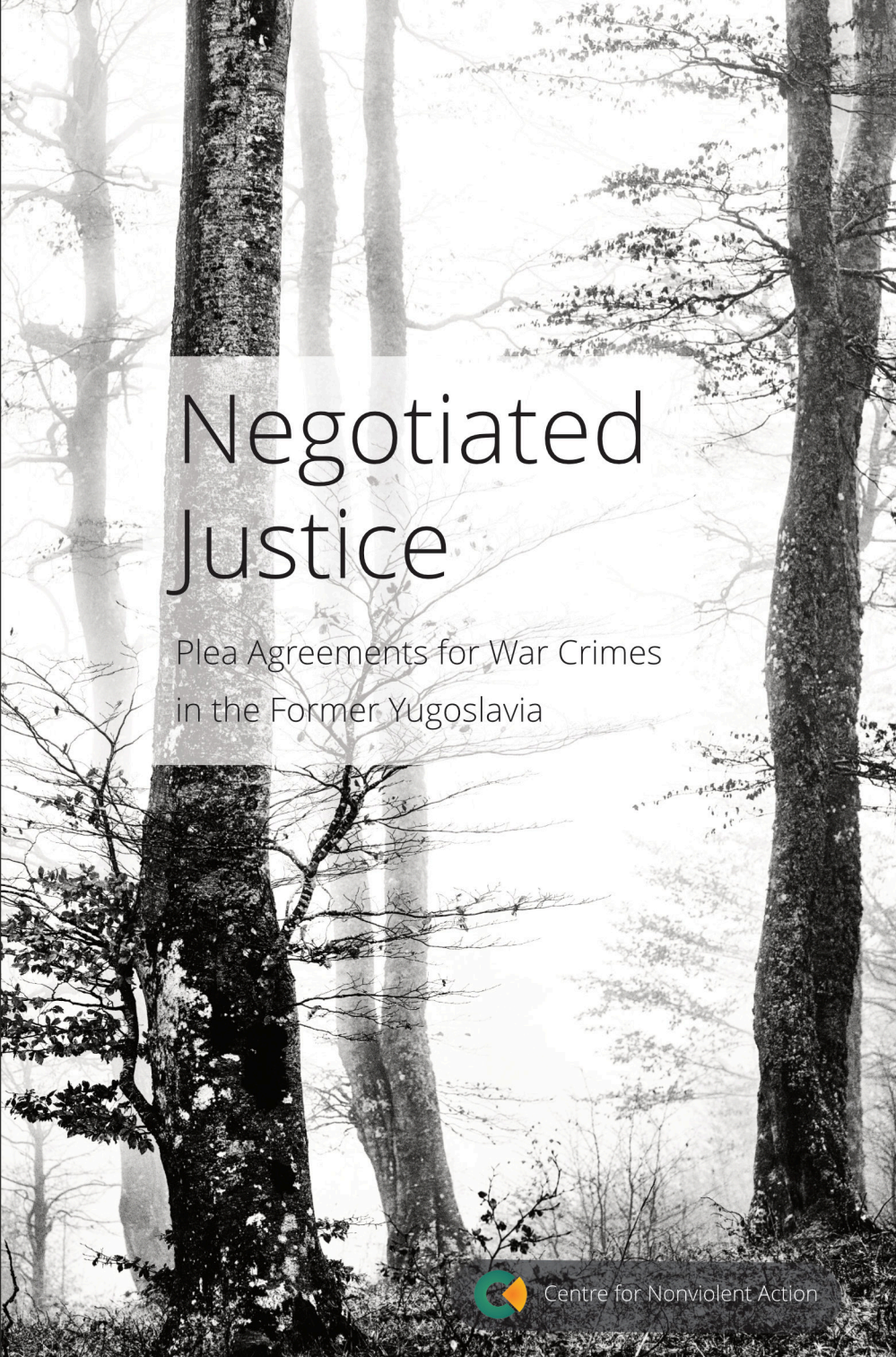
Negotiated Justice
Plea Agreements for War Crimes in the Former Yugoslavia
Centre for Nonviolent Action

# Negotiated Justice

## Plea Agreements for War Crimes in the Former Yugoslavia

Editors:
Nedžad Novalić
Davorka Turk

Translation:
Ulvija Tanović

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# Contents

# Instead of an Introduction: Why This Publication?

It was a pleasant spring day in central Bosnia. We were attending the commemoration for civilian victims of one of the largest crimes in central Bosnia together with a mixed group of war veterans from Bosnia and Herzegovina (BiH), Croatia and Serbia, organised by the Centre for Nonviolent Action. This unusual group of former combatants – who had by that time already attended more than 20 similar commemorations across the former Yugoslavia – was welcomed on the eve of this commemoration by the local organisers, representatives of victims' associations. They showed us the monument, the small museum nearby, the local places of worship and the neighbourhood where houses and lives had been reconstructed. We sat down together at the local primary school to talk and explain why we had come, but also to hear about their present life in the small, ethnically mixed community, about what hurts them and bothers them when it comes to conversations about the war, and what message they would like to send from the upcoming

commemoration and to whom. Our hosts repeatedly referred to the crime that gave rise to the commemoration as an **unpunished crime**.

Even though the International Criminal Tribunal for the former Yugoslavia (ICTY) had convicted seven people for this crime under the command responsibility doctrine, and the Court of BiH had convicted one additional individual, we were not surprised to learn that the local community perceived the cause of their suffering to be an unpunished crime. Despite what had by this point amounted to thousands of convictions, that sentiment had become almost ubiquitous in the postwar period in former Yugoslavia; indeed, Edin Ramulić, a prison camp survivor, war veteran and longstanding activist from Prijedor, said at the meeting in the primary school that not only were eight people convicted of that crime, two of them had pled guilty and expressed a degree of remorse in their statements that they never subsequently denied, at least not publicly.

During those two days in central Bosnia, as well as later on, we continued discussing why, despite numerous court judgements, war crimes are still regarded as unpunished. We unearthed new questions and returned to those that had irked us before, those we had encountered working in peacebuilding in the former Yugoslavia. What does justice for victims mean? Why is the concept of justice in our context almost always equated with the justice dispensed by courts? What would be genuine, just satisfaction for victims, and can survived pain ever be overcome, transformed or alleviated? Why is there still dissatisfaction with war crimes trials and the feeling that justice has not been done, despite thousands of court judgements, a number unsurpassed in human history? We started focusing on the guilty pleas for war crimes in the former Yugoslavia and the possibility of gathering

them in one place so they could contribute to the process of peacebuilding.

Admissions of guilt for war crimes have been a topic of public discussion, albeit only fleetingly and briefly. One example is the case of Biljana Plavšić, who pleaded guilty to war crimes before the ICTY and was sentenced to 11 years in prison, but was released after seven. Both experts and the general public have engaged intensely with the issue of plea agreements and guilty pleas, their advantages and disadvantages, the motives behind them, and the sincerity of such acts, given that in her published memoirs Plavšić almost completely denied her earlier admission of guilt. Reflecting on the case of Damir Došen, who also pleaded guilty before the ICTY to war crimes committed in Prijedor and was sentenced to five years in prison, and who is now an active member of ultranationalist groups, historian Jasmin Medić (2022) wondered whether plea agreements represented deceptive or sincere admissions of guilt. One of the most recent examples of an admission of guilt is the handwritten confession of Radislav Krstić, a former high-ranking officer of the Army of Republika Srpska (VRS) who was sentenced to 35 years in prison for the Srebrenica genocide. Although Krstić did not admit to committing war crimes during his trial, after serving two-thirds of his sentence, he applied for early release, and with the application he enclosed a letter in which he admitted to participating in the genocide and asked to be allowed to pay his respects to the victims. Krstić's request for early release was rejected, and the letter was published at his request.[1]

Occasional public interest in this topic is mainly concerned with the negative aspects of plea agreements,

[1] For Krstic's letter and the Tribunal's decision see under: *Prosecutor v. Radislav Krstic* (2024).

with the dominant question – or rather fear – being that they are merely transactional, with little or no sincerity. Back when the Court of BiH had just begun its work, and when only four plea agreements had been concluded, representatives of victims' associations expressed concern that such agreements served to deceive victims. Legal experts also pointed out the negative aspects of these agreements, but the BiH Prosecutor's Office and the Court of BiH believed it was too early to draw conclusions (Alić 2008). The fickleness of public interest in this topic is best reflected in the fact that, until now, there has been no database of cases in which defendants have pled guilty to war crimes and concluded agreements with prosecutors.

It was Edin Ramulić's initiative to publish a book about plea agreements that prompted us, alongside other reasons, to begin our research. In the first phase of the research, we focused on the 21 courts which, alongside the ICTY, are competent for trying war crimes cases in Croatia, Bosnia and Herzegovina, and Serbia. Unfortunately, it turned out that not even these courts had a full overview of cases in which defendants had pled guilty to war crimes.[2] The database included in this book shows that a total of 105 individuals have admitted to committing war crimes before one of the competent courts. In addition, the database enables further research and we believe it is particularly valuable because the list of pleas can be used together to counter the denial of war crimes.

While we were gathering information from the courts about cases where plea agreements had been concluded, we were trying to understand where the very concept of

[2] For example, the Livno Cantonal Court in BiH initially responded that there had been no such agreements within its jurisdiction. Only after further enquiry did they respond that one person had pled guilty to committing war crimes before the court.

plea agreements had originated, how it had developed, and what purpose it served. Not being legal professionals ourselves, and the finer points of law not being our primary interest, we placed our understanding of plea agreements in this context - in which trials are an integral part of the overall postwar legacy in this region. Only once the complex legal system within which these trials take place is – at least partially – grasped, does it become clearer why people are frustrated and dissatisfied and why they talk about "unpunished crimes". Those of us who are not 'at home' in legal matters usually imagine the legal system to be a *mathematical* problem and expect the rules to be clear and strict, and the final result to be precise. In mathematics, the sum of two numbers is always the same. However, a closer look at the practice of law, including the institution of plea agreements, reveals the need for a different way of looking at the courts and the law in general.

When it comes to prosecuting those responsible for war crimes, the experience of the former Yugoslavia is a special case. Not only is the ICTY the first international tribunal founded after the Second World War, but local courts, especially those in BiH, tried an extraordinarily large number of individuals for war crimes. That number remains unprecedented and unsurpassed. In a world where the International Criminal Court (ICC) is under direct pressure from the most powerful countries, the undertaking to prosecute so many of those responsible seems an even more extraordinary historical event. While it is possible to be critical of the idea that the entire process of dealing with the legacy of war – often referred to here and elsewhere as transitional justice – is based almost exclusively on justice dispensed by courts and on the trials of those responsible for war crimes, the legacy of those courts and trials represents valuable material.

This publication is an attempt to rescue this material – specifically as it relates to individuals who have admitted to committing war crimes before the courts – from oblivion, and to offer it as a tool that can be used in countering the denial of someone's suffering, in the fight against the denial of established facts, but also as a tool to be used by those who wish to analyse in greater depth all or some of the cases in which plea agreements were concluded. The majority of those who pled guilty to war crimes have neither denied their confessions nor called them into question by subsequent actions. Moreover, there are also individuals who only admitted to war crimes after having been tried and having served their sentences,[3] thereby removing any suspicion of trading information for a lighter sentence, which arises when guilty pleas are entered during the trial. Of course, viewed in a broader context, our experience is also relevant as a guide: what are the dos and don'ts, what warrants particular attention, what was missing in the process of dealing with the legacy of war.

We owe a special debt of gratitude to the considerable number of people we spoke to while preparing this publication. Their contribution was much greater than what can be shown by citing their insights and reflections, especially given the fact that some of them have worked with us on peacebuilding for years. A list of the interviewees, along with brief descriptions, is included at the end of this publication.

In its way, this book is also a tribute to Edin Ramulić, the most tireless fighter for justice we have encountered in

[3] One example is Esad Landžo who was convicted by the ICTY of war crimes in the Konjic area. Although he did not admit to the crimes during the trial, Landžo acknowledged his responsibility after serving his sentence. A documentary film was later made about this, titled *The Unforgiven* (*Neoprošteno*) (2017).

this region. His courage, perseverance and sense of justice are an inspiration to many. Including us.

On behalf of the CNA Team
Nedžad Novalić

# Part I

# Theory and Practice

# The Founding of the ICTY and the Introduction of Plea Bargaining

*Davorka Turk*

The International Criminal Tribunal for the former Yugoslavia (ICTY), an institution founded by the UN Security Council in May 1993, was the first *ad hoc* international court established after the Second World War. At that time, the scale of the destruction and crimes was already vast, but national judicial institutions were functioning poorly or not at all, and were not considered ready or willing to conduct war crimes trials.

The ICTY was granted authority to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 (Updated Statute of the ICTY 2009: 1). This included grave breaches of the Geneva Conventions, violations of the laws or customs of war, genocide and crimes against humanity. According to Article 9 of the ICTY Statute, its competence has primacy over that of national criminal courts. The Statute stipulates that the seat of the ICTY shall be in The Hague, that the expenses of the International Tribunal shall be borne by the regular budget of the UN, that the working languages of the International Tribunal shall be English and French, and that

the President of the International Tribunal shall submit an annual report to the UN Security Council and the UN General Assembly (Updated Statute of the ICTY 2009: 1). At the proposal of the Security Council, the judges were elected to the Chambers of the International Tribunal by the General Assembly, the main deliberative body of the United Nations. The President of the International Tribunal, who was elected from among the permanent judges, was a member of the Appeals Chamber and presided over its proceedings. The maximum sentence that the ICTY (Tribunal) could impose was life imprisonment.

The procedure was new to everyone involved with the Tribunal, since such an international body had not been established since the Nuremberg and Tokyo tribunals of 1946. However, in contrast to its predecessors, where the war's victors enabled access to witnesses and evidence as well as the arrest of accused war criminals (Del Ponte 2008), the ICTY had to first gather documents and evidence. The Office of the Prosecutor did not have recourse to its own police force that could pursue the accused, and the Tribunal was not authorised to sanction countries that refused to cooperate.

When the ICTY and the International Criminal Tribunal for Rwanda (ICTR)[1] were founded in the early 1990s, the original version of the Rules of Procedure and Evidence did not foresee the possibility of plea bargaining. The creators of the ICTY Rules believed that plea bargaining was inappropriate in the context of international

[1] The International Criminal Tribunal for Rwanda (ICTR) was established in 1995 with the task of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed on the territory of Rwanda and neighbouring states between 1 January and 31 December 1994. This Tribunal was based in Arusha, Tanzania, with offices in Kigali, Rwanda.

criminal prosecution (Turner 2016: 227) for reasons that we will discuss later. The change in attitude came after the Dražen Erdemović case.

Erdemović is a Bosnian Croat. As soon as he finished his military service in the JNA he was mobilised into the Army of RBiH, then he joined the HVO, and finally ended up in the Army of Republika Srpska as a member of the 10th Sabotage Detachment. He was a mechanic by trade, but without work experience. His wife was pregnant. Following the fall of Srebrenica, his unit was ordered to go to the Branjevo Farm, where they participated in the execution of more than 1,000 men and boys. On the same day, Erdemović, along with some other members of his unit, refused an order to participate in another massacre a few kilometres further away, at the Pilica Culture Centre (Prosecutor v. Dražen Erdemović 1997). Seeking to make contact with the International Tribunal, Erdemović ultimately confided his story to a journalist and was subsequently arrested in Belgrade at the beginning of March 1996 and transferred to the ICTY soon after. He was accused of crimes against humanity, and violations of the laws or customs of war (Prosecutor v. Dražen Erdemović 1996: 2).

According to prosecutor Mark Harmon, who met with Erdemović in the detention unit, it was immediately clear that he wanted to cooperate. "I therefore made an oral offer to Mr. Erdemović and to his counsel, the offer being roughly this: plead guilty to either of the counts on the indictment, cooperate with the prosecutor, and at the time of sentencing, the prosecution would recommend a sentence not to exceed ten years. After consulting with his counsel, Mr. Erdemović accepted the offer and he pleaded guilty to a crime against humanity, murder, and the count of murder as a violation of the laws or customs of war was

dismissed. He received a ten-year sentence." (Harmon 2017)

Erdemović later appealed this sentence and the Appellate Chamber remanded the case to the Trial Chamber for new proceedings, holding that his guilty plea had not been fully informed. Namely, even though his guilty plea was unconditional, given that he had asked for nothing in return, it was obvious to the Appellate Chamber that he had not fully grasped the consequences of pleading guilty. The procedure that followed also formally established the legitimacy of the plea agreement in the context of the International Tribunal. Erdemović's example is illustrative because it is through the separate opinions of the Appellate Chamber judges that the very institution of plea agreements and their applicability at the ICTY were discussed. The standards and safeguards for accepting plea agreements, as articulated in this appeals procedure, were later confirmed through amendments to the Rules of Procedure and Evidence.

When the plea agreement was introduced into the ICTY Rules of Procedure and Evidence, the ICTY was in its fifth year. The war in BiH was over, but the scale of the crimes was not yet known. The cases that came before the Tribunal were large and complex, and the proceedings were lengthy and expensive. They often included several accused, dozens or hundreds of witnesses, as well as thousands of pages of documents (Harmon 2017). In addition, there were also difficulties in obtaining information from domestic judicial systems.

These difficulties were seen as reasons for moving away from the previously expressly negative attitude towards introducing plea agreements at the ICTY. Namely, given that the Tribunal was established primarily as a retributive mechanism, it had been thought up until then that no one should have immunity from criminal prosecu-

tion for crimes such as genocide, torture, murder, rape, wanton destruction, persecution and other inhumane acts (Updated Statute of the ICTY 2009: Art. 2-5).

The increased number of complex high-profile cases that needed to be prosecuted was accompanied by pressure on the Tribunal from the international community, particularly the USA, to accelerate its work with a view to completing its mission by 2010. Given the large number of trials, the limited capacity and duration of the Tribunal, the main justification for introducing plea bargaining at the ICTY was precisely that it would save the Tribunal resources and time.

## What is plea bargaining?

**Plea agreements** are more common in adversarial common law systems than in inquisitorial continental law systems, due to the different roles that judges, prosecutors and defence lawyers play in the two systems. However, even in criminal justice systems where plea agreements are frequently used, their application is less common when it comes to serious criminal offences.

The ICTY, i.e. the international criminal proceedings conducted there, was meant to combine these two different legal systems to a considerable extent. The concepts of guilty pleas and plea agreements were familiar to lawyers coming from common law systems – the American, English and Australian prosecutors, who comprised a large part of the Office of the Prosecutor. However, many defence lawyers came from civil law systems and were unfamiliar with the practice of plea bargaining and guilty pleas (Harmon 2017).

In the American legal system, criminal proceedings are structured in the form of an adversarial process. The

parties to the proceedings have a responsibility to investigate the facts, research the laws and regulations, and to present their case in the manner most favourable to their side. The proceedings are conducted before a body – in most cases a jury – whose task is to determine the facts. A typical criminal trial therefore entails numerous challenges to the evidence, a long jury selection process, complex instructions given to the jury and arguments that support them, motions for exclusion and myriad tactical manoeuvres made by counsel to further the interests of their client (Combs 2002: 18). This type of trial provides the defendant with every means to challenge the evidence, but makes the proceedings so expensive and time-consuming that trials can be "afforded" only by a small number of defendants. That is why around 90 percent of all American criminal cases are resolved through guilty pleas secured through plea agreements (Combs 2002: 19). Plea bargaining concentrates enormous power in the hands of the prosecutors who, in order to bargain effectively, must be afforded broad discretion over almost all prosecutorial decisions, and who, by reaching agreements with the defendants about the punishment to be imposed, largely assume the role of judge in both determining guilt and sentencing (Combs 2002: 22). Plea bargaining may take place with a suspect in the pre-indictment phase or with the accused in the post-indictment phase (Harmon 2009).

In common law jurisdictions, most plea bargaining is explicit, with the prosecution and defence openly bargaining about the concessions the defendant is to receive. The bargaining can concern either the sentence or the charges. In the case of sentence bargaining, the prosecutor agrees to recommend a specific sentence which the court will almost certainly impose. When the bargaining concerns charges, the prosecution will agree not to charge certain crimes or to dismiss part of the indictment. Plea bargaining may also be implicit: irrespective of whether

any explicit bargaining takes place, in many jurisdictions it is well established for judges to impose more lenient sentences following a guilty plea than following a conviction at trial (Combs 2002: 10).

In civil law jurisdictions, plea bargaining is seen as inconsistent with the responsibility to prosecute and the duty of the court to independently investigate the facts of the case. Continental criminal proceedings are usually not adversarial and are instead structured in the form of an inquiry, directed by a judge on the basis of a dossier – a collection of written materials compiled by government officials who have investigated the case (Combs 2002: 30). The dossier is made available in its entirety to the defendant or his counsel and is supposed to contain all the evidence relevant to the case. The role of defence counsel is far more limited than in the US, for example, and the bulk of the questioning is carried out by either a judge or the President of the Chamber who is authorised to raise all issues relevant to the charge in an effort to determine the material truth. The very idea that the parties could resolve a case informally and through agreement is in stark opposition to this type of procedure. Evidentiary rules are very streamlined compared to those in the US justice system and rely more on documentary evidence than on time-consuming oral testimony. Given that all the evidence is made available to all the participants, the proceedings can focus on relevant issues, making trials in continental legal systems on average much shorter than those in the US (Combs 2002).

Until relatively recently, countries with continental legal systems had almost no practical need to resort to non-trial alternatives. The need for alternatives arose with increasing crime rates, especially of petty crime and complex financial crime, and due to the increased blending of accusatorial and inquisitorial systems. The convergence is

partly a result of larger caseloads, leading to the borrowing of institutions and practices that could lighten the burden (Combs 2002: 43-44). That is more or less what happened when it came to introducing the practice of plea bargaining at the ICTY.

The ICTY was made up of the following organs (Updated Statute of the ICTY 2009: 11):

- The Chambers – comprising three Trial Chambers and an Appeals Chamber – in which the judges' main responsibility entailed considering testimonies and presented evidence, deciding whether the accused was to be convicted or acquitted, and imposing sentences on those proven guilty. Permanent judges also had an important regulatory function; they drafted and adopted the fundamental legal documents of the court, including the Rules of Procedure and Evidence, as well as rules governing the detention of the accused. The composition of the Appeals Chamber was the same at the Tribunal for the former Yugoslavia and at the International Criminal Tribunal for Rwanda.
- The Prosecutor – responsible for the investigation and prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia from 1 January 1991.
- The Registrar/Registry – the body responsible for the administration and servicing of the ICTY. This included administrative services to the Tribunal, including the translation of documents and management of courtroom operations. The Registry recorded and archived evidentiary material, provided legal assistance and managed intervention programmes, provided assistance and protection to witnesses, and managed the detention unit of the Scheveningen prison (UN 2015).

Initially, the proceedings at the Tribunal followed an accusatorial structure, i.e. they allowed parties to act with a high degree of autonomy in presenting their case. However, in an effort to expedite proceedings, changes to the rules introduced more inquisitorial elements of continental law. The parties were still primarily responsible for preparing their case, but were also obliged to submit substantial documentation to the Trial Chamber and the opposing side in the pre-trial phase, thereby reducing surprise and enabling the Trial Chamber to restrict the number of witnesses and the amount of time required for their examination. The judges exercised control over the manner and order of interrogating the witnesses and presenting evidence "so as to make the interrogation and presentation effective for the ascertainment of the truth and avoid needless consumption of time" (Combs 2002: 76).

The way the ICTY and ICTR conceived of and practiced plea bargaining reflected their unique blend of non-adversarial and adversarial proceedings (where each party is guaranteed the right to be heard) and the purpose for which these tribunals were established.

## Elements of plea bargaining

Discussing the conditions of Erdemović's guilty plea, the Appeals Chamber noted the advantage of a guilty plea with regard to the speed or efficiency of the trial, but emphasised that this must not compromise or prejudice the requirements of justice. Therefore, it should include appropriate care for the protection of victims and witnesses, but also the fundamental rights of the accused. If the accused pleads guilty and decides to waive his right to a

trial, such a waiver may only be accepted under strict conditions (Prosecutor v. Dražen Erdemović 1997b). Dissenting opinions of judges of the Appeals Chamber led to the formulation of ***Rule 62bis*** (Guilty Pleas) in the *Rules of Procedure and Evidence* (2002: 52). This rule stipulates:

(i) that the guilty plea has been made voluntarily, i.e. it must not be affected by any threats, inducements or promises. The Appeals Chamber pointed out that a guilty plea is considered voluntary provided that the accused is "mentally fit to understand the consequences of pleading guilty" (Prosecutor v. Dražen Erdemović 1997b: 10).

(ii) that the guilty plea is informed – that it is given with full awareness of the legal consequences that arise from it, i.e. of the rights that the accused waives in relation to his trial. The court must also confirm that the defendant understands that the agreement is not binding on the court, and that the defendant may receive a sentence up to the maximum available at the international criminal courts. If a defendant affirms that he understands the charges and the sentencing consequences of the charges, this is likely to be sufficient to show that the guilty plea is informed (Turner 2016: 235).

(iii) that the guilty plea is not equivocal – the accused cannot be allowed on the one hand to admit to his guilt and by the same token nullify this plea by claiming that he acted in self-defence, or through a mistake of fact, or for some other reason which would exculpate him (Prosecutor v. Dražen Erdemović 1997c: 10).

(iv) that there is a sufficient Mejakić for a guilty plea, i.e. for the crime and the accused's participation in it, either on the basis of independent indicia or of lack of any material disagreement between the parties about

the facts of the case (Rules of Procedure and Evidence 2002: 52). The Trial Chamber may then enter a finding of guilt and instruct the Registrar to set a date for the sentencing hearing (Cook 2005: 481). In other words, the court can establish factual basis resting solely on the parties' agreement. This rule effectively allows the parties to engage in "fact bargaining" (Turner 2016: 236).

The ICTY's practice has been to formalise plea agreements in writing, clearly demonstrating that the accused fully understood the consequences of pleading guilty, that he had been given full information in a timely manner, that the accused's plea was unequivocal and given voluntarily, and that there was a sufficient factual basis for it.

In the Erdemović case, the Appeals Chamber concluded that his initial guilty plea was not informed – the Chamber was not convinced that Erdemović was aware of the rights he was waiving: the right to a trial, the right to be presumed innocent until proven guilty, and the right to prove his innocence. The Chamber also noted that there was a significant difference between crimes against humanity, to which Erdemović pleaded guilty, and violations of the laws and customs of war, the count of the indictment that was withdrawn. The accused was not adequately informed that a crime against humanity is a more serious crime and that it carries a more serious punishment (Turner 2016: 234).

Erdemović reappeared in court on 14 January 1998 and entered a guilty plea to a single charge of murder as a violation of the laws or customs of war. This charge related to the identical conduct that had served as the factual basis

for his former guilty plea. His second guilty plea[2] was entered pursuant to a written plea agreement, filed on 18 January 1998, being the first written plea agreement in the Tribunal's history (Harmon 2017).

An additional set of rules was adopted to regulate the plea agreement procedure and plea bargaining between the defence and the prosecutor. ***Rule 62ter*** (Plea Agreement Procedure) was adopted in 2001 and reads:

(A) The Prosecutor and the defence may agree that, upon the accused entering a plea of guilty to the indictment or to one or more counts of the indictment, the Prosecutor shall do one or more of the following before the Trial Chamber:

  (i) apply to amend the indictment accordingly;

  (ii) submit that a specific sentence or sentencing range is appropriate;

  (iii) not oppose a request by the accused for a particular sentence or sentencing range.

(B) The Trial Chamber shall not be bound by any agreement specified in paragraph (A).

[2] The key elements of the plea agreement were: (a) The accused would plead guilty to count 2, a violation of the laws or customs of war, in full understanding of the distinction between that charge and the alternative charge of a crime against humanity, and the consequences of his plea; (b) The accused's plea was based on his guilt and his acknowledgement of full responsibility for the actions with which he is charged; (c) The parties agreed on the factual basis of the allegations against the accused and in particular the fact that there was duress; (d) The parties, in full appreciation of the sole competence of the Trial Chamber to determine the sentence, recommended that seven years' imprisonment would be an appropriate sentence in this case, considering the mitigating circumstances; (e) In view of the accused's agreement to enter a plea of guilty to count 2, the Prosecutor agreed not to proceed with the alternative count of a crime against humanity (Prosecutor v. Dražen Erdemović 1998: 18).

(C) If a plea agreement has been reached by the parties, the Trial Chamber shall require the disclosure of the agreement in open session or, on a showing of good cause, in closed session, at the time the accused pleads guilty in accordance with *Rule 62 (vi),* or requests to change his or her plea to guilty (Rules of Procedure and Evidence 2002: 52-53).

Judges do not participate in plea bargaining between parties to the proceedings. If the parties fail to conclude a plea agreement, discussions held between them remain confidential and cannot be invoked by either side in any court proceedings.

The provisions of *Rule 62ter* indicate that judges retain control over the implementation of plea agreements – according to paragraph B of *Rule 62ter*, the Trial Chamber shall not be bound by any agreement between the prosecutor and the accused, and once the charges have been confirmed, the prosecutor cannot withdraw or amend those charges without the consent of the court. However, it was generally accepted that, if this practice were to continue, defendants must receive a more lenient sentence in return for admitting their guilt. Therefore, in most plea-bargained cases, judges followed the parties' agreement (Turner 2016: 237).

Plea agreements **must be in writing and must be disclosed to the court in a public session** (Turner 2016: 231). The court will then review the agreement to ensure that the plea was given voluntarily and that the agreement is fair and consistent with the interests of justice, including the interests of victims. If the Trial Chamber is not satisfied with the conditions of the agreement or finds that it does not adequately protect the accused's rights, it may reject the guilty plea as not being in the interests of justice. Procedural safeguards were introduced in order to maintain the integrity of the court and protect the rights

of the accused, but because of the large number of cases and the lack of resources, judges themselves were usually interested in expediting cases and often held perfunctory hearings that failed to probe meaningfully into the facts of the case or the voluntariness of the guilty plea (Turner 2016).

The retrial in 1998 led to Erdemović's plea agreement and established procedures that would ultimately result in a total of 19 plea agreements before the ICTY. The agreement in the *Erdemović* case involved **sentence bargaining**. This usually entails proposing a fixed prison sentence or a sentence range. The essence of these negotiations is for the accused to know the position of the prosecutor on sentencing before accepting responsibility for a crime or crimes to which he pleads guilty (Harmon 2017). As pointed out earlier, recommendations issuing from plea bargaining have no binding effect on the Chamber.[3]

The first plea bargain reached through negotiations between the accused and the prosecutor was the agreement with Stevan Todorović in the Šamac case. In this case, the prosecutor did not only engage in sentence bargaining, but introduced the concept of **indictment bargaining**. This means that the prosecutor agreed not to include certain crimes in the indictment, i.e. to withdraw certain counts of the indictment in order for the suspect to plead guilty.

Stevan Todorović, along with four others, was accused of crimes committed as part of the ethnic cleansing of Bosanski Šamac and Odžak in northern BiH. As chief of police in Bosanski Šamac, Todorović participated in the takeover of the municipality and the deportation and detention of the non-Serb population. In his capacity as the

[3] 62 ter (B) (Rules of Procedure and Evidence 2002: 53).

chief of police, he participated in killings, sexual assaults and beatings. He was indicted on 27 counts of crimes against humanity, grave breaches of the Geneva Conventions, and violations of the laws or customs of war (ICTY n.d.).

Todorović pleaded not guilty to these counts of the indictment and prepared for the trial together with his co-defendants. Unlike them, however, he had a bargaining chip – upon arrival in The Hague, Todorović requested an evidentiary hearing to address the legality of his arrest.[4] While the case was pending before the Appeals Chamber, Todorović and the Prosecution negotiated a plea agreement, in accordance with which Todorović pleaded guilty to one count of the indictment – persecution as a crime against humanity. He promised to testify both against his co-defendants and in other cases, and withdrew his motions challenging the legality of his arrest (Combs 2002: 119).

The Prosecution, for its part, withdrew the remaining twenty-six counts of the indictment and agreed to recommend a prison sentence of five to twelve years to the Trial Chamber. This may have seemed like a substantial prosecutorial concession, but in the factual basis for the crimes to which he pled guilty, Todorović admitted to the same killing, beatings, sexual assaults, torture, and deportations that were included in the 26 dropped counts. The real sentencing concession bestowed on Todorović was the prosecution's promise not to seek a sentence exceeding twelve years' imprisonment. At Todorović's sentencing hearing, the prosecution pointed out that, without the plea agreement, Todorović would have probably been sentenced to a term of imprisonment ranging from fifteen to twenty-five years or more (Combs 2002: 121).

[4] Todorović claimed that he had been abducted by four masked men, who spoke Serbian, and handed over to SFOR (Bogati, 1999).

At the sentencing hearing, the prosecution characterised his cooperation as significant, noting that the defendant had disclosed information about crimes that "might not have been accessible to the Prosecution but for his cooperation" and had agreed to testify against his earlier co-defendants and in other cases. In addition to cooperation with the Prosecution, which was considered the most important mitigating factor for the purpose of sentencing, the Trial Chamber also took into account his guilty plea, his expression of remorse for the crimes, as well as the issue of his diminished mental capacity. He was sentenced to ten years (Prosecutor v. Stevan Todorović 2001).

## Inconsistency in sentencing

International criminal courts have little in the way of guidance when it comes to the sentencing range for crimes against humanity or genocide, as there is little existing caselaw to provide a fundamental framework for sentencing. An additional problem is that, within what framework there is, sentences have been imposed for identical crimes but on defendants with varying levels of responsibility.

As institutions created by the international legal system and operating within it, international criminal courts represent a combination of different legal systems, providing a rather broad constitutional framework in which they must develop many aspects of substantive and procedural law. At the same time, there is no legislature to provide them with guidance, whereas there are legislatures in national legal systems (Chifflet and Boas 2012). Consistency in sentencing can be assessed only comparatively,

but a comparison between a relatively small number of sometimes very diverse cases is unlikely to be of much help.

Despite the Prosecution's requests that mandatory sentencing guidelines be established based on the functions and purposes of punishment in the International Tribunal's legal system (Prosecutor v. Ante Furundžija 2000: 238), the Appeals Chambers have repeatedly reaffirmed that the sentence must always be decided according to the facts of each particular case and the individual guilt of the perpetrator.[5] At the same time, sentences imposed in similar cases on individuals of similar rank and level of responsibility should be comparable, and therefore helpful in future cases (Chifflet and Boas 2012: 145). Was it really so?

## Sincere remorse or mere bargaining

"**Substantial cooperation with the Prosecutor by the convicted person before or after conviction**" (Rules of

[5] "The Appeals Chamber notes that the practice of the Tribunal with regard to sentencing is still in its early stages. Several sentences have been handed down by different Trial Chambers but these are now subject to appeal. Only three final sentencing judgements have been delivered [...] It is thus premature to speak of an emerging 'penal regime', and the coherence in sentencing practice that this denotes. It is true that certain issues relating to sentencing have now been dealt with in some depth; however, still others have not yet been addressed. The Chamber finds that, at this stage, it is not possible to identify an established 'penal regime'. Instead, due regard must be given to the relevant provisions in the Statute and the Rules which govern sentencing, as well as the relevant jurisprudence of this Tribunal and the ICTR, and of course to the circumstances of each case" (Prosecutor v. Ante Furundžija 2000: 237).

Procedure and Evidence 2002: *Rule 101 (B) (ii)*) is a mitigating factor explicitly stipulated in the ICTY Rules in relation to sentencing. This cooperation includes testifying (or promising to testify) for the prosecution in other cases, and admitting to certain facts in court. The Rules stipulate that when determining the sentence, all mitigating and aggravating circumstances, including the gravity of the offence and the individual circumstances of the convicted person, the general practice regarding prison sentences in the courts of the former Yugoslavia, as well as the time the accused spent in custody, must be taken into account (Rules of Procedure and Evidence 2002: *Rule 101 (B)*). However, the Rules provide no guidance on the comparative "gravity" of offences within the Tribunal's jurisdiction, nor do they indicate which "individual circumstances" might be relevant to sentencing (Combs 2002: 79).

These factors are expressed very broadly, and trial chambers have wide discretion as to how to apply them to the particular facts brought before them (Chifflet and Boas 2012: 147). An earlier sentencing decision may provide guidance if it relates to the same offence committed in very similar circumstances; otherwise, the Trial Chamber is bound only by the provisions of the Statute and the Rules (Prosecutor v. Ante Furundžija 2000: 250). It is to be expected that plea agreements acceptable to the public should be those that are sincere and given without coercion or trade-offs. Dražen Erdemović's guilty plea is probably seen as such, especially when it comes to cooperating with the ICTY Prosecutor.

Erdemović provided the Office of the Prosecutor with information about four criminal events the Office had not known about – summary executions in Srebrenica and Vlasenica, massacres at the Branjevo Farm in Pilica, where some 1200 civilians were killed, and at the Pilica Culture

Centre where some 500 civilians were killed. Based on this information, the Office of the Prosecutor conducted an on-site investigation which confirmed the veracity of Erdemović's claims. In addition to the locations, Erdemović also provided the Office of the Prosecutor with the names and identities of many perpetrators of these crimes (Prosecutor v. Dražen Erdemović 1996b: 317). As a witness, he made a crucial contribution with his testimony at the *Rule 61* hearing in the case of Radovan Karadžić and Ratko Mladić, which resulted in the issuing of international arrest warrants.

Erdemović's cooperation with the Prosecution was taken as a significant factor in the mitigation of his sentence. The Prosecution commended his efforts to surrender to the International Tribunal, his guilty plea and expression of remorse, as well as his acceptance of responsibility for the crimes (Prosecutor v. Dražen Erdemović 1996b: 315). The Trial Chamber concurred with this when delivering the sentence.

Whereas the absence of any guarantee that a guilty plea would necessarily entail a lighter sentence could be seen as an argument in favour of plea bargaining, **a guilty plea was almost always treated as a mitigating factor**, even when it occurred relatively late in the proceedings.

An example of this is the trial of Duško Sikirica, Damir Došen and Dragan Kolundžija for crimes committed in the Keraterm camp. The admission of guilt was made only after the trial had already started and after the prosecution had finished presenting its evidence – which had taken 33 court days and included testimony from 34 witnesses. Kolundžija was the first to admit guilt, followed by Došen and Sikirica.

As in the Todorović case, where a guilty plea had previously been entered, each of the defendants made statements at the sentencing hearing expressing remorse,

and the Prosecution, as in the Todorović case, agreed to recommend sentences that fell within specific ranges. The difference was that the defendants Sikrica, Došen and Kolundžija did not promise to cooperate with the prosecution (Combs 2002: 124-125).

The Todorović case established an example of desirable practice – Todorović pleaded guilty before the start of the trial, and the Trial Chamber, noting the savings in resources thereby made to the International Tribunal, concluded that "...a plea of guilt will only contribute to the above-described public advantage if it is pleaded before the commencement of the trial against the accused. Needless to say, if pleaded at a later stage of the proceedings, or even after the conclusion of the trial, a voluntary admission of guilt will not save the International Tribunal the time and effort of a lengthy investigation and trial" (Prosecutor v. Stevan Todorović 2001: 81).

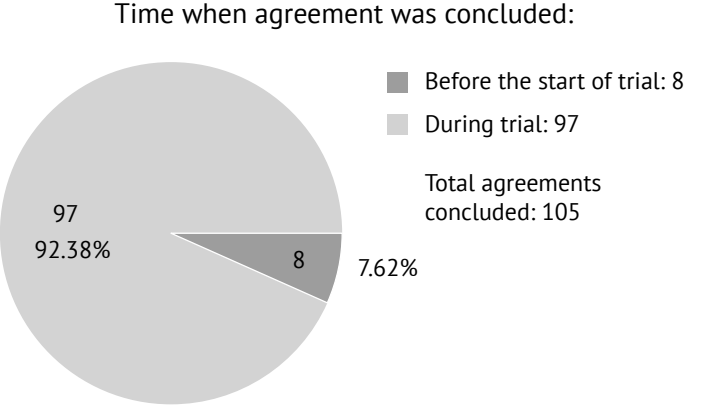
Hence, the Trial Chamber in the Sikirica, Došen and Kolundžija case had to explain its deviation from this principle.

In each of the individual cases, when considering the factors relevant to sentencing, the Trial Chamber noted that **the guilty plea is the primary factor to be considered in mitigation of the sentence**. The Judgement further elaborates on how a guilty plea facilitates the work of the International Tribunal, saving the time and effort of a lengthy investigation and trial, but also that a benefit accrues to the Trial Chamber **notwithstanding the timing of the guilty plea**, because a it contributes directly to one of the fundamental objectives of the International Tribunal: namely, its truth-finding function.

Accordingly, "while an accused who pleads guilty to the charges against him prior to the commencement of his trial will usually receive full credit for that plea, one who enters a plea of guilt any time thereafter will still stand to receive some credit, though not as much as he would

have, had the plea been made prior to the commencement of the trial" (Prosecutor v. Sikirica, Došen, Kolundžija 2001: 148-150). In this specific case, the guilty pleas of Sikirica and Došen were taken into account to a certain extent, while Kolundžija's guilty plea was taken into account to the maximum extent because "unlike his co-accused, [he] pleaded guilty before the commencement of his case, although after the close of the Prosecution case" (Prosecutor v. Sikirica, Došen, Kolundžija 2001: 228). For all three of the accused, the Trial Chamber accepted their sincere remorse as a mitigating factor, and the differences in their sentences resulted from the classification of the gravity of the crimes and on whether they had acted to alleviate the conditions of the prisoners at the Keraterm camp.

As opposed to a pure guilty plea (*Rule 62bis* of the Rules), a plea agreement (*Rule 62ter* of the Rules) entails two negative aspects (Prosecutor v. Dragan Nikolić 2003: 122). First of all, it is easy to imagine that **the accused would plead guilty simply to receive a lighter sentence in return**. There is another problem, the plea only relates to **the facts admitted to in the agreement,**



**which might not always reflect the entire available factual and legal basis.** Pursuant to the provisions, the accused before the ICTY are considered to plead guilty and disclose facts only for those counts in the indictment that remain in the indictment. The public may perceive this as downplaying the scale of the crime, as it allows for distorting the scope of the facts that could otherwise have been established through a trial.

While the accused's cooperation with the prosecutor may lead to new information or insights into previously unexplored areas, the agreement will necessarily limit the historical record compared to what might have been learned about a particular case during a regular trial. However, the judges recall that the Tribunal is not the final arbiter of historical facts and that its task is to ensure that justice be done and be seen to be done (Prosecutor v. Dragan Nikolić 2003: 122).

Plea bargains pertaining to indictments are more controversial due to concerns that they might obscure the true facts of the case and the full extent of the accused's culpability. The decision to drop charges from the indictment can be made for various reasons; commonly for lack of evidence beyond reasonable doubt or lack of witnesses. However, as we shall see in the Plavšić case, other factors can also influence that decision, particularly when it comes to indictments against high-ranking officials.

## Remorse

Remorse is a factor that warrants particular attention given that it certainly affects the final outcome of the judgement, and especially given its highly subjective nature (Tieger 2003: 778).

Reliance on the accused's remorse as a mitigating factor began as early as the Erdemović case. As he had consistently pleaded guilty since his first appearance in court, Erdemović did not wish to testify in the retrial. The evidence included transcripts from previous hearings, as well as psychiatric and psychological evaluations from prior proceedings. The only witness to give oral testimony before the Trial Chamber was Jean-René Ruez, who had led the Prosecution's investigation into the fall of Srebrenica. As part of the Prosecution's investigations, Ruez had an opportunity to study the accused up close and testified that his feelings of sorrow and remorse were undoubtedly genuine and real (Prosecutor v. Dražen Erdemović 1998: 14). Erdemović testified to his responsibility, as well as his remorse, on several occasions as a witness in the Karadžić and Mladić cases, as well as during previous proceedings in his case:

"First of all, honourable Judges, I wish to say that I feel sorry for all the victims, not only for the ones who were killed then at that farm, I feel sorry for all the victims in the former Bosnia and Herzegovina regardless of their nationality" (Prosecutor v. Dražen Erdemović 1996b).

The Trial Chamber also took into account the steadfastness of his guilty conscience as reflected in his readiness to surrender to the International Tribunal in order to answer for his actions, as well as the fact that he pled guilty, which put him in a position to be convicted. In short, it seemed that Erdemović's conduct reflected a classic case of deep self-condemnation and regret over his actions and as such it was taken as a genuine mitigating factor in this case, establishing an implicit standard for the cases that followed (Tieger 2003: 780).

In the Todorović case, the Trial Chamber specified that it "must be satisfied that the expressed remorse is sincere" (Prosecutor v. Stevan Todorović 2001: 89) in order

to accept it as a mitigating factor in its determination of the sentence. In the view of the Trial Chamber, Todorović's expressed remorse, as well as his desire to contribute to reconciliation in BiH had been corroborated by the fact that he pleaded guilty and cooperated with the Prosecution. Therefore, his remorse was deemed sincere and taken into account as a mitigating circumstance.

