact that the witnesses had really spoken of what they had seen or heard during the critical evening. The court concluded that the facts which were established from the presented evidence were firmly and logically mutually connected, and that they led to the only possible conclusion, that the accused had indeed been the perpetrators of the criminal offence for which they were charged.

460 The composition of the judicial panel: judge Rastko Popović, Chairman of the panel, judges Siniša Važić, Omer Hadžiomerović, Nada Hadži Perić and Aleksandar Vujičić, members of the panel.

461 The judgment by the Appellate Court in Belgrade Kž1 Po2 1/19 of 29 May 2019.

In relation to the legal assessment, the court concluded that the accused had committed the criminal offence of a war crime against a civilian population, and that they had acted as co-perpetrators whose unique intention had been that the aggrieved parties be deprived of their lives, and that both had actively participated in the act of perpetration.

When weighing the penalties, as mitigating circumstances for the accused were assessed the absence of previous criminal records, their family situations and the fact that, at the time when the offence had been committed, they had been 21 and 24 years old respectively. As aggravating circumstances, the court assessed the seriousness of the criminal offence committed and the consequences that had occurred i.e. that five persons had lost their lives, including three women and a 12-years-old girl.

Third instance judgment

On 29 Octboer 2019, the Appellate Court in Belgrade, deciding in the third instance[462], rendered a judgment by which it rejected all complaints as ungrounded and upheld the second instance judgment.[463] At the moment of drafting this report, the third instance judgment could not be analysed, because it was not available to the public.

HLC Findings

Fictitious increase in the number of indictments issued

The Prosecutor's Office for War Crimes issued two separate indictments in this case, against Dragan Bajić and Marko Pauković respectively, notwithstanding that it indicated them as co-perpetrators in both. It immediately proposed to the court that the proceedings against the accused be merged and conducted as a single case, and it amended the indictment in that direction only two days after the initial indictments had been issued. In this manner, the Prosecutor's Office for War Crimes appears to have feigned efficacity, by giving the impression that it was issuing a larger number of indictments than it actually was.

Publication of excessively anonymised indictments

On its website, the Prosecutor's Office for War Crimes published the indictments issued against Dragan Bajić and Marko Pauković, but they were excessively anonymised.[464] Namely, in the same

462 The Criminal Procedure Code, Article 463, which stipulates that a complaint may be filed against a second instance judgment in the part in which the court of second instance has reversed the first instance acquitting judgment and declared the accused guilty.

463 The judgment by the Appellate Court in Belgrade Kž3 Po2 1/19 of 29 October 2019.

464 The indictment by the Prosecutor's Office for War Crimes KTO no. 6/16 of 26 May 2016, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2019-04/%D0%9A%D0%A2%D0%9E_6_16_%D0%9B%D0%90%D0%A2.pdf accessed on 24 December 2019.

The indictment by the Prosecutor's Office for War Crimes KTO no. 7/16 of 26 May 2016, available at http://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2019-04/%D0%9A%D0%A2%D0%9E_7_16_%D0%9B%D0%B0%D1%82.pdf, accessed on 24 December 2019.

the names of the accused persons and the aggrieved parties are anonymised, but the reasoning is entirely omitted, thereby preventing an analysis of the reasons, and thus considerably hindering the monitoring of the trial.

Excessive and inadequate anonymisation of judgments

The courts submitted the first instance and the second instance judgments rendered in these proceedings to the HLC anonymised in an inadequate manner, by making the names of the witnesses and the victims completely invisible.[465] By such anonymisation, the reader's understanding of the manner in which the court established the key facts is completely prevented. Namely, given that all names of witnesses and victims are blacked-out, it can neither be concluded how many witnesses were examined, nor what individual witnesses stated, nor how many times the court referred to a statement or a part of a statement by the same witness when analysing and assessing the same.

465 The judgments in the *Ključ-Kamičak* Case, available at http://www.hlc-rdc.org/Transkripti/kljuc-kamicak.html accessed on 25 December 2019.