The assessment of the credibility of remorse on the part of the accused seems to rely on a simple comparison of objective circumstances, appropriate or inappropriate to "sincere remorse", along with an evaluation of the accused's conduct. However, remorse can mean different things in different jurisdictions and is likely to be linked to a particular society's general views of punishment and redemption (Tieger 2003: 785). The creators and early practitioners of the Tribunal mostly made use of criminal law from liberal countries where remorse and apology are routinely taken into account when determining sentences. In that sense, remorse should be an indication of someone's (better) character, lower probability of recidivism and greater potential for rehabilitation (Diggelman 2016). Although there is no empirical evidence to support this correlation, defendants who are remorseful are likely to receive lighter sentences, while those who are not are more likely to receive stricter sentences (Zhong et al. 2014: 40). In the context of social relations, expressing remorse is seen as having powerful reconciliatory healing effects for perpetrators and victims,[6] especially in the case of mass crimes, seeing as it enables the reaffirmation of existing social norms (Zhong et al. 2014).

[6] If circumstances are favourable, expressions of sincere remorse and adequate apologies in principle have the potential to improve relations between perpetrators and victims enormously and thus to promote reconciliation (Diggelman 2016: 1080).

There have been instances, more than one, where, even when this was not the case in actuality, trial chambers have found that under certain circumstances, a guilty plea itself may be said to be a demonstration of remorse. However, guilty pleas and cooperation are both factors that can exist quite independent of a genuine state of remorse (Tieger 2003: 782).

The case of Biljana Plavšić is generally thought to be the best example of this. The accused successively held presidential offices in BiH, she was a member of the Presidency of SR BiH, then the first member of the Presidency of the Republic of BiH, then a vice-president, and then also the president of Republika Srpska (1996-1998). Plavšić was accused of having participated in the persecution of Bosnian Muslims, Bosnian Croats and other non-Serbs in 37 Bosnian-Herzegovinian municipalities by support-ing a campaign of ethnic separation which resulted in the death of thousands and the expulsion of thousands more in circumstances of great brutality (ICTY n.d.b).

The consolidated indictment against Biljana Plavšić and Momčilo Krajišnik was confirmed in February 2001. Plavšić was accused, on the basis of individual and command responsibility, in eight counts of the indictment for: genocide, complicity to commit genocide, crimes against humanity (persecutions, extermination and murder, deportation and inhumane acts) and violations of the laws or customs of war (murder) (Prosecutor v. Biljana Plavšić 2003: 2). Although initially claiming she was not guilty, in October 2002 she pleaded guilty to count 3 of the indictment – acts of persecution as a crime against humanity. In exchange for pleading guilty on this count, the Prosecution agreed to move to dismiss the remaining counts of the indictment and they were subsequently dismissed by a decision by the Trial Chamber on 20 December 2002

(Prosecutor v. Biljana Plavšić 2003: 5). On that occasion, Plavšić reiterated her guilty plea and read a statement that many would later consider a controversial admission of guilt.

"Although I was repeatedly informed of allegations of cruel and inhuman conduct against non-Serbs, I refused to accept them or even to investigate. In fact, I immersed myself in addressing the suffering of the war's innocent Serb victims. This daily work confirmed in my mind that we were in a struggle for our very survival and that in this struggle, the international community was our enemy, and so I simply denied these charges, making no effort to investigate. I remained secure in my belief that Serbs were not capable of such acts. In this obsession of ours to never again become victims, we had allowed ourselves to become victimisers" (ICTY n.d.b: 4).

Among the dismissed counts of the indictment was the one for genocide. Chief Prosecutor Carla Del Ponte would later write in her memoirs: "My fundamental error was not obliging her to agree on paper to testify against the other accused (Krajišnik, Karadžić, Mladić, Milošević). I accepted verbal assurances and was deceived. I had felt that my personal contact with Plavšić, despite her racial-superiority claptrap, had been so cordial that I could trust her. Again, this was my error. She got up during her sentencing hearing and read out a statement full of generalistic *mea culpas* but lacking compelling detail. I listened to her admissions in horror, knowing she was saying nothing. In the end, the prosecution sought a sentence of twenty-five years, and she complained after the Trial Chamber sentenced her to eleven." (Del Ponte 2008: 162)

It seems that the trap Carla Del Ponte had fallen into was a factor that should have been taken into account. Even though leadership was an aggravating factor at the

Tribunal, it sometimes evidently "ha(d) difficulty imposing the harshest of sentences on people of education, who come before a Trial Chamber as intelligent, well dressed and articulate in their presentation." What else could explain the substantial difference in the length of sentences imposed on Dario Kordić, Momčilo Krajišnik and Biljana Plavšić? (Chifflet and Boas 2012: 151). It should also be kept in mind that trials involving high-ranking military and political officials boil down to proving, or finding a legal connection between the accused and the crimes committed. In an effort to expedite trials, **changes to rules of evidence at the ICTY** gave priority to **introducing written evidence, written witness statements**, factual findings from previous trials and the like, making the reality of the crimes seem abstract, and their horrific consequences invisible. **Cases involving direct participation in a (proportionately) limited number of crimes have regularly attracted disproportionately high sentences when compared with cases where the convicted person was responsible in a leadership, rather than direct, capacity, for organising or implementing widespread attacks or campaigns of persecution leading to a very high number of victims** (Chifflet and Boas 2012: 147), but where they themselves had not been present at the scene.

Therefore, despite the gravity of the offences, the massive scope of the persecutions, the numbers killed, deported and forcibly expelled, the grossly inhumane treatment of detainees (Prosecutor v. Biljana Plavšić 2003: 52), the scope of the wanton destruction of property and religious buildings,[7] and despite her leadership position,

[7] The results of the campaign of forced expulsions were terrifying: in the 37 municipalities, approximately 850 Muslim and Croat-occupied villages were physically destroyed and no longer exist. Entire families disappeared and the numbers of non-Serbs in these

the vulnerability of the victims and the depravity of the crimes committed against them being considered aggravating circumstances against the accused, the judgement reflects a story about a "well educated, now delicate old lady, who, caught up in events, came to see the error of her ways" (Chifflet and Boas 2012: 149).

Although her superior position was deemed an aggravating factor, the Trial Chamber also found that "the accused was not in the very first rank of the leadership: others occupied that position. She did not conceive the plan which led to this crime and had a lesser role in its execution than others" (Prosecutor v. Biljana Plavšić 2003: 57). Although Plavšić took responsibility for her actions, she stated that the responsibility was hers "alone" and "did not extend to other leaders who have a right to defend themselves" (Combs 2003: 933). In the same vein, Plavšić categorically refused to cooperate with the prosecution by providing information or testifying in other cases. The prosecution did not mention her refusal to cooperate in its sentencing brief.

The Trial Chamber concluded that "it may be argued" (Prosecutor v. Biljana Plavšić 2003: 73) that by her guilty plea, Mrs. Plavšić had already demonstrated remorse. Her admission and remorse, together with "the substantial

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municipalities fell from 726,960 (53.97%) in 1991 to 235,015 (36.39%) in 1997. The campaign of killings resulted in 1,100 recorded cases of mass killings and 320 sites where the bodies of individuals were found. In the 37 municipalities there was a total of 408 detention facilities where people were detained by force and exposed to serious physical and mental abuse, which included severe beatings, as well as unbearable living conditions with insufficient food and a complete lack of sanitary facilities. The wanton destruction of cultural property was illustrated by the destruction of cultural monuments and sacred sites in about 29 of the 37 municipalities listed, including the destruction of over 100 mosques, 2 mektebs and 7 Catholic churches (ICTY n.d.b: 5).

saving of international time and resources as a result of a plea of guilty before trial" formed the basis for a discount in her sentence. The Trial Chamber also added that her guilty plea would be important for "establishing the truth in relation to the crimes and furthering reconciliation in the former Yugoslavia" (Prosecutor v. Biljana Plavšić 2003: 73). Being satisfied that Biljana Plavšić was "instrumental in ensuring that the Dayton Agreement was accepted and implemented in Republika Srpska" (Prosecutor v. Biljana Plavšić 2003: 93), the Trial Chamber added voluntary surrender, post-conflict conduct and age to the mitigating circumstances.

It can certainly be said that the admission of guilt by a high-level defendant had some reputational benefits for the Tribunal (Combs 2003), regarding how it was perceived and questions of its legitimacy. However, tribunals can identify the emotional component of remorse – the described feelings of guilt and shame – only indirectly through circumstantial evidence or reliance on declarations of the accused. The practice of directly inferring sincerity of remorse from guilty pleas benefits both the tribunal and the perpetrators, but not the victims. (Diggelman 2016).

In stark contrast to the conduct of Biljana Plavšić was that of Milan Babić.

Babić first contacted the Tribunal in October 2001 when he found out that in one of the indictments raised against Slobodan Milošević (September 2001), he was named as a co-perpetrator in crimes committed in Croatia. He agreed to be interviewed by the Prosecution as a suspect. Following the interviews, he agreed to testify in the Milošević case, which he did in November 2002. Babić testified for twelve days, initially as a protected witness and then publicly during the last two days of his testimony (Prosecutor v. Milan Babić 2004: 3).

The indictment against Babić was confirmed on 17 November 2003. It alleged that as a participant in a joint criminal enterprise he was responsible for the planning, preparation, or execution of persecutions of the Croats and other non-Serb civilian populations in Krajina, Croatia, from August 1991 to February 1992. He was charged with persecution (crimes against humanity), murder, cruel treatment, wanton destruction of villages or devastation not justified by military necessity, and destruction or wilful damage to institutions dedicated to education or religion (violations of the laws or customs of war) (Prosecutor v. Milan Babić 2004: 4).

Shortly after the indictment was raised, Babić surrendered to the Tribunal, and reached a plea agreement with the Prosecution in January 2004. In the first version of the plea agreement, Babić admitted to having aided and abetted the crime of acts of persecution, committed by a joint criminal enterprise, as charged in count 1 of the indictment. The plea agreement was modified a few days later when Babić agreed to revise his plea of guilty to that of a co-perpetrator in the joint criminal enterprise (ICTY n.d.d: 3).

Although the Prosecution contended that Babić "had no *de facto* control over the forces (neither military nor police) that committed the crimes" (Prosecutor v. Milan Babić 2004: 54) but only a limited role in the joint criminal enterprise, the Trial Chamber did not accept this interpretation. It concluded that he "formulated, promoted, participated in, and encouraged the development and implementation of policies of the SDS in the SAO Krajina/RSK" (Prosecutor v. Milan Babić 2004: 24 ) and participated in meetings with the Serbian, SFRY, and Bosnian-Serb leadership at which these policies were defined. As a regional political leader he enlisted the resources of the SAO Krajina to further the joint criminal enterprise, and

by his speeches and media exposure prepared the ground for the Serb population to accept that their goals could be achieved through acts of persecution. By allowing the campaign of persecutions to continue he amplified its consequences. The Chamber found that the fact that Babić was and remained in a high-level political position during the campaign of persecutions amounted to an aggravating circumstance (Prosecutor v. Milan Babić 2004: 61).

It helped his case that he did not deny the seriousness of the crimes he committed and to which he pleaded guilty (ICTY n.d.d: 5). The Trial Chamber also noted that his acceptance of guilt was exceptional because his admission of facts and of guilt made it likely that an indictment would be issued against him. He gave extensive interviews to investigators as a suspect, during which he admitted bearing a certain responsibility. He stated the following:

"The lasting media campaign from Belgrade and the production of these events by Slobodan Milošević, events which occurred in Croatia, then also shaped such a public opinion, but now looking back on these events, I'm fully aware that also I, because I succumbed to this vanity of mine, influenced in some way that such a public opinion be created. Maybe I could describe it as ethno-selfishness and that's probably what I also became – an ethno-egoist, ethnic egoist, a person who exclusively wanted to see to the interests of people to which I belonged and that my emotions and feelings decreased and I became less sensitive and I neglected the interests and the suffering of other peoples, at the time the Croatian people" (Prosecutor v. Milan Babić 2004: 70).

His guilty plea gave a detailed description of the events he participated in and was an expression of sincere remorse. This sets Babić's guilty plea apart from all the

other guilty pleas accepted by the Tribunal. Apart from Dražen Erdemović, all the others pleaded guilty after having spent considerable time in custody, close to the start of trial, when it became clear that the Prosecution had irrefutable evidence of their guilt (Prosecutor v. Milan Babić 2004: 67). Babić was the first of the accused in the history of the International Tribunal for whom it was not necessary to issue an arrest warrant. He had already expressed his remorse in the initial interviews with the investigators of the Prosecution, as well as subsequently before the Trial Chamber when he pleaded guilty.

"I come before this Tribunal with a deep sense of shame and remorse. I have allowed myself to take part in the worst kind of persecution of people simply because they were Croats and not Serbs. Innocent people were persecuted; innocent people were evicted forcibly from their houses; and innocent people were killed. Even when I learned what had happened, I kept silent. Even worse, I continued in my office, and I became personally responsible for the inhumane treatment of innocent people.

"These crimes and my participation therein can never be justified. I'm speechless when I have to express the depth of my remorse for what I have done and for the effect that my sins have had on the others. I can only hope that by expressing the truth, by admitting to my guilt, and expressing the remorse can serve as an example to those who still mistakenly believe that such inhuman acts can ever be justified. Only truth can give the opportunity for the Serbian people to relieve itself of its collective burden of guilt.

"Only an admission of guilt on my part makes it possible for me to take responsibility for all the wrongs that I have done" (Prosecutor v. Milan Babić 2004: 83).

Babić volunteered to speak with the Prosecution. He provided useful information and important documents.

He also confirmed the authenticity of a large number of documents already in the possession of the Prosecution, thereby saving the immense resources that would have been required to gather and authenticate these documents. He testified voluntarily in the Milošević case despite the fact that he was incriminating himself. His twelve-day testimony provided far-reaching insight in the decision-making, the operation, and the plans of the JCE participants around Slobodan Milošević, which no other insider witness had been able to provide. His evidence further assisted in illuminating the early history of the conflict in Croatia in 1991, and the different stages of political development that ultimately led to the outbreak of that conflict. Qualitatively as well as quantitatively, the evidence provided by Babić was, therefore, "of major significance" to the Prosecution's case and substantially reduced its need for further in-depth investigations and presentation of evidence (Prosecutor v. Milan Babić 2004: 73).

This trial was one of the very few that examined the **effect of the guilty plea on victims**. Dr. Mladen Lončar, a psychiatrist with experience in working with victims of war crimes, had prepared, at the request of the Prosecution, an expert report dealing with the impact of wartime traumas on the physical and mental well-being of four different witness groups, all of which were part of this indictment. The report assessed the effect of Milan Babić's guilty plea on people who belonged to the victim group and the perpetrator group, as well as its contribution to reconciliation.

Dr. Lončar worked at the Medical Centre for Human Rights in Zagreb, where he provided psychosocial support to victims, and collected statements and documents from them about violations of humanitarian law. Having himself been detained for a time in the Begejci camp in Vojvodina, he devoted particular attention in the report to the detainees of the Knin camps, establishing their

number, the most frequent forms of violence to which they were subjected, and the psychological disorders they developed as a consequence of their detention. He gathered information during visits to refugee centres and the affected area, gaining contact with victims and returnees, and described the traumatic experiences of victims of displacement and deportation. In his testimony, he thoroughly explained the effect of trauma on an individual's psychosocial condition and the consequences this can have for society. The second part of his report and testimony dealt with the perception of Milan Babić's guilty plea by victims on both the Croatian and the Serbian side. He based his assessments on visits to the affected areas from 2004 until shortly before the trial, where he personally spoke with the victims. He pointed out that no official studies were conducted, but that Babić's admission was perceived positively by the majority of victims he spoke with.

"Following the admission of guilt of Mr. Babić, we can say that its impact on Croat victims could be described as follows: The perpetrator finally was given a first and a last name, so the guilt has been individualised, so to say. Therefore, negative emotions which are experienced towards the other ethnic group is diminished and finally can disappear altogether. The victims have received a certain satisfaction upon hearing that crimes have been committed, which is to say that their status of victims was officially acknowledged. And this is a process which has positive impact on Croatian victims" (Prosecutor v. Milan Babić 2004b: 110-111).

As for the Croatian Serbs, Dr. Lončar pointed out that he spoke mostly with Serbs from urban areas, but he also had contact with Serbs who had returned to their homes. These conversations were conducted in mixed villages, mainly in the Banija region of Croatia.

"Let me repeat once again that no official statistics was done. There was no official record-taking or research, so this is all a result of the exchanges in these interviews, but what I can say is that I have not met any Serbs who had a negative attitude towards the admission of guilt of Mr. Babić. What I also noticed among Serbs in Croatia is that there was a certain feeling of relief among them. The admission of guilt of Mr. Babić and the message that it sent was that we should focus on universal human emotions and treat it as such. This led to the fact that the Serbs do not feel a collective guilt now but, rather, this guilt has been individualised and attributed to a person" (Prosecutor v. Milan Babić 2004b: 112).

The witness was therefore convinced that this guilty plea would have a positive effect on both populations.

The Trial Chamber ultimately accepted Babić's admission of guilt, his substantial cooperation with the Prosecution, his showing of remorse, and his family and personal situation as factors establishing that a reduced sentence was appropriate (Prosecutor v. Milan Babić 2004: 97).

The defence, with the support of the Prosecution, requested that Babic's sentence not exceed 11 years, referring to the case of Plavšić who was sentenced to 11 years in prison even though her guilty plea, remorse and (lack of) cooperation could not compare to Babić's. The Trial Chamber, however, considered that in Babić's case the proposed sentence would not achieve the purpose of punishment, or justice, and so – adhering to the principle that the gravity of the crime is the most important factor in determining the sentence – sentenced Babić to 13 years' imprisonment.[8]

[8] This was only the third instance in the Tribunal's jurisprudence where a defendant who pleaded guilty received a sentence exceeding the maximum sentence recommended by the

Milan Babić, who had pledged to testify in subsequent cases before the Tribunal, took his own life in 2006, in his prison cell. A few days earlier, he had testified in the trial of Milan Martić.

## "Justice for the victims"?

The testimony of Dr. Lončar on the positive impact of Babić's admission on Croatian victims, as well as on Serbs in Croatia, is a rare report on the **impact of guilty pleas on the victims of the crime**. In the field of transitional justice,[9] it is generally assumed that trials of perpetrators of mass human rights violations have a pacifying effect on victims. However, research on the psychological effects that trials have on victims of crime in general, and specifically on victims of human rights violations, was almost non-existent[10] and the matter of how victims perceived

prosecutors. In the case of Momir Nikolić, the Prosecution had proposed a sentence ranging from 15 to 20 years, but the trial chamber sentenced him to 27 years. The Prosecution's recommendation in the case of Dragan Nikolić was that he should receive the maximum sentence of 15 years' imprisonment, but he was sentenced to 23 years' imprisonment.

[9] It is called transitional justice because the proceedings are meant to produce a "transition from war to peace and a democratic transition". This concept encompasses the goals of "liberalisation, the establishment of democracy and the rule of law, and the determination of committed crimes in criminal law, administrative and historical terms". Mechanisms of transitional justice can be retributive and restorative (Delaye 2015: 52).

[10] "Therapists, lawyers, and academics have observed individual survivors, and survivors themselves have spoken about their experiences. Most of these observations are merely snippets—a single paragraph in an article, an anecdote in a speech, a comment in an interview—that report a particular victim's response to a trial

the legitimacy and work of the Tribunal largely depended on how the legitimacy and work of the Tribunal was perceived by their wider social community.[11]

We do not have the space here to go into the history of the development of rights guaranteed to victims of criminal offences within national jurisdictions and the international legal system, given that criminal law is mostly focused on the link between the criminal offence and its perpetrator.[12] The interest of criminal law in protecting victims and reducing harm and the consequences arising from criminal offences was later covered by the concept of **restorative justice**, which is applied not only in national legal systems but also in international law pertaining to international criminal offences, such as violations of the laws or customs of war.

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or suggest a generalization about how victims react to trials" (O'Connell 2005: 316).

[11] Reactions to verdicts from The Hague were mainly divided along ethnic lines, and so were perceptions of the Tribunal itself: "It's good when it prosecutes war crimes from the other ethnic groups and it's bad when it reaches a verdict from our ethnic group. This is, roughly speaking, where the complete perceptions of The Hague is exhausted" (I. Lovrenović in Orentlicher 2010: 40).

[12] There are several international criminal law treaties unique in that they not only provide states and international organisations with a basis for exercising universal jurisdiction to prosecute perpetrators, but also require that such persons be prosecuted and that the punishments imposed be proportionate to the gravity of the crimes. Among them are the four Geneva Conventions of 1949, the Geneva Convention of 1948 that requires criminal prosecution and proportionate punishment for the crime of genocide, and the 1984 Torture Convention that requires prosecution and proportionate punishment for those who commit the crime of torture. The provisions of these treaties indicate that the obligation to prosecute and carry out "effective penalties" which "take into account their grave nature" is absolute, meaning that grants of amnesty, immunity, token sentences or pardons are not permitted with respect to these offences (Scharf 2004: 1074).

The ICTY is to this day considered the basic mechanism of transitional justice that the international community imposed on the countries of the former Yugoslavia. Insisting on, first and foremost, a retributive response stems from the imperative of establishing **individual accountability**[13] as a means of deterrent and ensuring that victims' needs for retribution and punishment are met (Kerr 2007: 379). This core objective was meant to include "recognition of the suffering of victims, establishing the factual truth about what happened and why, compensation for the crimes committed, the prevention of future conflicts and the encouragement of societal healing" (Delaye 2015: 52). Although reconciliation is not explicitly specified as a goal in Resolution 827 establishing the Tribunal, the UN General Assembly, in its Resolution of 17 December 1996, highlighted "the importance and urgency of the work of the International Tribunal as an element of the process of reconciliation in Bosnia and Herzegovina and in the region" (UN General Assembly 1997: 66).

Why is this important at all? Trials at *ad hoc* tribunals endeavour to reconcile several mutually exclusive aims: to effectively prosecute defendants, while at the same time establishing a historical record of past events that is wider than what is necessary for conviction, to adhere to the strictures of the legal process, while simultaneously

[13] The Tribunal did not address the accountability of the international community, the UN, or other national or international groups for their role in the mass-scale violence in the former Yugoslavia. "[T]he resolution is aimed at addressing a specific and unique situation with a view to producing one specific result: bringing to justice the persons responsible for serious violations of international humanitarian law in the former Yugoslavia. Both the resolution and the Statute it adopts are thus not meant to establish new norms or precedents of international law" (UN 1993: 37).

attending to the suffering of individual victims, and to take account of harrowing past events, while thereby aspiring to contribute to the creation of a more hopeful future (Dembour and Haslam 2004).

Consequently, in the quest for justice **the requirements of law may eschew the individuality of the victim**. In order for the accused to be tried within a reasonable time, the Tribunal must adhere to judicially imposed time limits. Within such limitations, the participation of victims is restricted to the role of witnesses.

Given that the Tribunal's task was, among other things, to establish and document in detail what had occurred during the relevant period, the evidence gathered did not have to relate directly to the person of the accused and often went beyond what was needed to establish the criminal offence (Dembour and Haslam 2004: 167). In service to that endeavour, **witness testimony was reduced to the interests and needs of the trial**. The Tribunal gradually adopted procedures to expedite the presentation of evidence, and as a result many witness statements were submitted in writing.[14] That often meant that witnesses either did not appear in court at all, or only appeared as witnesses under cross-examination. **They could neither demand the presence of a lawyer** when giving evidence, **nor did they have any right of access to the evidence** presented during the trial. In addition, the victims **could not demand to be kept informed of the progress of the proceedings**, **nor were they entitled to receive reparations or compensation for damages.**[15] The only guarantees that the Statute and

[14] Through procedures established by *Rule 92bis* or *Rule 89 (F);* (Rules of Procedure and Evidence 2002).

[15] *Rule 106,* Compensation to Victims (adopted on 11 February 1994) foresees that "a victim or persons claiming through the victim may bring an action in a national court or other competent

Rules provided to victims were safeguards for those amongst them who were instrumental to the prosecution as witnesses (Mekjian and Varughese 2005).

This means that they may have been selected for the purpose of presenting evidence to tell their part of the experience of suffering and loss, but also that in a large number of cases they were interrupted "when their narratives, the story of their suffering, became irrelevant to the purpose of assessing the guilt of the accused" (Dembour and Haslam 2004: 158), or were compelled to answer questions strictly in the affirmative or negative. "The Tribunal is not there to share their pain" (Dembour and Haslam 2004: 160), but to gather facts deemed important by law for the purpose of the trial. Giving evidence is subject to the pace and interest of those who have the power to ask questions (the Prosecution, the Defence and the Judges) and is hardly an ideal space for individuals to deal with their traumatic history; far from it (Dembour and Haslam 2004).

Mass human rights violations differ from 'ordinary' crimes in that the mass violations are committed, among others, by the larger social and political institutions charged with responsibility for ensuring the safety of their citizens, such as the police and military, or by those who are meant to investigate or prevent the repetition of crimes (O'Connell 2005). In such cases, the trauma suffered most often results in severe psychological consequences, and societal silence about human rights violations isolates survivors, whether it takes the form of denial, i.e. the desire of those who supported the regime and the violence it produced to "leave the past behind", or of "selective societal attention to atrocities, fellow citizens' belief that victims were responsible for their own

body to obtain compensation. (Amended 12 Nov 1997)" (Rules of Procedure and Evidence 2002).

suffering, or a combination of such factors" (O'Connell 2005: 311). If society nevertheless decides to deal with past violence by establishing *ad hoc* tribunals, giving testimony should not be an additional ordeal for those who have already gone through so much suffering.

One of the arguments cited in the relevant literature as an advantage of plea agreements is that sentencing hearings that are conducted in relation to these agreements (and are not in the context of trials) could offer gentler platforms for the voices of victims. Given that they testified about known events, in such cases victims were not cross-examined or challenged, and they could be given more time to tell their stories because the hearing mainly concerned the gravity of the crime and its impact on victims (Clark 2009). Thus, some judgements noted that guilty pleas spare witnesses,[16] i.e. relieve them of the necessity of giving evidence "with the attendant stress which this may incur" (Prosecutor v. Stevan Todorović 2001: 80). This is particularly emphasised as a practical advantage in cases where the admission of guilt is made at an early stage of the proceedings. The logic is that during cross-examination the defence may strategically bring into question the credibility of the victims, already worried about their own and the safety of their families due to having to face the accused and relive their trauma. If the plea bargaining process is conducted as per the Rules and in line with the Tribunal's mandate, the protection of the rights and interests of the victims should be guaranteed – given that the admission can serve as confirmation of victims' testimony, they would no longer be required to prove their own suffering.

[16] "A guilty plea protects victims from having to relive their experiences and re-open old wounds" (Prosecutor v. Dragan Nikolić 2003: 121).

We believe that this is a matter of interpretation. Plea agreements can have a host of advantages that, in total, can be seen as favourable to victims: the accused can disclose information during bargaining that the Tribunal would only have obtained otherwise with considerable effort and resources, which is particularly important in relation to the locations of remains of victims (Harmon 2009), guilty pleas can increase the swiftness and likelihood of punishment, or ensure at least some level of retribution for a great number of persons who would otherwise evade punishment altogether (Turner 2016: 241), and the guilt of the accused can no longer be brought into question.[17]

Absent from this interpretation is that regular proceedings and public trials provide both the court and the public with a more thorough and complete picture and

[17] The Judgement in the case of Momir Nikolić gives some sense of the motives of the Trial Chamber in accepting the plea agreement. "While in many corners of the globe, the word 'Srebrenica' has become almost synonymous with mass atrocities, the Trial Chamber considered that there might be certain areas of the former Yugoslavia in which the crimes committed there have not been fully acknowledged or have even been denied. Thus, the ground-work for reconciliation is not in place. The Trial Chamber considered Momir Nikolić's acknowledgment of the crimes committed following the fall of Srebrenica and his role therein, as well as the role of other Bosnian Serb members of the joint criminal enterprise, to be significant in verifying that these crimes were in fact committed and who was responsible for their commission. Such an acknowledgement may contribute to the establishment of the truth in all areas and communities in the former Yugoslavia. Until such crimes have been recognised, no steps can be taken to apologise for those crimes or seek forgiveness for one's role, however large or small, in their commission. Therefore, the Trial Chamber considered this to be an important factor weighing in favour of accepting the guilty plea" (Prosecutor v. Momir Nikolić 2003: 76).

record of past events.[18] In plea bargaining, defendants plead guilty and reveal facts only in relation to those counts of the indictment that remain part of the indictment as per the plea agreement, i.e. **the admission of guilt pertains only to the facts stated in the agreement**. In such cases, evidence held by the Prosecution that does not pertain to the counts of the indictment included in the plea is not presented in court. "[T]he public record established by that case might be incomplete or at least open to question, as the public will not know whether the allegations were withdrawn because of insufficient evidence or because they were simply a 'bargaining chip'" (Prosecutor v. Momir Nikolić 2003: 63).

Genuine and sincere remorse should not be reduced to "mere speech acts with a bargaining value" (Diggelmann 2016: 1086). One of the most important factors that affect the **quality of justice** for victims is the feeling that there should be a **just proportion between the imposed sentence and the gravity of the committed crime**. By this measure, all sentences imposed by the ICTY gave cause for disappointment, and as a rule even those at the shorter end were not served in their entirety. In keeping with standard practice in Europe, which is where most of those convicted by the ICTY served their sentences, the Tribunal consistently approved early release after two thirds of the sentence had been served. Dissatisfaction is, therefore, particularly related to reductions in sentences imposed on those who pled guilty (Orentlicher 2010).

The fact that the ICTY was situated in The Hague, far from the site of the conflict, limited its visibility, as well as public awareness and understanding of its proceedings and decisions among the citizens of former Yugoslavia.

[18] A judgement following a full trial would contain factual findings, witness testimony, official documents, forensic evidence and photographs of crime sites.

For a long time the working languages and the Tribunal website did not include languages of the region, potentially making the judgements inaccessible to the victims whose experiences ultimately make up the facts established in those very judgements. It is, therefore, unsurprising that basic information about the Tribunal, the indictments, whether sealed or not, and the decisions were susceptible to manipulation by political actors.

In the first years of the Tribunal's work, communication with the region was limited due to objective wartime circumstances. The first president of the Tribunal, Antionio Cassese, and his successor Gabrielle Kirk McDonald subsequently accepted the Tribunal's role as a mechanism with relevance to and a mission shaped by founding UN documents. They believed that what was happening before the Tribunal should be popularised, because otherwise it would not be able to achieve its wider social mission of disabling the denial of crimes (Hodžić 2020). This gave rise to the Tribunal's *Outreach Programme* launched in October 1999. Its purpose was to present the work of the Tribunal primarily to members of civil society and journalists, but it also included activities geared at raising awareness about judgements in war affected communities[19] (Orentlicher 2010). It was quite a large undertaking for a programme with limited reach and resources that relied on donations, and it was unclear to what extent it could even dismantle already established misperceptions and entrenched prejudices about the work of the Tribunal. We never got to find out because subsequent presidents of the Tribunal – such as Claude Jorda and Theodor Meron – had a more conservative

[19] These activities were focused on familiarisation with cases and proven facts in direct encounters with the local community, through various presentations, forums and discussions (UN 2010: 18-19).

approach to the function of the Tribunal and saw it exclusively as a judicial institution whose judgements should speak for themselves. This created a vacuum which was filled by **politicians who were completely focused on minimising any social impact of the trials.**[20]

Therefore, the basic dilemmas and problems regarding plea agreements, based on the experience of the ICTY, can be summarised in the following points:

1. A guilty plea saves the Tribunal time and effort with respect to other investigations and is of public benefit only if it occurs before the trial of the accused begins. However, the Trial Chambers have deemed a guilty plea beneficial regardless of when it is entered, because in the Tribunal's interpretation, it directly contributes to one of the fundamental goals of the International Tribunal: its function of establishing the truth.

2. Plea agreements spare witnesses in that they do not have to testify and prove their own suffering. The verdict is certain, and public acknowledgement of the victims' suffering and acceptance of responsibility for the crime can serve as the basis for reconciliation. However, the admission of guilt only relates to the facts stated in the agreement, which may not always reflect the entire availa-

[20] "And in that context, they created a narrative that was like a hurricane, like a cyclone, they were so powerful that everything that came later, any information that emerged from the trial, only resonated at the level of the neighbourhood, the street, some small micro-communities, where in principle it's known exactly what happened, and those trials take place with a kind of tacit acceptance of those facts. As soon as you take it to a higher political level, the pre-existing narratives overpower it and make it completely pointless. Whatever the trial, whatever the events, as soon as it reaches the political level, it becomes completely divorced from facts and turns into political manipulation" (Hodžić 2020).

ble factual and legal basis. This may leave victims feeling that their suffering is being used as a bargaining chip and that the scale of the crime is being erased. Given that this allows for distorting the scope of facts that could otherwise be established during trial, the historical record remains incomplete.

3. Trials involving high-level military and political officials mainly come down to proving the legal link between the accused and the crimes committed. Given that the change in the rules of evidence at the ICTY gave preference to the introduction of written evidence, written witness statements, factual findings from previous trials and the like, the reality of the crimes became abstracted, and their horrific consequences remained invisible. Therefore, cases involving the direct participation of the convicted individuals in a limited number of crimes have resulted in disproportionately high sentences compared to cases involving convicted individuals who were not present on the ground but were responsible for organising or implementing persecution campaigns that had large numbers of victims.

4. Victims could not demand to have a lawyer present when giving evidence, nor did they have the right to access evidence presented during the trial. Furthermore, victims could not request to be informed about the progress of the proceedings, nor did they have the right to receive reparations or compensation for damages. Victims or persons claiming compensation on behalf of a victim were directed to initiate proceedings for compensation before a domestic court, in accordance with relevant national legislation.

Some of the unresolved tensions between the different functions of the International Criminal Tribunal for the former Yugoslavia have also influenced the practice of national courts, as we shall see below.

# Domestic Courts and Plea Agreements

*Davorka Turk*

As already mentioned, the cooperation of states in the region of former Yugoslavia with the ICTY, in addition to already being stipulated by the Dayton Agreement, became a condition of their negotiations for membership and accession to the EU. If the Tribunal's primary role was to act as a political lever, then it is no wonder its integrity as an impartial instrument of justice was called into question. There was already a gap between what the ICTY supposedly represented and how it was perceived in the region (Kerr 2007).

However, the ICTY was not a replacement for national courts in the region; its jurisdiction was concurrent, not exclusive. This means that war crimes trials in the region were also conducted in domestic courts both during and after the armed conflict.

If domestic war crimes trials can be conducted fairly and impartially, they are considered to be "more transparent and accessible to the local population, able to reinforce the rule of law, contribute to peace building and build public confidence in law and peace" (Garbett 2011: 71). However, local, national courts in the countries of the

former Yugoslavia were not considered credible in the prosecution of war crimes; their investigations were ineffective, and their decisions questionable, with the justice system as a whole lacking public confidence. At the time of the ICTY's founding, war was still raging in BiH, and the judiciary had suffered the loss of qualified legal professionals, physical destruction, and a lack of adequate equipment and facilities, which significantly diminished the courts' ability to effectively administer justice. The loss of many pre-war judges resulted in ethnic majorities dominating the judiciary and prosecutor's offices, and the new judges and prosecutors lacked experience.[1]

Although the Tribunal's Statute foresaw a complementary role for local courts from the outset, the Tribunal's relationship with domestic courts began to change from 1996 onwards. In accordance with the Tribunal's completion strategy,[2] Security Council resolutions 1503 (UN 2003) and 1534 (UN 2004) stipulated that the International Criminal Tribunal for the former Yugoslavia would focus its efforts on the prosecution of the most senior leaders, while cases against **mid- and lower-level accused would be transferred to national courts** (Kerr 2007). The ICTY was closed on 31 December 2017. It had prosecuted a total of 161 individuals, of whom 90 were convicted and 19 acquitted, while 13 cases were transferred to national jurisdictions, two for retrial before the International Residual Mechanism for Criminal Tribunals, and 37 trials had been terminated, mainly due to the death of the accused (ICTY 2022).

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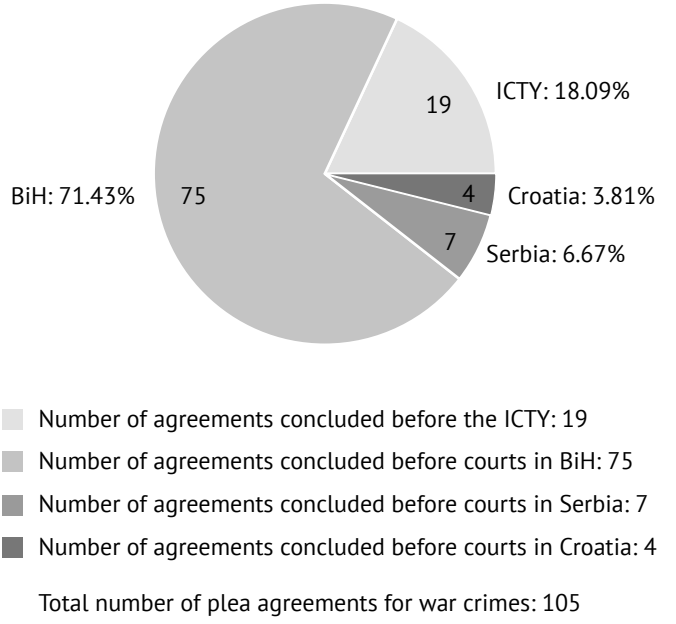
[1] Assessment by the Organization for Security and Co-operation in Europe (Orentlicher 2010: 109).

[2] According to a statement by the President of the UN Security Council dated 23 July 2002, the ICTY was meant to complete all investigations by 2004, all first instance proceedings by 2008, and cease operation by 2010 (UN 2002).

With encouragement from the UN Security Council and support from the international community, specialised mechanisms for the criminal prosecution and trials of war crimes were established in BiH, Serbia and Croatia. In 2010, the Security Council established the International Residual Mechanism for Criminal Tribunals with a mandate to carry out a number of essential functions of the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY).



## Bosnia and Herzegovina

In the case of BiH, the Rome Agreement of 1996 established the *Rules of the Road* with the aim of **preventing arbitrary arrests**. The *Rules of the Road* stipulate that local prosecutors must submit their case files to the ICTY Office of the Prosecutor for review. No one in BiH could be arrested on charges of war crimes unless the ICTY Office of the Prosecutor had confirmed the credibility of the charges. Thus, the Rome Agreement regulated the arrest and indictment of individuals alleged to have committed war crimes within the local justice system (UN n.d.). The transfer and receipt of cases that had been conducted before the Hague Tribunal was made possible by amendments to national legislation.

The following laws were in force in BiH from 1992 onwards: the 1976 Criminal Code of the SFRY, the 1998 Criminal Code of the Federation of BiH and the 2000 Criminal Code of Republika Srpska, as well as the Criminal Code of the Brčko District, also from 2000. The fragmented jurisdiction for prosecuting war crimes hindered the systematic prosecution of perpetrators of these crimes throughout the territory of BiH (Šimić 2013).

**The BiH Prosecutor's Office**, as the institution responsible for representing war crimes cases tried before the Court of BiH, was established in 2003. Along with the Law on the Public Prosecutor's Office of BiH, the High Representative also imposed a new **Criminal Code and Criminal Procedure Code of BiH**. Relying on international norms and precedents, this new legislation included the main international crimes (genocide, crimes against humanity, war crimes, and violations of the laws or customs of war) and established the competence of the Court of BiH for the application of criminal substantive law in connection with these criminal offences.

This is important to note given that the legislator in BiH has stipulated that the legislation can also be applied **retroactively** to events that occurred in the period from 1992-1995 and which, until 2003 and the enactment of the Criminal Code of BiH, were prosecuted under various criminal codes that were in force in the various territorial units of BiH. The provisions relating to war crimes were taken from the 1976 SFRY Criminal Code, which had been in force at the time when the crimes were committed and was more favourable to the perpetrators (Šimić 2013) insofar as it did not recognise crimes against humanity and did not regulate the issue of command responsibility. The Court of BiH has ruled that in respect of these criminal offences, the application of the law that is more favourable for the perpetrator is not mandatory, as is the case in other circumstances,[3] which is why many who have been convicted of war crimes before the Court of BiH over the years have claimed that the law is not equal for all.

[3] When it comes to prosecuting perpetrators of war crimes, all countries in the region were in a similar situation, given the applicability of the 1976 SFRY Criminal Code. Unlike Bosnia and Herzegovina, however, when Croatia and Serbia introduced new solutions into their criminal codes, such as command responsibility, they did not foresee their application to criminal offences committed before these amendments to the criminal codes came into force. According to Goran Šimić, BiH opted for the retroactive application of the 2003 Criminal Code primarily for practical reasons, namely due to the fragmentation of jurisdiction and the absence of a Supreme Court that would harmonise judicial practice in war crimes cases throughout the country. Although there was nominally a justification for this seemingly simple solution, the practice gave rise to many other questions, such as what was to be applicable international law in the context of the BiH justice system (Šimić 2012: 75), or the issue of the unequal position of defendants in the detention unit of the Court of BiH compared to other courts in the region.

Part of the reforms envisioned by the ICTY Completion Strategy related to the establishment of a **Special Department for War Crimes within the Court of BiH**, which had competence over cases in accordance with *Rule 11 bis*[4] of the ICTY Rules of Procedure and Evidence, cases in which the ICTY Office of the Prosecutor had not yet raised indictments, and cases that were in local courts but, due to their sensitivity, needed to be tried at the level of the state court (OSCE Mission 2011). In its decision-making and adjudication in war crimes cases, the War Crimes Department acted as a unique 'internationalised' department. The Court of BiH, specifically Department 1 (Special Department for War Crimes), was established as part of the justice system of BiH, but with international participation. Domestic and international prosecutors and judges worked together in the Special Department,[5] with the function of international judges and prosecutors being gradually phased out (Orentlicher 2010) until 2012, when it was finally terminated.

Aside from the geographical proximity to the affected communities and easier access to witnesses, these changes were also important because the trials took place in the

[4] *Rule 11bis* of the ICTY Rules of Procedure and Evidence provided the conditions for transfers, which included that the receiving country had an adequate legal framework that provided for criminal responsibility and appropriate punishment for international crimes, that the country could provide a fair trial, and that it would not impose the death penalty. If a state failed to prosecute a transferred case in a fair and diligent manner, the case would be returned to the ICTY. To assess the diligence and fairness of the national prosecutions, the ICTY Office of the Prosecutor could send observers to monitor the proceedings in the national courts on its behalf (OSCE Mission 2010: 8).

[5] International prosecutors were also part of the Special Department for Organised Crime, Economic Crime and Corruption.

parties' native language and were open to the public. The establishment of the Special Department was intended to guarantee that the prosecution of war crimes cases would be carried out in line with international standards, which was to be facilitated by the training of domestic prosecutors and judges.[6] Pragmatically speaking, the War Crimes Department would ultimately hear a far greater number of cases than the ICTY but require far fewer resources from international donors (Garbett 2012: 71).

**The first plea agreements in BiH** were concluded at the Cantonal Court in Sarajevo in 2003, a year before the establishment of the Special Department for War Crimes. Even though, according to the new BiH Criminal Code, a plea agreement could be concluded for war crimes without ICTY approval, the agreement with Enes Šakrak and Mustafa Hota was preceded by consultations with the Tribunal. The investigation against Šakrak and Hota was initiated after approval arrived from the ICTY Office of the Prosecutor that their case be referred to the Cantonal Court in Sarajevo (Mijatović 2003). As members of the 9th motorised brigade of the 1st Corps of the Army of RBiH, the accused had participated in the killings of more than 30 civilians from the village of Grabovica near Mostar, including a large number of elderly and women, as well as one minor. Šakrak executed Ljubica Zadro and her four-year-old daughter Mladenka, and Hota killed an elderly married couple. The plea agreement had been initiated by the defence lawyers of the two accused in exchange for shorter prison sentences (Mijatović 2003).

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[6] "I was fortunate in that the first Chamber included a former judge from the Hague Tribunal, so I learned and adopted a lot of things from him. [...] We had attended a bunch of seminars, about a dozen of us had attended these seminars where our colleagues from other systems – it was new to us, the plea bargain agreement – we jumped from one system into another which wasn't exactly straightforward" (Jukić 2021).

The Enes Šakrak judgement notes that the written Plea Agreement had been concluded between the deputy cantonal prosecutor and the suspect and his defence counsel **before the indictment was raised**. Only subsequently did the Cantonal Prosecutor's Office file the charges with the court. The preliminary hearing judge accepted the agreement and the proposed sentence contained therein, and a sentencing hearing was scheduled. Given that the chamber had accepted the plea agreement in full, it also accepted the proposed ten-year prison sentence.

Šakrak's age, since he had been young at the time of commission of the crime, as well as his being a family man and "that he had expressed sincere remorse and admitted guilt" were taken into account as mitigating circumstances (Cantonal Court in Sarajevo 2003: 4). The court found that there were no aggravating circumstances. The court was certainly of the opinion that the imposed sentence was proportionate to the offence and level of responsibility of the accused as a perpetrator, but the judgement does not contain the conditions of the plea agreement, and both trials, of Šakrak and of Hota, were closed to the public (Mijatović 2003). These conditions and their fulfilment appear in other sources – news articles, annual OSCE reports on war crimes trials and other publications – which state that Šakrak had agreed "to give evidence at future war crimes trials" (OSCE Mission 2005: 53). And he did testify, both in The Hague and before the Mostar Cantonal Court. The latter testimony was given at the trial of his fellow combatants, while at the ICTY he testified in the case against ARBiH general Sefer Halilović who was being tried under the command responsibility doctrine for crimes in Grabovica and Uzdol. On that occasion, Šakrak stated that the Hague investigators were the first to interview him about this crime and went on to describe what he and his fellow combatants did on the

relevant dates of 8 and 9 September 1993 and under whose orders. The Halilović judgement notes that Enes Šakrak had testified that he had decided to tell the truth about the murder of the Zadro family because of his remorse over what he had done (Prosecutor v. Sefer Halilović 2005: 459). Sefer Halilović was acquitted because the Prosecution failed to prove beyond reasonable doubt that he had actually commanded the operation that had taken so many civilian lives, and the Trial Chamber had not been convinced that the crimes in Grabovica and Uzdol were committed as part of a planned military operation. It was irrefutably established, however, that in September 1993, in the Grabovica and Uzdol areas, certain units – the 9th and 10th Brigades, the 2nd Independent Battalion and the Independent Prozor Battalion – were conducting combat operations, and a number of other irrefutable facts were established in connection with these crimes.

Investigating local perceptions of ICTY impact in BiH,[7] in July 2009, a few years after Sefer Halilović was acquitted, Diane Orentlischer had an opportunity to speak with Josip Drežnjak and Drago Zadro. Drežnjak's mother and father were among the Grabovica victims, and Zadro lost his mother, father, brother, sister-in-law, and a four-year-old niece (Orentlischer 2010). When interviewed, both said they had hung their hopes on the Tribunal: "We expected that he would be sentenced, that the verdict would be reached, that justice would be met" (Drežnjak in Orentlicher 2010: 127). In the following

[7] The Open Society Fund Justice Initiative began a three-year project in 2006 to examine local perceptions of the ICTY's impact in the former Yugoslavia, focusing on BiH and Serbia. The resulting study *That Someone Guilty Be Punished* examines how ICTY's impact and effectiveness in BiH is perceived primarily by those who survived the crimes and how the ability of domestic capacities to ensure criminal responsibility for war crimes is perceived (Orentlicher 2010).

elections, Halilović was elected to the House of Representatives of the BiH Parliamentary Assembly, and the victims who believe he was responsible for their relatives' deaths "see this guy on TV, in the media, every day" (Drežnjak in Orentlicher 2010: 127). Zadro says he found "at least something, some small comfort" in the convictions imposed by Bosnian courts (Zadro in Orentlicher 2010: 127). There seems to be no doubt that they are aware of how important it is that a perpetrator testified about the crime. However, according to them, three other soldiers implicated by Šakrak were convicted in Bosnian courts of participating in the crime but "they haven't served their sentences yet" because "there's no room in prison" for them.[8]

The accused Mustafa Hota also pled guilty to the crime in Grabovica, to killing the elderly Marić couple, but in his case – as opposed to that of Šakrak – the plea agreement was concluded, as envisaged**, after the indictment was confirmed** and the accused was informed of the charges made against him. At the sentencing hearing, the Cantonal Court in Sarajevo accepted the plea agreement in full, including the proposed sentence of nine years in prison. The judgement does not state whether Hota agreed to make any concessions to the Prosecution,

[8] Diane Orentlicher obtained this information in an interview with Josip Drežnjak, president of the "Grabovica '93" Association of Missing Croats, conducted on 18 July 2009. She sought to confirm this claim in an interview with David Schwendiman, an international prosecutor at the Special Department for War Crimes of the BiH Prosecutor's Office. The prosecutor confirmed it was common for persons convicted of war crimes at the first instance to remain free, at least until a second instance verdict is rendered, "because Bosnian prisons are filled to capacity". But the account concerned, as she reiterates, three soldiers whose convictions were affirmed by the second instance court (Orentlicher 2010: 203, footnote 880).

and we were unable to find any information about this elsewhere. In the following years, Hota protested on a number of occasions, together with other convicted war criminals, demanding the position and status afforded to war criminals who had been proven guilty at the Hague. They demanded the same possibility of commuted sentences and pardons afforded to those convicted at the ICTY.[9] In an interview he gave after his release in 2012 to Dnevni Avaz, Hota said that "no one committed war crimes as a private person. Could I, a lad from Baščaršija, go to Grabovica on my own, at the height of the war? I won't be pointing fingers at anyone when it comes to Grabovica. God forbid! I didn't want to go on about it in front of the court either. I didn't want to testify against anyone" (Hota in Dučić 2012). He pointed out that he had expected three, but got nine years in prison. Pursuant to a decision by FBiH president Živko Budimir, Hota was conditionally released a few months before he had served his nine-year sentence (Dučić 2012).

These are the first known domestic cases of plea agreements for war crimes following the adoption of the new BiH Criminal Procedure Code (OSCE Mission 2005: 53). Two more agreements were concluded in cases that were transferred pursuant to *Rule 11 bis* – the case of Mejakić et al. and the case of Paško Ljubičić (OSCE Mission 2010).

In the indictment of the BiH Prosecutor's Office, which was confirmed by the ICTY before being referred

[9] "For one murder, we get a longer sentence than those at the Hague who were tried for the murder of dozens, hundreds and thousands of raped, tortured, ill-treated! We have no right to a pardon, to early release. At the Hague, as soon as the verdict is pronounced, a third of the sentence is cut off. Representatives of the Hague Tribunal told us that they have nothing to do with our judiciary, that it's all up to the domestic authorities" (in Bećirović 2004).

and aligned with the provisions of the BiH CPC, the accused Dušan Fuštar was charged in July 2006, together with Željko Mejakić, Momčilo Gruban and Duško Knežević, with crimes against humanity. Fuštar was the shift commander at the Keraterm detention camp, established by Bosnian Serb forces in mid-1992 on the premises of a ceramics factory on the eastern outskirts of Prijedor. He supervised one of the three shifts of guards that operated within the camp. The accused, as well as his co-accused, repeatedly pled not guilty, at his first appearance before the ICTY, and subsequently after the indictment was referred to and raised before the Court of BiH.

Before the ICTY, Željko Mejakić, Momčilo Gruban and Dušan Fuštar were charged with individual and superior criminal responsibility for persecutions on political, racial or religious grounds, crimes against humanity, and violations of the laws or customs of war. For the same offences, Duško Knežević was charged with individual criminal responsibility. All four of the accused were transferred to BiH in May 2006. After they pled not guilty at the plea hearing, the trial of the accused before the Court of BiH commenced in December 2006 (ICTY n.d.c).

After the Prosecution had presented its evidence and before Fuštar's defence began presenting its case, in March 2008, **more than a year and a half since the start of the trial**, the Prosecutor of the Prosecutor's Office of BiH, on the one side, and Fuštar and his defence counsel, on the other, concluded a plea agreement which was filed with the court together with an **amended indictment**. The amended indictment of 21 March 2008 charged Dušan Fuštar with persecution on political, racial, national and religious grounds, as part of a widespread or systematic attack against a civilian population, and as a co-perpetrator with command responsibility. The plea agreement also proposed a prison sentence of nine

years. The proceedings against Fuštar were separated from the others (Court of BiH 2008: 1).

At the plea agreement hearing, the Prosecutor pointed out that the amended indictment no longer charged Fuštar with personal active involvement in the killings or maltreatment of the camp inmates in Keraterm. The Prosecution also submitted that they found as a particularly extenuating circumstance the accused's confession, his remorse for the commission of the offence and his commitment to future cooperation with the Prosecutor's Office. As a further argument in favour of the proposed sentence of nine years' imprisonment, the Prosecutor cited sentences imposed by the ICTY for the same criminal offences with which Dušan Fuštar was charged, in the case against Duško Sikirica et al. (IT-95-8), which were also imposed based on plea agreements (Court of BiH 2008: 4). The Court accepted the plea agreement, based on the amended indictment of the BiH Prosecutor's Office, in full.

After having served two-thirds of his sentence, Fuštar was conditionally released on 15 June 2010 (International Crimes Database n.d.). We were unable to confirm whether he actually did subsequently cooperate with the BiH Prosecutor's Office. The remaining defendants in the case of Mejakić et al., those who did not plead guilty, received higher sentences. For crimes against humanity in the Omarska and Keraterm camps in Prijedor, Željko Mejakić was sentenced to 21, Momčilo Gruban to 11, and Duško Knežević to 31 years in prison.

The course of the procedure in another case referred by the ICTY to the Court of BiH, the case of Paško Ljubičić,[10] was similar. The accused initially declined to

[10] Paško Ljubičić was the Commander of the Fourth Military Police Battalion of the HVO from January 1991 until July 1993, and Assistant Chief of the Military Police Administration for the

enter a plea, so the Court stated on the record that the accused had entered a plea of not guilty. The main trial began on 11 May 2007, and the Prosecution filed an **amended indictment**, together with the concluded plea agreement, on 24 February 2008, almost a year after the start of the trial. No sentence was proposed in the plea agreement itself. The Prosecution proposed nine and the defence eight years. The Panel sentenced Paško Ljubičić to ten years in prison (Court of BiH 2008b: 2).

It is worth highlighting that in addition to taking into account the accused's confession and expressed remorse for the committed offences as a particularly mitigating circumstance, the Prosecution also held that "an accused's public and open admission of guilt is frequently more satisfactory to the victims and community than

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Central Bosnia Operative Zone. He was accused, acting individually and in concert with members of the HVO Military Police who were under his command and control and with other members of the HVO, of having planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation, or execution of a crime against humanity by persecuting Bosnian Muslims on political, racial, or religious grounds, in the towns and villages in the municipalities of Vitez and Busovača. On 9 November 2001, the accused voluntarily surrendered to the authorities of Croatia, and on 21 November 2001, he was transferred to the ICTY. In April 2006, the Referral Bench of the ICTY, pursuant to *Rule 11bis* of the ICTY Rules of Procedure and Evidence, issued the Decision to refer the case against Paško Ljubičić to the BiH authorities. On 22 September 2006, the accused was transferred from Scheveningen to BiH (Court of BiH 2008b: 4).

Ljubičić had opposed the referral of the case to the Court of BiH and his defence counsel had motioned for the case to be referred to the courts in Croatia. Incidentally, until the change of government in Croatia in 2000, Paško Ljubičić had been on the payroll of the Croatian Ministry of Defence as a member of the First Guards Corps responsible for the security of President Tuđman (Sabalić 2000).

having a trial" (Court of BiH 2008b: 4). It is difficult to say on what basis the Prosecution reached that conclusion, unless it relies on the content of Annex A of the Plea Agreement concluded between the accused and the Prosecutor's Office of BiH on 24 April 2008, which describes the events in Ahmići and in which Ljubičić admits to all the circumstances of the crime.[11] When determining the sentence, the Panel also noted that "when the accused pleads guilty in a manner and under circumstances showing unconditional acceptance of personal responsibility, this can surely be considered a sign of sincere remorse. The Panel believes that the Accused's admission of guilt, together with his conduct after the events referred to in the Amended Indictment, demonstrate his sincere remorse" (Court of BiH 2008b: 21). According to the judgement, Ljubičić had agreed to "make full, truthful and complete disclosure of his knowledge of any other

[11] Namely, in the Annex to the Agreement (under point 26) the accused states: "At the time the attack began on 16 April 1993, the majority of the Muslim inhabitants of the village of Ahmići were civilians or poorly armed members of the ARBiH." Further, under point 27 of the Annex he stated: "During the attack on 16 April 1993, HVO soldiers, including the members of the Fourth Military Police Battalion under my command, used, among other things, grenades, explosives and incendiary ammunition to attack targets in Ahmići. The targets included military targets as well as houses, religious buildings, livestock and people." He also stated that at least 103 persons were killed during the attack on Ahmići, that a number of women and children were also killed in the attack and that some civilians were trapped inside houses and set on fire. The accused also stated that, in accordance with the order, the HVO did not attack houses owned by Croat families. In addition, he stated that the participants in the attack also blew up the mosque in Donji Ahmići and the mesjid and religious school in Gornji Ahmići. It is also stated in the Annex that Muslim-owned houses and business facilities were also set on fire in the days after 16 April 1993 (Court of BiH 2008b: 21).

matters of interest to the BiH Prosecutor's Office or the ICTY" (Court of BiH 2008b: 21).

However, it is doubtful that the plea bargain with Ljubičić, reached at the end of the proceedings, when all the evidence had been presented and witness statements heard, could have had more meaningful significance for the victims of these crimes than the remorse of Miroslav Bralo, aka Cicko, a member of the HVO *Jokers* unit, who was tried before the ICTY as one of the direct perpetrators of the Ahmići crimes.

What we have here are cases concerning a superior and his subordinate, both pertaining to the same crime committed in Ahmići on 16 April 1993. Even though they concern the same war crime and the same 116 victims who were killed as a result of the order given by Paško Ljubičić, as their superior, to the *Jokers* unit, the judgement in his case places his responsible position in the foreground,[12] while in the case of Miroslav Bralo, the focus had primarily been on the brutality of the crime (Prosecutor v. Miroslav Bralo 2007: 33). Ljubičić was sentenced to 10, and Bralo to 20 years in prison.

This comparison seems to indicate that a superior position is treated by the court as a mitigating circumstance compared to the circumstances "ordinary" soldiers find themselves in. Superiors are *only* responsible for large-scale war crimes and that somehow makes them more acceptable than people who would never have ended up in the war if it were not for those superiors who planned and instigated such actions. This was pointed out to us by Jasmin Mesić, a prosecutor with the Una Sana

[12] The Panel is satisfied that it was proven beyond reasonable doubt that the Accused was responsible for passing the order to attack the village of Ahmići to his subordinates and that he did so fully aware of the consequences that would undoubtedly ensue as a result of the order (Court of BiH 2008b: 20).

Canton Prosecutor's Office who has concluded the largest number of plea agreements for war crimes in the region:

"The intermediate level of command responsibility has been abolished in this state. No one is going after them. And, believe me, they are the worst. … No one takes account of this. Here it's about who gets nailed, what they've done and that's it. And who enabled this person to come in and do that? Came once, came twice, so one house burns, then another, and a third. Where were you to protect that village?" (Mesić 2021).

As we tried to explain earlier, plea bargaining can be useful to the justice system if agreements are reached at an early stage of the proceedings, which was not the case with Fuštar and Ljubičić, cases referred to the Court of BiH under *Rule 11bis*. In both these cases, plea agreements were concluded more than a year after the start of the main trial, once the Prosecution had already presented all its evidence and all its witnesses had been heard. The advantages that plea agreements can bring are thus significantly diminished. If other possible benefits of a plea agreement – where the accused discloses facts at a public trial, reveals the locations of missing persons, cooperates in other investigations or expresses sincere remorse – are also absent, then the admission of guilt is not convincing. When we add to this the bargaining regarding counts of the indictment, this brings up the question of whether certain counts of the indictment were withdrawn in order for the accused to plead guilty. Even though the Criminal Procedure Code does not explicitly preclude bargaining with respect to counts of the indictment,[13] just as at the ICTY, the main principle still involves

[13] As a legal institution, plea bargaining takes various forms, most commonly: (1) charge bargaining, involving negotiations to drop or reduce charges by changing the qualification of the criminal offence; (2) sentence bargaining, involving negotiations on the

the duty of the prosecutor to undertake criminal prosecution if there is evidence that a crime has been committed.

Plea agreements concluded before the Court of BiH later showed some progress in terms of the **conditions required for plea bargaining**. Damir Ivanković was accused that on 21 August 1992, together with Zoran Babić, Gordan Đurić, Milorad Radaković, Milorad Škrbić, Ljubiša Četić, Dušan Janković, and Željko Stojnić, former members of the Prijedor Police Station and the police intervention platoon, he participated in the execution of 200 civilians from Prijedor at Korićanske Stijene. The indictment was confirmed in January 2009. During the main trial, in June 2009, the BiH Prosecutor's Office filed a plea agreement with the Court and proposed the separation of proceedings against Ivanković from the others. Under the agreement, Ivanković had pledged to testify as a witness in the proceedings that continued against the seven other accused, but also in other cases concerning the crimes committed during 1992 in the areas of Prijedor, Travnik and Skender-Vakuf (*Fena* 2009). The Prosecutor's Office agreed that he should be sentenced to imprisonment for a term to be determined by the Court ranging from eight to fifteen years (Court of BiH 2009: 4). On that occasion, Ivanković stated:

"I want to confess to the crime. I want this to be over. No one promised me anything for this confession, this is about clearing my conscience" (*Fena* 2009).

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nature and length of the imposed criminal sanction; and (3) fact bargaining, involving negotiations on which facts can be brought to the court's attention. Trial monitoring showed that charge bargaining has been used in only a very limited number of hearings monitored, and those mainly before the Court of BiH and involving international prosecutors. Practitioners largely appear to have adopted the stance that the negotiation process does not include negotiations on charges or facts (OSCE Mission 2006: 8).

Given that his testimony in the above cited case was made a condition of the plea agreement, the Court decided that the **agreement between the accused and the Prosecutor's Office shall be considered after** Ivanković **testifies against the others accused** of the crime at Korićanske Stijene. In his testimony Ivanković described the course of events and directly incriminated his coaccused. At the end of his testimony, he reiterated his remorse for the crime and apologised to the families of the victims.[14] After he had given his testimony, the court accepted the plea agreement. During the hearing, the prosecutor noted as extenuating circumstances the accused's cooperation with ICTY investigators as early as 2002 and 2003, when he contacted the investigators and testified without concealing his own involvement, and the fact that he reported to the BiH Prosecutor's Office in 2006 to be prosecuted (Court of BiH 2009: 8). The Panel imposed a sentence of fourteen years in prison. The Court accepted his remorse in light of the fact that as early as 2002 he had testified in cases before the Hague Tribunal, not just about these, but also about other events in the territory of BiH during the war. In determining the sentence, the Court also had in mind as an extenuating circumstance his equally significant cooperation with the BiH Prosecutor's Office (Court of BiH 2009: 13).

Shortly thereafter, Gordan Đurić also pled guilty to the same crime. He also pledged to testify against the other accused and in his case, as well, consideration of the plea agreement he had concluded with the Prosecutor's

[14] "Želim iskreno da kažem svoje kajanje. Žao mi je za sve što se uradilo. ... Iskreno mi je žao svih žrtava i porodica koje su izgubile svoje najmilije" ["I want to express my sincere remorse. I am sorry about everything that was done... I am genuinely sorry for all the victims and the families who lost their loved ones."] (*BIRN BiH* 2009).

Office was postponed until after he had met the condition of testifying. The Prosecutor's Office claimed that before concluding the plea agreement, it had "informed the injured parties from the Prijedor area" (*BIRN BiH* 2009b). This is a rare example of a plea agreement that the Panel initially rejected, because in the agreement the accused had pled guilty to all the acts included in the facts of the indictment, while in his statement he departed from the facts as stated in the indictment describing the commission of the criminal offence. The BiH Prosecutor's Office filed a new agreement with the Court and proposed a sentence range from seven to ten years in prison (Court of BiH 2009b: 5). Đurić was sentenced to eight years. Following Đurić, Ljubiša Četić also pled guilty to the same crime.

The OSCE Mission regularly monitored war crimes trials, including proceedings related to concluding plea agreements.[15] In 2006, they published a report on the problems they had identified in the practical application of plea bargaining. In around 5% of monitored cases, suspects had signed plea agreements **before the indictment was confirmed**, meaning they did not have full insight into the evidence obtained by the prosecution, as we saw in the case of Enes Šakrak, for instance. The BiH Criminal Procedure Code does not preclude this practice explicitly, because it is assumed that in such cases the basis for bargaining are the allegations against the suspect contained in the investigation order (OSCE Mission 2006: 12). The accused were allowed to negotiate plea agreements after they had already pled guilty, which raises the

[15] In the period from January 2004 to August 2005, the OSCE monitored a total of 3045 hearings in 1660 cases at 51 courts across BiH. Of this number of hearings, 305 were concerned with plea agreements at the Court of BiH, cantonal and district courts and 30 municipal and basic courts. Each hearing may concern multiple plea agreements if the case pertains to several suspects or accused persons (OSCE Mission 2006: 6).

question of what exactly was then being negotiated and what basis the accused had for bargaining (OSCE Mission 2006: 12-13).

In this, as in much else, the Cantonal Court in Bihać is an exception. The Cantonal Courts in Mostar and Sarajevo were the most active until a sudden drop in the influx of new cases in 2007, when the Cantonal Court in Bihać took over the lead in that respect, with 23 plea agreements signed and 17 judgements handed down (Cantonal Court in Bihać 2020). None of the plea agreements were deliberated after the accused had pled guilty, but there were instances of investigations being terminated due to lack of evidence. These results are mostly credited to the cantonal prosecutor at the time, Jasmin Mesić. When asked about his motivation, he told us that the main incentive for concluding plea agreements was an effort to free up prosecutorial and judicial capacities as soon as possible "in order to move on." He came to this conclusion in view of the length of proceedings for war crimes, the number of crimes that needed to be prosecuted and the need to protect victims, especially in cases where they had suffered some form of torture.

"My guiding principle was always that witness testimony was key evidence in these cases. This is evidence that is subjective in nature, it's one thing to speak to a witness in a more relaxed atmosphere and another when you get the statement from a law enforcement agency and you've never even seen the witness yet... and all of that has to be maintained at the trial. You can have a clean case and still lose. Where I estimated that it would make sense to speed things up, that the judgement would be handed down. It will never be adequate to the gravity of the crime, to be clear" (Mesić 2021).

Other practitioners we spoke with agree that the purpose of guilty pleas is to shed light on the committed

criminal offence (Samardžić 2021), expedite proceedings, spare people as much as possible (Jukić 2021). Wartime rape is certainly a war crime, but how it will be qualified, as a crime against civilians or a crime against humanity, depends on what can be proven. "We had a man who was a cobbler, he had three years of primary school, rape as part of crimes against humanity. What does he know about widespread systematic attacks, that it had to be proven, his premeditation, intent, and then that his act was specifically intended for that, for a widespread systematic attack..." (Jukić 2021).

At a trial, through material evidence that is presented or obtained in direct or cross examination, the facts are established much better, deeper and wider. When it comes to plea agreements, the perpetrator always receives lighter treatment than when a judgement is passed following presentation of evidence (Badžarević 2021). At the BiH Prosecutor's Office, they confirmed that according to the rules set down in the CPC, the proceedings conducted in respect of plea agreements do not feature a presentation of evidence at the main hearing. But they point out that this has its advantages for the prosecution compared to a trial because "witnesses are heard in direct and cross examination, and when discrepancies in the testimony come to light this can make the witness less reliable or credible" (Bulić 2021). As advantages of plea agreements they cite the increased efficiency of criminal procedure, speedier conclusion of cases, lower costs, saving time, ensuring key evidence for other criminal proceedings and avoiding unnecessary legal formalities for ensuring and protecting the basic rights of participants in criminal proceedings (Bulić 2021). Both judges and prosecutors have an interest in a plea agreement being concluded.

Our interviewees agree that in most cases **the main motive for suspects to enter into plea bargaining** and

negotiate a plea agreement is a reduction in their sentence. The sincerity of the admission is not a matter of subjective appreciation – it is up to the court to apply the relevant provisions of the CPC in assessing whether the plea was entered without pressure (Jukić 2021). As for the sincerity of remorse, most of our interviewees do not believe in it or do not consider it relevant. The law does not require that the accused state whether he feels remorse, because "remorse or not, you committed the offence. And you are being tried for it. And a sentence will be imposed, you will be sanctioned. But it is a custom, so to speak, a good thing when it happens here" (Mesić 2021). Our interviewees also agree that what is missing within the consideration of plea agreements is a contract to be negotiated between the prosecutor and the accused that the injured party agrees to (Jukić 2021), or a deal: "it would be transactional in nature, you give a guilty plea, you get a reduced sentence" (Hodžić 2020). Precisely because it is impossible to avoid some kind of transaction in these processes, some of our interviewees concur that a bargain is directly opposed to the mission of the court – to establish the facts about what happened. There should be no room for transactions of any kind, because a transaction in and of itself means a reduced sentence, withdrawing some counts of the indictment in order to arrive at a guilty plea, fewer facts, fewer possibilities for witnesses to testify, fewer documents presented at trial, and that in itself makes the sentence problematic, as a means of achieving the deal (Hodžić 2020).

Conspicuously absent from most agreements is the **application of the clause on cooperation with the prosecution**, and most often this is the only measurable indicator of the 'sincerity' of remorse. In practice, there is no mechanism to compel the accused to comply with the clause on cooperation once his sanction has been determined; what the prosecution can achieve in the bargain-

ing process is limited to determining the terms of the agreement.[16] Still, at the BiH Prosecutor's Office, they confirmed that there were several cases in which the accused who pledged to disclose evidence really did bring to light the fates of missing persons, at least in two cases (Korićanske Stijene and Drvar), as well as several more cases where the commitment to testify included in the plea agreement was duly upheld (Bulić 2021).

Jasmin Mesić, a prosecutor with the Una Sana Canton Prosecutor's Office, said that one of the reasons he opted for plea agreements was to find the remains of missing persons. "I would find the remains. I would find the remains even in the investigation phase, that's why I went for the agreements. Because he would admit to everything that happened, describe it and then show me where, and the information he had. I would take them to the scene sometimes, and I've even found remains; there were individual cases" (Mesić 2021).

Most plea agreements are presented to the court only in verbal form during proceedings, and if the clause on cooperation or rejection of the agreement is not deliberated before the court, judges rarely determine whether the suspects fully understood their obligations under the cooperation clause, or whether the suspects concluded the agreement "willingly and with full awareness," as stipulated under Article 231 of the BiH CPC (OSCE Mission 2006: 16). The accused are often not fully informed about their **right to have a defence counsel appointed ex**

[16] "There is one example of a plea agreement in which the accused admitted his guilt and expressed remorse and accepted a prison sentence and pledged to testify in other proceedings, but after going to serve his sentence demonstrated that he had no remorse for what he had pled guilty to, and in preparations for giving testimony in other proceedings exhibited uncertainty about what according to his previous statements would have incriminated other persons" (Bulić 2021).

**officio**, and there are cases where a defence counsel is not appointed despite clear needs. Some judges believe that a defence counsel is not necessary during plea bargaining or at the plea agreement hearing, because they do not believe the suspects suffer any harm due to the lack of professional assistance. Given the significance of the rights the suspect gives up in this procedure, it is concerning that some judges suggest plea bargaining to the accused, which brings into question the presumption of innocence that must be guaranteed to each suspect and accused (OSCE Mission 2006: 13).

"I am a prosecutor for everyone, no matter the proceedings. A suspect can have an interest, if he is already guilty, to seek a chance to get a lesser sentence. But I am bound by law to be open towards him. There is no forest or mountain I haven't been to, no village or barn I haven't entered, wherever was tied to the crimes. Why? It helped me a lot to know the terrain, it gave me opportunities in interviews and plea bargaining… when I start telling him about his village, and I ask about his best man, and I ask about the priest that was there, and say how you have to go through the orchard… the man asks me whose brother I am. He thinks we're from the same village… he doesn't know how far I go, these are my tactics. Formally, they mostly proposed (bargaining), but there were also initiatives from the prosecution side" (Mesić 2021).

If it exists, public trust in the work of the prosecutor is the biggest help the prosecutor can have.

"There was a rape suspect and he heard I was the prosecutor and I told him there was also this possibility for plea bargaining, and I asked him, 'Please, don't tell me your plea now, you'll have to be detained because this is a serious offence, but once you select your defence lawyer, we can talk. I just wanted you to know there is this option.' A colleague came, one of the most respected lawyers in

this area, and I left them alone to talk. The lawyer calls, says, 'In all my years, I've never seen anything like this.' I'm telling him to keep quiet for now, and we'll see what we're going to do. 'I'm not going to be silent, I want to tell the man the truth about what happened.' And that was that, the man said everything that happened from A to Z and we ended up with an agreement. The injured party was also made aware of this. He was genuinely sorry, saying 'I can't go through that part of town, it all comes back to me, I made a mistake'... Sincere remorse. This means something to the victim. Because when you have someone who keeps saying 'I didn't do it, I didn't do it, I didn't do it,' and then you go to court, and the trial finishes, and the sanctions aren't even draconian. That man will be out sooner or later, and you'll be on your own. To cut a long story short, you don't get much in the way of special protection measures... This country is how it is" (Mesić 2021).

Expressions of remorse will be heard in the courtroom, but in most cases not outside it, unless the media are present at the trial. In that case, words of remorse will be recorded in the accused's closing statement. To our question as to why this differs from the common practice of guilty pleas at the ICTY, where the suspect reads a prepared statement of remorse, the prosecutor reminded us once again "that these aren't the same calibre of perpetrators, these are usually just ordinary folk. They're not exactly military leaders or anything. They're just people" (Mesić 2021).

One particular problem that is highlighted concerns **resolving property claims in plea agreements**, since this possibility of protecting the rights of victims is not sufficiently applied (OSCE Mission 2006: 2). As we noted earlier, when it comes to proceedings before the ICTY, victims could not claim compensation or the right to reparations at the ICTY, but the Statute stipulated that

**victims may seek compensation before national courts, pursuant to relevant national laws.**[17] The domestic legal framework stipulates that an injured party may seek compensation for damages in criminal proceedings by lodging a claim for damages as part of the criminal proceedings, which is known in domestic law as a "property claim". Chapter XVII of the BiH CPC stipulates that compensation claims can be filed during the investigation or during the trial, up until the end of the main trial or sentencing hearing before the court. If a claim is not filed, the court must inform the victims of their right to claim damages, or even decide in the convicting verdict to impose a measure of forfeiture of property gain, provided there are reliable grounds for a complete or partial resolution of the property claim (Federation of BiH 2003: Chapter XVII, Article 209, paragraph 5). The OSCE guidelines on victims' and witnesses' rights make it clear that if the prosecutor and the accused enter into a plea agreement, the court must inform the victims. After all the evidence has been presented and before a judgement is rendered, victims should have the right to a closing statement as well as to appeal the part of the judgement relevant to their property claim. Finally, **only in exceptional circumstances and for justified reasons could the court** refer property claims of injured parties to civil proceedings (OSCE Mission 2013).

Although Article 211 of the CPC obliges prosecutors to gather evidence on property claims related to the criminal offence and obliges the court to question the accused about facts related to the property claim, in most cases **injured parties were referred to civil proceedings to**

[17] *Rule 106*: "Pursuant to the relevant national legislation, a victim or persons claiming through the victim may bring an action in a national court or other competent body to obtain compensation" (Rules of Procedure and Evidence 2002).

**satisfy their property claims** with the reasoning that the information from the criminal proceedings did not provide sufficient grounds for full or partial adjudication of the property claim (Federation of BiH 2003: Chapter XVII, Article 212, paragraphs 3 and 4).

In most of the monitored cases **the injured party was not present** at plea agreement hearings. Some prosecutors have said that if plea bargaining takes place during the investigation, they try to obtain the opinion of the injured party before finalising the agreement (OSCE Mission 2006: 25). Our interviewees point to the changes in the relevant law and the differences that exist between cases. **According to the former CPC, the injured party was a party to the proceedings, while according to the current CPC, the property claim can only be filed by a person authorised to pursue that claim in civil proceedings** (Federation of BiH 2003: Chapter XVII, Article 208, paragraph 1), which significantly increases the costs associated with pursuing the claim and consequently limits this possibility.[18] Moreover, the legal counsel may only "observe, make notes, then when it is done... The injured party or parties are not at all adequately protected in these proceedings, primarily because their lawyers are not entitled to an active role during the trial" (Badžarević 2021). Goran Šimić (2021), professor of international criminal law and transitional justice, agrees: "An essential shortcoming is that the law does not foresee the participation of victims or injured parties in plea bargaining, either

[18] "Here, every appearance at a hearing is 500, 600 marks, now, when you're the defence counsel, would you advise someone to reach an agreement if for three years you can keep charging appearances 500, 600 marks? You need a professional, whether this is the defence counsel, or a lawyer who would receive payment, who would know how to guide the injured party, provide information about rights and not be motivated by fees and the like" (Jukić 2021).

before the Tribunal or before the Court of BiH. In fact, the prosecutor makes a bargain - using the brothers, sisters, body, soul, and lives of the victims - with the person who committed the crimes, and, in the end, Article 231 of the CPC states that the court will ultimately only inform the concerned person that an agreement has been reached." Šimić (2021) believes that when it comes to the property claim, **the law states clearly that the prosecutor has a clear obligation to assist the injured party**, i.e. to gather evidence in support of the property claim.

Since this is an adhesion procedure, i.e. for the sake of efficiency it is joined to the main trial, for a long time prosecutors believed resolving the criminal proceedings was more important, because the criminal conviction would have to be accepted in any civil proceedings and then "the case is 95 percent done".[19] However, in many such trials, the injured party appears before the court under witness protection and under a pseudonym, with their identity not being revealed even in the judgement. "After a conviction is obtained, when such a person then wants to file a claim for damages in civil proceedings, they cannot do so under a pseudonym. In BiH you cannot file an anonymous claim for damages in civil procedure, rather, you have to identify yourself before the court as the

[19] "Especially when this concerns victims of torture or rape, to avoid re-traumatising these people. It's no problem for me to issue a warrant for a neuro-psychiatrist, for expert testimony in neuro-psychiatry and psychology in combination to determine the impact. It's no problem for me to determine right away the mental pain, suffering... so that they would have to pay damages. Then the expert will testify at the same time on the consequences and on what is required for the damages claim. The evidence is the same. Any examination they would do over there, we can do here right away. I've gone through that whole procedure to help the injured party. We also included free legal aid, a lawyer of her choice to represent her interests" (Mesić 2021).

plaintiff with your full name and you have to disclose your identity to the person you are suing, which is something many victims do not want to do" (Šimić 2021).

The BiH Prosecutor's Office has confirmed to us that when negotiating the conditions of a plea bargain, it is common practice to invite the injured parties to weigh in on the conditions for the plea bargain, on any property claims and the like.[20] They pointed out that there is a distinct problem in cases where the crime involves several hundred victims and it is almost impossible to consult the next of kin of the victims, because they are often living all around the world. In such cases, the practice is to reach out to a citizens' association whose activities cover the relevant events of the criminal proceedings (Bulić 2021). Deciding on property claims in a situation where there are 150 victims, "that would mean bringing all those people together to file a claim, then the other side would contest it, and ultimately that procedure may end up lasting longer than the criminal trial to determine guilt. Where there were individual acts, as a rule the court would decide on any property claim" (Samardžić 2021). Goran Šimić (2021) believes that any consultations with non-governmental organisations, associations or individuals on the condi-

[20] The court has a duty to inform the injured party of the possibility to file a property claim, especially if said party is not accompanied by a professional able to provide such advice. "And even if they do, if it would take us three years to rule on a property claim, we refer them to civil proceedings, that's mostly how it's done. If there's enough material, the court will rule" (Jukić 2021). For a while, the Ministry of Justice had a service that was meant to provide professional guidance to injured parties, give them instructions and inform them of their fundamental rights under the CPC when it comes to property claims. Still, as is often the case, the need to economise with resources takes precedence, so the service still exists, but no longer performs this function. The BiH Ministry of Justice has a free legal aid office.

tions of a plea bargain constitute an illegal practice because they are not foreseen by law and that prosecutors undertake them "at their own discretion".

Prosecutor's offices in Banja Luka, Bihać and Tuzla believe their work is significantly helped by cooperation with associations representing or assisting victims. Such co-operation was seen to build trust and confidence in the judiciary among the public and even helped prosecutors in contacting and obtaining the presence of witnesses in court. Still, most prosecutors did not have well-established contacts with victims' associations, many of which are reluctant to co-operate with prosecutors of a different ethnicity (OSCE Mission 2011: 68). Davorin Jukić points out that the court must also take account of the interests of injured parties and that there are mechanisms for this, such as the status conference before the main hearing. The status conference is an opportunity to inform all parties, including the injured parties, of all available means that can be pursued. The likelihood is that the proceedings will be more efficient if there are opportunities for reaching agreement, and the injured parties could then also expect to have their property claims addressed much sooner than during a trial. Use of this mechanism has become less common with time, given that there were cases of its abuse to postpone criminal proceedings (Jukić 2021).

From the practical experience of most of our interviewees, both judges and prosecutors, **the injured parties are mostly interested in seeing the criminal proceedings brought to a close as soon as possible** and having the crime punished, because that "frees the injured party of the duty to come to trial, to relive everything again; these are terrible traumas that the victims are reliving at the trials, especially through specific, direct cross-examination" (Samardžić 2021). In other words, to

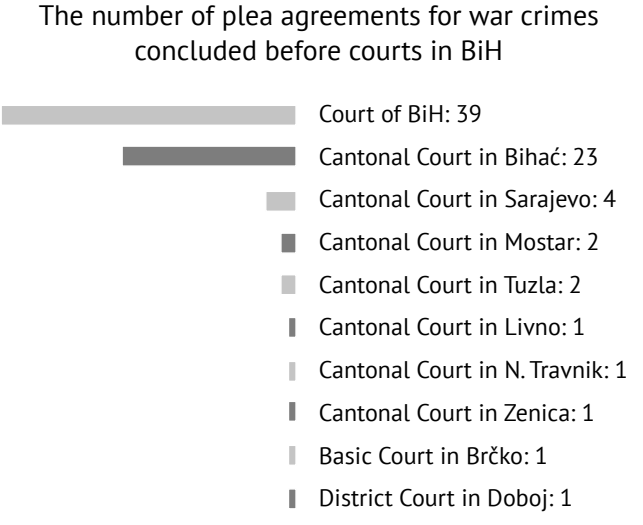
injured parties the plea agreement is acceptable insofar as it shortens the length of proceedings and, therefore, makes it possible to file any property claim earlier. On the other hand, a trial would last "several years on appeal, and this is a very long time for victims to live through and keep waiting every day, wondering what the outcome will be. Therefore, don't think that if the sentence is below the (expected) minimum, that this is something against the victims" (Samardžić 2021).

Although newer European directives aim to ensure protection of victims, and to reduce harm and the effects of the criminal offence (Šimić 2017: 156), the legal position of the victim in criminal proceedings in the BiH judicial system has not improved, and victims of war crimes receive the same treatment as victims of other criminal offences for which the law foresees a prison sentence. In practice, reducing the participation of victims in criminal proceedings to the role of mere witnesses prevents them from having a stronger position in the proceedings and succeeding in their claims (Šimić 2013: 27-28).

There seems to be general agreement that there is no criminal sanction that can satisfy people who have lost their loved ones in such brutal ways. If not the amount of prison time for those they consider responsible for the pain and loss they have suffered, what is it that could provide them with a certain degree of satisfaction, comfort or recognition?

The justice systems of all the countries in the region have undergone reforms that were meant to introduce norms to make criminal proceedings more efficient, and that included widening the scope of streamlined criminal procedure, "primarily through three possible modes – plea agreements between the public prosecutor and the accused, expedited criminal proceedings, and the principle of opportunity in criminal prosecution" (Bejatović

2013: 14). As a rule, these expedited forms are intended for trials of simpler criminal cases, given that minor and intermediate criminal offices make up the bulk of crimes overall. Streamlined procedures help courts reduce their backlogs and should therefore contribute to improving the quality of trials in more serious criminal cases (Bejatović 2012). To that end, countries in the region adopted new Criminal Procedure Codes – BiH in 2003, Croatia in 2008, and Serbia in 2011, although some of these laws have since undergone one or more sets of changes and amendments, primarily those in Serbia and BiH (Bejatović 2012: 103).




Total number of plea agreements for war crimes concluded before courts in BiH: 75

## Serbia

Serbia was required to cooperate with the ICTY as a condition of its political rehabilitation, both in terms of being able to open accession negotiations with the European Union and in terms of direct and indirect financial assistance needed for structural reforms, i.e. "Serbia's process of democratization and stabilization" (Orentlicher 2008: 27). That process was assessed against the background of perceived problems – possibly antagonising significant portions of the public (given the prevailing perceptions of the ICTY during Milošević's rule), the popularity of indicted war criminals, fears that evidence presented in criminal proceedings could increase Serbia's vulnerability in the genocide case against Serbia and Montenegro, and the resistance of security forces that mainly remained unreformed and outside the scope of democratic control (Orentlischer 2008).

The public shock of Prime Minister Zoran Đinđić's assassination was followed by a period of significant political reforms that included a crackdown on organised crime and renewed cooperation with the ICTY.[21] Though by no means simple and linear, in time this process improved access to witnesses and documents, as well as facilitating the transfer of several indicted persons to The Hague (Orentlischer 2008).

The courts in Serbia were assessed as not having the capacity to conduct a potentially large number of war crimes trials,[22] but a change was brought about incentiv-

[21] The Law on Cooperation with the ICTY was adopted in 2002.

[22] From 1991 to 2003, a small number of war crimes trials were held in Serbia, with serious misgivings about whether they were properly administered. This assessment was made by the Organisation for Security and Cooperation in Europe (Ellis 2004: 167).

ised by the draft of a new law and the establishment of a special court for war crimes. Although the Criminal Code of Yugoslavia, which was in force at the time, contained provisions on war crimes, it did not include crimes against humanity or modern developments in international criminal law. The latter refers to the "other acts", which are included under Article 3 of the 1948 Genocide Convention[23] or Article 4 of the ICTY Statute prohibiting genocide (Ellis 2004: 170).

The **Law on the Organisation and Jurisdiction of Government Authorities in Prosecuting Persons Guilty of War Crimes** was adopted in 2003. It pertains explicitly to "grave breaches of international humanitarian law committed in the territory of the former Yugoslavia from 1 January 1991 as enumerated in the Statute of the International Criminal Tribunal for the former Yugoslavia" (Republic of Serbia 2003, Article 2). The **Office of the Prosecutor for War Crimes** was established under this Law and it foresaw the establishment of a **War Crimes Chamber** at the District (later Higher) court in Belgrade. The Law also set out the establishment of the War Crimes Investigation Service which, though established at the Ministry of Interior, was meant to follow the instructions of the **Chief Prosecutor for War Crimes**. At the time when the War Crimes Chamber was established, the law did not provide for witness protection measures, but the Law on Protection of Participants in Criminal Proceedings adopted in 2006 introduced a set of measures intended to ensure more comprehensive witness protection, including relocation,

[23] Article III of the *Convention on the Prevention and Punishment of the Crime of Genocide* (1948) includes the following punishable acts: (a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide.

change of identity and use of pseudonyms (Human Rights Watch 2007: 3). Today, the law also provides for the Victim and Witness Support and Assistance Service at the Higher Court in Belgrade and a Special Detention Unit for war crimes suspects.

Although the ICTY did not have a formal role in the founding of these judicial institutions, the work of the War Crimes Chamber was significantly influenced by the transfer of knowledge,[24] evidence and information, as well as by access to the ICTY database. The most tangible manifestation of the ICTY's transfer of knowledge came in the form of procedural innovations, ranging from witness protection measures to status conferences aimed at improving the efficiency of trial proceedings, which were ultimately incorporated into the new Criminal Procedure Code (Orentlischer 2008).

Based primarily on influence from the US Government and despite considerable material assistance from the international community, the new war crimes court was exclusively domestic, without international experts participating in its work as judges, prosecutors or defence counsel (Ellis 2004: 189).

In the meantime, the Criminal Procedure Code in Serbia went through several sets of changes, the most important of which, for the purposes of this publication, are the CPC provisions from 2011 whereby the plea agreement became applicable even in cases of serious criminal offences of organised crime and war crimes.[25] To streamline and expedite procedural formalities, provisions of the CPC foresaw three types of agreement that could be

[24] The ICTY took part in training programmes for Serbian war crimes prosecutors and judges (Orentlischer 2008: 50).

[25] Compared to the former CPC from 2009 which allowed for only limited applicability to criminal offences for which a prison sentence of up to 12 years is proscribed.

concluded between the public prosecutor and the accused: 1) Plea agreement (Art. 313-319); 2) Agreement of the accused person to provide testimony (Art. 320-326), and the Agreement of the convicted person to provide testimony (Art. 327-330). The designation of the plea agreement as "Sporazum o priznanju krivičnog djela" [Agreement on admission to the criminal offence] was introduced into the CPC in 2009 instead of "Sporazum o priznanju krivice" [Agreement on admission of guilt]. The other two agreements that form the basis for statements given by the accused or convicted person to be used as evidence by the prosecution against other accused persons are, in effect, variants of "obtaining a cooperating witness" (Bejatović 2012: 107). Agreements on testimony determine the sentencing type, degree or range in exchange for testimony, and provide for the possibility of acquitting the accused or dropping charges. An accused person has to have admitted to the criminal offence in its entirety and the significance of his testimony for discovering, proving or preventing a criminal offence must outweigh the consequences of the offence he admits to committing (Bejatović 2023: 217).[26] A convicted person, under certain conditions, may also conclude an agreement on testifying.

In contrast to the accused-as-witness or the convicted-as-witness agreeing to testify against other persons accused of the crime, **an accused who pleads**

[26] An example of this practice can be found in the 2013 Sotin case where the accused Žarko Milošević received the status of a cooperating defendant based on an agreement with the Prosecutor's Office for War Crimes to provide testimony in exchange for a nine-year sentence. Although the Court did not accept his testimony, finding that his statement was not corroborated by other evidence, this was the first war crimes case in Serbia that resulted in missing persons being found (Humanitarian Law Center 2017: 157).