Case in which plea agreement was conducted

I. The Gornje Nerodimlje Case[466]

CASE FACT	
Current stage of the proceedings: finally completed	
Date of issue of the indictment: 24 December 2018	
Acting prosecutor: Mioljub Vitorović	
Acting judge: Vladimir Duruz	
Accused: Ramadan Maljoku	
Criminal offence: war crime against civilian population, the Criminal Act of the Federal Republic of Yugoslavia, Article 142, in co-perpetration in relation to Article 22 of the Criminal Act of the Federal Republic of Yugoslavia	
Number of accused: 1	
Rank of the accused: lower rank – no rank	**Number of court days in the reporting period:** 1
Number of victims: 2	**Number of witnesses heard in the reporting period:** 0
Number of witnesses heard: 0	
Key events in the reporting period:	
The judgment accepting the Agreement on admission of the criminal offence	

466 The *Gornje Nerodimlje* Case available at http://www.hlc-rdc.org/Transkripti/gornje-nerodimlje.html accessed on 15 November 2019.

Course of the proceedings

Indictment

The indictment by the Prosecutor's Office for War Crimes of 24 December 2018 charged Ramadan Maljoku that on 21 June 1992 he, as a member of the KLA, in the village of Gornje Nerodimlje (the municipality of Uroševac, Kosovo), leading four unknown members of the KLA, came to the house of two Serbian civilians, entering the yard by force, after which he at first hit one civilian in the area of the head and then continued to hit him on the head and over the body together with other members of the KLA, and threatened the other civilian – a woman -, after one of the KLA members had hit her in the head with a rifle, by using the words "I curse your Serbian mother! You should go to Serbia! You are Serbian". He requested the civilians to hand over their rifles to him, and then closed them in a room in the yard, threatening to kill them if they did not hand over their rifles to him when they returned. After the accused, together with the other KLA members, had left their yard, the civilians managed to open the room in the yard and escape.[467]

Judgment

On 19 March 2019, the Higher Court in Belgrade rendered the judgment by which it accepted the Agreement on admission of criminal offence[468] for a war crime against a civilian population, which the defendant Ramadan Maljoku had concluded with the Prosecutor's Office for War Crimes, and sentenced him to a prison sentence of one year and six months. This is the fifth concluded agreement on admission of a criminal offence of a war crime.[469]

HLC Findings

Judgment lacking explanation

When rendering the judgment on confirmation of the Agreement on admission of a criminal offence which the accused Ramadan Maljoku had concluded with the Prosecutor's Office for War Crimes, the Higher Court, instead of explaining the same, only listed the Articles of the Criminal Procedure Code on the basis of which it had established that the Agreement contained all the elements prescribed by the law, and indicated that the statutory conditions with respect to evidence enclosed in the Agreement were met, that the penalty was in accordance with the Criminal Code, and that there were no legal obstacles for the conclusion of an agreement on admission of guilt. Such an action by the

467 The indictment by the Prosecutor's Office for War Crimes, KTO no. 9/18 of 24 December 2018.
468 The judgment by the Higher Court in Belgrade in the *Gornje Nerodimlje* Case, Spk.Po2 1/19 of 19 March 2019.
469 The Prosecutor's Office for War Crimes concluded the first agreement on admission of guilt for a criminal offence of a war crime with the defendant Milan Škrbić in 2013, and then with Marko Crevar in 2015, with Brana Gojković in 2016 and with Dragan Maksimović in 2018.

court, when it concerns judgments confirming agreements on admission of guilt in war crimes cases, is the rule.[470]

Decision on penalty lacking explanation

According to the Criminal Procedure Code, the court will accept, in its judgment, an agreement on admission of a criminal offence, if it establishes that, inter alia, the penalty stipulated in the agreement is in accordance with the criminal act.[471]

A judgment accepting an agreement on admission of a criminal offence must contain "a partial rationale", outlining the reasons which directed the court when accepting the agreement.[472] Given that the Criminal Procedure Code stipulates that the court must establish the legality of accepting the agreement, the court had, without doubt, to at least partially explain the decision on the penalty.