**guilty is not obliged to testify against other persons**. The public prosecutor and the accused can conclude a plea agreement from the time when the investigation order is issued to the end of the main trial (Republic of Serbia 2011: Art. 313, para 1). The agreement may be proposed either by the public prosecutor or the accused and his defence counsel. The court has no rights with respect to initiating, negotiating or concluding plea agreements. The court may refuse, reject or accept the agreement. The conditions for accepting the agreement follow ICTY caselaw, as well as that of the courts in BiH. This entails ensuring that the guilty plea to criminal offences contained in the indictment is informed and voluntary, that the accused is aware of all the consequences of the concluded agreement and the rights he waives, that there is also no evidence that contradicts the guilty plea, and that the prison sentence or other criminal sanction proposed is in line with criminal or other law (Republic of Serbia 2011: Art. 317, para 1, pt. 4; Bejatović 2023: 211).

In a letter to us from the War Crimes Prosecutor, we were told that one of the main sources of motivation for guilty pleas on the part of the accused is a reduction in the sentence, while for the Prosecutor it is reducing the costs of proceedings. It was noted that the advantage of a plea agreement lies in expediting criminal proceedings, while one disadvantage may be raising suspicions about the fairness of proceedings, since efficiency should not be equated with the speed of criminal proceedings, or their final outcome (Office of the War Crimes Prosecutor 2021).

One of the first guilty pleas in Serbia was that of military reservist Danilo Tešić in connection to war crimes in Kosovo in 1999 which were the subject of a *B92* television documentary titled *Kad pališ, pali bolje* [When you burn, burn better] (*B92* 2004). Not long after committing the

crime, Tešić confessed to military authorities that he had killed two Kosovo Albanian civilians. An investigation and trial were initiated solely based on his statement. The Supreme Military Court sentenced Tešić to seven years in prison, while Mišel Seregi, the second soldier who took part in the execution, was sentenced to five years in prison. The Supreme Court of Serbia overturned this final judgement and ordered a retrial (Humanitarian Law Center 2013: 74). At the retrial before the District Court in Niš, the accused withdrew their guilty pleas and their sentences were ultimately halved – after years of proceedings (Higher Court in Niš 2016: 3).

The Office of the War Crimes Prosecutor concluded its first plea agreement with Milan Škrbić for war crimes against the civilian population in Sanica (Municipality of Ključ, BiH).[27] In this case, Serbia's Office of the War Crimes Prosecutor took over criminal prosecution from the Cantonal Prosecutor's Office in Bihać (Humanitarian Law Center 2014: 46, footnote 113). For a long time, Škrbić had been on the run from law enforcement in BiH. After an international arrest warrant was issued, "and thanks to good cooperation between police and the intelligence agencies of BiH and Serbia and mutual international legal assistance, Škrbić was found and questioned as a suspect by Serbian investigation authorities. That created the conditions to close the investigation and raise this indictment" (Mesić in *BIRN BiH* 2012). Cooperation with the BiH Prosecutor's Office was again crucial in the case of Dragan Maksimović.[28] In June 2018, the Higher Court in

[27] Previous agreements that the Office of the War Crimes Prosecutor had concluded were related to aiding in the hiding of individuals indicted by the ICTY (Humanitarian Law Center 2014b: 43).

[28] The indictment against Dragan Maksimović notes that the "Prosecutor's Office of BiH, via the Ministry of Justice of BiH and

Belgrade delivered a judgement accepting the plea agreement (for war crimes against the civilian population in Caparde, Municipality of Kalesija, BiH) that Maksimović had concluded with the Office of the War Crimes Prosecutor of Serbia, and sentenced him to six years and two months in prison (Humanitarian Law Center 2019: 132).

Guilty pleas can be of multiple benefit, as illustrated by another good example of **regional cooperation**, the trial of Đuro Tadić. He was accused, together with co-perpetrators, of committing war crimes against the civilian population in Duljci (Municipality of Bihać, BiH). Four co-perpetrators, Jovan and Zoran Tadić, Zoran Berga and Željko Babić, were questioned as witnesses before the Cantonal Court in Bihać and pled guilty to that criminal offence. The presentation of evidence, despite including a considerable number of witnesses, was completed within six months (Humanitarian Law Center 2014: 17-20). In its findings the HLC notes that if this procedural institute were to be used more often, it would shorten the length of criminal proceedings considerably and free up the Office of the War Crimes Prosecutor and the courts to devote more time to more complex cases (Humanitarian Law Center 2014: 47). However, even though there have been instances where persons who had previously concluded plea agreements appear as witnesses for the prosecution,[29]

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the Ministry of Justice of the Republic of Serbia, transferred the criminal prosecution against the accused Dragan Maksimović from Mali Zvornik for war crimes against the civilian population under Article 142 of the CC FRY to the judicial authorities of the Republic of Serbia, given that the accused Dragan Maksimović is a citizen of the Republic of Serbia with a registered place of residence in the Republic of Serbia" (Office of the War Crimes Prosecutor 2017).

[29] For example, one witness for the prosecution in the Štrpci case was Mićo Jovičić, who had concluded a plea agreement with the BiH Prosecutor's Office for the same criminal offence and was

their testimony could not be relied on without reservation. Thus, for example, Zoran Kenjalo, who concluded a plea agreement with the BiH Prosecutor's Office (Bosanski Novi II case) in exchange for a prison sentence of five years, appeared as a witness for the prosecution in the trial of Milenko Karlica and Željko Novaković where he then denied everything and said he had lied in his statement to the BiH Prosecutor's Office (Humanitarian Law Center 2023: 204-205).

In contrast to the above benefits, we have the entirely opposite example of Brano Gojković's guilty plea from 2016. The charges against him were that, together with other members of the 10th Sabotage Detachment of VRS, he executed several hundred civilians from Srebrenica at the Branjevo Farm near Zvornik. At the time these proceedings were initiated, Brano Gojković had been a well-known name in the Office of the Prosecutor.[30] Already back in 2010, Bosnia and Herzegovina had issued an international warrant for Gojković. That same year HLC filed criminal charges for the Srebrenica genocide against several members of the 10th Sabotage Detachment, including Gojković, who had been living in Serbia at the time and was available to the authorities. In 2011, the Humanitarian Law Center had made public the role of this Detachment, including Brano Gojković, in the crime set out in the indictment, and also in the capture of Srebrenica (Humanitarian Law Center 2017: 122).

The Office of the Prosecutor, however, did not take any action until Bosnia and Herzegovina demanded

sentenced to five years in prison which he was serving in Serbia (Humanitarian Law Center 2021: 86, footnote 245).

[30] Brano Gojković already appeared in the testimony given by Dražen Erdemović before the ICTY as the man who threatened that if he refused to participate in the execution, he would be killed himself (Humanitarian Law Center 2011: 18, footnote 73).

Gojković's extradition, given that Gojković did not have Serbian citizenship and that the offence was committed in the territory of BiH where witnesses and other evidence were located. Instead of an agreement whereby the accused would testify and thus contribute to the prosecution of co-perpetrators, the Office of the War Crimes Prosecutor of Serbia decided to conclude a plea agreement "which did not significantly contribute to the fight against impunity, or to informing the public about this crime (as information on the role Brano Gojković played in the Srebrenica genocide has been publicly available for 15 years), nor did it bring satisfaction to victims' families" (Humanitarian Law Center 2017: 124). Gojković was ultimately sentenced to ten years in prison.[31] The Prosecutor's Office of BiH strongly objected to this course of events.[32]

By the time of the Gojković judgement, it had already become established practice for the Court to forego detailed explanation when confirming a plea agreement and to simply list the CPC articles on the basis of which it determined that the agreement contained all the necessary elements required by law, that all legal requirements were

[31] For the sake of comparison, the Court of BiH convicted four individuals for the same criminal offence and sentenced them to a total of 112 years in prison for crimes against humanity (Franc Kos to 35 years, Stanko Kojić to 32, Zoran Goronja to 30, Vlastimir Golijan to 15 years in prison). Two other members of the unit, Marko Boškić (Court of BiH) and Dražen Erdemović (ICTY), pled guilty, with the former being sentenced to ten and the latter to five years in prison (Humanitarian Law Center 2017: 124-125).

[32] "We are especially unhappy that Gojković did not testify in other cases within his plea deal, which is mandatory for plea agreements in BiH, and that the plea agreement was made soon after BiH filed an extradition request. Families of Srebrenica victims have also contacted the Prosecutor's Office of BiH to express their dissatisfaction with the plea agreement" (Džidić and Ristić 2016).

met regarding the evidence attached to the agreement, and that the punishment was consistent with the provisions of the Criminal Code, without providing any reasons for its decision (Humanitarian Law Center 2017:125).[33] This is especially problematic when the sentence is below the minimum sentence set by law, in which case there should be particularly mitigating circumstances that the court must explain in its reasoning. "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" (Humanitarian Law Center 2020: 157). The above assessment relates to the judgement in which the Higher Court in Belgrade accepted the plea agreement between the accused Ramadan Maljoku[34] and the Office of the War Crimes Prosecutor. Maljoku was sentenced to one year and six months in prison for the criminal offence of war crimes against the civilian population for which the law prescribes a minimum sentence of five years in prison (Humanitarian Law Center 2020: 157).

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[33] The sentencing decision in this case should be compared to the sentence of nine years imposed on an accused accomplice in the Sotin case, for the murder of 16 civilians, even though the accused accomplice revealed the location of the mass grave with the remains of the victims and contributed to the determination of criminal responsibility of the co-accused for participation in the execution of 13 Croatian civilians (Humanitarian Law Center 2017: 126).

[34] The charges against Radman Maljoku were that on 21 June 1999, as a member of the Kosovo Liberation Army (KLA), in the area of Gornja Nerodimlja near Uroševac, he led a group of four uniformed and armed individuals and together with them abused several Serb civilians, including women. They were subjected to intimidation, bodily harm and unlawful detention.

Anonymising indictments turned out to be a particular problem, most often resulting in names of the accused and co-perpetrators being redacted in judgements even when their identities had already long been known to the public (Humanitarian Law Center 2017: 126).

Much like their colleagues in Bosnia and Herzegovina, at the Office of the War Crimes Prosecutor of Serbia they believe that concluding plea agreements contributes to achieving **justice for victims**, given that between 20 and 30 years have passed since the commission of the war crimes. They point out that initiating and conducting criminal proceedings before a first-instance, and probably later an appeals court, with the high likelihood of a retrial along with additional time, can realistically lead to "losing witnesses, evidence and injured parties" and a real danger that after so much time the injured parties do not see justice and "the truth about the committed war crime never becomes the official truth 'established in court'" (Office of the War Crimes Prosecutor 2021). From the point of view of the Office of the War Crimes Prosecutor, this is the main reason why they opt for plea agreements in cases where it is seen as justified and where the agreement is seen as an acceptable and optimal solution.

However, as we have already seen in the case of criminal procedure law in BiH, the rights of the injured parties are not adequately safeguarded in Serbia either. First of all, the CPC does not mandate informing injured parties of plea bargaining or inviting them to plea agreement hearings. If they find out about the judgement, the injured parties do not have the right to appeal a court decision on the agreement (Bejatović 2023: 215), except insofar as it concerns the costs of criminal proceedings

and the adjudicated property claim (Republic of Serbia 2011: Art. 50).[35]

The injured parties (victims) in war crimes cases in Serbia can hire proxies to represent them and actively participate in the court proceedings. Up until 15 January 2012, anyone authorised by the injured party could act as their representative in court proceedings. However, with the entry into force of the new CPC, the injured party as the plaintiff could only have a lawyer represent them (Republic of Serbia 2011: Article 50, paragraph 1, point 3 and Article 56). Apart from being inaccessible for most injured parties, who cannot afford the high price of such services, this legal provision does not take into account the specificity of war crimes cases in which injured parties are mostly from other countries and ethnic groups. It is reasonable to assume that due to the crimes committed by Serb forces, the victims have low levels of trust in Serbian institutions, including the Office of the War Crimes Prosecutor (Humanitarian Law Center 2014b: 81).

Article 313, paragraph 6 of the CPC stipulates that "if the authorised person from Article 253, paragraph 1 of the CPC did not file a **property law claim**, the public prosecutor shall invite him to file the claim prior to concluding the agreement" (Office of the War Crimes Prosecutor

[35] "Among the rights allowing the victim an active role in the process are the following: the right to attend the examination of witnesses and experts in the investigation; the right to suggest that the prosecutor ask the defendant, witness or expert certain questions; the right to briefly explain, at the trial, after the opening statements, his or her property claim; the right to propose the presentation of new evidence, and to have previously rejected proposals revisited; the right to put questions to defendant, the accused, the witnesses, the expert and the consultant; the right to request additional evidentiary proceedings; and the right to have the final say and respond to the closing arguments of the counsel and the defendant" (Humanitarian Law Center 2014b: 80-81).

2021). In each of the cases handled by the Office of the War Crimes Prosecutor, "the victims were duly informed. They were contacted by the Service for Information and Support to Victims and Witnesses and informed about their rights within criminal procedure."[36] However, despite available legal possibilities, the Court instructed the victims in each and every case to pursue their property claims in civil procedure. The victims received assistance from human rights organisations, which initiated proceedings on their behalf. Their claims were most often refused due to an alleged statute of limitations applicable to the right to claim damages (Humanitarian Law Center 2014: 82).

## Croatia

By signing the *Stabilisation and Association Agreement* in 2001, Croatia committed to reforming its judiciary and enhancing fundamental rights, taking on a host of tasks related to uninvestigated war crimes. International human rights organisations monitored the implementation of these commitments (Chapter 23), the process of democratisation and the functioning of justice institutions, and regularly informed the public,[37] while the OSCE

[36] "Contacts were made by e-mail, phone numbers obtained from the Service for Discovering War Crimes of the Ministry of Interior, via contacts with authorised representatives and based on cooperation with prosecutor's offices in the region under international memorandums of understanding" (Office of the War Crimes Prosecutor 2021).

[37] This includes reports by Amnesty International and Human Rights Watch, and at the regional level reports coordinated by the Humanitarian Law Center.

informed government institutions of its findings[38] (Teršelič, Documenta 2014: 41).

The need for this was identified based on patterns observed in war crimes trials in Croatia: a hugely disproportionate number of cases being brought against the ethnic Serb minority;[39] the use of group indictments that fail to specify an individual defendant's role in the commission of the alleged crime;[40] the use of *in absentia* trials;[41] and convictions of ethnic Serbs where the

[38] There was an OSCE field mission in Croatia until the end of 2007, and then from 2008 to 2011, an OSCE Office in Zagreb. When its mandate ran out (on 31 December 2011), it was decided to end the 15-year-long field presence of the OSCE in Croatia. The decision to close the Office was certainly impacted by the conclusion of accession negotiations between Croatia and the EU, especially once Croatia had met its commitments under Chapter 23, as well as the signing of the accession agreement with the EU (Ministry of Foreign Affairs n.d.).

[39] In 2002, the OSCE found that for comparable criminal offences, twenty-eight of the thirty-five persons arrested for war crimes in Croatia were Serbs. "While a perfect symmetry in the numbers of war crimes indictees from the two ethnic groups—Serb and Croat—might not reflect the actual number of crimes committed, the disproportion in the number of prosecutions brought against Serbs as compared to Croats (a ratio of 5:1, on average) is so large that it strongly suggests discrimination" (Human Rights Watch 2004: 12).

[40] Indictments were often raised against several defendants who were charged as co-perpetrators for the crime of genocide or war crimes. However, the indictments did not reflect the concrete contribution of each individual defendant to the commission of the offence, as a precondition for determining, beyond reasonable doubt, the responsibility of each of the co-perpetrators (Kastratović 2014: 81).

[41] In the period from 1992 to 2000, Croatian courts convicted a total of 578 persons of war crimes, 497 of which were in absentia, accounting for 86% of their total number. Proceedings were conducted before military and district courts while these still existed, and later before county courts. A total of 134 judgements

evidence did not support the charges (Human Rights Watch 2004: 2).[42]

With the establishment of the Office for the Suppression of Corruption and Organised Crime (USKOK) in 2001, the legislator entrusted a new department of the State Attorney's Office with conducting investigations in the domain of corruption, but no similar changes were undertaken when it came to the prosecution of war crimes. For a long time, investigations remained within the competences of county state attorneys and trials could be conduc-ted before any county court.

The Law on the Implementation of the ICTY Statute and the Prosecution of Crimes against the International Law of War and International Humanitarian Law, adopted in 2003, allowed for the use of evidence presented at the ICTY in proceedings before domestic courts, as well as for the transfer of war crimes cases from county courts with territorial jurisdiction to a county court in one of the four largest cities – Zagreb, Osijek, Rijeka and Split (Republic of Croatia 2003: Art. 12). Given the staffing capacities of the county courts in Osijek, Rijeka and Split,

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were delivered in absentia. The largest number of such judgements was delivered by the Court in Sisak (23 judgements), followed by Zadar and Osijek (21 judgements) (Čalić-Jelić 2014: 135).

[42] Maximum sentences under applicable law were usually imposed, with this often being a reflection of the political climate, which inevitably affected the position of the judges, but also of the inability of the judges' panels to determine mitigating circumstances for individual defendants. In many judgements against a larger number of accused, all of the accused in the case received the same prison sentence. Thus, for example, in the 1993 judgement for crimes committed in Gospić against 15 accused, the court sentenced three of them to 20 years in prison and the remaining 12 to 15 years in prison. In another case adjudicated by the same court in 1994 for crimes committed in Korenica, the 15 accused were sentenced to 15 years in prison (Čalić-Jelić 2014: 138).

almost all judges from the criminal and investigation departments at those courts were appointed to their war crimes departments. The same judges also presided over USKOK cases, for which these four county courts also had exclusive competence, as well as over other criminal cases (Teršelić 2014: 49).

Extensive reforms of criminal procedure legislation began in Croatia in 2002 and lasted through 2008, when the new Criminal Procedure Code was adopted. The new law gave the state attorney considerable competences in conducting investigations and in the criminal proceedings. When it comes to expedited forms of criminal procedure, which these reforms aimed to expand, it was specifically the state attorney who was given the right and duty to "bargain and reach an agreement with the accused about admission of guilt and sanction" (Republic of Croatia 2008: Chapter IV, Art. 38, para 7). Namely, it is the state attorney who decides on the need to conduct regular or expedited proceedings, on the sentencing policy, and on the protection of the interests of injured parties and victims (Republic of Croatia 2008: Chapter XXV, Art. 524, para 1).

Articles 359 and 360 of the CPC foresee two different institutions of proceedings: **entering a guilty plea** and **plea bargaining**. A guilty plea entered before the panel is unilateral and unconditional (Republic of Croatia 2008: Chapter XIX, Art. 359), it does not achieve an agreement on the sanction. On the other hand, a guilty plea under Art. 360 is the result of plea bargaining which includes an agreement on the sanction.

Bargaining may only concern the conditions for entering a guilty plea and the type and degree of criminal sanction to be imposed (Republic of Croatia 2008: Chapter XIX, Art. 360, para 1). The plea bargaining procedure itself is not specified in the CPC. In essence, it concerns an

alignment of commitments, or mutual acts (guilty plea) and counter acts (offer of lighter type or degree of criminal sanction), i.e. concessions made in the interest of concluding the proceedings to mutual satisfaction (Bubalović 2013: 276).

Since plea bargaining introduced new competences, the Law on the State Attorney's Office (Republic of Croatia 2009) stipulated that instructions for plea bargaining shall be issued by the State Attorney General.[43] For that purpose, on 17 February 2010 the State Attorney's Office published its *Instruction on Plea Bargaining and Plea Agreements*. As noted in the document itself, the Instruction was published for the sake of transparency, so that the other party in the bargaining would know what to expect and what the state attorney or deputy engaged in bargaining is authorised to do and when his statements incur obligations for the state attorney's office (State Attorney's Office of the Republic of Croatia n.d.).

The Instruction stipulates that bargaining may be initiated by the accused or the state attorney. If there is interest, initial **bargaining may begin even before proceedings are formally initiated**, during the preliminary criminal proceedings, but also after the start of criminal proceedings, right up until the moment to which the Criminal Procedure Code allows for a judgement based on an agreement between the parties to be delivered.

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[43] "The State Attorney General provides instructions on plea bargaining and plea agreements. The instructions regulate the bargaining procedure, the written form and the content of the agreement, which must include a statement that the judgement shall be based on an agreement between the parties, and the manner for calculating the reduction in the prison sentence to be applied in the concrete case. The instructions can prescribe cases when state attorneys are not able to conclude plea agreements" (State Attorney's Office of the Republic of Croatia 2010).

If the accused proposes a plea agreement, the state attorney or his deputy must assess whether the guilty plea would render a hearing unnecessary and enable other cases to be resolved faster, whether it would shorten the expected duration of the criminal proceedings from indictment to final judgement, whether it would result in significant savings in terms of the costs of the proceedings and spare victims and other sensitive witnesses from the negative effects of publicly giving testimony at trial, and whether it would enable the implementation of precautionary measures or provide for commuting a prison sente-nce to community service (while free) and/or contribute to the discovery of other offences or other perpetrators.[44]

Even though the law contains no specific provisions to that effect, the Instruction stipulates that in all cases where he estimates that the agreement may be unacceptable for the victim or injured party and may result in negative effects in the public, the state attorney (or his deputy) should **inform the victim or injured party of his decision.**[45] Namely, the victim and injured party are

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[44] These conditions are stipulated under Article 74 of the Law on the State Attorney's Office (Republic of Croatia 2009). The Instruction stipulates that before making a decision on plea bargaining, "the case should be considered carefully, including the evidence in the file, all the circumstances, as well as all possible consequences of a plea agreement. … Unjustified withdrawal from bargaining may result in a loss of trust on the part of the suspect, and especially of his defence counsel, and make it questionable whether the defence lawyer will be prepared to bargain in another case. For this very reason, the state attorney, and especially the deputy state attorney, should not present all his conditions at the very beginning of bargaining, and in particular should not offer the lowest sanction, i.e. one below what the state attorney's office is prepared to accept" (State Attorney's Office of the Republic of Croatia 2010: 4).

[45] The rights of injured parties in criminal proceedings are covered

accorded special rights under the CPC. Article 43 of the CPC stipulates that the **victim** has, *inter alia*, **the right to participate in criminal proceedings as an injured party**, and in the case of criminal offences for which a prison sentence of five years or more is foreseen, **has the right to be provided with an advisor,** the costs of whose services shall be covered by the budget, **before giving a statement** in the criminal proceedings**, as well as for the purpose of filing a property claim** (Republic of Croatia 2008: Chapter V. Art. 43).

Opposition of the victim or injured party does not prevent the state attorney from concluding an agreement. Even though the Instruction points out that "victims and injured parties will often have a negative reaction to any agreement with the suspect/accused," the main criteria for reaching an agreement remain that it is useful and that legal requirements have been met. "In all those other cases where the injured party only has a property claim, and where the victim is not severely traumatised, reporting is unnecessary" (State Attorney's Office of the Republic of Croatia 2010: 6).

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under Article 47 of the CPC which stipulates that the injured party shall be entitled to: 1) communicate in his native language and be assisted by a translator; 2) file a property claim for indemnification and a request for temporary insurance measures for such a claim; 3) have a legal guardian; 4) point out the facts and suggest evidence; 5) be present at the evidentiary hearing; 6) be present at the hearing, participate in evidentiary proceedings and make a closing statement; 7) inspect documents and files; 8) file an appeal under the conditions stipulated by this Code; 9) file a motion for prosecution and a private charge pursuant to the provisions of this Code; 10) be informed if criminal charges are dismissed or the State Attorney decides not to proceed with the criminal prosecution; 11) take over the criminal prosecution from the State Attorney; 12) request the case to be reinstated to the prior state of affairs; 13) be informed of the outcome of the criminal proceedings (Republic of Croatia 2008: Chapter IV, Art. 47).

The suspect must have a defence counsel, especially when bargaining is in the interest of the proceedings in order to uncover other criminal offences or other perpetrators.

Sentencing reduction should generally follow the sentencing policy for the offence in question, but is subject to the needs of the proceedings. In cases where a plea agreement enables further discovery of other criminal offences or other perpetrators, it is in the state attorney's interest to conclude the agreement "even with the condition of a sanction at the lower limit of what can be imposed for the given offence with mitigation.[46] This assessment should be based on common sanctions imposed for the criminal offence "in the territory of the state attorney's office, but also sanctions most often pronounced for the specific criminal offence in the Republic of Croatia, with particular attention paid to the character of the suspect, as well as any mitigating or aggravating circumstances in the specific case" (State Attorney's Office of the Republic of Croatia 2010: 9).

According to reports from state attorney's offices, the following mitigating circumstances most often and most significantly impacted the type and degree of sanction imposed: guilty plea, no prior criminal convictions, low-income status of the perpetrator in cases of individual criminal offences, minimal proceeds from the commission of the offence or minor damage incurred, impaired

[46] "The reduced sanction should not be less than two thirds of the expected sanction or sentence that the state attorney believes he could achieve in regular or expedited proceedings. Exceptionally, in cases where the presentation of evidence is particularly complex, either due to the large number of suspects/defendants or difficulties in obtaining evidence (requiring international legal assistance, etc.), the reduced sanction should not be less than one half of the expected sanction" (State Attorney's Office of the Republic of Croatia 2010: 9).

capacity, young age, old age, conduct following the commission of the offence (remorse, etc.). The most frequent aggravating circumstances were: multiple prior criminal convictions, significant deterioration of health of the injured party, abuse of the injured party, particular persistence and ruthlessness in the commission of the offence, considerable benefit from the commission of the offence, etc (State Attorney's Office of the Republic of Croatia 2010: 9-10).

Following successful plea bargaining, a statement is signed by the state attorney,[47] on the one hand, and by the accused and his defence council, on the other. The signed statement is submitted to the indictment panel and must contain: a description of the criminal offence being charged, the defendant's guilty plea to that criminal offence, an agreement on the type and degree of sentence or other sanction or measure, an agreement on the costs of the criminal proceedings, and the defendant's statement on any property claims that were filed (Republic of Croatia 2008: Chapter XIX, Art. 360, para 4).

After receiving the written statement for rendering a judgement based on the parties' agreement, the panel decides on whether to confirm the indictment. If it confirms the indictment, the panel decides on whether to accept the statement for rendering a judgement based on the parties' agreement and renders a judgement imposing the proposed, i.e. agreed sanction or measure on the defendant (Republic of Croatia 2008: Chapter XIX, Art. 361, para 2). It follows from the above that a judgement

[47] Deputy state attorneys also have the authority to engage in plea bargaining, but they must consult with the state attorney before they sign the statement for rendering a judgement based on the parties' agreement. In that case, the state attorney is bound by Art. 74–75 of the Law on the State Attorney's Office (Bubalović 2013: 275).

based on the parties' agreement is delivered **without prior confirmation of the indictment, i.e. before the start of criminal proceedings** (Bubalović 2013: 277).

The panel shall not accept the agreement if it is not aligned with the legally prescribed determination of the sentence or is otherwise not in line with the law. In that case, the panel shall decide on rejecting the agreement and proceed with examining the indictment. The decision to reject the agreement cannot be appealed. The parties themselves may withdraw the proposed agreement before a judgement is rendered, in which case the proposed agreement and all other information relating thereto shall be exempted from the file and may not be viewed or used as evidence in the proceedings (Republic of Croatia 2008: Chapter XIX, Art. 362, paras 1 and 2).

A rendered judgement based on an agreement between the parties may be challenged only on the basis of fundamental violations of criminal procedure provisions (Art. 468) or the Criminal Code (Art. 469) (Bubalović 2013: 278).

Even though instructions issued by the State Attorney's Office regulate the manner and possibilities of plea bargaining, what happened in the case of Josip Bikić, who pled guilty to crimes committed in Lora in Split, was in complete contravention of those stipulations. Proceedings for crimes committed in Lora were first initiated in 2002. The indictment of the County State Attorney's Office in Split charged the accused, as members of the 72nd HV Military Police, stating that in the period from March to September 1992, they detained a large number of civilians, mostly Serbs, without any legal basis, at the Lora Military Investigative Centre (military prison) in Split, under suspicion that they had participated in hostile activities against Croatia. The subject of the indictment was that eight military police officers, in violation of

international law, killed and tortured civilians, treated them inhumanely and inflicted grievous suffering and injury to bodily integrity and health, thereby committing war crimes against the civilian population (County Court in Split 2002: 28).

On 20 November 2002, all eight accused were acquitted by the trial chamber of the County Court in Split. Josip Bikić was on the run and had been tried in absentia. The defence he had given to the investigating judge of the County Court in Split in 2001 was presented at the trial (County Court in Split 2002: 16). On 25 March 2004, the Supreme Court of the Republic of Croatia overturned the acquittal and referred the case for retrial (Documenta 2023).

At the retrial in March 2006, the accused, Tomislav Duić, Tonči Vrkić, Davor Banić, Miljenko Bajić, Josip Bikić, Emilio Bungur, Ante Godić and Anđelko Botić, were pronounced guilty and sentenced to six to eight years in prison, pending appeal. Josip Bikić was sentenced to six years in prison. That same year, the judgement became final (Documenta 2023).

The trial garnered a high degree of media attention and was accompanied by veterans' protests and calls for not recognising the court's decision (Ivančić 2021).

And then on 18 November 2008, Josip Bikić, "having found out that he was wanted by criminal prosecution bodies, turned himself in to serve his sentence" (County Court in Split 2009: 2) as pronounced in the previous judgement of the County Court in Split. Six months later, his defence counsel filed a motion to reopen the legally finalised criminal proceedings. In the reopened proceedings, he pled guilty to all charges and in his defence "stated that he admits in full to the commission of the criminal offence as charged in the indictment of the County State Attorney's Office in Split, saying that he felt

remorse and wanted to use his legal right not to present anything else in his defence and not to answer any questions" (County Court in Split 2009: 4). Following evidentiary proceedings, the war crimes panel concluded that the admission was consistent with other evidence presented in the proceedings, i.e. that the accused had committed the criminal offence precisely in the manner and under the legal qualification charged in the indictment. No new circumstances were determined in the proceedings "that would cast doubt on the findings of the court in the previous proceedings, both in relation to the facts and in relation to the degree of guilt or capacity of the accused" (County Court in Split 2009: 9). The panel found Bikić's plea to be genuine and complete.

However, the existence of mitigating circumstances was found in a significantly different measure compared to the previous proceedings. "Namely, having found out that he was wanted by judicial authorities of Croatia, the defendant turned himself in to serve his sentence, and later admitted to the commission of the criminal offence in full at the main hearing, expressing genuine remorse for his actions, which has particular weight given that it was the first time in these proceedings that an accused had admitted to the commission of a war crime." It was also pointed out, with reference to the caselaw "of Croatian courts, but even more to that of the International Criminal Tribunal at the Hague" that "**the defendant's guilty plea is evaluated as a particularly mitigating circumstance** that significantly influences the choice of the type and measure of punishment, as well as any later decisions on his conditional release" (County Court in Split 2009: 9).

And this is indeed what happened. The court counted as mitigating circumstances in favour of the defendant "that at the time of commission of the offence he was

young, he was a participant in the Homeland War who had been awarded numerous medals, and, on top of that, he had been wounded. In the meantime, he had married and started a family, and was now the father of two small children" (County Court in Split 2009: 10). The court, therefore, concluded that there were grounds for mitigating his sentence below the minimum foreseen for war crimes against the civilian population, that reduced sentence being appropriate to the degree of criminal responsibility of the accused. Instead of six, he was sentenced to four years in prison, with the time he had spent in detention and serving his previous prison sentence to be counted towards his new sentence.

It should be reiterated that the consequences of the defendant's conduct had been severe and had resulted in the deaths of two persons, while his guilty plea had not led to any new information or charges, given that the defendant invoked his right to forgo giving any further defence and to decline to answer any questions. No one appealed the judgement, so it became final after the appeal period had run out (Documenta n.d.).

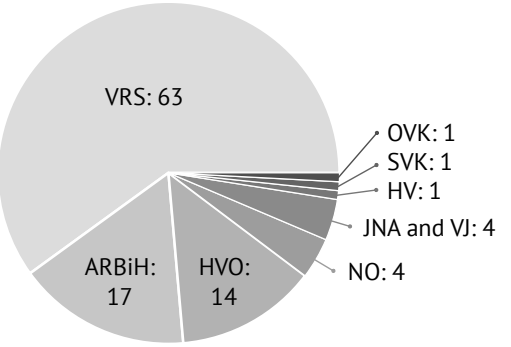
Following the retrial, Tonči Majić, president of the Dalmatian Human Rights Committee, said that Josip Bikić's guilty plea was truly "a new and unexpected element, especially for those who keep shutting their eyes to what happened in Lora" (Vežić 2010). Even though trials for war crimes in Lora were widely covered in the media and challenged in society, following this guilty plea, there was no uptick in media reporting or analytical articles.

Among the media headlines, there is one from late 2011 about Bikić being reported to the police for disturbing public peace and order while intoxicated. He had been on conditional release at the time (*Index.hr* 2011).

It should also be noted that a memorial was erected in Lora to commemorate fallen members of that very same

72nd Military Police Battalion of HV. It is three meters high and consists of three monoliths forming the letter H which is meant to represent "Croatia, heroes and courage" (*Vojna policija* n.d.). While we do agree with our interlocutors who believe that guilty pleas are important "because they testify to the emancipation of the state, its institutions," it has been shown thus far that such "gestures are made purely out of necessity. They are not the result of a paradigm shift, but an effort to disguise the absence of such a shift" (Ivančić 2021).

The number of persons who concluded plea agreements by membership of political and military structures during the war




- Military/police/political structures of Republika Srpska (VRS): 63
- Military/police/political structures of the Republic of BiH (ARBiH): 17
- Military/police/political structures of Herceg-Bosna (HVO): 14
- Military/police/political structures of the Autonomous Province of Western Bosnia (National Defence, NO): 4
- Military/police/political structures of the Federal Republic of Yugoslavia (JNA and VJ): 4
- Military/police/political structures of the Republic of Croatia (Croatian Army, HV): 1
- Military/police/political structures of the Republic of Serbian Krajina (SVK): 1
- Military/police/political structures of Kosovo (OVK): 1

Total number: 105

# The Admission Itself Has That Power: Voices of Those It Concerns

*Davorka Turk*

In preparing this publication, we spoke with many people – with prosecutors, judges and lawyers, but also with those who have testified before the ICTY and/or domestic courts, with representatives of victims' associations, and with activists and others who tried to give their contribution to dealing with the past in the context of mass crimes, primarily in BiH, but also in Croatia and Serbia. We wanted to include the experiences of domestic stakeholders and the dilemmas they faced regarding judicial practice related to plea agreements for war crimes, which are primarily related to the caselaw of the ICTY, but also to that of domestic courts. Whether they are judges or prosecutors, or representatives of victims' associations, witnesses, researchers or reporters, their voices reflect what has by now become decades of experience with war crimes trials and the impact of those trials on what is usually referred to as transitional justice. Since context goes a long way to determining experience and perception, it is important to mention that as the retributive

element of transitional justice, war crimes trials had a fundamental and dominant role in the process of dealing with the legacies of war in the territory of the former Yugoslavia. In addition to the ICTY, which was founded at the height of the war, domestic courts in BiH, Croatia and Serbia had prosecuted some 2000 individuals for war crimes by 2025.[1] This region is unique globally in terms of the number of people prosecuted, making the experiences of people from this region all the more significant. That is precisely why it was important for us to speak with domestic stakeholders about the dilemmas surrounding plea bargaining in war crimes cases. We started with the question of whether – from today's perspective – they have a positive or negative view of plea bargaining, what the concrete positive impacts of this practice were and what its failings were, and where they were most evident. However, since satisfaction for victims is often cited as the goal of many actions, including court proceedings, our central question was: what does satisfaction mean for victims?

[1] Although individual courts and states have databases of persons tried for war crimes before a specific court or in a specific country, the only comprehensive database of all war crimes judgements from all courts and in all countries was presented to the public in 2023 and is available online (*War Crimes Trials Database*). In 2024, the High Judicial and Prosecutorial Council of BiH (HJPC) also published its database of all court judgements from all courts in BiH. This database is important because BiH had the largest number of war crimes trials. The database is available online as well (*Court Decisions Database*).

## Absolute proof that something happened

Teufik Kulašić had been detained in Keraterm and later in Trnopolje near Prijedor. He was one of the first returnees to Prijedor and a witness in several war crimes cases. According to him, guilty pleas that resulted from plea agreements were a certain kind of satisfaction, but with a dose of bitterness because of the process of plea bargaining itself and especially bargaining about the length of the sentence.

"It has been twenty years already, but a guilty plea is a type of satisfaction for us witnesses of everything that happened – that it really did happen. Even though our statements about the suffering and losses were treated as if we were making it up, the guilty pleas come out of the mouths of those who did the deeds and say it is true. On the other hand, after more than twenty years, talking about it and confessing just so they'd get off more lightly, so that as direct participants they would be punished less. I am aware that I cannot bring back my deceased brother, he was killed, but the fact is that it is extremely unfair to victims, this scheme of killing civilians and the guilty pleas confirming this happened just so you'd get a reduced sentence."

**The passage of time impacts the expectations of the families of victims**, as pointed out by Hasan Nuhanović (2020) whose family was killed in the Srebrenica genocide. "Our expectations were much higher in those first years after Dayton, but they were depleted over time, and ultimately we all get older, witnesses are dying too, survivors are dying, and so are the accused..."[2]

[2] Hasan Nuhanović, who used to work as a translator for the UN Dutch Battalion stationed in Potočari, survived the Srebrenica genocide. He spent nine years battling the Dutch state in civil court. In 2011, the court found that the Dutch Battalion were to

Edin Ramulić, a prison camp survivor, war veteran and activist from Prijedor, has been working for years on researching and documenting war crimes, on cooperation with courts and on finding witnesses. As a peace activist, he has experience of what specific judgements mean and the influence they have in society. Edin believes that in the context of ubiquitous denial and negation of perpetrated crimes, guilty pleas have a particular strength, notwithstanding the possible element of "trade-offs" for a reduced sentence. In his opinion, it is crucial that information about these guilty pleas should reach the wider community – only then can they achieve their full effect.

"**The admission itself has that power**, it's another indicator that these things really did happen, because the person who did them is saying so. I guess at least the criminals will be trusted more when they say they did it. The main problem is that people always think, and not without reason, that they only admitted to the crime to get a lighter punishment. But these are people who at one point, when they were faced with everything that was presented as evidence against them, they decided to confess and remained steadfast. From among those who have been convicted, several are from Prijedor, they have done nothing to show that they were not being sincere. Most of them live quiet lives, at least those that admitted their guilt. So, that makes it a good argument that these people have changed" (Ramulić 2025).

Whether people have changed or not is a deeply individual matter that very much depends on the social climate, according to Refik Hodžić, a journalist and

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blame for turning members of Hasan's family over to the forces of Ratko Mladić, who was tried by the ICTY. His entire immediate family, mother, father and brother, who sought shelter at the UN base in Potočari, were killed when they were handed over by Dutch UN soldiers to Bosnian Serb forces.

researcher who worked as the spokesperson and BiH outreach coordinator for the International Criminal Tribunal for the former Yugoslavia. He points out that admissions have particular strength in circumstances where war crimes are still defined as acts of patriotism.

"It's a lot more difficult for people who, after they've served their sentence, **return to a narrative structure where the crime for which they were convicted, and which they confessed to, is defined as an act of patriotism and is part of some national myth** and all that. It then becomes almost impossible to get to a point of catharsis, because you are being told that what you did, you actually had to do it, etc. ... that you're a hero, what you did was a heroic act and so on. And then it thaws, it ebbs, that capacity you have because of, I don't know, nightmares and whatever it is that drives someone to admit their guilt" (Hodžić 2020).

## Sincerity, it is (not) important

The question of sincerity of remorse is central to this topic. Since it is impossible to see into the mind of the accused, the question of sincerity can only be tested indirectly, primarily by whether those who confessed ever subsequently denied or diminished that admission, or whether they cooperated with prosecutors to help discover other perpetrators or important information. Kemal Pervanić, who survived being detained at the Omarska camp and who established a peace organisation after the war, stresses the symbolic importance of admission and believes the question of sincerity, as important as it may be, is not central in this case:

"It was probably sincere for some, some discovered they had a conscience, and some were probably advised by lawyers what to say in order to get a reduced sentenced, but it's the symbolism that matters. It makes no difference whether it was sincere or insincere, **the symbolism of the admission is much more important**" (Pervanić 2020).[3]

Refik Hodžić highlights the "usefulness" of admissions for making progress. In his opinion, the symbolism of a guilty plea is primarily tied to the fact that the perpetrators of the crime confirm that they *did* commit the crime.

"This can be used in multiple ways, because there had been no understanding on any side, no initiative or project for dealing with the past in order to leave that past behind and move on towards the future without the burden of what happened. This also goes for what we can call the Bosniak side, and in that context, if we look at it that way, the Tribunal and its judgements were used exclusively to set up a kind of moral superiority of the Bosniaks as the biggest victims compared to the Serbs and Croats – which is beyond question in all respects, both when it comes to the number of victims and when it comes to the absence of a systematic policy of genocide that did exist in the political projects of the Serbs and Croats. However, it turned out to be destructive in the long run, because the Bosniaks thus reduced the role of the Tribunal solely to confirming their moral superiority, without any thought or initiative to use this for healing and integration of society, to start a conversation, a dialogue that would lead to admission and to forgiveness, ultimately. And then

[3] Kemal Pervanić is the founder of the peace organisation *Most Mira* and author of *The Killing Days: My Journey through the Bosnian War*. He is also author of the film *Pretty Village*, a story about forgiveness, reconciliation and the reaches of humaneness.

what happens? In this context, of course, **imposed sentences become a kind of currency** of that moral superiority: the bigger the punishment the bigger the crime. The facts and what was said and what was established and, you take any of these great Bosniak politicians, any one of them, they have no idea what the Tribunal's judgements said, they have absolutely no clue about what is actually most important, they have reduced everything to just whether genocide was confirmed or not, and who got how many years" (Hodžić 2020).

Edin Ramulić says that politics dictated the approach whereby convictions are seen as continuing the injustice against "our people". Guilty pleas disrupted that concept and were therefore not welcomed and did not receive enough attention. Edin cites a concrete example:

"For example, the same day that Dušan Fuštar pled guilty at the Court of BiH,[4] another three Serbs were convicted for the crimes in Jajce. All the media in Republika Srpska – print media, online portals and the public broadcaster – reported that those three were convicted. No one reported that this one pled guilty, they just glossed over it. **What we have lost is the creation of public opinion through independent media"** (Ramulić 2025).

Kemal Pervanić also believes it is important to note that we live **in a climate where those who are in power deny the crimes**.

"If we are electing these people, then we are following them and listening to them. And then a member of that

[4] During 1992, Fuštar was a shift leader in the Keraterm camp. Under *Rule 11bis* of the ICTY Rules of Procedure and Evidence, he was transferred from the detention unit in The Hague to the Court of BiH. He accepted his guilt under the revised indictment that no longer charged him with personally actively participating in the killings and abuse of prisoners. He was found guilty of crimes against humanity and sentenced to nine years in prison.

community or most members of that community will not go researching what happened at the Hague Tribunal where you have tens of thousands of pieces of evidence and the transcripts are endless, they won't go looking for details unless they are specifically interested in a given case. **It then becomes very important if someone from that community admits guilt**. It is very, very important for the community that was injured" (Pervanić 2020).

Guilty pleas, though they have a certain power, are still limited in reach because they are opposed by a powerful machinery that shapes the discourse in which all judgements and facts established in court are presented as non-objective, as lies, as something directed against "our" people, according to Refik Hodžić. This approach, Hodžić points out, creates a kind of hurricane that sucks everything in, so the admissions of guilt are viewed in the context of someone having to plead guilty in order to receive a lighter sentence and the crimes, despite the admission, go on being justified in the usual manner (Hodžić 2020).

We were told something similar by Dragica Tomić, president of the Association of Killed, Deceased and Missing Croat Defenders from Trusina where, according to data from the Court of BiH, 19 civilians and three HVO prisoners of war were killed on 16 April 1992. Rasema Handanović, who took part in the execution of civilians and prisoners of war, confessed to the crime. In this case, the Prosecutor's Office met with representatives of the victims' families and informed them of the possibility of a plea bargain with the accused.

"They asked the victims' families whether they would agree in this case to reduce Rasema Handanović's sentence in order for her to tell the truth about what happened. The families agreed and then the proceedings moved on" (Tomić 2020).

Even before the judgement in her case was delivered, Rasema Handanović had testified in the case of Memić et al. and had "expressed her clear intentions to continue doing so in the future, when requested by the Prosecution, and in a way she is bound to do so under the entered Plea Agreement," according to the judgement (Court of BiH 2012: 76). However, there is no record of attempts made to ask the families of the victims for forgiveness and convey her remorse as stated in the judgement, nor were there any statements or attempts to contact the injured parties.

Dragica Tomić (2020) relates how she personally took Rasema Handanović's admission and how other members of victims' families reacted:

"My personal opinion is that she was brave to say it, to confess. On the other hand, her admission did not go over well with some others, so in this case I think Ms Handanović maybe just didn't have a chance. Maybe she didn't have a chance to say so in public, to come here."