The Higher Court sentenced the accused Ramadan Maljoku to a prison sentence of one year and six months' duration. However, the court's conclusion that the penalty proposed by the Agreement was in accordance with the criminal act is not really partially explained anywhere in the judgment. Instead, it is only indicated that, for the criminal offence for which Maljoku is declared guilty, the prison sentence prescribed is for the duration of at least five years, that the accused and the Prosecutor's Office for War Crimes had agreed that the penalty for the same be reduced, and that the court found that there was a place to apply Articles 42 and 43 of the Criminal Act of the Federal Republic of Yugoslavia, that the sentence of one year and six months was all in accordance with the law, that the same was proportionate to the seriousness of the criminal offence committed, as well as to the personality of the accused as perpetrator, and that such a penalty would achieve the purpose of punishment.

Considering the fact that the minimum penalty threatened for the said criminal offence is a prison sentence of 5 years' duration,[473] and that a lighter penalty may be imposed only by applying the provisions on reduction of the penalty[474], which provisions stipulate that particularly mitigating circumstances must exist, the court was obliged to explain those mitigating circumstances. From the statements of the court, reduced only to a note that the penalty was adequate to the seriousness of the committed offence as well as to the personality of the accused as perpetrator, it cannot really be concluded that the conditions for applying the provisions on reduction of penalty have been met, and thereby whether the penalty was in accordance with the law. The claim that the penalty was adequate to the seriousness of the offence and to the personality of the accused is a very generalised claim, which is essentially applicable to any perpetrator. Such a generalisation makes senseless the existence

470 Please see: the judgment by the Higher Court in Belgrade SPK P02 2/13 of 13 September 2013, the judgment by the Higher Court in Belgrade SPK Po2 1/15 of 18 February 2016, the judgment by the Higher Court in Belgrade SPK –Po2 no. 1/2016 of 27 January 2016, the judgment by the Higher Court in Belgrade K.Po2 number 10/17, Spk.Po2 no. 1/2018 of 6 June 2018.

471 The Criminal Procedure Code, Article 317 paragraph 1 item 3).

472 The Criminal Procedure Code, Article 429, paragraph 3, item 2).

473 The Criminal Act of the Federal Republic of Yugoslavia, Article 142 paragraph 1.

474 The Criminal Act of the Federal Republic of Yugoslavia, Articles 42 and 43 of the Criminal Act of the Federal Republic of Yugoslavia.

of the concept of reduction of penalty, which may be used only when there are certain circumstances which individually, or in their entirety, form particularly mitigating circumstances, which must be clearly visible from the rationale of the judgment.

Excessive anonymisation

At request of the HLC, the court delivered a judgment by which the Agreement on admission of guilt was confirmed, in which it had performed an excessive anonymisation, insofar that it had fully redacted the names of the victims, as well as the place of perpetration. By such anonymisation, the Higher Court only showed that it does the same arbitrarily, contrary to the Data Protection Act, which stipulates that data that have already been made available to the public are not to be anonymised; given that data on the place of perpetration of the criminal offence had already been indicated in the indictment[475], which had already been uploaded to the website of the Prosecutor's Office for War Crimes prior to the adjucation of the judgment.

475 The indictment by the Prosecutor's Office for War Crimes KTO 9/18 of 24 December 2018, available at https://www.tuzilastvorz.org.rs/upload/Indictment/Documents__sr/2019-04/kto_9_18_lat~2.pdf, accessed on 29 November 2019.

Proceeding on requestfor recognition and enforcement of foreign judgment in war crimes cases

I. The Novak Đukić Case – Tuzla's „Kapija" Case[476]

CASE FACT
Current stage of the proceedings: request for recognition and enforcement of a final judgment
Date of commencement of the trial: 26 February 2016
Acting prosecutor: Mioljub Vitorović
Convict: Novak Đukić
Criminal offence: war crime against civilian population, the Criminal Act of the Federal Republic of Yugoslavia, Article 142

Chamber	Judge Vinka Beraha-Nikićević (Chairperson of the panel) Judge Vladimir Duruz Judge Vera Vukotić

Number of convicts: 1	
Rank of convicts: high rank	**Number of court days in the reporting period:** 0
Number of victims: 71	**Number of witnesses heard in the reporting period:** 0
Number of witnesses heard: 0	

Key events in the reporting period:

The proceedings for recognition and enforcement of the final criminal judgment of the Court of Bosnia and Herzegovina is in course

476 For the *Novak Đukić* Case, please see on the website of the Court of Bosnia and Herzegovina, available at http://www.sudbih.gov.ba/predmet/2472/show, pristupljeno dana 2. februara 2018. godine. Accessed on 24 October 2019.

Course of the proceedings

First instance judgment by the Court of Bosnia and Herzegovina

By the judgment by the Court of Bosnia and Herzegovina of 12 June 2009[477], Novak Đukić was sentenced to a long-term prison sentence of 25 years' duration for the criminal offence of a war crime against a civilian population, referred to in Article 173 of the Criminal Act of Bosnia and Herzegovina. He was declared guilty because on 25 May 1995, as the commander of the Tactical Group "Ozren" of the Army of Republika Srpska, he had ordered the artillery platoon under his command to grenade the city of Tuzla, which at the time was declared a protected area by the Resolution of the United Nations number 824 of 6 May 1993. One artillery projectile hit the narrow locality of the centre of the city called "The Gate", when 71 persons lost their lives, most of them approximately 20 years old; whilst more than 100 other persons were wounded.

Second instance decision of the Court of Bosnia and Herzegovina

On 6 April 2010, the Appellate Panel of the War Crimes Department of the Court of Bosnia and Herzegovina upheld the first instance judgment, after which Novak Đukić commenced serving the prison sentence in Bosnia and Herzegovina.[478]

Decision of the Constitutional Court of Bosnia and Herzegovina

The convicted Đukić filed a complaint before the Constitutional Court of Bosnia and Herzegovina, stating that the criminal judgment of the Court of Bosnia and Herzegovina had violated his right, guaranteed by the Constitution and the European Convention on Human Rights, which prohibits retroactive implementation of the law. Namely, Đukić was tried according to the Criminal Act of Bosnia and Herzegovina, which applied at the time when the offence was committed in 1995.

The Constitutional Court of Bosnia and Herzegovina upheld the complaint by the convicted Đukić and, by the decision of 23 January 2014, overturned the second instance judgment and ordered the Court of Bosnia and Herzegovina do render a new decision.[479]

Given that the decision of the Constitutional Court overturned the final criminal judgment, the legal basis for the further serving of the convicted persons's prison sentence ceased to exist, and on 14 February 2014 the Court of Bosnia and Herzegovina rendered a decision by which Đukić was released.

477 The first instance judgment of the Court of Bosnia and Herzegovina number X-KR-07/394 of 12 June 2009 in the case of *Bosnia and Herzegovina v. Novak Đukić*.
478 The second instance judgment of the Court of Bosnia and Herzegovian number X-KRŽ-07/394 of 6 April 2010.
479 The decision on merits by the Constitutional Court of Bosnia and Herzegovina in the case number AP-5161/10 of 23 January 2014.

Second instance judgment of the Court of Bosnia and Herzegovina in the retrial

On 11 April 2014, the Court of Bosnia and Herzegovina rendered a judgment by which it reduced Đukić's prison sentence from 25 to 20 years, in accordance with the Criminal Act of the Socialist Federal Republic of Yugoslavia.[480]

Request of Bosnia and Herzegovina to Serbia for recognition and enforcement of the final court decision

Soon after Đukić had been released, his attorney notified the Court of Bosnia and Herzegovina that Đukić was undergoing medical treatment in Serbia, and given that the latter did not answer calls to serve the sentence, the Court of Bosnia and Herzegovina issued a warrant. Given that Đukić, apart from citizenship of Bosnia and Herzegovina, also possesses citizenship of the Republic of Serbia, he could not be extradited to Bosnia and Herzegovina according to the provisions of the Act on International Legal Assistance in Criminal Matters.[481] Therefore, in October 2015, the Court of Bosnia and Herzegovina sent Serbia a request for recognition and enforcement of the final court decision.

The meetings of the panel before the War Crimes Department of the Higher Court in Belgrade in the proceedings for the recognition of the judgments of the Court of Bosnia and Herzegovina were delayed several times, because of the absence of the convicted Đukić, on account of health reasons, as stated.

The convicted person's attorney asked for the request of the Court of Bosnia and Herzegovina to be rejected because the trial before the Court of Bosnia and Herzegovina had not been just, and he proposed that the case files be requested from the Court of Bosnia and Herzegovina, in order to confirm this claim by reviewing the same. This proposal of the attorney was accepted, but only a part of the requested documentation was submitted from the Court of Bosnia and Herzegovina by the end of the reporting period.