## Nothing is enough

Kemal Pervanić reiterated the importance of guilty pleas, beyond any personal satisfaction, at the social level, especially in view of future generations. It is unlikely, Pervanić points out, that the survivors will be "100 percent satisfied"; it is clear that their pain is irreparable and that nothing can bring back their loved ones, but the guilty pleas are important when it comes to thinking about the kind of society we want in the future.

"For me as an individual, but at the same time a member of society, it would be good to hear someone who was involved in those crimes say so, to explain: I took part for

such and such a reason, I regret it, or forgive me. However, as far as I'm concerned, it's the **historical and legal aspect** that's more important. For years now, I've been thinking about the **effects of those admissions on future generations**. Those of us who lived through it, in most cases, whatever happens, we will never be 100% satisfied, because we are still sensitive to those things in a way. For example, when it comes to Srebrenica, someone was convicted of genocide, was it Karadžić or Beara, it doesn't matter. After that judgement, and it was a life sentence, one of the mothers said, a reporter was interviewing her and she said: Nothing is enough! Even if they were to impose a death sentence on one of those criminals, bring them before a firing squad, there would still be this feeling because at that moment we realise, as that mother and wife realised, that **no judgement can bring back loved ones who were killed**. That is why I think the personal attitude, the personal perspective is less important than this other perspective, the historical and legal perspective. If we want to think about what kind of society we want to have after everything, then **we have to think about the younger generations and about future generations**. The judiciary as such is not perfect, the law as such is not perfect, we have to accept the work of these institutions, to have their work – if we are dissatisfied – raised to a better, higher level, but we have to accept these institutions, their work and their decisions" (Pervanić 2020).

Although overly or exclusively relying on the courts as a mechanism of transitional justice evidently has its shortcomings, the judgements and facts established in court are still a bedrock for victims, and often the only one they have. Hasan Nuhanović (2020) sees the judgements as important because they leave a record of what happened. Edin Ramulić (2025) believes that we wouldn't have anything if it weren't for the courts that dealt with

war crimes, and the institution of guilty pleas is a step further in that process. The key aspect of a plea agreement is the fact that after a guilty plea is entered, there is no doubt that the crime was committed.

Apart from preventing the negation of crimes, guilty pleas also help shorten proceedings and gather evidence against other suspects, Ramulić points out.

"They always had to offer something the prosecutor could use, at least here in BiH. But the problem is that this was used only at that specific time. When they go to serve their sentences, they are forgotten and **that other potential of guilty pleas was never used**. There were no guilty pleas in the case of Omarska, but all the bodies have been found,[5] while in the case of Keraterm, everyone pled guilty, but we're still looking for the bodies. This shows that no one insisted that the perpetrators say where the bodies are buried; who came to get them, where they may have been taken. No one capitalised on that guilty plea. If he decides to renege on the agreement, the sentence will not be increased, there is no sanction for something like that. And this is a shortcoming, **that agreement – when it is signed – there is no guarantee it will be upheld**" (Ramulić 2025).

Refik Hodžić (2020) also points to the perspective of the courts, what courts see as the benefit of plea agreements. As mentioned earlier, this mostly boils down to saving resources, and from the courts' perspective the

[5] The remains of people who had been detained in Omarska were found in mass graves at several localities in Prijedor and the surrounding area, mostly in the Stari Kevljani and Kevljani mass graves. Mass graves were sometimes discovered by returnees who noticed sunken ground or hunters who noticed tracks in inaccessible areas. There were also cases where the sites were reported by local Serbs who had not personally taken part in the executions, but had information about possible locations of the mass graves. .

right word for this institution, in his opinion, is bargaining.

"If you look at the roots of this practice, it comes primarily from the US where over 80% of court cases are solved with plea bargains. And the reduction in a sentence is a matter of bargaining. We should also use that word. It is transactional in nature, it's about 'I give you a reduced sentence, and you give me a guilty plea'. Done, move on. And it's impossible to avoid that transactional nature since this institution was adopted at the Tribunal, even though it goes against the mission of the Tribunal, which is to determine the facts of what happened. There should be **no room for transactions of any kind**, because a transaction in and of itself means a reduced sentence, withdrawing some counts of the indictment in order to arrive at a guilty plea, **it means fewer facts, fewer possibilities for witnesses to testify, fewer documents presented at trial**, and that in itself problematises the punishment as a means of achieving the bargain" (Hodžić 2020).

**In the long term**, Hasan Nuhanović (2020) points out, "guilty pleas will have some effect on public opinion and on the future, leaving a **lasting mark that cannot be brought into question**, and I don't think they will be questioned in the future," adding that it would be important for victims' families to feel some sense of justice in their lifetimes if the system is to be meaningful in any way.

Whenever the issue of plea bargaining, and its potential and limitations, is brought up, the discussion almost always includes the case of Biljana Plavšić and her guilty plea. Refik Hodžić (2020) points out that her admission is of special significance and has great potential, and that the length of her sentence should not be the only point of focus:

"In the text of her guilty plea, Biljana Plavšić said one very important fact. [...] For the first time, coming from someone who shaped the policy, she talks about how they lost all humanity in an effort to prevent the same things that happened in the Second World War from happening to the Serb people again, that they did this to others before those others had a chance to do it to them. Of course, she says other things as well, but they are all brushed aside and in Sarajevo, in the Bosniak public arena so to speak, no one is talking about these things, instead everyone is talking about how she got 12 years and how that's not enough. And all that **potential for completely disabling denial** and saying: here, look, Biljana Plavšić admits to what we all know you did and what happened, so let's talk about that now, let's analyse that. That, while there was still a chance, but no, it was just '12 years! 12 years!' And of course, when Plavšić later starts denying her admission, then the potential of her admission is completely nullified. At that time, in 2006, 2007, 2008, politics went back in principle to its positions of 1992 and the strategic objectives of that time, so Plavšić's denial of what the Tribunal established should be viewed through that lens. However, the Bosniak public absolutely never came to understand the potential of what was happening at the Tribunal for the integration of BiH and for the healing of society, which is a fundamental Bosniak interest in BiH."

Looking at the case of Biljana Plavšić and other similar cases, Pervanić (2020) points out that it doesn't matter that Plavšić got a reduced sentence or that she denied her admission:

"**What matters is that she was accused of war crimes within an institutional legal system**, in this case an international legal system, meaning it wasn't done here so that someone could claim it was vengeance, unfair

or whatever... **And she admitted to her crimes formally and legally**. And did she change her mind afterwards, did she not change her mind... We have cases, but we don't talk to these people, that someone was insincere; but here, we were talking about Landžo.[6] He did not confess in court, but after the trial, he admitted to having been involved in war crimes. But even of those who did plead guilty in court, maybe insincerely, we don't know, because we don't talk to them, and maybe some of them have regretted it."

It seems everyone agrees that no criminal sanction can offer satisfaction to people who lost their loved ones in brutal ways. What is it that could provide some satisfaction, consolation or recognition, if not the length of the prison sentence for those found responsible? Refik Hodžić cites an example from one of the trials where there was a plea agreement, and where the victims primarily sought for the accused to reveal where the bodies of their loved ones were buried.

"I think that in terms of the value of genuine remorse, this kind of thing is only valuable for direct victims. I'm not sure we have the mechanisms that could evaluate it in some broader social context. Common law is not interested in whether (admission) is sincere or not. They are only interested in a guilty plea. You agree to plead guilty to three points on the indictment, you get your sentence and that's it. It doesn't go deeper. The fact that you admit to your guilt, who can guarantee that you were sincere, nor do I ultimately care whether you were sincere, I care about

[6] Esad Landžo was sentenced to 15 years in prison by the ICTY in 1998 for the killing and torture of Serb prisoners at the Čelebići camp, Municipality of Konjic. After serving his sentence, Landžo returned to Konjic in 2015 and sought to personally express his remorse to the victims. A film was made about this called *The Unforgiven: A War Criminal's Remorse*.

what it means for the community," says Hodžić (2020), and then he refers to a study done by the Max Planck Institute about what Nikolić's admission[7] meant for the victims from Vlasenica and what it meant for the wider community. "And so, they literally do the research, conduct the study, and on top of that, they ask the victims' families to say what they would like to hear from Nikolić, but at that time the families still have no idea where their children are, where their loved ones are, and so we get a concrete request, the victim's family saying, **I want him to tell me where my loved ones are buried**. I think that is one of the most powerful moments in the history of the Tribunal, when he addressed that woman at that sentence hearing.[8] They had taken two of her sons and Nikolić was telling her where they were and what happened. I think that, for me, that was the approach I could think of as the right one in the context of these cases, then the pleas make sense. While everything else, really... in a way I feel disgusted even thinking about whether Damir Došen was sincere in his admission of guilt. They read those statements that someone else wrote for them, it's all a travesty, a perversion of the proceedings."

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[7] Dragan Nikolić was the commander of the Sušica detention camp established in 1992 by Serb forces in the Municipality of Vlasenica, BiH. While he was commander for the camp, he participated in creating and maintaining an atmosphere of terror and systematic sadism inflicted on Bosniak and other non-Serb detainees. He personally killed nine people and subjected others to torture and beatings, while women of all ages were subjected to sexual violence and abuse.

[8] This refers to Habiba Hadžić who was herself detained in Vlasenica and to whom Dragan Nikolić revealed in the courtroom where the remains of her sons could be found. See *Remember Sušica Crimes* (2024).

## Searching for other forms of justice

Edin Ramulić (2025) believes that different people have different ideas about 'what satisfaction for victims would look like', because their needs are largely determined by their postwar situation. After the war, many survivors and their families returned to their homes where they are now a minority community, which significantly determines both their position and what they consider a priority.

"There is a whole system of measures, but it's not the same for everyone. For some, it's important to get access to rights. If someone returns, especially as a member of a minority community, to Prijedor for example, they can see that there's a whole system of privilege for veterans. And none of it is available to returnees. Waiting in line, families of fallen fighters have priority, while families of those who were detained in camps have no priority. For some, that would be meaningful, to get certain rights, but that can't be given by a court. **A whole system of measures to make people equal, so everyone has equal rights no matter where they live, what region, what people, what identity they belong to**. It's impossible to resolve because everyone sticks to their own, there is continuous injustice and then it's very hard to compensate with anything" (Ramulić 2025). With time, even though status rights have become irrelevant, symbolic reparations are becoming more important, Ramulić points out. "Some monuments exist, others don't; war crimes victims usually do not have the right to have their own monuments in their own towns. I think that is now the most painful thing that people are facing. We in Prijedor have the largest number of convicted war criminals, but that is not an argument in favour of a memorial for war victims[9] and it

[9] For years, representatives of the victims' association in Prijedor have been asking the town's authorities for permission to erect a

doesn't seem to be an argument against murals honouring military units, glorifying them, with the official authorities celebrating all those days of the police, the brigades... So, these reactions are more the channelling of anger and it's impossible to satisfy that with the length of a sentence."

Ramulić points out that all three camps in Prijedor have been marked, but no other camp in the territory of Republika Srpska has been marked.

"Is it because we have the largest number of prosecutions? Or the largest number of guilty pleas? Well, we can't say that isn't part of it. We've never had trouble accessing these places, especially Keraterm, we can access any time, day or night, also Trnopolje; Omarska is a bit specific. That is the power of Darko Mrđa's guilty plea.[10] After his guilty plea, we sought and received funds from the municipality to organise commemorations at Korićanske Stijene."

Our interlocutors, from among judges, prosecutors and defence lawyers, point out that the biggest value of a guilty plea is the **certainty of punishment**, and that this is the biggest satisfaction for victims; that someone was tried and convicted of the crime they committed. This certainty is absent in trials that follow regular proceed-

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memorial to the 102 children of Prijedor who were war victims. Despite obstruction from the local authorities, the families of the victims keep insisting on institutional support for their request.

[10] Darko Mrđa was a member of the so-called "intervention squad", a special Bosnian Serb police unit in the town of Prijedor, in 1992. Together with the other members of the squad, Mrđa personally participated in the unloading, guarding, escorting, shooting and killing of more than 200 unarmed men at Korićanske Stijene. Only 12 men survived the massacre. He agreed to cooperate with the Prosecution and his plea helped to establish the truth surrounding the crimes committed against non-Serbs.

ings. If we accept this interpretation, then the most important issue becomes the **uneven sentencing policy**.

"There has never been a uniform policy and there are so many outliers. For the same offence, one person will be acquitted and someone else will get too much. At the Court of BiH, the legal minimum for war crimes is ten years in prison, so **either you're a war criminal or you're not**, and if you are a war criminal, then you can't have any mitigating circumstances; it should never have gone below that minimum of ten years. It should have been that instead of 15 you get 10 years in prison, and not five instead of 10. The Tribunal is even worse; at least we have that law, while the Tribunal didn't have any minimums" (Ramulić 2025).

Speaking about the length of sentences and the issue of personal satisfaction, Edin Ramulić refers to the example of the guilty plea related to crimes committed in the Keraterm camp where his father had been detained.

"This guilty plea for Keraterm, for instance, am I now fully satisfied because the man responsible for my father's death – Dragan Kolundžija, who was the shift commander in Keraterm – got three years in prison? Except that he spent more than two years in the detention unit, which means he didn't spend a day in prison and he is literally being released out of the detention unit. Damir Došen, who also pled guilty, got five years, but he only spent eight months in a real prison" (Ramulić 2025).

When it comes to plea agreements, according to the law, the court is obliged to consult the injured parties, but is not bound by their opinion. Additionally, the time limit for contact and consultation with the injured parties is very short and practically impossible to meet. What most often happens in practice is that a victims' association is contacted, if it exists, and most often by telephone, says Ramulić.

"Whenever we were consulted, we said, OK, we agree if it will help, if it will lead to finding the bodies. It makes no difference if we're opposed, because **the opposition of the injured party has no influence**, it absolutely cannot challenge the agreement. The law foresees this role, but it has no formal weight. In practice, it's even worse, and injured parties aren't even informed about the judgement, no effort is made to inform them" (Ramulić 2025).

It's similar with property claims, which are usually referred to civil proceedings. The law provides for the courts to ensure evidence is gathered for the property claim, but as a rule the courts invoke another provision whereby they are exempt from gathering evidence if this would prolong proceedings. Looking critically at this practice, Ramulić points to the fact that in an overwhelming number of cases this would involve an additional expert witness because the damages are almost always non-pecuniary. Most of the injured parties do not hire a lawyer, and even if they do have one, the possibilities for action are minimal and mostly involve filing a claim for damages. Edin Ramulić points out that **guilty pleas are the only point where families, as the injured party, are given an additional role, because families need to be consulted and give a statement in support of the concluded agreement**.

What could have been done in other, extrajudicial ways, to gather historical facts, to collect testimonies, or to communicate facts from trials to the public? Who should have been doing that?

Hasan Nuhanović (2020) points out the importance of there being alternatives outside the courts and adds:

"Dealing with the past takes many forms, including **other forms of truth finding, outside the court**. But a truth established in court must not be brought into

question, the truth established by the court should not be up for discussion; here I refer to final judgements."

Refik Hodžić (2020) believes that in order for **guilty pleas to have an effect in the community**, the kind that we think of as healing, "the admission must be about what happened and must include accepting responsibility for the crimes committed. The **admission must be public**, and **it must also be acknowledged in some way by other members of the community**, in order to have a wider effect."

Speaking from personal experience of working with young people, Kemal Pervanić (2020) talked about the lack of deeper discussion and the predominance of one-sided and simplified narratives:

"You have the usual 'they did this to us.' And what is worse, when it comes to young people, they don't know that most of those friendships, the good interpersonal relations from before the war, they were sincere. Now they say, 'they were pretending, they were always like this, they would do it again.' For me, this is horrifying, **there is no reflection about our personal attitudes**, when it comes to that part of our history, for people to ask how they themselves would have reacted in that situation, so that **we start re-examining ourselves**. When it comes to younger generations, in some way the presence of hatred is – greater. I sometimes point this out – it's a very controversial opinion – that there is more hatred among young people than among those of us who have been through it, precisely because young people do not have any personal experience of the life that existed before."

Refik Hodžić (2020) says that no effort was ever made in our societies to reach **the kind of catharsis that guilty pleas can generate**:

"Because you have to ask, in what context could this have happened? In a context where the leaders, the people

shaping social life, from politicians to religious leaders, they would have had to come out and say: 'We must face up to what we have done to each other and ask for forgiveness, we must admit the wrongdoings we committed against our neighbours.' In that kind of context, guilty pleas would have been cathartic and it would not have mattered if the media covered them or not; we would all know, because at the level of the discourse, people would have been elevated as important for a process that takes place in the community, a process of healing. That didn't happen."

Thinking about **what reconciliation means**, Hasan Nuhanović (2020) says that for him it has the very concrete form of him being able to walk through his town of Vlasenica without fear:

"Reconciliation is an abstract concept, it can be important, and it's a topic that can be discussed, but the smallest effect of something that could be called reconciliation, its minimal effect, would be for me to be able to walk though Vlasenica without fear, but also without fearing how I would react if I ran into so and so on the street. It is absolutely humiliating and it should not be expected of anyone, not of me or of anyone else, that in a local community of just a few thousand residents, that you are in a situation where you walk through town and run into the person who most probably committed the murder of your father, mother, brother. I think this situation is still present in many communities 25 years after the war, and then reconciliation as a concept, abstract, loses all meaning. You know where it doesn't lose its meaning? Well, it doesn't lose its meaning only in the fact that most probably no one there will kill me, but that is partly because the Tribunal did its job, because there is the police, and because it has been 25 years since the war, but it's least of all because some people admitted to crimes and because we have dozens of final judgements for genocide."

# The Media: The Missing Link

*Nedžad Novalić*

The role of the media in the wars in the former Yugoslavia has been discussed in various publications and from various angles.[1] The media had an important role in the Yugoslav crisis, the disintegration of Yugoslavia, and the wars that followed. A considerable number of media outlets spread disinformation, fear and hatred, clearly marking the *enemy*, they were part of the war effort and it was often media reports that preceded crimes in the field. There were, of course, media outlets that resisted such trends and remained faithful to the principles of their profession.

When it comes to war crimes trials and the media, criticism sometimes arises because none of the reporters and other media workers from the former Yugoslavia were ever held accountable for warmongering, spreading hatred and inciting crimes. In contrast to the International Criminal Tribunal for Rwanda, the International Criminal Tribunal for the former Yugoslavia (ICTY) did not have

[1] See, for example, Thompson (1995). Today, there are many available memoirs of reporters and editors, for example: Jakić (2013), Kurspahić (2003) and Pejić (2013).

any cases with reporters as the accused. All that has remained are sporadic scholarly conferences and statements that those responsible for warmongering should be held accountable and should not be allowed to keep important positions in the media. Thus, for example, in 2009 the Independent Journalists' Association of Vojvodina filed a criminal report, without naming the perpetrators, for the criminal offence of incitement to genocide and war crimes, which led to an investigation that went on for several years, but never produced any concrete results in the form of raised indictments or court judgements. The result of these efforts was ultimately a few publications and documentaries about the role of journalists and the media in warmongering.[2]

On the other hand, the role of the media in the post-war period and in the context of dealing with the past and peacebuilding is not so clearly documented or researched. Some of the media undoubtedly had a positive role in that they were among the first to investigate war crimes that had been taboo and exerted pressure on domestic judicial institutions to initiate court proceedings. Among the media that at one point led these processes are *Feral Tribune* in Croatia, *Dani* and *Nezavisne novine* in BiH, and *Vreme* and *B92* in Serbia.

As the process of dealing with the past in the post-Yugoslav space had its own ups and downs, the trends were also reflected in the media and in their contribution to dealing with the past. Public broadcasters, in particular, and media under direct or indirect government control continued to report about the war and about war crimes trials in one-sided ways. It should be noted that we had ups and downs there too. Edin Ramulić – activist, prison camp survivor and journalist from Prijedor –

[2] See Boljević et al. (2011). Also see the documentary by Boro Kontić *Godine koje su pojeli lavovi* (2010).

believes that the period up to 2003 in the mainstream media, especially public television broadcasters, was marked by a media blackout of war crimes. The trend of the media opening up to taboo war crimes topics started in the early 2000s and lasted, according to Ramulić, throughout that decade, but then entered another phase of regression that we are still witnessing today. Refik Hodžić recounts a similar timeline for the media and their contribution to dealing with the past (Hodžić 2020).

## The media and the trials

When it comes to the media and dealing with the past, a particular issue is how the media reported on trials for war crimes committed in the territory of the former Yugoslavia. Judges and prosecutors did not see the media as important mediators conveying information to ordinary people, because they operated from the assumption that the verdict, in line with criminal law, should speak for itself and that any public statements of theirs could call into question their independence and impartiality. This distrust between the judiciary and the media would carry on for years.

As explained earlier, the ICTY was initially conceived with a broader role, as it was thought that war crimes trials would contribute to dealing with the past and reconciliation in the territory of the former Yugoslavia. It is evident, however, that in that first phase there was no media strategy for the ICTY. It was not just the geographic distance between The Hague and the countries of the former Yugoslavia, but the language barrier was also an obstacle. Factors such as the limited availability of translations into the local languages, court procedures foreign to the local context and a minimal number of people who had inter-

net access contributed to distrust of the ICTY, and the dominant narratives – created by the political elites – that the Tribunal *only tries our side*, certainly did not help.

At some point, the Tribunal itself became aware that people in the territory of the former Yugoslavia had a very negative perception of it.

"There continued to be a perception that the Tribunal was shrouded in mystery. It was perceived as depersonalized, distant and unresponsive, too narrow in its focus and too legalistic in its outlook. Many considered that the Tribunal was influencing their lives with no input from them. Yet many desired greater access to the Tribunal through both its jurisprudence and its direct representatives stationed in the region," recalled former ICTY president Gabrielle Kirk McDonald (ICTY 2016).

Hence, in 1999, a full six years after the Tribunal was founded, its *Outreach* programme was launched. Its aim was to address precisely the key issues that Gabrielle Kirk McDonald pointed out. The ICTY started translating all documents into the languages of the peoples from the territory of the former Yugoslavia, producing documentaries, issuing various publications, organising conferences to share the work of the ICTY, the facts established in court and witness testimony with victims and their families, but also generally with young people.

A year earlier (1998) the independent news agency SENSE[3] was launched with the primary task of covering the work of the ICTY, i.e. trials at the ICTY. SENSE brought together recognised and respected journalists from the former Yugoslavia, and in 2000 *TV Tribunal* was launched, bringing regular weekly TV reports from all

[3] The *SENSE* news agency reported from The Hague up until 2017. Today, it continues as the SENSE Center for Transitional Justice and maintains the entire archives of the Agency.

trials. The programme was made available to public broadcasters and local TV stations and became accessible to a wide audience.

Both the *Outreach* programme and opening up to the media were recognition of the fact that the wider social mission of the Tribunal, which its leaders had aspired to from the very beginning, was not possible without cooperation with the media and local communities. With a host of activities and programmes, the ICTY primarily endeavoured to tackle the denial of judgements and established facts. Refik Hodžić (2020), who coordinated *Outreach* activities, says that the idea of giving the Tribunal a wider social mission and responsibility was abandoned quite early on:

"Actually, we got to a point where the Tribunal stopped these efforts sometime after Gabrielle (Kirk McDonald). Saying, it's not our job, the judgements speak for themselves, it's not up to us to do that, it's up to other people and societies, etc. This created a vacuum that, of course, as we know, was filled by politicians. Politicians who were completely focused on minimising any social impact of those trials." Hodžić explains that later, at the very end of the Tribunal's work, it became clear how important it was to actively fight denial, but that the crucial opportunity was missed in the first decade of the 2000s. Legal expert and professor Goran Šimić (2021) also believes that the Tribunal could have done more in its first fifteen years or so. Steps were made only at the very end, at the time when the work of the ICTY was taken over by the Residual Mechanism.

Most trials at the ICTY had quite good media coverage. This was helped by the greater openness of the Tribunal, but also by the fact that it was in the early 2000s that trials of high-level military and political officials started, and these attracted public interest in and of

themselves. The way the trials were conducted, when compared to trials in the region, gave the media some unprecedented possibilities. All the trials were recorded and transmitted through the ICTY's website, the cross-examinations offered dramatic effects, testimonies were translated into the local languages, and among the witnesses were some of the highest officials from the international and regional political scene. Even the combination of two legal systems made the trials attractive to follow – turning the courtroom into a stage. Perhaps this is best illustrated by the statements read by the accused in the courtroom following the conclusion of plea agreements. These brief, succinct and direct messages read in the courtroom by persons admitting their responsibility for war crimes constituted very effective material for the media, especially television, which was the primary source of news at the time. Due to the intensive media coverage of trials, some of the accused came to view the courtroom as a platform from which to spread their politics and messages. Instead of focusing on their defence, some of the accused focused on defending their policies and justifying the war crimes that were committed, which became especially apparent at the trial of Vojislav Šešelj.

The local media on the whole, however, could not afford to have permanent correspondents in The Hague to provide daily coverage of the work of the Tribunal. Public television broadcasters, which were heavily controlled by politics, generally provided one-sided reports on trials at the Hague, acting as megaphones for political elites intent on portraying the Tribunal as not objective and biased against one people or state. Edin Ramulić (2025) remembers how public broadcasters in BiH reported on the trial of Slobodan Milošević: one broadcaster had detailed coverage while the Prosecution was presenting its evidence but stopped providing coverage once the defence started presenting their evidence, while another broadcaster had

ignored the evidence of the Prosecution and started reporting only once Milošević began his defence.

There has been much discussion about the reach and influence of the Hague Tribunal, but the fact remains that an overwhelming number of people from the former Yugoslavia had an opportunity to see what the courtroom looked like, to see the accused, the judges and the way cross-examinations were conducted, to see how audio-visual safeguards were applied to witnesses, etc. Trials conducted in the region were significantly different.

**Courts in the region**

To this day, domestic courts in BiH, Croatia and Serbia have retained the practice whereby the media and the public in general are not looked upon kindly, but are often openly seen as enemies. The key difference is that domestic courts never did think their work had a wider social role to play.

Davorin Jukić (2021), a judge at the Court of BiH, says it was unacceptable to him that as judges they should go into local communities, while Judge Darko Samardžić from the Court of BiH adds that this would necessarily "put them on one side":

"You put yourself on one side right away. This way, our decisions are what they are, they are made public and that is our position. And if we said a crime was committed there, then it was committed and there is no need for us to be further exposed in any way," said Judge Samardžić (Jukić and Samardžić 2021), explaining his view of the role of the court.

Reporting from war crimes trials at courts in the region was mostly left to non-governmental organisations

such as *Documenta* in Croatia, the *Humanitarian Law Center* in Serbia and the *Balkan Investigative Reporting Network* (BIRN) in BiH. These organisations would send their reports from the trials to all the media who would publish them if they had the opportunity or if there was interest. The media outlets themselves generally did not cover war crimes trials, or would cover them only at the very beginning (plea hearing) or at the very end (delivery of judgement). This, in addition to the often biased reporting, meant that the wider public received partial information, as the course of the trial itself remained largely unreported. All of that resulted in, for example, a section of the public left feeling bitter over an acquittal, erroneously thinking that this meant the court was denying the crime had been committed at all. From the course of the proceedings, however, and from the judgement itself, it would have been clear that the court had confirmed beyond doubt that the crime had been committed, but that in its interpretation the accused could not be found guilty.

Denis Džidić, director of BIRN BiH, says that media coverage of war crimes trials was not at an especially high level.

"I don't want this to sound like unfair criticism of the media, because I am aware that these proceedings are long, there are a huge number of trials, a huge number of hearings... Honestly, the hearings are not that interesting when you get to some of the expert witnesses and highly technical issues – there are a lot of status conferences... What stands as criticism is that our public broadcasters do not treat the trials as important, and they are not much different in that respect from some commercial media, they provide brief news bulletins when indictments are raised, when trials start and when judgements are delivered – this applies to both trials at the Hague and at the

Court of BiH. They just sensationalise some number, the number of years in the sentence, or that someone was acquitted, or that someone pled guilty, and that is the beginning and end of everything. There are a few political reactions to the news and that's it, we don't see documentaries being made based on these established facts, or broader analytical reporting... I repeat, this is particularly problematic when it comes to public broadcasters, and among the public broadcasters I would particularly single out RTRS as problematic because its reporting is very biased, very nationalist, based on certain political narratives that are very critical of the judiciary" (Džidić 2021).

Džidić points to the fact that the courts themselves are not sufficiently open to the media and that their rules often make reporting difficult.

"I think the *outreach* of the Court of BiH and the BiH Prosecutor's Office is disastrous; their public communication offices are examples of how not to communicate with the public. They antagonise the media, they don't respond in a timely manner, they refuse to give any information that should be available to the public. And all of this is then reflected in the fact that the public is generally left to political narratives" (Džidić 2021).

Similar problems were identified by Marina Kljaić from the Humanitarian Law Center which covers war crimes trials in Serbia. Only someone who is well versed in the case can make sense of anonymised indictments and judgements. Another problem is the Court's non-functioning website where judgements are difficult or impossible to find, as well as the fact that the Court and Office of the Prosecutor do not issue regular press releases about plea agreements. "These are judgements confirming plea agreements, and plea agreements can be concluded from when the indictment is raised to the end of the main trial, but are mostly concluded before the main

trial begins, which means that, in effect, the public in Serbia is not even aware that such a judgement has been delivered," Kljaić (2020) added.

Vesna Teršelič from *Documenta* says that the public in Croatia is not as well informed about judgements in war crimes cases as the public in BiH.

"No television station in Croatia, neither public nor private, covered this. On average, the public was poorly informed up until the closing arguments of the prosecution and the delivery of the judgement, both in the case of first instance and final judgements. I think that even during the trial for the bombing of Dubrovnik and crimes related to Miodrag Jokić, or crimes committed within occupied areas in the so-called Republic of Serbian Krajina related to Milan Babić, even then, people hardly noticed the trials beyond a brief news bulletin. On occasions when longer texts are published to mark the anniversary of a crime, when human rights organisations, and we in Documenta are preparing an article, we always mention the crimes that were committed and the judgements and plea agreements. Still, it all seems to remain a footnote in the public consciousness" (Teršelič 2021).

Though the practices of courts in the region differ, cameras are mostly banned from the courtroom, meaning that the public may never see the face of the accused even though the trial goes on for years. Courts that do record trials have a host of restrictions when it comes to providing access to audio-visual material. Indictments are often anonymised to the point of being unrecognisable, and for a long time they were not available to the media at all.[4]

[4] BIRN BiH had a long-running public campaign to make confirmed indictments publicly available in BiH, which finally became common practice at the start of 2022. And in 2024, the High Judicial and Prosecutorial Council of BiH developed the *Court Decisions Database* - a special database containing all judgements from all the courts in BiH.

After it is read in the courtroom, it can take months for a judgement to be posted on the court's website. Sometimes judgements remain anonymised even after they are published, making them incomprehensible to all except a small circle of people who kept up with the case all the way through.

"In a country where, according to the European Commission's progress report, one of the key problems is the contesting of facts established in court, where revisionism has become widespread, etc., you have nothing in the way of an effort to communicate the facts established in court better or more proactively. Or let's take guilty pleas – especially the part where accused individuals expressed some form of remorse or an apology before the Court of BiH, which are essential messages that can help society at a very basic level to find some kind of acceptance – for these to be used as counter-narratives, given that people are exposed daily to the political propaganda of denial, dispute, that pervasive 'but'," Džidić (2021) added.

Jasmin Mesić, a former prosecutor for war crimes at the Una Sana Canton Prosecutor's Office, points out how important the media, and generally animating the public, can be in prosecuting those responsible for war crimes. From his experience working as a prosecutor, he has first-hand knowledge of how the media were an important factor.

"Hundreds, thousands of criminals and suspects are walking around and no one does anything. The victim knows what happened and asks: well, why won't anyone do anything, what's holding it up, what is it? This was the stage at which it all came to a head for me and I concluded that something had to be done urgently, and to the greatest extent possible. And then it became clear that if what was going on didn't reach the public, no one would ever know. At that time, I had a lot of support from the public.

The cantonal, federal and state television, they all covered it. As soon as SIPA announced they had arrested someone in Sarajevo, the cameras would be there, the TV stations... Now, what is good about all that? I think I am one of the prosecutors that prosecuted the largest number of cases in the region, in the former Yugoslavia. And it was all on TV, all the SIPA arrests, full courtrooms, trials, which then had a positive effect" (Mesić 2021).

## The missing link

Although the motivation for concluding plea agreements varied, ranging from shortening the length of proceedings to sparing victims from having to testify, in many cases there is also direct or indirect mention of the broader impact guilty pleas can have on society in the sense of acknowledging facts, building trust and countering the denial of crimes. Of course, the social impact is difficult to *measure*, but there has evidently been very little systemic or systematic effort to ensure that information about guilty pleas reach local communities, families of victims or the community of the perpetrator. Hasan Nuhanović, whose parents and brother were killed in the genocide in Srebrenica, where he worked as a translator for the UN, testified in several cases and believes that one of the possible solutions would have been a special TV channel covering the trials.

"Of course, the Tribunal is 2000 kilometres from BiH, information availability was limited to the few news items in the media, and in my opinion, this is one of the reasons why there was not much of an effect among the communities of those who pled guilty" (Nuhanović 2020).

Edin Ramulić (2025) points out that in some cases where plea agreements were concluded, for the purpose of

sentencing the court took as an especially mitigating circumstance the **public** remorse of the accused. One example is the case of Dušan Fuštar before the Court of BiH (2008). There were also judgements that were unequivocal in claiming the admission would contribute to reconciliation in the local community, such as, for example, in the case against Ljubiša Četić.[5]

"But the court took this as relevant in determining the punishment, it had weight, that his admission would contribute to reconciliation, and that is why he got a significantly reduced sentence; but what was expected did not happen, his admission had no impact on the community, it never found out about it, never heard any words of genuine remorse – it was impossible for that to happen because there was no mechanism for it. At that time, I contacted the public information department at the Court of BiH, asking them to make additional efforts, but they said: no, we're open insofar as the media can get everything from us, but we have no need to act ourselves; we are at the service of the media, so they can make additional information available and reach out to those local communities. The problem is that the court has no mechanism. The Tribunal had its *Outreach* programme that covered as much as it could, even though it was belatedly established, but the Court of BiH never even had anything like that*" (*Ramulić 2025).

As legal expert Goran Šimić explains, in the former Yugoslavia there was over-reliance on courts, while other mechanisms and social institutions were neglected:

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[5] "The Panel further considered that the admission of the accused to the offences as charged will contribute much more not only to reconciliation in this region, but also to the finding of truth about the crimes committed in the past war than would be the case with a court judgement reached without the admission of guilt" (Court of BiH 2010: 17).

"Once it delivers the judgement, the court has completed its task. The court does not build memorials or write school textbooks, it is not the responsibility of the judiciary to contribute to reconciliation in society after it delivers a judgement. The basic problem when it comes to what we're discussing here is, actually, that the media, the schools, and unfortunately also the religious communities, households, families and so on, for these 25 years in BiH – instead of promoting reconciliation and bringing up new generations of advocates for peace and reconciliation in BiH – they are actually raising haters; we have already produced 25 generations of new haters who have been brought up, indoctrinated with selective truth, with the wrong perception, with finger-pointing at others, etc. And I would wager that 99% of the people in BiH who talk about war crimes judgements have never read a single judgement in their lives" (Šimić 2021).

Šimić sees the fact that judgements never reached local communities as the biggest problem of the courts and judgements.

"This did not happen in BiH, unfortunately. I can't say the Tribunal is to blame, or the *Outreach* programme, I think there were multiple factors, where simply both the *Outreach* programme and the international community, and of course us locals in BiH, we simply did not make enough of an effort to get things done, to disclose the facts established in judgements to the public and to have them accepted in society as such. Instead, we have left the public space wide open to manipulation, something all sides in BiH have perfected – they are all very good at manipulation and they're also trigger-happy, quick to point fingers, to lie, muddy the waters and falsify the number of victims, but when they are supposed to take a step forward and talk about the actual crimes they committed during the war, there is no such introspection. Unfortunately, 25

years on, we can say that the hundreds of judgements we've delivered and all the facts established about the conflicts in BiH have not found their way to the public. One of the reasons, certainly, is that they do not benefit any of the warring sides, not even those who suffered the most in the war, but this is something we'll have to change, otherwise the potential for conflict, which was never reduced after the war, we will be contributing to maintaining it, even 25 years later, instead of doing our best to put it out" (Šimić 2021).

# Ordinary Non-Transitional Justice

*Nenad Vukosavljević*

## Preparing for and repairing war

War is not a natural disaster that arises unpredictably, coming and passing. War is prepared for carefully and extensively, in order to bring ordinary people up to a state of anger, fear and desperation, making them see violence as a justified response to the injustices of the enemy, and as something inevitable that they engage in involuntarily. Pre-war psychological preparation for widespread violence, where the rules of civilian peacetime life do not apply, is an indispensable part of war. The preparations for war are conducted by political decision-makers. They prepare the ground for war by spreading fear and normalising violence, reinforcing hostile narratives about the alleged collective enemy and the irredeemable rottenness of the enemy's character, and by spreading the belief that defence is not just legitimate, but every decent citizen's duty. And defence includes the pre-emptive first strike.

What follows is war, a period in which, in addition to fear, people largely feel an initial intoxication with "their

own" power, a feeling of righteousness and of untouchability among a frenzied mass. Apart from the proclaimed and intentioned killing of enemy soldiers, this also always results in acts which are prohibited under the Geneva Conventions and qualified as war crimes. Sometimes these acts are large in scope, acts involving a great many soldiers and victims, acts that are planned and documented in detail, and ordered by military and political leaders. And sometimes these are independent acts by individuals. There is, however, a large grey area in which those issuing commands deliberately incite or ignore (deliberately fail to prevent) the commission of crimes, but at the same time endeavour to leave no trace that could be used in court to unequivocally establish their responsibility. The majority of war crimes committed in the Balkan wars of the 1990s falls within this third category of intentionally blurred lines of responsibility.

In the post-war period, fear and hatred persist, in part because they are deliberately maintained, and the blurring of boundaries of responsibility is employed to maintain simple narratives that present one's own side as righteous, victimised and unwillingly dragged into war, while the opposing side is always the aggressor and wrongdoer. A good number of those who were involved in preparing the war are now put to the task of justifying their war and ensuring it is remembered as righteous and heroic. We can assume that part of their motivation comes from a desire to protect themselves from responsibility for their pre-war actions that contributed to the war, the rampant destruction and irreplaceable loss of life.

These three phases – preparing for war, waging war, and producing narratives after the war (instead of assigning criminal and moral responsibility) – form the context of war, but we should not forget that pre-war preparation

and post-war production of narrative are very similar in content and may overlap if they lead to restarting the war.

## Lasting peace or "just and pure" war

If we look at war as a destructive social phenomenon, efforts to prevent a recurrence of war would have to be comprehensive, encompassing both the pre-war and post-war period, and not focused only on the war period or reduced only to violations of international humanitarian law.

This brings up the question of the goal we are striving towards when we are engaged in improving the state of affairs after a war. Is the goal to achieve the ideal of a "clean" war, without any violations of the rules of war or of humanitarian law, or is the goal to prevent war as a form of extreme injustice and violence?

Legal mechanisms have their scope within the law, they follow the logic of achieving a "clean" war and that is their aim. They examine actions against standards to determine whether the rules of war have been broken and whether a war crime was committed or not. The fact that thousands of people died in battle, with their families left in pain and bitterness, falls to the sidelines, beyond the scope of the legal processing of the practice of war. This means that lasting peace cannot be reached by means of the law, and it is particularly misguided to assume that it will come of its own accord once all the legal proceedings have been completed.

The concept of transitional justice that has gained traction in the past few decades defines the foundations on which establishing justice should rely as follows: truth (establishing the factual truth on the basis of incontrovertible evidence), justice (reduced to punishing perpetra-

tors), reparations for victims (material and/or moral compensation), and guarantees of non-recurrence (institutional reforms that remove social inequalities in rights, i.e. the presumed causes of violence). In practice, the concept of transitional justice in the countries of the former Yugoslavia primarily relied on the International Criminal Tribunal for the former Yugoslavia (ICTY) as the central pillar supporting all the others. The Tribunal investigated, established incontrovertible facts, prosecuted those responsible if they were identified, accessible and alive, and delivered judgements. In numerous cases of crimes where victims were identified and some of the circumstances of their deaths were known, the perpetrators were not tried for various reasons and no judgements were delivered.

Court judgements are a form of moral compensation, but in many cases there was none because judgements were never reached, and sometimes, even when judgements were pronounced, the victims did not perceive them as just, nor, therefore, as the needed compensation, or they saw them as insufficient. It is not clear what reparation would mean for victims, given that the word "reparation" means "repairing damage". The idea that the loss of human lives can somehow be repaired or compensated leads us astray into a misapprehension, because compensation can only ever be moral and/or material, always only partial and can never remedy the injustice. **The loss of human lives is irreplaceable**, that truth must stand before any attempt to provide compensation. War leads to irreplaceable loss, war is always evil and never just. Many will agree that there is no such thing as a just war, but everyone will seek justice after the war. That seeking will take place in societies that have not reached the fourth postulate of what is known as transitional justice, i.e. the "guarantee of non-recurrence", **because there can be no such guarantee in the absence of an**

**awareness of the injustice**, if the injustice is not a widely known and recognised fact that determines social attitudes. The term "transitional justice" suggests that it is temporary, its aim is to achieve punishment, which is presumed to deter reoccurrence, and to repair the catastrophic post-war situation of the general absence of responsibility. In time, as it became clear that its effects and scope were misguided, the definition of transitional justice kept being expanded, until at one point peacebuilding became part of transitional justice. But that is not accurate, peacebuilding is not some form of a transitional justice measure, they are two separate processes, they each follow their own logic of action, and they have distinct aims. They may be compatible, but not necessarily, because there are other concepts of healing society after systemic social injustice, concepts that are restorative as opposed to retributive in nature. If I had to describe the difference, I would say that the restorative approach is characterised by removing the cause, changing social relationships, sometimes re-examining formed identities; in essence it tends towards healing society, universally recognising, accepting and remembering the injustices committed and their causes. The retributive approach is much more superficial and, therefore, given its limitations, potentially easier to implement. It relies on the idea of punishing the perpetrator as a way of deterring others from repeating the crime; courts conduct proceedings to establish incontrovertible facts, and it relies on government institutions, without examining the deeper causes that led to large-scale violence.

In the public's perception, court judgements determine the full truth of specific crimes, which means that if final judgements are not reached, the truth-finding process is incomplete. The bizarre nature of putting hope in the judicial process for the needed satisfaction is perhaps best illustrated by the case of Slobodan Milošević who was

on trial for years and who died before a final judgement could be pronounced. Some would say he died before his conviction, and some that he died an innocent man because there was no judgement. This tells us that trials focus on determining guilt and not finding the truth, and that failure to complete the proceedings intended to determine guilt is seen as failure to find the truth, because it remains unverified by a final judgement. Tremendous energy, time, money and emotion is invested, but the result is ultimately frustrating.

Because of the difficulties in unequivocally determining guilt in the complex matter of responsibility, which is sometimes extremely hard to prove, plea bargains can potentially be very valuable. In plea bargaining, from the point of view of the court, it is not the punishment that is of primary importance, but the efficiency of proceedings and the determination of truth, while the main interest of the accused is to receive a lighter sentence. Guilty pleas are a basic and key advantage of this mechanism for society after proceedings are completed, because sometimes a plea of guilt is subsequently denied after the sentence is served – which is certainly very frustrating and counterproductive when it comes to ensuring a universally accepted truth that will prevent attempts to deny or repeat the crimes. The extent to which the potential of admissions of guilt for wrongdoings and injustices is used to re-examine and establish social narratives about the wartime past is a matter of conveying this message within society, which is certainly not the sole responsibility of the courts.

An additional dimension is that guilty pleas contain facts that could not otherwise be established; the truth is considerably wider in scope, more detailed and sound than what can unequivocally be proven relying on the existence and readiness of potential witnesses to testify or the availability of relevant documents in the archives,

without an admission of guilt. Saving resources is another aspect that is not negligible in the logic of the courts, as it potentially enables them to handle a large number of cases within a reasonable time, providing the victims with moral satisfaction sooner and allowing the court to process more cases.

## Remorse

Still, it seems that the most significant aspect of guilty pleas is the presumed regret, the unequivocal admission that an injustice was committed and the expressions of remorse. Genuine remorse is a transformation that occurs as a result of re-examining one's own responsibility and accepting the burden of one's own responsibility. As a form of mental transformation from the state of wartime hatred to a state of seeking peace, remorse is needed by entire communities. The remorse of an individual is catalysing, a public call to others to do the same, to re-examine themselves and their actions, to ask how much they contributed to hatred and violence, how much they supported it and how much responsibility they bear. That transformation of a society at war into a society overcoming wartime divisions must be defined precisely by a process of individuals recognising and critically assessing their own responsibility and stepping outside of simplified templates of collective guilt. In that sense, guilty pleas of individuals are symbolically significant for societies, because they call on others to re-examine themselves.