Because of the frequent absences of the convicted Đukić owing to health reasons, the judicial panel passed an order to have recourse to medical expertise on the circumstances as to whether he is capable of attending meetings of the panel and participating in the proceedings.

Reconstruction of the event on a military training ground

At the request of the defence team of Novak Đukić, on a training ground of the Army of Serbia - specifically, on the training ground of the Technical Experimental Centre in Nikinci -, the experiment of "the Reconstruction of the Crime at Tuzla Gate" was performed in 2014, 2015 and 2016.[482] This

480 The judgment of the Court of Bosnia and Herzegovina, number: S1 1 K 015222 14 Krž of 11 April 2014.

481 The Act on International Legal Assistance in Criminal Matters (*Official Gazette of the Republic of Serbia* number 20/2009), Article 16 paragraph 1 item 1.

482 The reply of the General Staff of the Army of Serbia of 13 April 2016, available at http://www.hlc-rdc.org/wp-content/uploads/2016/04/Odgovor_na_zahtev_za_pristup_informacijama_od_javnog_znacaja,rekonstrukcija_dogadjaja_na_Tuzlanskom_trgu_25.05.1995,Generalstab_Vojske_Srbije.pdf, accessed on 24 October 2019.

involved the simulation of the impact of a projectile onto a model representing the buildings and other structures of the Tuzla Gate, on the basis of which it was concluded that on 25 May 1995 the civilians could not have suffered from the explosion of a grenade fired from the positions of the Army of Republika Srpska, i.e. that the facts established in the final judgment of the Court of Bosnia and Herzegovina against Novak Đukić were incorrect.[483]

Course of the proceedings until 2019

During 2017, none of the four scheduled meetings of the panel was held, because the convicted Novak Đukić did not come to the court, explaining his absence by giving health reasons, i.e. his frequent hospitalisations in the Military-Medical Academy.

The court expert from the medical profession, Branimir Aleksandrić, the chairman of the Commission which performed the medical expertise of the accused at the court's order, stated that the expertise established that the convicted person was capable of participating in the proceedings. However, as the convicted person was frequently hospitalised, the meetings of the panel could not be held. Only one meeting of the panel was scheduled during 2018, which was not held because Novak Đukić did not come to the same, for the reason that he was undergoing hospital treatment.

At the beginning of 2018, the expertise established that Novak Đukić was temporarily unable to participate in proceedings, and that a new expertise would be performed one year later.

Course of the proceedings in 2019

New medical expertise for establishing the capacity of Novak Đukić to participate in proceedings was to be performed during 2019, but at the moment of drafting this report the same has not been completed, owing to the court expert's illness.

HLC Findings

Attempt at influencing the judiciary

The results of the experiment in NIkinci were presented to the domestic media, and on 4 November 2016 the documentary film "Grievous Burden of Planted Guilt" was featured at the Zvezdara teatar in Belgrade.[484] The findings were also communicated at the panel held in the Faculty of Law in

483 Daily newspapers "Večernje Novosti", 25 February 2016, *Serbian grenade did not kill people in Tuzla,* available at http://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:592567-Srpska-granata-nije-ubila-ljude-u-Tuzli, accessed on 24 October 2019.

484 Daily newspaper "Večernje Novosti", 4 November 2016, *Documentary on Tuzla: Real Truth on Planting Lies*, available at http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:633415-Dokumentarac-o-Tuzli-Prava-istina-o-poturanju-lazi, accessed on 24 October 2019.

Belgrade.[485] At the same time, the allegation was presented in the media that charges were being pressed against the expert Berko Zečević, who had performed the expertise in the Đukić Case during the proceedings in Bosnia and Herzegovina, for making false allegations when testifying before that court.[486] By means of this media campaign, pressure was being exerted, without any doubt, on the Higher Court in Belgrade, in order that it reject the request of the Court of Bosnia and Herzegovina to uphold the judgment delaring Novak Đukić guilty.