From the perspective of peacebuilding, there are three ways in which the guilty plea process is limited:

- the exclusion of the period of preparation for war and/or the dishonest interpretation and justification of violence and injustice;
- the restricted focus on loss of life as the result of what the law defines as a crime (the death of soldiers in battle is excluded);
- the general limitation of all trials as such, in that they are possible, as previously mentioned, only in cases where evidence and perpetrators are available.

Each of these limitations excludes one part of the suffering of people, and once all three are applied, only a small number of events remain that can be tried in court, but they still have the potential of symbolic value for the whole of society.

The incentive to re-examine our own responsibility, and if not remorse, then at least a feeling of sadness over the general loss of life (even on the enemy side) opens the way to shut down hostility and hatred, for humanity to prevail and for trust and cooperation to grow between communities on different sides. Trials and possible expressions of remorse for crimes are not the only way to build peace, but they can contribute to peacebuilding in a direct way that touches the local community.

With all of its inconsistencies and flaws, and the conflicts between different judicial systems and ways of reasoning, the practice of plea bargaining has contributed to an easier and broader determination of the truth, and illuminated the concept of admission and remorse. There are certainly many other criticisms that could be brought against this mechanism, and they are welcome if they lead to lessons for other times and, I hope, other regions than ours. This book offers an insight into the dilemmas that arise from the practice, but also the potential that guilty pleas as a concept have for society.

# Part II

# Archive of Plea Agreements for War Crimes in the Territory of the Former Yugoslavia

*Edited by Edin Ramulić*

## Introductory Remarks

A total of 105 plea agreements for war crimes have been concluded before the ICTY and courts in BiH, Croatia and Serbia. The cases that ended in plea agreements before the ICTY are available on the Tribunal's website, and the guilty plea statements in this chapter were taken from the ICTY website and presented in the original or as official translations. A total of 19 cases at the ICTY ended with plea agreements. We decided to keep the terminology used in the judgements (e.g. Bosnian Serb Army and Muslims). Unless otherwise indicated, the quotations were taken from the ICTY website and from judgements delivered by the ICTY and other courts.

When it comes to war crimes cases prosecuted before courts in BiH, Croatia and Serbia, in 2020 the Centre for Nonviolent Action sent an official request to all courts in these three countries that tried war crimes cases and asked for all judgements that included plea agreements. There were 21 such courts, of which 16 were in BiH (the Court of BiH, 10 cantonal courts in the Federation of BiH, four district courts in Republika Srpska and the Basic Court in the Brčko District of BiH), four in Croatia (the county courts in Zagreb, Rijeka, Split and Osijek) and one

in Serbia (the Higher Court in Belgrade). We repeated the request in 2025 to account for the interim period and any new plea agreements. Ultimately, of the 21 courts that tried war crimes cases, at 14 courts at least one case ended with a plea agreement. A total of 75 plea agreements were concluded before courts in BiH, in Serbia plea agreements were concluded in seven cases, and in Croatia in four.

Information included in this chapter about the cases that ended with plea agreements before the courts in BiH, Croatia and Serbia is based on the judgements sent to us by the courts. Wherever possible, such as in the case of the Court of BiH, we made extensive use of video material published on the Court's website. In some cases, the Court of BiH published videos of judgement hearings. Where no such videos were available, we used news reports whenever possible. But for the largest number of cases, especially in the lower courts, there were no videos of the judgement hearing and no news reports, and in such cases all information is based exclusively on the judgements sent to us by the courts themselves.

In order to provide an overview, at the end of the chapter we have included a table listing all of the accused who concluded plea agreements. The table also includes information about the court where the agreement was concluded, the sentence, the year of the agreement, the case in which the accused was charged and the military formation the accused belonged to. We have included the year of birth of the accused wherever possible, but in many of the anonymised judgements, the year of birth is not visible.

Cases that ended with plea agreements are grouped by the court where the agreements were concluded and the year when they were concluded, starting with cases at the ICTY and followed by cases before the Court of BiH, the Basic Court of the Brčko District of BiH, the cantonal

courts in FBiH, the District Court in Doboj, the county courts in Croatia and the Higher Court in Belgrade.

There are several particularly interesting cases that could lend themselves to further analysis, but here, in order to clarify that they concern the same person, we should point out the case of Novica Tripković. He first concluded a plea agreement in 2011 for crimes committed in Foča, and he was sentenced to eight years in prison. Then in 2016, he was convicted again and sentenced to eight years in prison for crimes committed in Kalinovik, but that time he did not conclude a plea agreement and did not plead guilty to the charges. In 2022, in another case for war crimes in Foča, Tripković concluded a plea agreement and was once again sentenced to eight years in prison.

# Plea Agreements before the International Criminal Tribunal for the former Yugoslavia

DRAŽEN ERDEMOVIĆ
Case: Pilica Farm, Srebrenica

**Dražen Erdemović** (born 1971) was a soldier in the 10th Sabotage Detachment of the Bosnian Serb Army (VRS). After Bosnian Serb forces took Srebrenica in July 1995, he participated, as part of a firing squad, in the shooting and killing of hundreds of unarmed Bosnian Muslim men from the enclave. He was the first person to plead guilty before the International Criminal Tribunal and he later testified in other cases before the ICTY, providing important and detailed evidence on committed crimes that had been unknown to the Prosecution before his guilty plea.

At the hearing on 20 November 1996, Erdemović read his guilty plea statement:

"First of all, honourable Judges, I wish to say that I feel sorry for all the victims, not only for the ones who were killed then at that farm, I feel sorry for all the victims in the former Bosnia and Herzegovina regardless of their nationality.

I have lost many very good friends of all nationalities only because of that war, and I am convinced that all of them, all of my friends, were not in favour of a war. I am convinced of that. But simply they had no other choice. This war came and there was no way out. The same happened to me.

Because of my case, because of everything that happened, I of my own will, without being either arrested and

interrogated or put under pressure, admitted even before I was arrested in the Federal Republic of Yugoslavia, I admitted to what I did to this journalist and I told her at that time that I wanted to go to the International Tribunal, that I wanted to help the International Tribunal understand what happened to ordinary people like myself in Yugoslavia.

As Mr. Babić has said, in the Federal Republic of Yugoslavia I admitted to what I did before the authorities, judicial authorities, and the authorities of the Ministry of the Interior, like I did here. Mr. Babić when he first arrived here, he told me, "Dražen, can you change your mind, your decision? I do not know what can happen. I do not know what will happen."

I told him because of those victims, because of my consciousness, because of my life, because of my child and my wife, I cannot change what I said to this journalist and what I said in Novi Sad, because of the peace of my mind, my soul, my honesty, because of the victims and war and because of everything. Although I knew that my family, my parents, my brother, my sister, would have problems because of that, I did not want to change it.

Because of everything that happened I feel terribly sorry, but I could not do anything. When I could do something, I did it. Thank you."

He was sentenced on 5 March 1998 to five years in prison.

## DAMIR DOŠEN

Case: Keraterm Camp, Prijedor

**Damir Došen** (born 1967) was a guard shift leader at the Keraterm detention camp in Prijedor, Bosnia and Herzegovina in 1992. He permitted the persecutions and violence towards detainees in the camp. This included

beatings, rape, sexual assaults, harassment, humiliation, psychological abuse and killing. However, the amount of aggravation was limited in light of the restricted nature of his authority, and as a shift leader he often acted to improve the terrible conditions that prevailed in the camp.

At the hearing on 8 October 2001, Došen read his guilty plea statement:

"Your Honours, at the end of this trial, for the evil that happened in my town Prijedor and in Keraterm, I wish to thank you for letting my voice be remembered. I wish to say that I was in Keraterm, that I was sent there as a reserve policeman, that I spent two months there guarding innocent people who were imprisoned there.

I wish to say that at that time I was young, thoughtless, that I had lost a son, that I was caught in the chaos of war and death in which I found it difficult to find my bearings. The people who are imprisoned were my fellow townspeople. They were innocent and they were suffering grievously.

A crime has been committed against these people, and I am prepared to take my part of the responsibility for this crime before God and before men. I tried to help them, to make it easier for them, to talk to them, to protect them. The conditions under which they were imprisoned were below human dignity.

I am guilty because I agreed to be in Keraterm. I am guilty because I did not help them more. For this I am guilty before God, before those people, and before you, Your Honours. I am sorry for every man who suffered, every family that lost a family member, every child that has lost a father. I am sorry for every mother who has lost a son. I want everybody to hear my words, especially my neighbours, who were imprisoned only because they were not Serbs.

Evil happened, and evil must not happen again, nor must it be forgotten. I am conscious of all this today. I'm con-

scious that a man, however small and impotent he may be, must not allow himself to be overcome by lack of courage and that he must sacrifice himself in such situations. This is the only way in which we can help future generations to overcome injustice and inhuman actions. I wish to thank Their Honours and the gentlemen from the Prosecution for their efforts to reach the truth and to satisfy justice.

I hope that the Trial Chamber will give me a chance to return to my family and to my children, to return to my neighbours of all religious and nationalities, and I hope that we will again have an opportunity to live in my town of Prijedor with my fellow townspeople with whom I lived and kept company before the war. I hope that we shall live together again in harmony, as we did before the war and before the evil that befell us."

He was sentenced on 13 November 2001 to five years in prison.

## DRAGAN KOLUNDŽIJA

Case: Keraterm Camp, Prijedor

**Dragan Kolundžija** (born 1959) was a guard shift commander at the notorious Bosnian Serb-run Keraterm detention camp in Prijedor, Bosnia and Herzegovina in 1992. Although Kolundžija was aware that detainees were kept in inhumane conditions, beaten, raped, sexually assaulted and killed, the Trial Chamber heard ample evidence of his effort to ease the harsh conditions at the camp for many of the detainees.

His guilty plea statement, read at the hearing on 9 October 2001:

"Good morning, Your Honours. Thank you for allowing me this opportunity to say a few words.

Today, to my plea of guilty, I would like to add my sincere human regret. I'm sorry for all the families of the people who were in Keraterm. All my life I tried not to do unto others as I would not like to be done unto me. About the existence of the camp, I learnt only when I was assigned there as a reserve policeman. Throughout the time I worked there, I viewed all people equally, regardless of whether I knew them or not. The events that followed demonstrated that I was naive. It is true that I complained many times about the conditions for the people in Keraterm, but I see that it was not enough. It is true that I allowed of my own will people to be brought food, blankets, and clothing for the detainees, but I see that that, too, was not enough. I prevented all sorts of harm to be done to the detainees. I see now that it was not enough, although this did not happen while I was socalled shift leader. I never protected only those people whom I knew. I think I acted the same towards everyone. For all my mistakes, I bear responsibility.

It is true that the massacre in Room 3 happened in the night shift, when I was on duty. God is my witness that I tried everything to save the people, to prevent the crime, but unfortunately I did not succeed against a large number of armed people. For the rest of my life, I won't be able to forget that bloody night, nor will I be able to forget all that happened to my townspeople who were unjustly contained in the Keraterm camp. It is hard for me to remember those people in those conditions and to realise that I didn't do more for them.

I never wanted to stay in Keraterm, and I did not agree with the conditions, but I believed if I stayed, I could help to lessen the evil and to ease the suffering. As an ordinary reserve policeman, or the socalled shift leader, I thought I had done all I could. Before the war, I socialised with all people. I was friends with everyone, regardless of their nationality and faith. Even today, I have no prejudice in

that respect. I am aware now that at the time I was a tool in the hands of others, and this I deeply regret. I express regret and remorse for all the acts, including my acts in situations when I could have done more and didn't. I am aware that this is no compensation to my own people of Prijedor, but I do hope that I will be contributing to a new beginning.

My remorse will certainly not remove the scars of a painful past, but I sincerely hope that it will help heal the wounds. Once again, I apologise and I am sorry for everything that happened. For the sake of our children's future and all of our futures, I will do my utmost to prevent this or anything like this from ever happening again. Thank you."

He was sentenced on 13 November 2001 to three years in prison.

## DUŠKO SIKIRICA

Case: Keraterm Camp, Prijedor

**Duško Sikirica** (born 1964) was a security commander at the Keraterm detention camp in Prijedor, Bosnia and Herzegovina in 1992. He was aware of the inhumane conditions at the camp and he also knew that detainees were being beaten, raped, sexually assaulted and killed. Sikirica failed to prevent outsiders coming into the camp to mistreat detainees. He also killed one of the detainees in the camp by shooting him in the head.

Duško Sikirica's guilty plea statement, read at the hearing on 8 October 2001:

"Before the war in Bosnia, we all lived together in good neighbourly relations regardless of who or what we were. Prijedor was a good place to live in in the former

Yugoslavia and to live together. I had many friendships, many of which transcended ethnic differences.

Unfortunately, when the war broke out, we had to go where we were told to go. We didn't have much choice. We could either obey orders, refuse to obey them, or desert. I was sent to Keraterm, although I would have preferred to go somewhere else at the time, because to go and work in Keraterm was the worst thing that could have happened to me.

After the events in 1992, I personally had occasion to see the consequences suffered by Serbian refugees who arrived in Prijedor because of similar events elsewhere, and I was able to imagine what the people who had to leave Prijedor had to go through. I fully understand that these events had destructive consequences and that they still affect Muslims today, some of whom were my friends.

After I saw and I understood the consequences, I wish to tell the Trial Chamber that I deeply regret everything that happened in Keraterm while I was there. I feel only regret for all the lives that have been lost and the lives that were damaged in Prijedor, in Keraterm, and unfortunately, I contributed to the destruction of these lives.

I am especially sorry that I did not have enough moral courage and power to prevent some or all of the terrible things that happened. I would like to be able to turn back the clock and act differently. I understand that by taking responsibility for my role in these events I have to be punished, and I hope that what happened to me will be a good lesson to anyone anywhere who finds himself in similar circumstances in the future, and I truly hope that I will be forgiven, although I do understand that some will find it very difficult.

I also hope that my family will forgive me, because through my thoughtlessness, I have brought their lives into a difficult situation. I hope that what happened to me will contribute to the faster return of Muslims to their

homes and to the faster and more efficient reconciliation of all peoples.

I understand that as a consequence of this, I will be absent from Prijedor for a long time, but let me assure you, Your Honours, that when I do return home one day, I will be the one to speak with the most conviction against such folly, and I hope that you will accept this – that you will accept my regret and my remorse for everything that I did and everything I did not do.

I feel no self-pity because I know that this is an experience I have to go through, but I trust that Your Honours will understand when I say that I deeply regret what has happened and that I regret that I cannot be with my family in my home. I know that it is always difficult to find enough words and the right words to express one's sorrow in such circumstances, but I hope that Your Honours will understand me and reach a just decision."

He was sentenced on 13 November 2001 to 15 years in prison.

## STEVAN TODOROVIĆ

Case: Bosanski Šamac

**Stevan Todorović (born 1957)** was Police Chief and a member of the Bosnian Serb Crisis Staff in Bosanski Šamac, Bosnia and Herzegovina in 1992-1993. He persecuted non-Serb civilians on political, racial and religious grounds. Over a period of eight months, Todorović beat and tortured men, and ordered and participated in the interrogation of detained persons ordering them to sign false statements. He issued orders and directives that violated the rights of non-Serb civilians to equal treatment under the law. Todorović agreed to cooperate with the Prosecution by providing truthful and complete

information and by testifying in the case against his former co-accused. The Trial Chamber noted his desire to channel his remorse into positive action by contributing to reconciliation in BiH.

His guilty plea statement, read at the hearing on 4 May 2001:

"Your Honours, never in my life did I want to be the chief of police, but perhaps destiny or a set of unfortunate circumstances put me in that position, and at the worst possible time, the time of war, and here I am today standing before you, before world public opinion, and before God. War is hell. The town of Bosanski Šamac, as well as the police station, throughout the war were actually on the very front line. Artillery shells were falling almost daily on the town, as well as throughout the territory of the municipality. Frequent deaths, the wounding of soldiers, civilians, and children occurred. Attending the funerals of my relatives, friends, and acquaintances was frequent.

The testimony of Serbs who came from Odžak and Orašje through a process of exchange, events followed one another at great speed, and at times, it was very difficult to act wisely. A great deal of fear, panic, fatigue, stress, and at times alcohol, too, influenced my actions. Under those circumstances, I made erroneous decisions and I committed erroneous acts. At the time, I didn't have sufficient courage or determination to prevent volunteers and local criminals from committing evil and plundering the non-Serb population, and for this I feel great remorse.

Before the war, I had not planned ethnic cleansing or persecution, nor was I aware of any such plan. Two weeks into the war, I realised that a large number of non-Serbs had left and were continuing to leave the territory of Šamac municipality. I realised but I lacked courage to prevent the illegal and inhuman activities that were going on and that such treatment of non-Serbs, due to which those people

left the territory of Šamac municipality. Some of them left out of fear even before the conflict, some via Yugoslavia to Western European countries, while a certain number left through the exchanges and against their own will. Those exchanges in those days seemed to me as a temporary solution. I realise today that those exchanges were unfair and unjust.

In the autumn of 1992, I realised that the volunteers from Serbia had done more harm and evil than good. As I was still afraid of them, secretly we undertook to get rid of them and to expel them into Serbia. After that, they were arrested and transferred to the military prison in Banja Luka. And during that year, the year of 1992, I became aware that Croats and Muslims had suffered a great deal, to my great regret. That is why I feel very profound repentance and remorse. I pray to God every day for forgiveness for my sins.

I have cooperated fully with this Tribunal, and I'm ready to continue to do so. I am ready to testify, to cooperate, and to say everything I know in the interests of truth and justice. My wish and hope is, and that depends on you, Your Honours, to go back to the wonderful prewar times that we had when all the people of Bosnia lived in unity and happily together. Unfortunately, I cannot change history. I would wish and am ready, if you give me such a chance, to try and improve the future. If fate gives me such a chance, I will dedicate myself to my family and my children. I'm also ready to invest every effort in the new multiethnic Bosnia, to have a positive effect on the surroundings so that the inter-ethnic wounds should heal as soon as possible and that peoples and nations should live in mutual respect and harmony and thereby to atone for my sins up to a point, my sins towards men and to God.

Though I stand before you, Your Honours, as the accused, I do thank you very much for your attention, for your reasoning, and for your protection of my rights. Thank you, Your Honours."

He was sentenced on 31 July 2001 to 10 years in prison.

MILAN SIMIĆ
Case: Bosanski Šamac

**Milan Simić** (born 1960) was a member of the Bosnian Serb Crisis Staff and President of the Municipal Assembly of Bosanski Šamac, Bosnia and Herzegovina in 1992. Together with several other men, Simić personally beat four detainees held at the Bosanski Šamac primary school, including a man who was known to have a heart condition. He kicked the men in their genitals and, during the beatings, fired gunshots over their heads. He was the first accused to turn himself in to the International Tribunal.

Simić read his guilty plea statement at the hearing on 22 July 2002:

"First of all, I would like to express my sincere regret and remorse for what I have done to my fellow citizens and friends at the elementary school. I'm aware of the fact that the fact that my best friend was killed and the fact that I was drunk can in no way serve as a justification for what I have done there. I am convinced that even my late friend, Dušan Mijanić, with whom I have spent unforgettable days as a student, would not find words to justify my conduct. Unfortunately, I became aware of all this only afterwards, and although it was immediately clear to me that it was impossible to make up for what I have done, my conscience led me to at least extend my apologies to the people whom I had hurt.

I have done that, but in addition to my sincere regret and remorse and personal apology that I extended to them, I was still haunted by guilt and it continues so until this day.

As regards the interview I gave to the Prosecutor, one

should bear in mind that I gave that interview immediately after being the first to come voluntarily to The Hague at the time when The Hague Tribunal was a taboo topic in Bosnia and Herzegovina and that for me, the mere fact of voluntary surrender was too great a burden so that I did not have enough strength or courage to do an additional step and immediately admit my guilt.

This is why I value even more the fact that you allowed me to once again publicly extend apology to all of them. Thank you. "

He was sentenced on 17 October 2002 to five years in prison.

PREDRAG BANOVIĆ

Case: Keraterm Camp, Prijedor

**Predrag Banović** (born 1969) was a guard at the Keraterm detention camp in Prijedor, Bosnia and Herzegovina in 1992. Banović participated in the abuse and persecution of non-Serb detainees within the camp. He murdered five prisoners as the result of his participation in beatings and also beat 27 detainees with baseball bats, truncheons, cables and iron balls.

The guilty plea that Banović read at the hearing on 3 September 2003:

"Your Honours, I have pleaded unequivocally as guilty. My guilty plea was an expression of sincere remorse concerning the events in Prijedor, and especially the Keraterm camp. I gave an interview about my role in this to the investigators of the Tribunal. Today, I wish to add only the following: My arrest and transfer to The Hague, as well as that of my brother, was something I experienced with great fear, mostly because the propaganda was

always that The Hague was a place for the quiet murder of the Serbs. Fortunately, very soon, I came to the conclusion that this propaganda was a lie.

Through the proceedings up to this point, I have experienced enlightenment. I have gathered the strength to face the truth and myself. This is why I made the decision to change my plea. I deplore the period of war and hatred, and I regret that I did not find a way to avoid mobilisation and my role in the camp. I feel sorry for all the victims, and I curse my own hands for having inflicted pain in any way on innocent people. I wish my sincere words to be understood as a balm for those wounds and as a contribution to the reconciliation of all people in Prijedor and the restoration of the situation that existed before the war."

He was sentenced on 28 October 2003 to eight years in prison.

## DRAGAN NIKOLIĆ

Case: Sušica Camp, Vlasenica

**Dragan Nikolić** (born 1957) was commander of the Serb-run Sušica Detention Camp in the municipality of Vlasenica, Bosnia and Herzegovina in 1992. While in charge of the camp, he participated in creating and maintaining an atmosphere of terror and systematic sadism in the camp for the Bosnian Muslims and other non-Serb detainees. Nikolić personally killed nine people, and tortured and beat other detainees. Under his guidance women of all ages were raped or sexually assaulted.

Dragan Nikolić read his guilty plea statement at the hearing on 6 November 2003:

"Your Honours, I am fully aware of all the things with which I am charged. I am aware of the acts that I have committed, and I confess to them count by count as they were read out to me here. I pleaded guilty, and I assume full responsibility for the acts that I have committed.

How do I feel about the things that I did in those three months that I spent in the Sušica camp? Only I know that. But I genuinely feel shame and disgrace. But as you heard here, on the one hand, I carried weapons in Sušica, I wore a uniform; and on the other hand, there is the fact that there were women there, aged the same as my mother, there were children there, there were people who used to be friends of mine, whom I used to see over the years in cafes, on sports fields, and playgrounds, with whom I spent summer vacations. And when I think about all of this, it turned into a nightmare that is pursuing me these days and that I see over and over again in my sleep. The question arises why did I do all that? I had enough time to think about it, 11 years. But it is still hard to find an answer to that question.

I can tell you with complete sincerity I never felt sorry for myself because I was not too young to understand at the time; I was a mature man, 35 – 35 years old. And my compassion was always directed only at the victims, not only those that I hurt myself or whose families I hurt. All those who were down there at Sušica were victims.

What can I say about it all? I can say that I repent sincerely for all of that. I genuinely repent. I am not saying this pro forma, this repentance and contrition comes from deep inside me, because I knew most of those people from the earliest stage. I knew them well; some of them were my neighbours. I want to avail myself of this opportunity to say to all those who – whom I hurt, either directly or indirectly, that I apologise to everyone who spent any time in Sušica, be it a month or several months.

I would like, now that I have this opportunity to speak in public, to make even those victims feel the sincerity of my apology and my repentance, even those who were never at

the Sušica camp and who are now scattered all over the world as a result of that conflict and the expulsions which made it impossible for them to return home. I am aware, Your Honours, that I will spend a long time in prison, but at the same time I hope that the day will come when I will get out. It is my desire to return to Vlasenica one day to do whatever is in my power, if it is at all possible, for those people to become close again, to return to their homes. I would not for a second like to be a threat to anyone by my mere presence, and if at any moment I should feel that my presence disturbs anybody, I would leave immediately. I would go to see my family, my relatives, and I would keep returning there as long as it takes until the moment comes when I feel that nobody minds my being there any more, to try to help those people start a new life in that town, which after all had not been completely destroyed.

I have admitted to my guilt, and as my counsel said - I wish to repeat it once again - I hope that all the three parties will be encouraged by my confession to assume their part of the responsibility for those terrible acts, because that is the only thing that would make it possible for people to become close again, for the three peoples to become close again in those parts. It should be clear to all of us that we are after all an important factor in this reconciliation and peaceful coexistence. This Tribunal also plays an important part in it. And I am trying to assist the Tribunal in this way. We must never forget about the victims.

I now speak only in my own name, and I wish to say that there were among the victims people with whom I grew up and I wish to reiterate once again my deep and sincere repentance over everything that I had done down there. I hope I will get a chance to redeem myself and to alleviate their suffering. I received a message when my cousin visited me, and I want to thank you, Your Honours, for giving me this opportunity to speak and to say all this, to thank you in my own name and on behalf of my mother and my sister, who are here. I had told them that this would be a

public hearing. They wanted me to convey to everyone here that their door is always open, that anyone can come to talk to them, including victims and perhaps even neighbours who were never at Sušica.

I can hardly find the right words, but even so, mere words are not enough. Acts are needed, and I do intend to act for reconciliation for the return of those people who were displaced and expelled. That is my deepest wish."

He was sentenced on 18 December 2003 to 20 years in prison.

## MOMIR NIKOLIĆ

Case: Srebrenica

**Momir Nikolić** (born 1955) was an Assistant Commander for Security and Intelligence in the Bosnian Serb Army. Nikolić was at the centre of the crimes that took place following the fall of Srebrenica in July 1995. He did not raise any objections when informed of the plan to deport Muslim women and children and to separate, detain and ultimately kill Muslim men. Nikolić did nothing to stop the beatings, humiliation and the killing of thousands of Bosnian Muslim men. He also personally co-ordinated the exhumation and re-burial of victims' bodies. He testified in other proceedings before the Tribunal, including the trial of his two co-accused Blagojević and Jokić.

At the hearing on 29 October 2003, Momir Nikolić read the following guilty plea statement:

"Your Honours, by this statement, I wish to explain to you in the simplest and shortest way possible the reasons for my guilty plea to count 5 of the indictment. I arrived at this decision on my own, without any kind of pressure, threat, or persuasion by my counsel or by the prosecutors,

and I decided to come before this Tribunal and admit that a crime happened in Srebrenica in which I myself participated and for which I expect adequate punishment.

I sincerely wish before this Chamber and before the public, especially the Bosniak public, to express my deep and sincere remorse and regret because of the crime that occurred and to apologise to the victims, their families, and the Bosniak people for my participation in this crime. I am aware that I cannot bring back the dead, that I cannot mitigate the pain of the families by my confession, but I wish to contribute to the full truth being established about Srebrenica and the victims there and for the government organs of Republika Srpska, and all the individuals who took part in these crimes should follow in my footsteps and admit to their participation and their guilt, that they should give themselves in and be held responsible for what they have done.

By my guilty plea, I wanted to help the Tribunal and the Prosecutors to arrive at the complete and full truth and the victims, their brothers, mothers, and sisters should – I wanted to avoid their being subjected to additional suffering and not to remind them of this terrible tragedy.

Your Honours, I feel that my confession is an important step toward the rebuilding of confidence and co-existence in Bosnia and Herzegovina, and after my guilty plea and sentencing, after I have served my sentence, it is my wish to go back to my native town of Bratunac and to live there with all other peoples in peace and harmony, such as prevailed before the outbreak of the war."

He was sentenced on 2 December 2003 to 27 years in prison. His sentence was reduced to 20 years on 8 March 2006.

DRAGAN OBRENOVIĆ
Case: Srebrenica

**Dragan Obrenović (born 1963)** was a senior officer and commander in the Bosnian Serb Army in July 1995. He was convicted for persecutions carried out through the murder of hundreds of Bosnian Muslim civilians, committed in and around Srebrenica. Under the plea agreement, he agreed to testify in other proceedings before the Tribunal, including those trials related to Srebrenica.

At the hearing on 30 October 2003, Dragan Obrenović said:

"Your Honours, thank you for giving me the opportunity to speak today. On the territory of the country in which I was born, shooting from firearms was usual when celebrating the birth of a male child. These shots tell you everything, what a new male member of the family means and what is expected of him - strength, protection; he should be a warrior, a soldier, the head of the family, as they say in our parts. Unfortunately, when other kinds of shooting started in the former Yugoslavia, shooting in war, it was normal for every man, every male child, to put on a uniform, take up a weapon, and go to protect his homeland, his nation, and ultimately his family. This was expected of him. This was his role, a sacred role.

There was no choice. You could be either a soldier or a traitor. At the beginning of the war, it seemed as if the war and all it brought with it was impossible, that this wasn't really happening to us, and that everything would be resolved within a few days, and that finally our generation would have a chance. We didn't even notice how we were drawn into the vortex of inter-ethnic hatred and how neighbours were no longer able to live beside each other, how death moved into the vicinity, and we didn't even notice that we had got used to it. Death became our reality.

Unfortunately, it became everyday reality. Who before that could have believed that the horrors of war would have become everyday reality? Who could have believed that they could become a part of our lives? Surrounded with horrors, we got used to them and went on living like that. Among those horrors, things happened that were done by people who knew each other, people who, until yesterday, had lived almost as family members together. In Bosnia, a neighbour means more than a relative. In Bosnia, having coffee with your neighbour is a ritual, and this is what we trampled on and forgot. We lost ourselves in hatred and brutality. And in this vortex of terrible misfortune and horror, the horror of Srebrenica happened.

I am here before Your Honours because I wish to express my remorse. I have thought for a long time, and I'm always followed by the same thought - guilt. I find it very hard to say this truth. I am to blame for everything I did at that time. I am trying to erase all this and to be what I was not at that time. I am also to blame for what I did not do, for not trying to protect those prisoners. Regardless of the temporary nature of my then-post. I ask myself again and again, what could I have done that I didn't do? Thousands of innocent victims perished. Graves remain behind, refugees, general destruction and misfortune and misery. I bear part of the responsibility for this.

There is misfortune on all sides that stays behind as a warning that this should never happen again. My testimony and admission of guilt will also remove blame from my nation because it is individual guilt, the guilt of a man named Dragan Obrenović. I stand by this. I am responsible for this. The guilt for which I feel remorse and for which I apologise to the victims and to their shadows. I will be happy if this contributed to reconciliation in Bosnia, if neighbours can again shake hands, if our children can again play games together, and if they have the right to a chance.

I will be happy if my testimony helps the families of victims, if I can spare them having to testify again and thus relive the horrors and the pain during their testimony. It is my wish that my testimony should help prevent this ever happening again, not just in Bosnia, but anywhere in the world. It is too late for me now, but for the children living in Bosnia now, it's not too late and I hope that this will be a good warning to them.

In our wartime sufferings, no one has come out as the winner; everybody is suffering now. On all sides, there is still pain. What has won the victory is misfortune and unhappiness, as a consequence of blind hatred. The spirit of this unhappiness still hovers over our Bosnian hills, which have suffered so much, and it will take years to wipe out the traces of this horrible war and to have smoke rise again from people's chimneys, from the hearths, and maybe decades will have to pass before the wounds in people's souls are healed. If my confession, my testimony, and my remorse, if my attempt to face myself contributes to the quicker healing of these wounds, I will have done my duty of a soldier, a fighter, a human being, and a father.

In the end, I wish to thank the Prosecution for their efforts to establish the truth and for their efforts to have justice done. I would like to thank you, Your Honours, for listening to me so attentively throughout my testimony. I tried to answer every question put to me as correctly and truthfully as I could. Thank you."

He was sentenced on 10 December 2003 to 17 years in prison.

## BILJANA PLAVŠIĆ

Case: Bosnia and Herzegovina

**Biljana Plavšić** (born 1930) was a leading Bosnian Serb political figure holding a senior office before, during and

after the 1992-1995 conflict. She participated in the persecutions of Bosnian Muslim, Bosnian Croat and other non-Serb populations in 37 municipalities. Plavšić supported a campaign of ethnic separation which resulted in the death of thousands of civilians and the expulsion of thousands more from municipalities in Bosnia and Herzegovina in circumstances of great brutality, by inviting paramilitaries from Serbia to assist Bosnian Serb forces in effecting ethnic separation by force.

Biljana Plavšić read her guilty plea statement on 17 December 2002:

"Mr. President, Your Honours, Madam Prosecutor, Counsel: I'm thankful to have this opportunity to speak today. Nearly two years ago, I came before this Tribunal, having been charged with participating in crimes against other human beings, and even against humanity itself. I came for two reasons: To confront these charges and to spare my people, for it was clear that they would pay the price of any refusal to come. I have now had time to examine these charges and, together with my lawyers, conduct our own investigation and evaluation. I have now come to the belief and accept the fact that many thousands of innocent people were the victims of an organised, systematic effort to remove Muslims and Croats from the territory claimed by Serbs.

At the time, I easily convinced myself that this was a matter of survival and self-defence. In fact, it was more. Our leadership, of which I was a necessary part, led an effort which victimised countless innocent people. Explanations of self-defence and survival offer no justification. By the end, it was said, even among our own people, that in this war we had lost our nobility of character. The obvious questions become, if this truth is now self-evident, why did I not see it earlier? And how could our leaders and those who followed have committed such acts? The answer to both questions is, I believe, fear, a blinding fear

that led to an obsession, especially for those of us for whom the Second World War was a living memory, that Serbs would never again allow themselves to become victims. In this, we in the leadership violated the most basic duty of every human being, the duty to restrain oneself and to respect the human dignity of others. We were committed to do whatever was necessary to prevail.

Although I was repeatedly informed of allegations of cruel and inhuman conduct against non-Serbs, I refused to accept them or even to investigate. In fact, I immersed myself in addressing the suffering of the war's innocent Serb victims. This daily work confirmed in my mind that we were in a struggle for our very survival and that in this struggle, the international community was our enemy, and so I simply denied these charges, making no effort to investigate. I remained secure in my belief that Serbs were not capable of such acts. In this obsession of ours to never again become victims, we had allowed ourselves to become victimisers.

You have heard, both yesterday and today, the litany of suffering that this produced. I have accepted responsibility for my part in this. This responsibility is mine and mine alone. It does not extend to other leaders who have a right to defend themselves. It certainly should not extend to our Serbian people, who have already paid a terrible price for our leadership. The knowledge that I am responsible for such human suffering and for soiling the character of my people will always be with me.

There is a justice which demands a life for each innocent life, a death for each wrongful death. It is, of course, not possible for me to meet the demands of such justice. I can only do what is in my power and hope that it will be of some benefit, that having come to the truth, to speak it, and to accept responsibility. This will, I hope, help the Muslim, Croat, and even Serb innocent victims not to be overtaken with bitterness, which often becomes hatred and is in the end self-destructive.

As for my own people, I have referred today to their character. I think it, therefore, important to explain what I'm speaking of. There now stands in the centre of Belgrade a great domed church, still under construction, the construction begun in 1935. Our people have persevered in building this church as a monument to a man who more than any other formed the character of the Serbian people. That man was the great St. Sava. The path he followed was marked by self-restraint and respect for all others. A great diplomat who gained the respect of his people and the world around him, a man whose character has become deeply ingrained in the Serbian people.

It is the path and example of St. Sava that the great Serbian leaders have followed, even in our own times, demonstrating a noble endurance and dignity, even in the most difficult circumstances. One need only point to Bishop Artemije Radosavljević, who to this very day is a voice crying out for justice in what has become for Serbs the wilderness of Kosovo. Tragically, our leaders, including myself, abandoned this path in the last war. I think it is clear that I have separated myself from those leaders, but too late. Yet, this leadership, without shame, continues to seek the loyalty and support of our people. It is done by provoking fear and speaking half-truths in order to convince our people that the world is against us. But by now the fruits of this leadership are clear. They are graves, refugees, isolation, and bitterness against the whole world, which spurns us because of these very leaders.

I have been urged that this is not the time nor the place to speak this truth. We must wait, they say, until others also accept responsibility for their deeds. But I believe that there is no place and that there is no time where it is not appropriate to speak the truth. I believe that we must put our own house in order. Others will have to examine themselves and their own conduct. We must live in the world and not in a cave. The world is always imperfect and often unjust, but as long as we persevere and preserve our identity and our character, we have nothing to fear.

As for me, it is the members of this Trial Chamber that have been given the responsibility to judge. You must strive in your judgment to find whatever justice this world can offer, not only for me but also for the innocent victims of this war. I will, however, make one appeal, and that is to the Tribunal itself, the Judges, Prosecutors, investigators; that you do all within your power to bring justice to all sides. In doing this, you may be able to accomplish the mission for which this Tribunal has been created. Thank you."

She was sentenced on 27 February 2003 to 11 years in prison.

## MILAN BABIĆ

Case: Republic of Serbian Krajina

**Milan Babić** (born 1956) was former Prime Minister/ President of the government of the self-declared Serbian Autonomous Region of Krajina, Croatia, later the so-called Republic of Serbian Krajina in 1991-1992. Babić participated in a campaign of persecutions against non-Serbs. He was aware that crimes such as mistreatment in prisons, deportations, forcible transfer and the destruction of property were being committed, and he knew that civilians were being killed in the course of the forcible removal. He participated and supported the military take over of territories, encouraging and assisting in the acquisition of arms. He made ethnically inflammatory speeches at public events and in the media, and such propaganda helped the unleashing of violence against the Croat population and other non-Serbs. Before he was indicted, he testified for the Prosecution in the Milošević case, aware that by doing so he was incriminating himself.

At the hearing on 27 January 2004, Babić read his guilty plea statement:

"I come before this Tribunal with a deep sense of shame and remorse. I have allowed myself to take part in the worst kind of persecution of people simply because they were Croats and not Serbs. Innocent people were persecuted; innocent people were evicted forcibly from their houses; and innocent people were killed. Even I learned what had happened, I kept silent. Even worse, I continued in my office, and I became personally responsible for the inhumane treatment of innocent people.

The regret that I feel is the pain that I have to live for the rest of my life. These crimes and my participation therein can never be justified. I'm speechless when I have to express the depth of my remorse for what I have done and for the effect that my sins have had on the others. I can only hope that by expressing the truth, by admitting to my guilt, and expressing the remorse can serve as an example to those who still mistakenly believe that such inhumane acts can ever be justified. Only truth can give the opportunity for the Serbian people to relieve itself of its collective burden of guilt. Only an admission of guilt on my part makes it possible for me to take responsibility for all the wrongs that I have done.

I hope that the remorse that I expressed will make it easier for the others to bear their pain and suffering. I have come to understand that enmity and division can never make it easier for us to live. I have come to understand that our – the fact that we all belong to the same human race is more important than any differences, and I have come to understand that only through friendship and confidence we can live together in peace and friendship, and thus make it possible for our children to live in a better world.

I have asked help from God to make it easier for me to repent, and I am thankful to God for making it possible for me to express my repentance. I ask from my brothers,

Croats, to forgive us, their brother Serbs, and I pray for the Serb people to turn to the future and to achieve the kind of compassion that will make it possible to forgive the crimes. And lastly, I place myself at the full disposal of this Tribunal and international justice."

He was sentenced on 29 June 2004 to 13 years in prison. He committed suicide on 5 March 2006.

RANKO ČEŠIĆ
Case: Brčko

**Ranko Češić (born 1964)** was a member of the Bosnian Serb Territorial Defence near Brčko, Bosnia and Herzegovina and a member of a special police team at the Brčko police station in 1992. One of his tasks was to arrest desig-nated non-Serbs and bring them to the police station or to the Luka Detention Camp for interrogation where he beat, humiliated, and murdered detainees. In total he admitted killing 10 individuals, two of whom died as a result of beatings and eight others who were shot dead. He substantially cooperated with the Prosecution and agreed to testify in other proceedings before the Tribunal.

At the hearing on 27 November 2003, Češić said:

"Thank you, Your Honours. First of all, without any false sentiments, I wish to express my deep remorse for all the evil I have done. Words such as 'remorse' are insufficient to express what somebody like me feels. Looking back in time after so much time has elapsed since I committed those crimes, there is an enormous difference between my state of mind now and then. Now I would never do the things I did then, the things that took place in a time of euphoria, a time when all human dignity was abolished.

Before the trial, I pleaded guilty to the counts of the indictment, and I did my best to help the Office of the Prosecu-tor and the Tribunal to bring to light a small part of the overall truth, the part that refers to my actions. Your Honours, I would do anything to bring back the past and not do what I have done. Since this is not possible, all that is left for me is to feel the deepest remorse for what I have done.

To this I would like to add that I did not want to bring my friends and relatives here to say nice things about me because I didn't want to increase the pain of the victims and their families, out of respect for the deceased. I hope that my sincere remorse, which I feel deeply, will help to prevent similar things from happening in the future, and I wish to say that any people that experiences war is unfortunate, and people who live through this and families who have suffered pain feel this deeply.

I want to say that I hope nobody will ever do the things that I have done and that prison is not the only punishment for me, because it is even harder to go on living with this feeling of guilt. Thank you, Your Honours, for giving me leave to speak."

He was sentenced on 11 March 2004 to 18 years in prison.

MIROSLAV DERONJIĆ

Case: Glogova, Bratunac

**Miroslav Deronjić** (born 1954) was a leading Bosnian Serb political figure in and around the Bosnian town of Bratunac in 1992. On 8 May 1992 He gave the orders to the Bratunac Territorial Defence, including the police forces, to attack and partially burn the nearby, undefended village of Glogova. As a result, 65 Muslim civilians were killed, Bosnian Muslim homes, private property, and the

mosque were destroyed, and a substantial part of Glogova was razed to the ground. He testified in several proceedings before the Tribunal, in the cases against Momir Nikolić, Radislav Krstić, Vidoje Blagojević *et al.,* as well as in the cases against Momčilo Krajišnik and Slobodan Milošević.

Deronjić read his guilty plea statement at the hearing on 28 January 2004:

"Your Honours,

I was born in a small place in Eastern Bosnia called Bratunac. I spent most of my life in that town. I grew up there, made my friends, and worked at the job that I was trained for. I established my family. I started my family. My life was no different from the life of the majority of the people I knew. In our neighbourhood, only about 10 kilometres away, there is a similar town called Srebrenica. We were connected by numerous connections which life itself weaved, business connections, family connections, neighbourly connections, close friend connections. We lived our ordinary lives. Altogether, we were a little bit poor, a little bit forgotten by everyone.

In the early 1990s, our common state began to break apart. The state was called Yugoslavia. Soon afterwards, war began. In the beginning, we hoped that perhaps it will not reach us. But connections amongst the people had begun to break apart. Instead of our lives, the only true value that we had, we began to make up and accept some other values. Instead of ordinary words that we knew, we began to speak some great words: State, nation, religion. Those who taught us those words did not even know us, and we believed that they were doing that precisely for us. Soon, we understood that we began to be endless lines of dead in the chronicles of the dead, the missing, the bereaved. The war, which did not pass us by for some inexplicable reasons, expressed its anti-humane and anti-civilisational

nature precisely there, all of its brutality, precisely in that area, its bloodiest and most terrible events were acted out.

There is nothing that it did not touch. People, their property, everything that had been built up over decades, even the gifts of nature about which we were so proud, although we were poor, forests, places where we went for holidays. There is no way to explain and describe all of these things or express this entirely in words.

When everything was over and it seemed as if it lasted for an eternity, those of us who survived, instead of the paradise that everybody promised, found ourselves in hell. Thousands of dead remained around us. Tens of thousands of destroyed homes. Deserted properties without people. Destroyed religious facilities. Bridges. Schools. Sadness and devastation remained inside us and all around us. Deep wounds which will continue to burn us for decades.

Today, the town that I am speaking about, the town called Bratunac, is situated between two graveyards. One is on the northern side, and the other is on the southern side. One contains the bodies of one group, and the other contains the bodies of another group, divided even in death. Both graveyards came to be during and after the war. When you count all of those who are buried in those graveyards, there are twice as many of those than those who today inhabit that town. That is the result of war, the result of the terrible events we went through. That is the result of mindless political concepts to which we agreed and in which we participated.

The town of Srebrenica does not exist any more. Whom does it belong to today? The Serbs? The Muslims? It is a town of the dead. Those who committed this killed a town. It doesn't have its present; it doesn't have its future. All that remains is its past which can be measured in centuries. Is there a greater condemnation for those who did that, no matter who they are and what their names are? They are hiding today, and they once spoke – described themselves as heroes. They said that they were the

faithful. How is it possible, then, that they're afraid of earthly justice and what are we to do with the justice that is expecting all of us quite soon?

It is difficult to live with the memories of everything that happened, with the feeling of shame and embarrassment. In the years that are behind me, during many sleepless nights, I kept asking myself the same questions: How is it possible that we did this to each other? How is it possible at all that we agreed to something like this? If we are the way we are, is there any salvation for all of us together?

A lot of time has passed since then, and I haven't found the answers to those questions. But I know one thing: If the truth cannot save us, then really nothing can save us. And that is why, Your Honour, I spoke the truth. I'm not claiming that it is the only truth or the complete truth; the only thing that I am asserting is that I said everything that I knew, and that it is all correct. The truth may not be liked by everybody, but is it also necessary to say that I myself don't like it either?