Unjust trial as the basis for rejection of the request

According to the Act on International Legal Assistance in Criminal Matters, the Higher Court may reject or accept a request for recognition and enforcement of a foreign court judgment; but, when deciding on a request, the court is bound by the factual description of the criminal offence in the foreign judgment.[487] According to this provision, the Higher Court cannot in any circumstances open a hearing at which it would consider the findings of the experiment performed in Nikinci. Notwithstanding this, it is certain that Đukić's defence will use the findings of this experiment in order to claim that Đukić did not have a just trial, which is a statutory basis for rendering a decision rejecting a request.[488] Notwithstanding that an unjust trial is a basis for rejection of recognition of a judgment according to this Act, the HLC considers that the Higher Court in Belgrade is not an adequate forum for examination of the justice of that trial, given that Bosnia and Herzegovina is a signatory of the European Convention on Human Rights, and that Đukić's defence had at its disposal the protection of the European Court of Human Rights, if it had considered that his right to a just trial was violated before the Court of Bosnia and Herzegovina. Finally, the HLC considers that it is unlikely that the defence has convincing arguments that the trial was unjust, when bearing in mind that, in addition to the findings of the criminal investigation, and the testimonies by insider-witnesses from the Army of Republika Srpska and several Tuzlaks who had survived the attack, the Court in Bosnia and Herzegovina based its judgment on two ballistic expertises, and that during the trial Đukić had for his defence his expert for weaponry and ballistics, and that the experts were directly and cross-examined, and that they were also confronted.

The HLC considers that, by its recognition of the judgment of the Court of Bosnia and Herzegovina, the War Crimes Department of the Higher Court in Belgrade would show its commitment to regional cooperation, and also its independence.

485 Daily newspaper "Večernje Novosti", 24 October 2016, *A Lie Broken 32 times: People at the "Gate" Killed Simultaneously and from Several Directions*, available at http://www.novosti.rs/vesti/naslovna/dosije/aktuelno.292.html:631462-Laz-razbijena-32-puta-Ljudi-na-Kapiji--ubijani-simultano-iz-vise-pravaca, accessed on 24 October 2019.

486 Blic online, of 30 May 2016, available at http://www.blic.rs/vesti/hronika/u-sredu-o-priznavanju-presude-generalu-novaku-djukicu/l6cbr5l, accessed on 24 October 2019.

487 Act on International Legal Assistance in Criminal Matters (*Official Gazette of the Republic of Serbia* number 20/2009), Article 61 paragraph 4.

488 *Ibid*, Article 63 paragraph 1 item 4.

Breach of the National Strategy for the Prosecution of War Crimes

The HLC considers that the experiment in Nikinci serves a double objective – on the one hand, to exert pressure on the judiciary in order that **Đukić can avoid serving his sentence in Serbia, and on the other hand, to raise questions about the recent war past, by a failure to recognise the facts established by the court.**

That the campaign was directed towards a denial of the conclusions of the Court of Bosnia and Herzegovina with respect to the responsibility for the attack at the Tuzla Gate, as part of a broader effort having as its objective a change in the established facts pertaining to the nature of the war in Bosnia and Herzegovina from 1992 to 1995, was also confirmed by the announcement of a new experiment in NIkinci, which would this time relate to the attacks of the Army of Republika Srpska on Markale, the Sarajevo market.[489]

The HLC considers that, by the participation of the state authorities in the changing of facts established by the court, the National Strategy for the Prosecution of War Crimes was breached. By this Strategy, Serbia undertook the obligation to "objectively inform citizens on trials for war crimes", with the aim of "raising the level of the general social awareness of events in the space of former Yugoslavia and of the need that war crimes be discovered, investigated and prosecuted, and that the perpetrators be punished, regardless of national, ethnical and religious affiliation, or of their rank".[490]

489 S. J. Matić, *Serbia breaks the lie from Markale in NIkinci*, "Večernje Novosti", 19 September 2016, available at http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:625814-Srbija-u-Nikincima-rusi-laz-s-Markala , accessed on 24 October 2016.

490 *National Strategy for the Prosecution of War Crimes*, p. 14, available at http://aler.rs/files/NACIONALNA_STRATEGIJA_za_procesuiranje_ratnih_zlocina_Sl_gl_RS_br_19_2016.pdf accessed on 24 October 2019.

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