In numerous interviews to the Prosecution, which can be measured in thousands of pages, the four times that I testified before this Tribunal in different cases, I said everything that I had to say, including the truth about myself. From the very first day when I entered politics as far back as 1990 until the day I definitely left it, I did not conceal anything. I am what I am, no matter what that means. I cannot defend myself from myself. I accepted responsibility for Glogova, and I did not accuse anyone of the things that I am guilty of. I did not understand my guilt only in the legal sense, but in a broader, human sense. Even the things that I did not understand in the best way at the time or the things that I did not know, I was obliged to know and understand. Because I know, Your Honours, that I am capable of it.

That is why my guilt is greater and more profound. I am aware of it completely, and that is why I admitted it. When I realised what really happened in Glogova, and I understood that for the first time completely when I was here

listening to certain testimonies of survivors in other cases, I decided without much thinking to admit my guilt because what is my life in relation to the lives of those innocent victims? What is its value? And what can we measure it by? I did not calculate in any sense, particularly not in relation to a sentence which may be passed down. I did not think at that time, nor am I thinking about the sentence today. I have too many years and too much guilt to permit myself to think about that.

I will accept my punishment in the same way that I accepted my guilt, aware that it cannot in any way be greater than the one I passed on myself, having permitted myself to be in the position that I am in and of which I am ashamed, aware that no punishment can pay my debts to the – settle my debts to the living and the dead. I loved those towns in Eastern Bosnia. Today, they don't love me. They have renounced me, and that is my punishment. There is no greater punishment.

Your Honours, I bow to the spirit of innocent victims in Glogova. Everything that I did in this Tribunal, for whatever it's worth, I dedicate to them in the hope that it will at least somewhat alleviate the pain of their dear ones. I am familiar with that pain because I also carry that pain. I regret the expulsion that I committed, and I express my remorse about all the victims of this war, no matter in which graveyards they lie. I apologise to all those whom – to whom I caused sorrow and whom I let down.

The last sentence that I wish to state before this Trial Chamber, I address exclusively, solely to my family, to my children: Never in this war did I wish, order, nor commit a singlemurder.

Thank you, Your Honours."

He was sentenced on 30 March 2004 to 10 years in prison.

MIODRAG JOKIĆ
Case: Dubrovnik

**Miodrag Jokić** (born 1935) was commander of the 9th Military Naval Sector of the Yugoslav Navy, which was responsible for attacking the southern Croatian town of Dubrovnik and surrounding areas in late 1991. Soldiers under his command shelled the Old Town of Dubrovnik, a UNESCO World Cultural Heritage site, where two civilians were killed and three were wounded. Buildings, institutions dedicated to religion, charity, education, and the arts and sciences, and historic monuments were damaged or destroyed. As commander, Jokić failed to take the necessary measures to prevent or stop the shelling or subsequently to punish or discipline those responsible. At the time, he was the most senior officer of the Yugoslav army to voluntarily surrender, and his guilty plea was to help break the code of silence that had hovered over the bombing of Dubrovnik. He substantially cooperated with the Tribunal and participated in political activities aimed at promoting a peaceful solution to the conflicts in the region.

At the hearing held on 4 December 2003, Jokić said:

"Mr. President, Your Honours, Madam Prosecutor, I would like to thank you for giving me this opportunity to address you. Two years ago, immediately after the indictment was made public, I surrendered to the organs of the Tribunal in order to face the allegations and for the truth to come out. At that time, in my state, there was no legal framework for the cooperation with the Tribunal. None of the officers against whom indictments had been issued had surrendered, and the public opinion was against such an act.

Together with my Defence team and with the minimal assistance provided by the organs of the state and of the

military, I thoroughly investigated and examined the allegations in the indictment and my individual and objective responsibility. I was aware of my command responsibility for the acts of my subordinates in combat and for the failings and mistakes in the exercise of command over troops.

At the same time, I felt the need for us as a responsible society to openly and sincerely face the war crimes that have been committed. I believed that it was important to start cooperating with the Tribunal and that despite all the opposition and lack of understanding in the public somebody should definitely start the process of accepting the responsibility of asking forgiveness of the victims and, as the final goal, of achieving reconciliation with the environment.

Your Honour, there are two reasons why I'm here today: The first is my personal conviction that as a commander I have a moral and personal obligation to accept responsibility and to ask forgiveness for the acts of my subordinates, even though I did not order them; the second reason is the awareness of the fact that my admission of guilt and repentance and remorse are more important than my personal fate.

On 6 December 1991, two people were killed, three people were wounded and substantial damage was caused to civilian structures and to cultural and historical monuments in the old town of Dubrovnik. The fact that these lives were lost in the area for which I was responsible will remain etched in my consciousness for the rest of my life. I am ready to bow before all the victims of this conflict, regardless of the side they were on, with the dignity of a soldier.

Furthermore, although I had already done that in the course of the shelling itself over the radio, and afterwards I did it again in person, I feel the obligation to express my deepest sympathy to the families of those who were killed and wounded and the citizens of Dubrovnik for the pain

and all the damage that was caused to them by the unit under my command.

I see my regret as a prerequisite for reconciliation and the coexistence of various peoples in this area. Your Honour, I have been a professional soldier my whole life. As such, I have abided by the officers' code trying to serve my profession and my country honourably.

That is why I stand here before you, in hope that my act will contribute to the final reconciliation and that it will enable the people in this area to live together and that it will also create a possibility for my people not to bear the burden of guilt now and in the future. Thank you very much, Your Honours."

He was sentenced on 18 March 2004 to seven years in prison.

## DARKO MRĐA

Case: Vlašić Mountain, Prijedor

**Darko Mrđa** (born 1967) was a member of the so-called "intervention squad", a special Bosnian Serb police unit in the town of Prijedor, Bosnia and Herzegovina in 1992. Together with the other members of the squad, Mrđa personally participated in the unloading, guarding, escorting, shooting and killing of more than 200 unarmed men at Korićanske Stijene. Only 12 men survived the massacre. He agreed to cooperate with the Prosecution and his plea helped to establish the truth surrounding the crimes committed against non-Serbs.

At the hearing held on 22 October 2003, Mrđa read the following guilty plea statement:

"Your Honours, thank you for giving me an opportunity at the end of this trial against me to address you with several

words. In Yugoslavia, in the state where I was born, some 13 years ago a tragic conflict broke out. I was 23 years old at the time. Just like all people of my age, I desired peace and I had a number of plans for my future. The last thing on my mind was war and bloodshed. I knew about war only what my parents told me, and they told me very little about war. I didn't pay a lot of attention to that. At the time I believed war to be something from a distant past, something that happened way before I was born.

Frankly speaking, until the very last moment I believed that I would be a member of a generation that would live its lifetime in peace. I grew up in a socialist system. At school I learned about brotherhood and unity between various peoples living in my country. However, I knew that a number of my ancestors perished in the previous war. I knew about the Jasenovac camp. However, at the time I was convinced that that was part of a distant past, something that did not concern me. I had peaceful relationships with my neighbours, Muslims and Croats. We lived together and socialised together, and I even had girlfriends that were non-Serbs. My parents never reproached me for that.

In the beginning of the 1990s, things changed abruptly. Radio, television, press, everything was full of threats against Serbs and against Muslims, depending on whose media it was. Suddenly we started splitting along the lines of our thoughts and ideas at the time. It is difficult to comprehend it right now. Believing that we were faced with the same threat as Jasenovac was in the past, I responded to the mobilisation. I was young and strong, and exactly these kinds of people are needed in every army. I wanted to defend my people, and the last thing on my mind was attacking somebody else.

In late spring 1992, I ended up in the intervention platoon of Prijedor Police. Terrible things were happening in Prijedor, and I would like to forget that. My neighbours and friends, Muslims, had to leave. As a policeman, before the 21st of August, I escorted and was – provided security

to several convoys leaving Prijedor. I cannot say that Muslims fared well there, but I know that most of them reached their destination safely.

In the morning of the 21st of August, I was told that I had to escort another similar convoy. I didn't think that – I apologise. I did not think that anything particular was going to happen. However, that's not how it was. At the order of the commander of the Intervention Platoon, who later was killed at the Bihac front - and I don't wish to mention his name now - we separated two bus loads of military-aged men. They were killed at Koricanske Stijene between Skender Vakuf and Travnik.

I participated in separating and killing these innocent people. I have sincere remorse with respect to that, and I wish to offer my sincere apology to all the victims and their families.

Your Honours, I hope that you will believe me. I did not commit this because I wanted to commit this or I enjoyed doing this. I did not hate these people. I did it because I was ordered to do so. My commander, who enjoyed great respect and had a lot of authority, was present personally and issued these orders. In those moments, I could not muster up enough courage to disobey the order. I can tell you now what would have happened had I refused to carry out the order; I assure you that they would have killed me right then. I hope that you believe me, Your Honours. All of my friends from the Intervention Platoon who could testify to this are afraid for their own future and they don't wish to testify. I cannot reproach them for this.

Your Honours, in the past war, I was an ordinary rank and file soldier. I did not have a rank. I fought at many battle-fronts and I behaved in a dignified manner. I faced many enemies and was wounded three times. I have never been a coward in this war and it is very difficult for me to face what happened at Korićanske Stijene. I asked to be transferred to another unit because I did not wish to kill innocent civilians. I spent the rest of my war service as a soldier who never committed anything similar to what had

happened at Koricanske Stijene. This is the most difficult time of my past, and I would like to erase everything that had happened. However, I know it's not possible. I have in the meantime married and I have two children. I have lived after this in a dignified manner and have not committed any offences. I know that all of those families who lost their loved ones on the 21st of August, 1992 can see me only as a murderer and perhaps will think that my apologies are insincere. I can understand them for believing so, and I am prepared to serve time in order to pay for this.

I hope that my confession will aid in ensuring that such things are never repeated in our territory. I know that by doing so I can help in some way remove some of the burden that I've been carrying for 11 years; however, I know that this will stay with me until the day I die. Once again, I offer my sincere apology to all of the families, and I thank you, Your Honours, for allowing me to address you. Thank you."

He was sentenced on 31 March 2004 to 17 years in prison.

## MIROSLAV BRALO

Case: Lašva Valley

**Miroslav Bralo** (born 1967) was a member of the "Jokers", a Military Police unit of the Croatian Defence Council, which operated primarily in the Lašva Valley region in central Bosnia and Herzegovina in 1993. Bralo committed a range of appalling crimes and was convicted of killing five people and of assisting the killing of 14 Bosnian Muslim civilians, nine of whom were children. He brutally raped and tortured a Bosnian Muslim woman and imprisoned her for approximately two months to be further violated at the whim of her captors. The Trial Chamber

believed that it was noteworthy that Bralo admitted to crimes that he was not originally charged with and made efforts to atone for his crimes by engaging in community work and assisting in the location of the remains of some of his victims.

On 7 October 2005, Miroslav Bralo signed the plea agreement and factual basis along with his personal apology. In his handwritten statement Bralo stated the following:

"My name is Miroslav Bralo. I wish to make a personal apology to each one of my victims who I made suffer, and to each member of every one of the families affected by my actions. I wish to say that I am truly sorry for their suffering and the suffering of their loved ones. What I said in court last time I really meant: I am guilty, and I deeply regret it.

My apology should go further. It should be bigger than a globe. It should include my apology to all the victims and their families; all those who had to pass through the horrific events that took place- those known and those still unknown. I also want to apologize to the many people who are still living in fear and despair as refugees all around the world.

The factual basis to my plea is agreed. It is true. One of the gravest counts is the first one, which talks of persecutions as a crime against humanity. This means something particular to me. As a human being these are my crimes alone, committed against people whose voice I silenced in the massacre at Ahmici. I would like to apologize in the name of those who committed horrific crimes and are not alive any more. And to all those who had to experience pain and suffering due to war and inhumane behavior in Ahmici.

These were acts which I always knew to be wrong, which anyone would know to be wrong, and for which there really can be no excuse at all.

I know I acted badly, and compounded this later by my words. Our wrongs were so terrible - I include others here - that we even clung to them, and tried to justify them. I tried to be proud of my actions and to think they were the actions of a successful soldier. Today I am ashamed of all of that, ashamed of my conduct and ashamed how I behaved.

No, these were not the actions of the soldier I once wanted to be. I was present when women and children were gunned down in front of me, and at that moment the good soldier in me was gone, silent.

I was sometimes brave during that time, but I was not brave enough to recognize what I had become, I was not brave enough to speak out for people whose lives should have been saved. At that time that would have been the heroic act.

It has taken me years to understand and acknowledge my full responsibility for each of my own actions. Now, reasoning about my own conduct, I feel enormously sorry and can do nothing but pray that never ever happens again in this world.

The Tribunal has had to deal with a lot of lies. I do believe that the only way forward is for the truth to be told and for the denial to stop. I don't think I lied, but I was one of the biggest deniers - particularly to myself.

But there must be an end to the cover up of crimes. Families should grieve knowing the truth. I know what it is to grieve for the one whom you love deeply. I truly hope all sides will cooperate in search for the truth and by doing so they will shorten the agony of many families.

I would have said let people take their own course, but I do not believe it. I would say that I encourage anyone who can do so to come forward and talk to their neighbours, to talk to the court and begin to make their peace. When one says the truth and admits the truth- both the neighbour and the court will believe him or her.

At the Tribunal, from last November, I knew straight away that the original indictment did not tell it all. I wanted to offer up the truth about my own crimes, even though I knew that the worst were known only by me. This, and more, is what I owe."

He was sentenced on 7 December 2005 to 20 years in prison.

IVICA RAJIĆ
Case: Stupni Do, Vareš

**Ivica Rajić** (born 1958) was a commander of units of Bosnian Croat soldiers based in Kiseljak, Bosnia and Herzegovina in 1993. He commanded forces that attacked and looted the village of Stupni Do, which resulted in the murder of at least 37 Bosnian Muslim civilians and the destruction of the village. The forces Rajić commanded also attacked the nearby town of Vareš and detained about 250 Bosnian Muslim men, physically and mentally abusing their families and other inhabitants, and sexually assaulting the women. He significantly cooperated with the Prosecution providing and authenticating key documents and confirming numerous important facts.

At the hearing on 7 April 2006, Rajić said:

"Your Honours, thank you for giving me the opportunity in this encounter with the truth to say a few words about myself and the war in which I took part, about the reasons for the war, tragic consequences, and my real role in the events which led me to appear before this Court. I was born in a country where, at the time when I was a child, when I attended school, an impression was created that all of the reasons that had until then caused small peoples living there to fight had ceased. I remember well my

thoughts as a young man when I believed that I belonged to this fortunate generation which will never experience war and that all that was needed for a happy future was an honourable and proper attitude to work the society and work.

Growing up with such beliefs and growing up in a poor family, while still a high school student, I received a scholarship which enabled me to continue my education. I enrolled into a very prestigious air force academy where I achieved great results in my studies. The profession that I required [as interpreted], that of a very sophisticated radar engineer, opened up great possibilities for me in life. In addition to that, a very brave, very decisive, young woman of a different faith and ethnic background but with similar convictions and values became my wife. We started a family without any prejudice. We were an example for all generations.

At the time it seemed that nothing could be better or happier. However, different times came, times when people started splitting along religious or ethnic lines, times that did not allow one a lot of choice. The war broke out with lightning speed and forced me to accept the call given by my friends and neighbours to assist in the defence of our people. To remain with one's nation in difficult times was always considered an honourable choice. Although I had some different plans for myself, this unfortunate development of events determined my fate.

The chance to leave that hell decreased on a daily basis and as did their demands to remain on their side, to stand by them. This is how I came to be a member of the worst war which ever took place in that area. The plans of great powers and ambitions of small nations to organise the state of Bosnia and Herzegovina in accordance with their wishes were not compatible. This conflict between great powers and small nations caused violence, and overnight animosity was created, as were alliances which were difficult to understand. Although I was not a political man, I had sufficient background in history in order to know that

my Croatian nation which was not very numerous in Bosnia and Herzegovina had nevertheless very deep roots in Bosnia and Herzegovina. Due to the aggression against Bosnia and Herzegovina, our people were exposed to great suffering, and I believe that it was my duty, my clear duty, to remain with my nation.

Your Honours, this is my belief to this day. Since I was not active in politics nor did I participate in setting the goals of the war, I believed that the leadership was doing this wisely, the leadership that was entrusted with this. Unfortunately, the time and events which ensued showed that some of the decisions were neither wise nor responsible. The conflict between Croats and Muslims should not have happened. There are witnesses, and I have also provided some evidence to the Prosecution clearly showing that back in the summer of 1992 I took a decisive stand against mad action of Tihomir Blaškić and those who protected him and provoked this conflict in Central Bosnia.

Due to my position, I was removed in early 1993 from all positions I held at the time, so that this man with the support of the same people could immediately after that start his second war against Muslims. Having a good reputation in both nations and risking my own life, I played a key role in stopping this completely senseless conflict which could not produce a winner.

Your Honours, there are many witnesses who can testify about this, and there are numerous documents which I, through my cooperation, provided to the Prosecution. However, despite of everything, the same people basically deported me from Kiseljak which was my town. In late April of 1993, when visiting some relatives in Kiseljak, I found myself amid crucial events when the same people started their third war against Muslims. It was no longer possible to do anything that could have stopped this senseless plight of people, destruction of their homes and settlements. A scenario was set in motion, a scenario that I knew nothing about, neither did many people that I spoke to.

However, based on what we could see, and based on what I could learn, it didn't take much to realise what was going on. There was no double chain of command, nor was there an interruption in communication between those issuing orders and what was going on. Everything unfolded precisely as Blaškić requested it, pursuant his decision or somebody's order. I hope that he will be forced to explain this.

The second issue was conceived in the eyes of cowards when they had to avoid their own responsibility and catastrophic effects. Lack of knowledge of what was going on the ground and due to distance and poor communication, all of these facts point to the direction of lack of sensible leadership. However, as was easy to predict, the fortunes of war changed direction and soon Croats were under an all-out attack. The situation – the status of Croats living in Central Bosnia became a terrible one. They started making plans for moving out. I also provided evidence about this to the Prosecution.

Then the same authors of war remembered me. Knowing that I previously held a high reputation among Muslims and their military commanders, they entrusted me with a role of a negotiator and later on appointed me commander who was tasked with saving whatever was there left to save. It was difficult to negotiate and convince the opposing side that something that wasn't true in fact was true. Fully aware of tragic consequences should the war continue, I did my best to put an end to this madness.

Unannounced I went to the headquarters of the army of Bosnia and Herzegovina in Visoko, and at the risk of being imprisoned, once again I attempted to negotiate the end of war. I did everything that they asked me to do, even what they themselves believed to be impossible. However, the spiral of violence had reached such a high level that it was impossible to even discuss a truce. The desire to survive is such that it is difficult to ensure that those who had suffered terrible personal losses will always act reason-

ably. How to act in compliance with what was permissible under the circumstances which themselves are as impermissible as that war was.

Your Honours, I knew that a large number of people that were under my command had suffered a personal loss, a loss of their family members or homes. I knew that there were people with their human faults. However, it was impossible for me to predict how each of them was going to react under war circumstances. I carried out my tasks with the people I had under my command, not the people I wish I had under my command. I never ordered a crime to be committed. I only ordered the implementation of what was necessary in terms of our operations.

Within the framework of my possibilities, I sanctioned certain acts straight away, some upon the advice of my associates and the authorities and institutions were recorded with the intention of taking the necessary steps and procedure at a time when this would not be counterproductive for the overall system of defence. I also stood up to lawlessness, very often at the risk of my own life, and this is borne out by the fact that the criminals from my own ethnic group attacked me very often and a number of times tried to abduct me and kill me. There are documents to bear that out and I have put them at the disposal of the Prosecution.

I have said all this in order to paint a realistic picture of the situation and the circumstances I had to act in. My departure to Vareš did not have as its aim to perpetrate any crime which would create as a response an attack by the BH army on Vareš, after which the Croatian people would have to leave that territory.

The attack launched by the BH army on Vareš lasted for several days. It was already ongoing. The HVO Vareš asked for assistance, and in following orders, the orders given to me by my superiors, I did everything in my power to do what I could to save the situation. Unfortunately, certain individuals and groups did not respect the instructions received from their superiors and in that very difficult and

unforeseeable development of events a crime took place. Nonetheless, it should not have been a justification for the serious crimes which happened to the Croatian people later on in that same territory.

Your Honours, from everything that I have said and that you have heard, I would like to say that I did not order that crime to take place nor did it take place with my knowledge but it did happen. It was affected by individuals and groups to which I was superior. So that is why I am held accountable. Just as a commander can bask in glory for his good acts, the acts that he accomplishes together with his soldiers, so also military ethics and honour make it incumbent upon him to accept responsibility for the evil deeds that were committed.

I will accept your sentence and judgement bravely and courageously. I am very sorry for all the victims and suffering that took place in Stupni Do and Vareš. Those victims were unnecessary, just as the war between two friendly nations was unnecessary.

I should like to apologise to the families of the people who have suffered, expressing my full sympathies for having lost their – and my regrets for the loss of their nearest and dearest. This comes from the heart, and it is my sincere regret, because I understand the pain and suffering. I know this because the war brought pain and suffering to my own family, as it did to many other families, regardless of their ethnicity. All those victims deserve the truth and justice, and my cooperation with the Prosecution is a contribution to the establishment of the truth and the acceptance of my responsibility of a man who is responsible but not broken, as my former attorney was prone to state.

I am convinced that this grain of truth will be recognised and separated from the sea of lies which for years in Bosnia and Herzegovina and the Republic of Croatia have been put about – about me by individuals and the intelligence services and media who are owned by various proprietors in order to make me keep quiet, to remain silent, and to cover up the truth, to cover up the truth about the

policies and politics pursued, policies which have made my own people both victims and aggressors in their own country.

Only the truth can help future generations, and I will tell the truth and defend the truth regardless of threats and physical assaults, indeed, which I experienced in the Detention Unit. Since those threats were not only held at me personally but at my entire family and, indeed, my defence counsel as well, I should like to ask this Honourable Trial Chamber to use its influence to protect them.

Those people who are afraid of the truth will stop at nothing and use subtle and dangerous methods which confirms the well-devised intelligence and media campaign launched in the Republic of Croatia against me after I had reached a plea agreement with the Prosecution. How else can one explain the writings of a very influential Croatian weekly which refers to Croatian intelligence services and the lies they put out that I was responsible for the terrible tragedy that took place at the Markale market in Sarajevo and as a threat to my family. If along with this monstrous lie they publish a photograph of my wife with my address and even the licence plates of our family car. Is that not a covered up invitation to the friends and family of those who suffered in that terrible crime to lynch my family in retaliation and revenge. And even more monstrous and worse lies were bandied about me through a programme that is very popular on Croatia television immediately after the plea agreement was made and immediately after I recognised my guilt.

I should like to mention that my former attorney took part in that television programme. I described him earlier on by just two words - just two words. Such tricks that are being played and the fate of individuals in Croatia who cooperated with this Tribunal are a lesson for caution, that I should proceed with care and do everything to see that my family are safe. They are well tried and tested methods of the lackeys of the regime, of poodles and dogs from the intelligence service and security services, of

former political clans and present-day political clans who were at the head of fateful events and who had our destiny in our hands in order to protect themselves. They are trying to cover up what actually happened and are doing their best to provide false evidence and proof and accuse others by doing so, and thus belittle this Tribunal before the eyes of the Croatian public as well.

I know full well that the Prosecution is undertaking concrete steps to unmask certain false constructions that have been slipped into this Tribunal. And I sincerely hope that they will give me the opportunity of personally taking part in unmasking these untruths.

Your Honours, I have done everything in my power to ensure that you arrive at the whole truth. Proof and evidence about everything that happened stand firmly, placed before you in your hands. I believe in your courage and your wisdom in weighing up a just sentence. I pray to God to give me the strength and health to persevere honourably and to go back to my family, which is blameless and who needs me very much. Thank you."

He was sentenced on 8 May 2006 to 12 years in prison.

## DRAGAN ZELENOVIĆ

Case: Foča

**Dragan Zelenović** (born 1961) was a Bosnian Serb soldier and *de facto* military policeman in the town of Foča, Bosnia and Herzegovina in 1992. Zelenović raped and tortured a number of detained Muslim women and girls, including a 15 year old. Women who resisted his sexual assaults were threatened with death or were beaten. As part of the plea agreement, Dragan Zelenović agreed to provide truthful and complete information and to testify at any proceedings before the ICTY.

At the hearing held on 23 February 2007, Zelenović said:

"Your Honours, I have expressed my position and remorse in the statement presented by the Defence. Also now, before all, I wish to repeat this and say I thank you for giving me this opportunity to address you first and foremost with a few words, and then all those who advocate truth and justice. I hope that the victims of this senseless war will hear my words too.

This is a war that didn't make anybody happy. Guided by biblical teachings that the truth is not to be feared because that is the only thing that will help all, I have confessed as to my guilt, and I am prepared to bear all the consequences of that. I know that not a single form of punishment can erase the suffering sustained by my victims.

However, faith teaches us that admission of having committed injustice to someone is the best way of helping them. And also in order to protect the victims from being reminded yet again of their suffering, I admitted my guilt. I feel sorry for all the victims who were victimised by anything that I did, and that is why I express from this forum my deepest remorse and regret.

I am a human being with virtues and vices, and I didn't know how to deal with these vices when I should have.

Your Honours, it is for you to give your say now. I will courageously take any sentence meted out, and I hope that God will give me strength to go through all of this and that I go back to my family."

He was sentenced on 4 April 2007 to 15 years in prison.

# Bosnia and Herzegovina

## Plea Agreements before the Court of BiH

### VEIZ BJELIĆ
Case: Vlasenica

**Veiz Bjelić** (born 1949) admitted that as a member of the Piskavica Territorial Defence and guard at the prison known as "Štala" in the hamlet of Rovaši, village of Cerska near Vlasenica, in the period from June 1992 to the end of January 1993, he repeatedly raped a woman who he would take out of the "Štala" prison at night, so the other prisoners and guards would not see her, threatening to kill her if she told anyone what was happening. Together with other members of the RBiH Territorial Defence, he participated in seven months of physical and mental abuse of prisoners in the "Štala" prison, inflicting grievous bodily injury and suffering. In determining the sentence, the Court took as a mitigating circumstance the cooperation of the accused with the Prosecution, his admission and genuine remorse that could have "significant positive effects for the victims". He was found guilty of war crimes against the civilian population and war crimes against prisoners of war.

Explaining why he admitted his guilt, in March 2008 Bjelić said in court that he wanted to give his "mind a rest" and "stop the agony that keeps him up at night". "I did what I am charged with," Bjelić said.

He was sentenced on 28 March 2008 to five years in prison.

DUŠAN FUŠTAR

Case: Keraterm Camp, Prijedor

**Dušan Fuštar** (born 1954) was shift leader in the Keraterm camp near Prijedor during 1992. The prisoners detained at the camp were systematically abused and persecuted with various forms of physical and mental violence, as well as killing, torture, beating, abuse, humiliation and being detained in inhumane conditions. Fuštar did not prevent or stop the abuse of prisoners at the camp, even though he "had the authority and influence" to do so, and therefore "contributed to and furthered the system of illtreatment and persecution". He was accused before the ICTY, but the case was referred to BiH under Rule 11 bis of the ICTY Rules of Procedure and Evidence. He accepted his guilt under the revised indictment that no longer charged him with personally actively participating in the killings and abuse of prisoners. He was found guilty of crimes against humanity.

"Even though I did not personally beat anyone or abuse anyone in any way, the pressure of my conscience requires that I express the deepest remorse to all who have been in any way harmed by being detained in the camp, who have suffered any form of mental or physical abuse, as well as to their families for all the worry they suffered. (...) I want to particularly stress that I am convinced these events and human suffering should never be repeated anywhere in the world, and especially not in BiH."

He was sentenced on 21 April 2008 to nine years in prison.

PAŠKO LJUBIČIĆ
Case: Ahmići, Vitez

**Paško Ljubičić**, previously known as **Toni Raić** (born 1965) was commander of the Fourth Battalion of the HVO Military Police from January to July 1993. On 15 or 16 April 1993, Ljubičić conveyed to his subordinates, over whom he had effective control, the order of his superior officer Tihomir Blaškić to attack the village of Ahmići in Vitez, kill the military-age population, expel the civilians and destroy their property. During the attack on Ahmići, more than a hundred civilians were killed, numerous houses and the two mosques in the village were destroyed. Ljubičić helped plan the attack, aware that "by conveying and issuing such orders he could cause, inter alia, the deaths of a number of persons". He was accused before the ICTY, but the case was referred to BiH under Rule 11 bis of the ICTY Rules of Procedure and Evidence. He was found guilty of war crimes against the civilian population.

"I have been waiting 15 years for the moment when I would be able to publicly express my condolences for all the victims, especially those who lost their lives on 16 April 1993," Ljubičić said and "apologised for his mistake, for not refusing to convey the order of Tihomir Blaškić, which had been illegal."

"I know I will not bring back anybody's loved ones, but I want them to know I feel remorse, as this will probably help me find mental peace," Ljubičić said, adding that he did not want to minimise his responsibility, but that he had to say he "never even verbally hurt anyone".

He was sentenced on 29 April 2008 to 10 years in prison.

IDHAN SIPIĆ
Case: Ključ

**Idhan Sipić** aka **Nuno** (born 1967) was a member of the Reconnaissance and Sabotage Company within the Fifth Corps of the Army of RBiH during 1995. In mid September 1995, in Korjenovo Brdo near Ključ, he killed an elderly Serb woman with his military bayonet. Sipić turned himself in for the murder and took an investigative team to the crime site "whereby he helped ensure the crime would not remain unsolved". Sipić was the first person to conclude a plea agreement before the War Crimes Section at the Court of BiH. During the plea agreement hearing, he said that he had *travelled across Europe, but wherever he went to bed and wherever he woke up, he always had the same image before his eyes – the image of killing the helpless old woman!* He was found guilty of war crimes against the civilian population.

"I am guilty and I am sorry for what I have done," Sipić said at the plea agreement hearing in February 2008.

He was sentenced on 22 February 2008 to eight years in prison.

SLAVKO ŠAKIĆ
Case: Bugojno

**Slavko Šakić** (born 1972), was a member of the Garavi Special Purposes Unit with the 104th HVO Eugen Kvarternik Brigade during July 1993 when as a co-perpetrator he committed murder, participated in the unlawful detention, torture and imposition of forced labour on Bosniaks in the area of Bugojno. In all that, Šakić exhibited particular cruelty, as for example on a prisoner

"whose hands and feet he tied and proceeded to make cuts with a knife on his head". The body of the prisoner was found a year later. In determining his sentence, the Court took as mitigating circumstances Šakić's youth at the time of commission of the crime and the fact that he was the father of three children. The agreement and judgement do not specify whether Šakić committed to any form of cooperation with the BiH Prosecutor's Office. He was found guilty of war crimes against the civilian population.

He was sentenced on 29 September 2008 to eight years and six months in prison.

VASO TODOROVIĆ
Case: Srebrenica

**Vaso Todorović** (born 1968) was a member of the 2nd Detachment of the Šekovići Special Police of the RS Ministry of Interior when on 12 July 1995 he participated in the ransacking of a village in the Srebrenica area, expelling the civilians and taking them to Potočari, knowing they would be "forcibly and permanently displaced". Todorović participated in the capturing of more than a thousand men and escorting a column of several hundred Bosniaks to the warehouse at the Kravica Agricultural Cooperative, "knowing that they would be executed". Other members of the same detachment "killed the captured Bosniaks, using rifles, machine guns and bombs" while Todorović stood guard. In determining his sentence, the Court took as a mitigating circumstance his guilty plea and the fact that this saved the Court the expense of a trial and spared the witnesses from retraumatisation. The Court found that Todorović's testimony represented

"valuable assistance" for the Prosecution. The amended indictment charged him with crimes against humanity instead of genocide.

In the courtroom, Todorović testified that he had known many of the Bosniaks killed in Kravica. "But I did not speak to them. I just got out of the way because I knew what was coming. I genuinely regret being there at all. But it was war, and if I had run away, I could have ended up just like those victims."

He was sentenced on 22 October 2008 to six years in prison.

## GORDAN ĐURIĆ

Case: Korićanske Stijene, Mount Vlašić

**Gordan Đurić** (born 1968) was a member of the Intervention Platoon of the Public Security Station in Prijedor during 1992. He admitted to having participated in taking civilians out of a convoy deporting non-Serbs, at the locality of Korićanske Stijene on Mount Vlašić and that he was ordered to stand guard while other members of the Intervention Platoon executed some 200 men from the Prijedor area. Đurić testified for the Prosecution against the other accused, which was one of the conditions included in his plea agreement. He was found guilty of crimes against humanity.

"Honourable Court, I know that a terrible crime took place. I am sorry and I feel genuine remorse. I have been carrying that burden for 17 years and I will carry it the rest of my life... I truly regret it," Đurić said.

He was sentenced on 10 February 2009 to eight years in prison.

DAMIR IVANKOVIĆ
Case: Korićanske Stijene, Prijedor

**Damir Ivanković** (born 1970) was a member of the Intervention Platoon of the Public Security Station in Prijedor during 1992. Together with the other members of the Intervention Platoon, he personally participated in the taking out, guarding, escorting, execution and killing of more than 200 unarmed men, civilians, at Korićanske Stijene. Only 12 men survived the massacre. Ivanković agreed to cooperate with the Prosecution and his plea helped to establish the truth surrounding the crimes committed against non-Serbs. He provided information that was useful in finding the remains of the victims. He was found guilty of crimes against humanity.

"I want to express my sincere remorse. I am sorry for everything that was done... I am sincerely sorry for all the victims and the families that lost their loved ones," Ivanković said before the judgement was pronounced.

He was sentenced on 2 July 2009 to 14 years in prison.

ZORAN MARIĆ
Case: Jajce

**Zoran Marić aka Đole** (born 1964) was a member of VRS during 1992. Together with other members of an "organised group of armed people", having jointly agreed on a plan, on 10 September 1992, in the villages of Ljoljići and Čerkazovići near Jajce, he participated in forcibly taking Bosniak civilians out of their houses and arresting them. The civilians were then taken to Tisovac where they were ordered to line up at the edge of a precipice and were

executed. On that occasion, 23 persons were killed, four were wounded, and one remained unharmed. The mitigating circumstances taken into account included his "serious health difficulties". He was found guilty of war crimes against the civilian population.

"I declare that I am sorry for what happened, I accept my guilt. I want to say that I am sorry about what was done with the people who were killed and I want to convey my condolences to the families of those who were killed," Marić said.

He was sentenced on 29 October 2009 to 15 years in prison.

## STOJAN PERKOVIĆ

Case: Rogatica

**Stojan Perković** (born 1944) was a member of VRS and Company Commander in Lađevine, in the area of Rogatica, where he committed and knew of but did not prevent or punish: killings, forcible disappearances, severe detention contrary to the basic rules of international law, rapes, persecution of the non-Serb civilian population on national, ethnic, religious and sexual grounds, as well as other inhumane acts committed with the intent to cause great suffering, serious physical injuries and harm to health. In determining his sentence, the Panel took as a mitigating circumstance the fact that Perković had "significantly cooperated with the BiH Prosecutor's Office", which resulted in the discovery of a mass grave. The Court took as an aggravating circumstance the fact that in committing the crimes, which included rape, Perković had exhibited "particular brutality". He was found guilty of crimes against humanity.

"I never wanted this war and I lived with my neighbours whatever their nationality. I know that evil happened and ugly things happened that I did not want. I feel genuine compassion for the pain and suffering of all victims, because I have felt it myself, and I once again want to express my sincere remorse to all the victims," Perković said.

He was sentenced on 24 December 2009 to 12 years in prison.

## RADE VESELINOVIĆ

Case: Hadžići

**Rade Veselinović** (born 1944), as member of the VRS Military Poplice in Hadžići, in the period from early May 1992 to the end of 1992, participated, instigated and aided the persecution of non-Serbs from the municipality of Hadžići on political, national, ethnic, cultural and religious grounds, resulting in murders, unlawful detention, torture, forced disappearances, inflicting of grave suffering and bodily injury and other inhumane acts committed with the intention of inflicting grave suffering and grievous physical injury and harm to health. In addition to his guilty plea, the Court accepted as a mitigating circumstance the fact that the accused was of older age and had a serious health condition. He was found guilty of crimes against humanity.

"I accept responsibility for the charges against me," Veselinović said in court.

He was sentenced on 30 June 2009 to seven years and six months in prison.

MARKO BOŠKIĆ
Case: Zvornik, Srebrenica

**Marko Boškić** (born 1964) was a member of the 10th Sabotage Detachment of the VRS Main Staff during 1995. On 16 July 1995, at the Branjevo Farm in the village of Pilica, Municipality of Zvornik, together with another seven members of the 10th Sabotage Detachment, he took part in the execution of several hundred captured Bosniak men from the Srebrenica enclave, some of whom had been blindfolded. Only two prisoners survived the execution. Boškić had been extradited from the US, having admitted before a court in the US to participation in war crimes in BiH. Under the plea agreement, he committed to testifying on this and other events, and a mitigating circumstance accepted in his favour was that during the commission of the crime, he had been under threat from his superior officer that he would himself be put to death if he did not obey the order. He was found guilty of crimes against humanity.

He was sentenced on 19 July 2010 to 10 years in prison.

LJUBIŠA ČETIĆ
Case: Korićanske Stijene, Mount Vlašić

**Ljubiša Četić** (born 1969) was a member of the Intervention Platoon of the Public Security Station in Prijedor during 1992. He admitted that together with other members of the Intervention Platoon, he personally participated in the taking out, guarding, escorting, execution and killing of more than 200 unarmed men, civilians, at Korićanske Stijene on Mount Vlašić.

In his plea agreement, Četić committed to helping the BiH Prosecutor's Office in shedding light on the killings at Korićanske Stijene and to "sharing any information about other events of interest to the prosecutor". For the commission of the crime, he had used a smaller calibre rifle that was less powerful compared to an automatic rifle. He was found guilty of crimes against humanity. When he was sentenced to five years in prison in 2024, for crimes in the Prijedor village of Zecovi, he did not conclude a plea agreement.

"I regret everything I have done and being in the police at all, because it ruined my life. I want to apologise to the victims that I have in any way wronged as a member of the police in Prijedor."

He was sentenced on 18 March 2010 to 13 years in prison.

ELVIR JAKUPOVIĆ
Case: Travnik

**Elvir Jakupović** aka **Čoki** (born 1976) was a member of the 1st Battalion of the 17th Krajina Brigade of the Army of RBiH during 1993. He admitted that on 9 June 1993, in Slimena near Travnik, he shot dead at close range a member of the Croat Defence Council he had helped capture. Jakupović concluded a plea agreement at an early stage of the proceedings "when it is most useful for the judiciary" as stated in the judgement. Jakupović had been a minor at the time of commission of the crime. He was found guilty of war crimes against prisoners of war.

"Even though I was young back then, I am sincerely sorry for what I did."

He was sentenced on 23 August 2010 to five years in prison.

DRAGAN RODIĆ
Case: Drvar

**Dragan Rodić** aka **Šaula** (born 1963) was entrusted from 1992 to 1995 with guarding prisoners at the Slavko Rodić Primary School in Drvar and at the Kamenica camp where, in the period from mid-1994 to the end of 1995 at least, he served as shift leader. He supported a system of repression over the prisoners and took part in the abuse of civilians and prisoners of war. This included capturing members of other nationalities, maintaining inhumane conditions in the prison facilities and the constant torture, beatings and killings of prisoners. The Prosecution pointed out that Rodić expressed remorse and was open to cooperation from the start, as well as that he provided important information about the camps in Drvar. He was found guilty of crimes against humanity and war crimes against prisoners of war.

He was sentenced on 26 October 2010 to eight years in prison.

MIROSLAV ANIĆ
Case: Kiseljak and Vareš

**Miroslav Anić** aka **Firga** (born 1971) was a member of the Special Purpose Unit of Maturice as part of the Josip Ban Jelačić HVO Brigade in Kiseljak during 1993. In June 1993, together with the other members of the Maturice unit, Anić took part in the attacks on the villages of Grahovci,

Han Ploča and Luke in the Kiseljak area, and the village of Stupni Do near Vareš in October 1993. During these attacks, he participated in the capture and killing of some 60 Bosniak civilians, including children. After being on the run for years, Anić turned himself in to the Prosecutor's Office. Miroslav Anić refused the Prosecution's offer of setting the sentencing range as 12 to 15 years in the agreement and asked for a 15-year sentence, even though his commander received a 12-year sentence for the same crimes. He was found guilty of war crimes against the civilian population.

"I am sorry for all the people who died by my hand and by the hand of the people who took part in these events with me. I feel remorse and I will feel it for the rest of my life. (...) I apologise again and I feel remorse for the wrongs I have done to people and for the victims of my wrongdoings," Anić said in court.

He was sentenced on 31 May 2011 to 15 years in prison.

## DRAGAN CRNOGORAC

Case: Srebrenica

**Dragan Crnogorac** (born 1972) was a member of the Jahorina Training Centre, Special Police Brigade of the Republika Srpska Ministry of Interior during 1995. He admitted that on 13 July 1995, in Sandići, Municipality of Bratunac, together with other members of the Centre, he participated in the capture of Bosniak men who were trying to leave the UN designated "safe area" of Srebrenica. On that occasion, they put to death ten Bosniak men, six of whom had been captured wounded. The accused Dragan Crnogorac expressed his genuine remorse and said that he could not influence events because he had to

carry out orders for his own safety, and he apologised to the victims. He was found guilty of crimes against humanity.

He was sentenced on 13 May 2011 to 13 years in prison.

PAVLE GAJIĆ
Case: Bihać

**Pavle Gajić** (born 1971) admitted that in November 1994, as a member of the VRS Reconnaissance and Sabotage Detachment Orlovi Grmeča, in the settlement of Sokolac near Bihać, he used a military bayonet to kill a captured member of the Army of RBiH. A video recording of the brutal execution was made. In determining his sentence, the Court took as mitigating circumstances the disability, unemployed status and family circumstances of the accused, as well as his guilty plea and apology to the family of the victim. He was found guilty of war crimes against prisoners of war.

Gajić briefly addressed the Panel, saying he "apologises to the family of the killed victim for the monstrous act."

He was sentenced on 16 June 2011 to seven years in prison.

ENES HANDŽIĆ
Case: Bugojno

**Enes Handžić** (born 1960) was the Assistant Commander for Security in the 307th Brigade of the Army of RBiH during 1993. He was responsible for sending Croat prison-

ers to dig trenches, and he was charged with failing to investigate subordinate members of the military police responsible for beatings and killings of Croat prisoners in a number of buildings in Bugojno. During plea bargaining, the accused Enes Handžić provided the BiH Prosecutor's Office with useful information about the locations where the prisoners were liquidated and possible sites where their remains might be found, as well as about other persons who participated in wartime events in Bugojno. He was found guilty of war crimes against the civilian population.

"I tried to make things easier for myself and others. I am now no longer under the burden of all those events and as a man, I can continue living with the sanction that will be pronounced," Handžić said.

He was sentenced on 25 May 2011 to eight years in prison.

ZORAN KUŠIĆ
Case: Srebrenica

**Zoran Kušić** (born 1974) was pronounced guilty because on 14 July 1995, as part of the attack on the UN Safe Area of Srebrenica, as a member of the Jahorina Training Centre Special Police Brigade of the RS Ministry of Interior, in the morning hours, acting on the orders of his superior officer, in the vicinity of the Kravica Agricultural Cooperative warehouse, he killed one of the captured Bosniak men. In determining his sentence, the Court took into account that Kušić was young at the time of commission of the crime, that he was arrested in Serbia as a deserter and deported to BiH against his convictions, that he did

not take part in the attack willingly, and that he committed the murder at the order of his superior officer. He was found guilty of crimes against humanity.

He was sentenced on 11 March 2011 to five years in prison.

## OSMAN ŠEGO

Case: Bugojno

**Osman Šego** (born 1966) was a member of the military police in the 307th Brigade of the Army of RBiH during 1993. He admitted that in July 1993 he took part and aided in the killing, torture and forced labour of Croats detained at several locations in Bugojno: in the Convent-Marxist Centre, in Guvno near Bugojno and in Bugojno's Vrbanja neighbourhood. The Court took into account that his admission was given in the initial phase of proceedings, before the main trial, "which is of greatest benefit for the judiciary". The Court accepted as a mitigating circumstance that the accused had a minor daughter with a severe medical condition. He was found guilty of war crimes against the civilian population.

"The charges are true and I plead guilty, honourable Court. I want to apologise to all the victims and express my deep and sincere remorse for what happened," Šego said.

He was sentenced on 8 June 2011 to five years in prison.

NOVICA TRIPKOVIĆ
Case: Foča and Kalinovik

**Novica Tripković** aka **Vojvoda** (born 1947) concluded two plea agreements for two separate war crimes. Under the first agreement, Tripković admitted to being guilty of persecution of Bosniak civilians from April to June 1992, as a member of the VRS in the Donje Polje neighbourhood of Foča. He raped a woman under threat of force and direct attack on her life. On a number of occasions, he acted inhumanely, physically and mentally abusing the same person and members of her family. At the end of June 1992, he killed a man in the neighbourhood. The Court accepted as a mitigating circumstance the age and poor health of the accused, as well as his admission and remorse. Tripković had been convicted before. He was found guilty of crimes against humanity. Under another plea agreement, Tripković admitted to raping a number of women from the Aladža neighbourhood near Foča. Tripković was also convicted in 2016 for the war crime of killing three civilians captured in the area of Kalinovik, in a case where he did not conclude a plea agreement. This makes his case exceptional, because in 2011 he pled guilty to the first crime he was charged with, then in 2016 he did not plead guilty, but in 2022 he once again pled guilty.

In the first case, on 7 June 2011, he was sentenced to eight years in prison. He was sentenced to another eight years in prison in the second case, and on 24 May 2022, the Court pronounced a unique prison sentence of 20 years.

ZDRAVKO MIHALJEVIĆ
Case: Kiseljak and Vareš

**Zdravko Mihaljević** aka **Pijuk** (born 1964) was a member of the Maturice Special Unit in the Josip ban Jelačić Brigade of the HVO, under the command of Ivica Rajić, during the armed conflict between units of the Croat Defence Council and the Army of RBiH in the Kiseljak area. In 1993, together with other HVO members, Mihaljević took part in the attack on the village of Tulice and was responsible for the killing of a number of Bosniak civilians and detaining a group of some 30 civilians from which seven men were separated and in whose killing Mihaljević personally took part.

In the first-instance proceedings, Mihaljević did not plead guilty to the commission of war crimes and the Court of BiH acquitted him. Following an appeal by the BiH Prosecutor's Office, the Appellate Division of the Court of BiH overturned the first-instance acquittal and scheduled a trial before the Appellate Division of the Court of BiH. The BiH Prosecutor's Office then amended the indictment and submitted along with the amended indictment the plea agreement it had concluded with Mihaljević.

He was sentenced on 16 June 2011 to six years in prison.

ŠABAN ĐELILBAŠIĆ
ELVIR ĐELILBAŠIĆ
Case: Turbe, Travnik

**Šaban Đelilbašić** (born 1966) and his brother Elvir Đelilbašić (born 1969) were members of the 3rd Battalion in the 312th Motorised Brigade (the so-called Turbetanski

Detachment) of the Army of RBiH. They admitted that on 9 December 1992, having been informed that their brother had been killed on the front line in combat against the Army of Republika Srpska, they both armed themselves with automatic rifles and, with the intention of killing citizens of Serb ethnicity who lived in Turbe, deprived two persons of Serb ethnicity of their lives. In determining their sentence, in addition to their admission and remorse, the Court especially took into account that the admission was given before the start of the main trial, which contributed to efficiency and reduced the cost of proceedings. They were found guilty of war crimes against the civilian population.

They were sentenced on 22 June 2012 to six years in prison each.

## RASEMA HANDANOVIĆ

Case: Konjic

**Rasema Handanović** aka **Zolja** (born 1972) was a member of the Zulfikar Special Detachment of the Supreme Command Staff of the Army of RBiH. She participated in the attack on the village of Trusina near Konjic and within the attack in the execution of a number of prisoners of war and civilians. In determining her sentence, the Court took into account that Handanović was young at the time, that she was a single mother, that she had herself previously suffered the trauma of rape and loss of family members in the war. Under her plea agreement, Handanović testified against the other accused for the crime in Trusina. She was found guilty of war crimes against the civilian population and war crimes against prisoners of war.

She was sentenced on 30 April 2012 to five years and six months in prison.

RADIVOJE SOLDO
Case: Konjic

**Radivoje Soldo** aka **Rašo** (born 1963) admitted that in June and July 1992, in the area of Konjic, in a bungalow at Boračko Lake that was part of the VRS Red Berets camp, he unlawfully detained a Bosniak woman and raped her daily and subjected her to forced labour. The victim was also raped by other unknown members of the VRS, as well as soldiers from Serbia. Soldo forced the victim to convert to Christianity and change her name, which, fearing for her life, she had to do. The Court accepted as a mitigating circumstance that Soldo was disabled and a father of two. He was found guilty of war crimes against the civilian population.

Before the judgement was pronounced, the accused Soldo addressed the Court and apologised to the victim:

"I am sorry for everything that happened. I am sorry and I sincerely apologise for everything that happened."

He was sentenced on 3 November 2015 to five years in prison.

MILIVOJE ĆIRKOVIĆ
Case: Srebrenica

**Milivoje Ćirković aka Ćiro** (born 1973) was a member of the Jahorina Training Centre Special Police Brigade of the Republika Srpska Ministry of Interior during 1995. Ćirković admitted that on 14 July 1995, as a member of the Centre, acting on orders of his superior officer, in the vicinity of the Kravica Agricultural Cooperative near Bratunac, he killed one civilian by shooting him in the back. The Prosecution's sentencing proposal pointed out

the accused's cooperation, as well as the fact that he had not voluntarily been a member of the Special Police Brigade and that he committed the murder on orders from his superior officer. He was found guilty of crimes against humanity.

"I want to say that I am sorry for everything I did that day. I feel guilty. I am sorry and I want to apologise to the family whose member I killed, even though I didn't know who he was," Ćirković said, addressing the Court of BiH.

He was sentenced on 16 November 2016 to five years in prison.

## MIĆO JOVIČIĆ

Case: Štrpci, Rudo and Višegrad

**Mićo Jovičić** aka **Splića** and **Crni** (born 1961) was a member of the Intervention Company in the 2nd Podrinje Light Infantry Brigade of VRS in Višegrad during 1993. Together with around 25 VRS soldiers, he took part in the abduction of 20 non-Serb passengers that were forced off the train travelling from Belgrade to Bar at the railway station in Štrpci near Rudo and taken to the Command in Prelovo, Municipality of Višegrad. There, they brutally beat the captured civilians, tied them with wire and drove them to the bank of the Drina River in the village of Mušići where they executed them and threw their bodies into the river. In determining the sentence, the Court took into account Jovičić's admission in the early phase of the proceedings, which contributed to shedding light on this crime, and that "although a co-perpetrator in the commission of the offence, he was not a direct perpetrator, i.e. he did not undertake the action of shooting the civilians." He

was found guilty of war crimes against the civilian population.

He was sentenced on 16 November 2016 to five years in prison.

STOJAN KENJALO
ZORAN KENJALO
DRAGAN BALABAN
Case: Bosanski Novi/Novi Grad

**Stojan Kenjalo** aka **Bajo** (born 1970), his brother **Zoran Kenjalo** (born 1973) and **Dragan Balaban** aka **Kipalj** (born 1955) were members of VRS during 1992. In an attack on the civilian population of Alići and Ekići, hamlets of the Village of Maslovare near Bosanski Novi, they took part, together with over 20 other armed persons, in the killing of 27 men. Beforehand, they physically abused them in front of the women and children, and then made them dig a mass grave. All three accused concluded separate plea agreements on the same day and were convicted in a single judgement. The Prosecutor highlighted the sincere remorse of all three accused and added that Dragan Balaban expressed remorse to the point of attempting suicide. He stated that his only wish was to meet the families that survived and ask for their forgiveness. Zoran Kenjalo's youth at the time of commission was accepted as a mitigating circumstance. They were found guilty of crimes against humanity.

"I am one hundred percent guilty. I admitted this back in Banja Luka nine years ago," said the accused, Dragan Balaban.

Stojan Kenjalo was sentenced on 9 June 2016 to seven years in prison. On the same day, Zoran Kenjalo was sentenced to five, and Dragan Balaban to seven years in prison.

## DAMIR LIPOVAC

Case: Derventa

**Damir Lipovac** (born 1970) was a member of the 103rd Brigade of the Croat Defence Council and commander of the camp established at the Primary School in Poljari near Derventa during 1992. He took part in grave deprivation of liberty, killings, torture, various forms of physical and mental abuse and the robbing of Serb civilians unlawfully detained at this camp. Lipovac admitted to killing two prisoners. He was found guilty of war crimes against the civilian population. In addition to his admission and remorse, the fact that he was young, age 22, at the time of commission was accepted as a mitigating circumstance.

"Once again, I express my remorse to the victims," was the statement published in the media.

He was sentenced on 9 February 2016 to seven years in prison.

## DARIO SLAVULJICA

Case: Teslić, Miće

**Dario Slavuljica** (born 1973) was a member of the military-police formation Miće and the Military Police of the VRS Teslić Brigade during 1992. He admitted that on Mount Borje, at a site known as Bebe, together with five other persons, he took part in the killing of 28 Bosniak

and Croat civilians from the Teslić area. He had admitted to the criminal offence immediately in an investigation conducted in 1992, but the trial took place only once the Court of BiH was established. His admission and readiness to testify in all phases of the proceedings significantly contributed to shedding light on the circumstances of this crime and the trials of the other perpetrators. At the time of commission, Slavuljica was 19 years old, he had been doing his military service and was subordinate to the officers that gave orders for the crime. That fact that he had been a young adult was treated as a mitigating circumstance. He was found guilty of crimes against humanity.

He was sentenced on 29 February 2016 to eight years in prison.

MIROSLAV PERIĆ

Case: Vojno Camp, Mostar

**Miroslav Perić** (born 1972), as a member of the Ministry of Interior at the Police Station in Mostar, from 17 April 1993 to the end of February 1994 he acted inhumanely and participated in the mistreatment – violence against detained civilians in the Vojno Camp near Mostar – which resulted in a serious bodily injury and violation of personal dignity. The plea agreement included a BAM 10,000 payment to a victim who had been a minor during the detention and who had been particularly cruelly treated by Miroslav Perić and his accomplices. The Court took into account that the accused had been young and himself a victim of war, which had claimed the lives of his family members. He was found guilty of war crimes against the civilian population.

Perić stated that he signed the agreement with full awareness, that he felt remorse and was prepared to reconcile with the victim.

"I am sorry for what happened," he said in the courtroom.

He was sentenced on 19 December 2017 to one year in prison.

## GORAN PAVKOVIĆ

Case: Prozor

**Goran Pavković** (born 1975) was a member of the Croat Defence Council in Rama-Prozor during 1993. The charge was that in November 1993 at the Fire Department in Prozor, where members of the HVO were interrogating a group of unlawfully detained Bosniak civilians, he took part, together with a number of other HVO members, in the torture of the detained civilians by inflicting electric shocks on their naked bodies and kicking and beating them, thereby inflicting suffering and violating their bodily integrity. At the time of the commission of the crime, Pavković was a young adult, aged 18 years and 7 days. He admitted to his guilt in an early phase of the proceedings. He was found guilty of war crimes against the civilian population.

He was sentenced on 23 April 2018 to one year in prison.

GORAN VIŠKOVIĆ
Case: Vlasenica and Milići

**Goran Višković** aka **Vjetar** (born 1954) was a member of VRS, and during 1992 and 1993 he took part in the persecution of non-Serb civilians from the area of Vlasenica and Milići, including through killings, deprivation of liberty and inhumane treatment. In 2010, Višković was sentenced to 18 years in prison in the case of *Predrag Bastah and others* for crimes committed in the area of Vlasenica and Milići, at which time he did not conclude a plea agreement. Another indictment was raised in 2021 and Višković admitted that, together with other members of VRS, he was responsible for the abduction, beating and murder of Mevludin Hasanbegović, the capture and beating of Ismet Hasanović and other civilians, as well as for the beating and inhumane treatment of prisoners at the Sušica camp near Vlasenica. In addition, Višković took a number of prisoners out of the Sušica camp who were then lost and have not been found since. In determining the sentence, the Court took into account that the accused had expressed remorse and had cooperated with the Prosecution in the early phase of the main trial, and that his admission contributed to the cost-effectiveness and efficiency of the proceedings.

He was sentenced on 12 November 2021 to eight years in prison. Given his previous prison sentence of 18 years, the Court pronounced a single prison sentence of 20 years.

DAMIR MISKIN
Case: Mostar and Nevesinje

**Damir Miskin** aka **Dama** (born 1968) was a member of the 5th Battalion of the VRS Nevesinje Brigade during the armed conflict between the VRS and the Army of RBiH in the area of Mostar and Nevesinje. On 29 June 1992, together with other VRS members, he captured a group of Bosniak civilians on Mount Velež, who were fleeing attacks of Serb forces on their villages in the Nevesinje area and trying to reach the territory of the Mostar Municipality. The group was taken to the primary school building in Zijemlje where they were unlawfully detained and beaten. In the plea agreement, Miskin admitted that together with another two members of the VRS, he raped one of the detained women. In determining the sentence, the Court took into account that the accused had expressed remorse, that he had cooperated with the Prosecution in an early phase of the proceedings and that he had committed to testifying in other cases.

He was sentenced on 11 April 2022 to four years in prison.

## Plea Agreements before the Basic Court of the Brčko District of BiH

KONSTANTIN SIMONOVIĆ
Case: Luka, Brčko

**Konstantin Simonović** (born 1962) admitted to the allegations in the indictment that in the Luka camp near

Brčko, from early May to late July 1992, "together with other persons he issued orders, performed daily torture, inhumane treatment, unlawful transfers to concentration camps, inflicted grave suffering, violated the bodily integrity and health of the civilian population, raped non-Serb female civilians." He thereby committed the criminal offence of war crimes against the civilian population.

The accused stated that he admitted his guilt in full, for all seven acts underlying the commission of the criminal offence he was charged with, adding that he had himself been forcibly mobilised in the past war, that he felt deep remorse for having committed the criminal offence, that he publicly apologised to all the victims he mistreated at the Luka camp, that he was sorry for what happened and that he accepted the six-year sentence set in the agreement.

He was sentenced on 18 October 2005 to six years in prison.

## Plea Agreements before the Cantonal Court in Bihać

### PETAR ARSENIĆ

Case: Sanski Most

**Petar Arsenić** admitted that on 10 October 1995, as a member of the VRS, by prior agreement together with another two armed soldiers, he took part in the killing of 15 Bosniak civilians in Sanski Most. In the village of Kruhari, they intercepted Bosniak civilians returning with three carts from cutting wood in the forest where they had been taken for forced labour. They were being escorted by

five VRS soldiers, from which Arsenić and another two armed soldiers forcibly took the 15 civilians, against the wishes of the soldiers escorting them. They forced the civilians to return the way they came, ordered them to lie face-down in a meadow and fired multiple rounds into their bodies. They killed all 15 civilians. In determining the sentence, the Court particularly took into account his "readiness to testify about the events in relation to the other accused," which had been his obligation under the agreement. The injured parties, as well as the president of the local association of prison camp survivors, supported the conclusion of the plea agreement. Arsenić was found guilty of war crimes against the civilian population.

He was sentenced on 22 November 2010 to 10 years in prison.

MIROSLAV GRBIĆ
Case: Bosanski Petrovac

**Miroslav Grbić** aka **Mišo** admitted that as a member of the VRS Petrovačka Company, on 22 September 1992, in the village of Gaj near Bosanski Petrovac, he wounded a Bosniak civilian. He had come armed to his house and threateningly told him to come outside. The two male civilians who had been staying in the house, fearing for their lives, tried to escape by jumping through the window. Grbić fired shots after them and seriously wounded one of them in the back. The Court accepted as a mitigating circumstance Grbić's cooperation with the Prosecution and his expression of genuine remorse. He was found guilty of war crimes against the civilian population.

"I had been thinking about apologising to the victim before, but I was afraid and I was ashamed," Grbić said in the courtroom.

He was sentenced on 1 June 2011 to three years in prison.

MUSTAFA ODOBAŠIĆ
Case: Velika Kladuša

**Mustafa Odobašić** admitted that on 18 March 1995, in Podzvizd near Velika Kladuša, as a member of the Golubovi Reconnaissance-Sabotage Company within the 2nd Brigade of the National Defence of the Autonomous Province of Western Bosnia, he killed a captured member of the 5th Corps of the Army of the Republic of BiH. Odobašić pulled the captured soldier out of the line and hit him until he fell to the ground, he then fired several shots into his body, killing him on the spot. The Court accepted the plea agreement in full and was of the opinion that the punishment was sufficient "to achieve the purpose of punishment in terms of general and special prevention." He was found guilty of war crimes against prisoners of war.

He was sentenced on 28 June 2011 to seven years in prison.

NEĐO TRIFKOVIĆ
MITAR MILINKOVIĆ
Case: Sanakeram, Sanski Most

**Neđo Trifković** and **Mitar Milinković** admitted that in October 1995, as members of the VRS, they had guarded Bosniak civilians detained on the ground floor on the premises of the Sanakeram Company in Donji Kamengrad near Sanski Most and that they took part in their physical

abuse and killing. Trifković and Milinković admitted that they had killed three civilians and that on multiple occasions, they had taken out groups of 10 civilians and physically abused them. Acting in their capacity as guards, they forced one prisoner to execute nine other prisoners taken outside the building, which he did, firing from an automatic rifle and killing eight of the prisoners. Only one survived, with injuries. In considering the plea agreement, the Court took into account that the accused had pled guilty and expressed remorse, thereby "contributing to the cost-effectiveness and efficiency of the proceedings". The Court also took into account the fact that the accused had committed to "actively cooperating with the Prosecution to discover the other perpetrators". They were found guilty of war crimes against the civilian population.

They were sentenced on 10 February 2011 to 10 years in prison each.

## NEDELJKO ŠIKMAN

Case: Ključ

**Nedeljko Šikman** aka **Šico** admitted that as a member of the VRS, on 30 October 1994, in Biljani near Ključ, he killed a Bosniak woman. He had come to her house in the evening, called for her to come out and hit her on the head with a blunt object; he then strangled her with her scarf. He dragged the body of the strangled woman into the barn where it was discovered the next morning by her neighbours. The Court accepted as a mitigating circumstance that Šikman's admission "contributed to the cost-effectiveness and efficiency of the proceedings" and that he committed to actively cooperating with the Prosecu-

tion on discovering the other perpetrators. He was found guilty of war crimes against the civilian population.

The accused Šikman expressed remorse for the crime he committed, saying that he had been young and intoxicated at the time, and he also promised to cooperate with investigators on discovering the perpetrators of other crimes committed in the Ključ area.

He was sentenced on 21 April 2011 to seven years and six months in prison.

SAFET DELIĆ
Case: Velika Kladuša

**Safet Delić** aka **Soja** (born 1973) admitted that as a member of the 506th Brigade of the 5th Corps of the Army of the Republic of BiH, on 7 August 1995, he raped a woman in Velika Kladuša. Together with an unknown other soldier, Delić came to the family home of the victim and when she tried to leave the room, he struck her in the head with his rifle butt, toppled her to the floor and proceeded to beat her and rip at her clothes. He then raped her. Delić had known the victim from before, and he had known that some of her relatives had been members of the National Defence of the Autonomous Province of Western Bosnia. The Court took as a mitigating circumstance, inter alia, that Delić was young at the time of commission of the crime (under 22) and that he was "considerably intoxica-ted". Among the aggravating circumstances, the Court counted "lasting repercussions of the criminal offence on the victim". He was found guilty of war crimes against the civilian population.

He was sentenced on 7 December 2012 to three years and six months in prison.

JOVICA TADIĆ
ZORAN TADIĆ
ZORAN BERGA
ŽELJKO BABIĆ
GORAN MIHAJLOVIĆ
Case: Bihać

**Jovica Tadić** aka **Kajo**, **Zoran Tadić**, **Zoran Berga**, **Željko Babić** aka **Željo** and **Goran Mihajlović** were members of the Republika Srpska military and police when, in September 1992, they killed 25 Bosniak civilians in the villages of Duljci and Orašac near Bihać. The killed civilians included women and children. The accused carried out the killings without any real reason or selection. Some of the murders were committed using knives, and the bodies of some of the victims were burned. All five concluded a plea agreement in the preparatory phase before trial, thus contributing to the cost-effectiveness of the proceedings. The Court took as an aggravating circumstance the contempt, persistence and ruthlessness in the commission of the criminal offence and the grave consequences that it caused. They were found guilty of war crimes against the civilian population.

They were sentenced on 1 February 2012: Jovica Tadić, Zoran Tadić and Željko Babić to 12 years in prison each, Zoran Berga to 11 years in prison, and Goran Mihajlović to 10 years in prison.

SLOBODAN DRAGIĆ
Case: Ključ

**Slobodan Dragić** was accused together with four other members of the VRS of taking part in killings, rapes and

inhumane treatment in the villages of Humići, Vojići and Pudin Han near Ključ. He admitted that together with Predrag Bajić and Siniša Babić, at the end of December 1992, he took part in the robbing and physical abuse of a number of Bosniak civilians, and that together with Predrag Bajić, he raped a fourteen-year-old girl. In determining the sanction, in addition to the admission and contribution to the cost-effectiveness of the proceedings, the Court noted that Dragić "expressed sincere remorse, that he was young at the time of commission, and that the injured parties agreed with the proposed sanction." Under the agreement, Dragić committed to cooperating with prosecution authorities in investigations of war crimes in the Ključ area. He was found guilty of war crimes against the civilian population.

He was sentenced on 28 April 2014 to five years in prison.

PREDRAG BAJIĆ
SINIŠA BABIĆ
Case: Ključ

**Predrag Bajić** aka **Gagi** and **Siniša Babić**, together with Slobodan Dragić, Nenad Bajić and other members of the VRS, subjected Bosniak civilians to inhumane treatment and committed multiple murders and rapes in the villages around Ključ, in the second half of 1992 and early 1993. Predrag Bajić admitted that he had taken part in the killing of seven civilians and had raped two persons, one of whom was a 14-year-old girl. The other, a woman, he raped together with Nenad Babić and they put cigarettes out on her skin and urinated on her; they spilled hot soup on her one-year-old baby, thereby inflicting grievous bodily harm. Siniša Babić admitted that together with

others, he murdered five civilians and participated in the rape of one person. In concluding the plea agreement, the accused stated "that they had committed the crime as very young persons, that they felt remorse for having committed the crime, that they publicly apologise to all the injured parties and accept the sentence within the range proposed in the agreement." The Court accepted as a mitigating circumstance that the accused had families. Their "contempt, persistence, ruthlessness and serious consequences" were taken as aggravating circumstances. They were found guilty of war crimes against the civilian population.

They were sentenced on 22 May 2014: Predrag Bajić to 13 years in prison, and Siniša Babić to seven years in prison.

## NENAD BAJIĆ
Case: Ključ

**Nenad Bajić** aka **Limun**, in the second half of 1992 and early 1993, together with Predrag Bajić, Siniša Babić and other VRS members, took part in the killing of five civilians and the rape of one woman in the Ključ area. He raped the woman together with Predrag Bajić and they put cigarettes out on her skin and urinated on her; they spilled hot soup on her one-year-old baby, thereby inflicting grievous bodily harm. The Court accepted as a mitigating circumstance that Nenad Bajić was married, had three children, and that he had expressed remorse and admitted guilt, thereby "contributing to speedier and more efficient criminal proceedings" while "his contempt, persistence, ruthlessness and grievous consequences" were taken as aggravating circumstances. He was found guilty of war crimes against the civilian population.

He was sentenced on 13 June 2014 to seven years and six months in prison.

AMIR ĆORALIĆ
Case: Cazin

**Amir Ćoralić** aka **Pango** admitted that, on 13 December 1993 in Tržac near Cazin, as a member of the 4th Brigade of the National Defence of the Autonomous Province of Western Bosnia, he treated civilians inhumanely and raped a 14-year-old girl. He perpetrated the rape in a vehicle which they were using to transport two sisters who were minors, after they had abducted them from their family home, knowing their brother was a member of the 5th Corps of the Army of the Republic of BiH. Redžep Beganović, who was with Ćoralić, attempted to rape the other sister, a thirteen-year-old girl, but was prevented from doing so by a third member of the National Defence, who had passed away in the meantime. In the agreement concluded with the Prosecution, Ćoralić pledged to pay the victim BAM 50,000 (EUR 25,000) in non-pecuniary damages. The victim accepted the proposed amount and the length of the proposed sentence for the accused. He was found guilty of war crimes against the civilian population.

He was sentenced on 19 October 2015 to one year in prison. He availed himself of the legal possibility to "buy out" his prison sentence for EUR 18,500.

SAFET KOVAČEVIĆ
Case: Bihać

**Safet Kovačević** aka **Papo** admitted that, as a member of the 5th Military Police Battalion of the 5th Corps of the Army of the Republic of BiH, together with Dževad Mahmutović and other members of the same unit, he treated prisoners of war from VRS inhumanely, inflicting bodily injuries and harm to their health. On 11 March 1995, while Kovačević was transporting 31 prisoners of war from the locations where they had been detained – from Cazin and Bihać to the Izačić border crossing, where it had been planned for them to be exchanged – he beat the prisoners with a police baton, forced them to sing, and shouted offensive and humiliating words at them. Throughout the drive, they kept asking the driver to go slowly in order to have more time to abuse the prisoners who were seated on the floor of the bus with canvas bags over their heads. In determining the sentence, the Court took into account the expressed remorse and family situation of Kovačević, who was of low-income status and a father of three children. He was found guilty of war crimes against prisoners of war.

He was sentenced on 28 December 2015 to one year in prison.

DŽEVAD MAHMUTOVIĆ
Case: Bihać

**Dževad Mahmutović** admitted that, as a member of the 5th Military Police Battalion of the 5th Corps of the Army of the Republic of BiH, together with Safet Kovačević and other members of the same unit, he treated prisoners of

war from VRS inhumanely, inflicting bodily injuries and harm to their health. On 11 March 1995, while Mahmutović was transporting 31 prisoners of war from locations where they had been detained – from Cazin and Bihać to the Izačić border crossing, where it had been planned for them to be exchanged – he beat the prisoners with a police baton, forced them to sing and shouted offensive and humiliating words at them. At the time of commission of the crime, Mahmutović was 20 years old, and he concluded his plea agreement before the start of the main trial, which contributed to the cost-effectiveness of the proceedings. He was found guilty of war crimes against prisoners of war.

He was sentenced on 23 February 2015 to one year in prison.

## REDŽEP BEGANOVIĆ

Case: Cazin

**Redžep Beganović** aka **Redžo** admitted that, on 13 December 1993 in Tržac near Cazin, as a member of the 4th Brigade of the National Defence of the Autonomous Province of Western Bosnia, he treated civilians inhumanely and attempted to rape a thirteen-year-old girl. Together with Amir Ćoralić and another member of the National Defence, he took two minor girls from their family home, knowing their brother was a member of the 5th Corps of the Army of the Republic of BiH. Beganović took the thirteen-year-old girl from the car, ripped off her clothes and attempted to rape her, but was prevented by a third member of the National Defence, who had passed away in the meantime. While the two of them were arguing, Amir Ćoralić raped the other girl in the car. After committing the criminal offence, they took the sisters

back to their family home. In the agreement concluded with the Prosecution, Beganović pledged to pay the victim BAM 50,000 (EUR 25,000) in non-pecuniary damages. The victim accepted the proposed amount and the length of the proposed sentence for the accused. He was found guilty of war crimes against the civilian population.

He was sentenced on 18 March 2016 to one year in prison.

SEFER DERVIŠEVIĆ
Case: Cazin

**Sefer Dervišević** was a member of the 517th Liberation Brigade of the 5th Corps of the Army of the Republic of BiH when, in August 1995, in Šturlić near Cazin, on multiple occasions, he severely abused civilians and inflicted grave bodily and mental pain and suffering. The civilians mainly included Bosniak women and elderly persons. He forced the civilians to pull and push his car with the engine turned off while he beat them with a rubber truncheon. The Court accepted the guilty plea and remorse expressed by Dervišević as a mitigating circumstance, noting that it contributed to the "cost-effectiveness and efficiency of the proceedings." The agreement does not specify whether the injured parties were informed about the agreement, as had been done in other proceedings before the same court. He was found guilty of war crimes against the civilian population.

He was sentenced on 28 September 2016 to one year in prison.

MUSTAFA OMERĆEHAJIĆ
Case: Velika Kladuša

**Mustafa Omerćehajić** admitted that, as a member of the Zenge Reconnaissance-Sabotage Detachment within the 3rd Brigade of the National Defence of the Autonomous Province of Western Bosnia, he treated prisoners of war from the 5th Corps of the Army of the Republic of BiH inhumanely, inflicting grave suffering. On 21 June 1995 in the vicinity of Vrnogrč near Velika Kladuša, together with other members of the National Defence, he took part in the brutal beating of prisoners that were being transported on a truck to Donja Slapnica in Velika Kladuša. In determining the sentence, the Court took into account his young age at the time of commission of the offence, difficult family circumstances, as well as the fact that he admitted to his guilt and "expressed deep remorse." He was found guilty of war crimes against prisoners of war.

He was sentenced on 28 September 2016 to two years in prison.

HASID DŽELALAGIĆ
Case: Cazin

**Hasid Dželalagić** admitted that, as a member of the Cazin police, he killed a Serb civilian who had been captured in the area of Sanski Most and brought to Cazin. In September 1995, the captured civilian had been taken along with members of the Civil Defence to perform work, but near the village of Ostrožac, Dželalagić took him out of the vehicle and shot him dead. They threw his body into the Una River. In determining the sentence, in addition to Dželalagić's admission and expressed remorse,

the Court noted that as part of the agreement Dželalagić had paid the family of the victim BAM 25,000 (EUR 12,500), but also noted his contempt and ruthlessness in the commission of the offence. He was found guilty of war crimes against the civilian population.

In a statement before the court, Dželalagić said that "something broke inside him, he cannot explain to this day what happened, he took out his pistol and fired a shot." He said he regretted it the same moment and could not explain to himself why he had done so. He said that before the critical event, he had been consuming alcohol, "that he was sorry, that he regretted his actions, and that not a day passes without him remembering what he did."

He was sentenced on 31 May 2018 to five years in prison.

## Plea Agreements before the Cantonal Court in Mostar

### NIKO LOVRIĆ
Case: Neum

**Niko Lovrić** (born 1963) admitted that, in his capacity as the Detachment Commander of the 3rd Military Police Battalion of the Croat Defence Council in Neum, together with other military police officers, he took part in the transport of non-Croat civilians from Neum to the Dretelj camp near Čapljina, "knowing it was a site for the unlawful detention of Bosniak and Serb civilians." The military police officers under Lovrić's command, and in his presence, insulted and physically abused the civilians, forcing them to sing Ustasha songs as they were taken to the

camp. In determining the sentence, the Court took into account the accused's admission, which "made the criminal proceedings more efficient", and the fact that he was the father of minor children. He was found guilty of war crimes against the civilian population.

He was sentenced on 13 September 2018 to one year in prison.

## ARMAN BAJRIĆ

Case: Mostar

**Arman Bajrić** aka **Kvisko** (born 1970) was a member of the ATG Benko Penavić unit of the Croat Defence Council, and in that capacity, during 1993 in the area of Mostar, he violated the bodily integrity and health of civilians, treated them inhumanely and took part in the forcible displacement of the Bosniak population from the western part to the part of the city on the left bank of the Neretva River. He admitted, *inter alia*, that he had abused two women: he put a knife to one's throat and hit the other with his fist and knee, with the intention of intimidating and expelling them. In determining the sentence, the Court accepted as a particularly mitigating circumstance the written consent of the injured parties who stated that they were not seeking reparation for damages and that they accepted the proposed sentence. He was found guilty of war crimes against the civilian population.

He was sentenced on 8 April 2019 to 14 months in prison.

## Plea Agreements before the Cantonal Court in Novi Travnik

### SMAIL MEVIĆ
Case: Travnik

**Smail Mević** (born 1960) was a guard of the District Military Prison in Travnik, located in the premises of the Petar Mećava Barracks, from June to December 1993, during which time on multiple occasions he took out and interrogated prisoners of war, members of the HVO, using torture and physical and mental abuse. He thereby committed war crimes against prisoners of war. The Court accepted his guilty plea as a mitigating circumstance, because "with expedited proceedings, witnesses are not exposed to retraumatisation" when giving testimony. He was found guilty of war crimes against prisoners of war.

He was sentenced on 29 May 2019 to one year in prison.

## Plea Agreements before the Cantonal Court in Sarajevo

### ENES ŠAKRAK
Case: Grabovica, Mostar

**Enes Šakrak** was a member of the 9th Motorised Brigade of the 1st Corps of the Army of the Republic of BiH during 1993. He admitted that on 9 September 1993 he committed crimes against Croat civilians in the village of

Grabovica near Mostar. He shot a woman holding her four-year-old daughter at close range, killing both of them with a round from his automatic weapon. Together with other members of his unit, he then took part in concealing the bodies of the victims. On that day, 32 civilians were killed in the village of Grabovica. The Court accepted as mitigating circumstances that he was a family man, that he was young at the time of commission and that he pled guilty. The Court was of the opinion that the sanction "would have a reformative effect on the accused and deter him from committing criminal offences in the future" and that the imposed prison sentence would "reflect the social condemnation of the committed offence." He was found guilty of war crimes against the civilian population.

He was sentenced on 4 November 2003 to 10 years in prison.

MUSTAFA HOTA

Case: Grabovica, Mostar

**Mustafa Hota** admitted that, as a member of the 9th Motorised Brigade of the 1st Corps of the Army of the Republic of BiH, in September 1993, he committed crimes against Croat civilians in the village of Grabovica near Mostar. He admitted to killing two civilians – a married couple in whose house he had been stationed as a soldier. On that occasion, 32 civilians were killed in the village, including one child. The Court accepted as mitigating circumstances that he had a family, his age at the time of commission of the offence, that "at the time of commission, he had reduced capacity, but not significantly," and that he had pled guilty. In the opinion of the Court, the criminal sanction was "adequate and proportional to the gravity of the offence" and reflected the social condem-

nation of the committed offence. He was found guilty of war crimes against the civilian population.

He was sentenced on 2 December 2003 to nine years in prison.

MILORAD RODIĆ
Case: Sarajevo

**Milorad Rodić** aka **Mićo** was a member of the VRS in the Sarajevo neighbourhood of Grbavica during 1992 and 1993, during which time he intimidated and physically injured civilians, and forcibly displaced the remaining Muslim population. He admitted that on 13 January 1993, he raped a woman he had threatened with a knife and with blows to her head. The following mitigating circumstances were accepted: "that he was a family man, the father of two children, the condition of his health, and that he had pled guilty." In the opinion of the Court, the pronounced sanction was "adequate and proportional to the gravity of the crime and the degree of responsibility of the accused" and it would sufficiently "deter others from committing criminal offences." He was found guilty of war crimes against the civilian population.

He was sentenced on 9 July 2004 to five years in prison.

ŽELJKO MITROVIĆ
Case: Sarajevo

**Željko Mitrović** aka **Gilmar** was a member of the 2nd Battalion of the 1st Sarajevo Mechanised Brigade of VRS during the war. He admitted that as the commander of the

labour detachment he applied intimidation measures against non-Serbs and forced civilians to work on the front lines. Executing the orders of his superior officers, Mitrović selected civilians for forced labour and exposed them to immediate danger by making them dig trenches and pull out the bodies of killed soldiers, which had resulted in the wounding and death of a number of members of the labour detachment. The Court accepted the following mitigating circumstances: "no prior criminal record, being a family man, his sincere demeanour before the court, and his pleading guilty to the offence." The Court was of the opinion that the imposed punishment would "achieve the purpose of special and general prevention of criminality." He was found guilty of war crimes against the civilian population.

He was sentenced on 17 March 2009 to two years in prison.

## Plea Agreements before the Cantonal Court in Tuzla

### MIRKO PANTIĆ

Case: Zvornik

**Mirko Pantić** (born 1967) admitted that, as a member of the Military Police Detachment of the VRS Zvornik Brigade, from March until the end of December 1993, he had been a guard at the DP Novi izvor administrative building in Zvornik, which had been turned into a prison camp. He admitted that, acting alone and in concert with Radomir Škiljević and other guards, he physically abused, beat and collectively punished Bosniak prisoners. To-

gether with the other guards, on multiple occasions, Pantić punished the prisoners without reason, making them stand against a wall for a long time and forcing them to fight each other. They were denied food and Serb soldiers and civilians were allowed into the camp to beat the prisoners of war. Pantić beat one female prisoner and attempted to rape her, he abused her sexually and in other degrading ways. It was found that a number of prisoners did not survive the torture. The Court took Pantić's admission of guilt for the criminal offence in full as a mitigating circumstance. He was found guilty of war crimes against the civilian population and war crimes against prisoners of war.

He was sentenced on 6 June 2006 to three years and six months in prison.

## RADOMIR ŠKILJEVIĆ

Case: Zvornik

**Radomir Škiljević** aka **Škilje** or **Rašo** (born 1973) admitted that, as a member of the Military Police Detachent of the VRS Zvornik Brigade, from March until the end of December 1993, he had been a guard at the DP Novi Izvor administrative building in Zvornik, which had been turned into a prison camp. Alone, and in concert with Mirko Pantić and the other guards, he physically abused, beat and collectively punished, and with sexual abuse violated the dignity of Bosniak prisoners. In addition to other tortures stated in the judgement, the accused had ordered a group of prisoners to strip naked and had then inflicted injuries to their genitalia with a white-hot implement. During the proceedings, it was found that a number of prisoners succumbed to their injuries due to brutal beatings. In determining the sentence, the Court accepted as

mitigating circumstances the accused's guilty plea and his family circumstances and young age at the time of commission of the crime. He was found guilty of war crimes against the civilian population and war crimes against prisoners of war.

He was sentenced on 26 February 2015 to three years and six months in prison.

## Plea Agreements before the Cantonal Court in Zenica

### SEAD DIZDAREVIĆ

Case: Tešanj

**Sead Dizdarević** (born 1969), when faced with the evidence, admitted that in June and July 1992, as a member of the Tešanj Police and in the official premises of the police, he tortured Serb civilians in order to obtain confessions and information. He insulted, intimidated and beat the apprehended civilians with a baton, his feet, fists and various objects, including a hand-held rocket launcher. The Court accepted his admission as the main mitigating circumstance when determining his sentence. He was found guilty of war crimes against the civilian population.

He was sentenced on 7 November 2017 to one year in prison.

## Plea Agreements before the Cantonal Court in Livno

### DRAGAN ZJAJIĆ
Case: Glamoč

**Dragan Zjajić** aka **Zjajo** was a member of the VRS responsible for forcibly detaining non-Serb civilians in the Glamoč area in 1992; he took civilians to the Klubana camp, detained them at the local mosque, beat them and unlawfully confiscated their property. In September 1992, he attempted to rape M. B. in her family home and, in an attempt to kill her, shot her in her right forearm. M. B. broke a window and escaped to her neighbour Š. L. Zjajić ran after her, but Š. L. prevented him from entering the house and called the police who took M. B. to the Health Clinic for medical attention.

He was sentenced on 5 January 2010 to four years in prison.

## Plea Agreements before the District Court in Doboj

### HARIS SKELIĆ
Case: Derventa

**Haris Skelić aka Skelo** accepted responsibility for taking part in the abuse and beating of civilians detained at the Rabić and Polje camps during the armed conflict between the VRS, on one side, and the Army of RBiH and Croat

Defence Council, on the other, in the wider Derventa area in 1992. Under the plea agreement concluded with the Prosecution, Skelić agreed to pay BAM 2,500 (EUR 1,250) to each of the injured parties, with the total amount being BAM 10,000 (EUR 5,000).

He was sentenced on 12 February 2024 to one year in prison.

# Croatia

## Plea Agreements before the County Court in Split

### JOSIP BIKIĆ
Case: Lora, Split

**Josip Bikić aka Ćop** (born 1968) was a member of the Intervention Detachment of the 72nd Military Police Battalion when, from March to September 1992, together with other members of the Intervention Detachment and Guards, he detained a number of mostly Serb civilians at the Military Investigation Centre Lora in Split, without any legal basis. They tortured the prisoners and physically punished them, insulted their dignity and degraded them. Two of the prisoners died from their injuries following brutal beatings and Bikić was implicated in these events. Having previously been sentenced to six years in absentia, he requested a retrial, at which time he admitted to all the charges in the indictment in full. The Court accepted the guilty plea as a mitigating circumstance and

pronounced a lighter sentence. He was found guilty of crimes against humanity and international law – war crimes against the civilian population.

"I am guilty on all counts of the indictment and I feel remorse. This is my defence, and I do not wish to be questioned," Bikić said.

He was sentenced on 29 December 2009 to four years in prison.

## Plea Agreements before the County Court in Zagreb

MARINKO STOJANOVIĆ
Case: Kiseljak and Vareš

Judicial institutions of BiH had already raised an indictment against **Marinko Stojanović** in 2015. Given that the accused was a resident in Croatia, the case was transferred to Croatian judicial institutions. At the time of the armed conflict between the Army of RBiH and the Croat Defence Council in the area of Kiseljak, as a member of the Maturice HVO Special Purposes Unit, he raped two female persons, one of whom was a minor.

He was sentenced on 27 April 2022 to four years in prison.

# Plea Agreements before the County Court in Osijek

## MILAN PAVLOVIĆ
Case: Šibenik

**Milan Pavlović** aka **Paja** (born 1944) was a commander of the JNA Artillery Unit in September 1991 when he took part in attacks on civilians and civil and cultural buildings in Šibenik. One woman was killed during the attacks, while the city cathedral, a landmark of Šibenik, was significantly damaged, and further damage was caused to other churches, cultural heritage buildings and other property. The County Court in Šibenik had previously sentenced him in absentia to 15 years in prison. After his admission, he requested a new trial and the request was granted.

"The fact is that as a member of the JNA, I took part in the shelling of Šibenik, thereby causing the consequences stated in the indictment. However, I must note that I did not come to Šibenik to wage war. I was a professional soldier, I attended military schools and was taught to be an honourable soldier and officer. The war that nobody wanted happened. As the commander of the artillery battery, I received orders I had to carry out, and I issued orders to my subordinates that had to be carried out. I regret this. I have three children and serious health problems," Pavlović said in court.

He was sentenced on 4 May 2018 to four years and six months in prison.

BOŠKO PREVIŠIĆ
Case: Gabela, Čapljina

**Boško Previšić** aka **Boko** (born 1950) was the commander of the Gabela camp near Čapljina from June to December 1993. Bosniak civilians and prisoners of war were detained at the camp. He was changed with "personally inflicting injuries on the prisoners with a firearm and killing one of them, taking part in inflicting grievous bodily injury and in mental and physical abuse of prisoners, denying them food, water and medical assistance, subjecting them to degrading treatment, as well as instigating such actions towards the prisoners by HVO Security and Information Service officers and subordinate guards. He thereby committed crimes against humanity and international law, specifically war crimes against the civilian population and war crimes against prisoners of war. Previšić pled guilty to all counts of the indictment. In determining his sentence, the Court accepted as mitigating circumstances his admission, age, compromised health at the time of commission and at the time of the trial, and finding that based on a psychological evaluation "his capacity to understand the significance of his actions and to have full control of his actions was considerably diminished." The Cantonal Prosecutor's Office in Mostar raised an indictment against Previšić in November 2005, but he was not available to that institution.

He was sentenced on 24 April 2018 to eight years in prison.

# Serbia

## Plea Agreements before the Higher Court in Belgrade

### MILAN ŠKRBIĆ
Case: Sanica, Ključ

**Milan Škrbić** aka **Svetica** (born 1948) was a member of VRS when on 26 June 1992, in the area of Ključ, he shot dead a Muslim civilian, firing from an automatic rifle at his head and body. Serbia's Office of the War Crimes Prosecutor took over the criminal prosecution of Škrbića from the Cantonal Prosecutor's Office in Bihać in view of the fact that the accused was a national of Serbia and a resident in the country. The War Crimes Department at the Higher Court in Belgrade accepted the plea agreement concluded between the accused and the Office of the War Crimes Prosecutor of Serbia. He was found guilty of war crimes against the civilian population.

He was sentenced on 13 September 2013 to seven years in prison.

### MARKO CREVAR
Case: Sremska Mitrovica

**Marko Crevar** (born 1964), as a member of the armed forces – the Territorial Defence within the JNA, and subsequently the police of SAO Krajina and the police of the newly formed Republic of Serbian Krajina (RSK), came to

the Reception Centre at the Correctional Institute in Sremska Mitrovica, where members of the reserve forces of the Croatian National Guard (ZNG) who had been captured on 18 November 1991 in Vukovar were detained. During interrogations in February 1992, he tortured the prisoners of war, demanding that they admit to the charges against them and provide information of military significance, while inflicting injuries to their bodily integrity. He thereby committed the criminal offence of war crimes against prisoners of war.

He was sentenced on 18 February 2015 to one year and six months in prison.

ŽARKO MILOŠEVIĆ
Case: Sotin, Vukovar

**Žarko Milošević** admitted that in December 1991, as the commander of the Territorial Defence in Sotin near Vukovar, he took part in the killing of 16 Croat civilians from the village of Sotin. During the proceedings, Milošević acquired the status of collaborator after reaching a plea bargain with the Prosecution. The Court accepted Milošević's testimony against himself and the other accused only where it was corroborated by other evidence. Milošević admitted that he personally put together a liquidation list of 13 Croats from Sotin and then took part in their execution. He was found guilty of war crimes against the civilian population.

He was sentenced on 26 June 2015 to nine years in prison.

BRANO GOJKOVIĆ
Case: Branjevo, Srebrenica

**Brano Gojković** was a member of the Tenth Sabotage Detachment of VRS during 1995. He admitted that on 16 July 1995 at the Branjevo Farm in the village of Pilica near Zvornik, he took part, together with other members of the detachment, in the execution of several hundred captured civilians – Muslim men who were captured on 12 and 13 July 1995 along with several thousand other civilians after the fall of Srebrenica. Gojković and the other members of the detachment took the civilians off the bus, some of them blindfolded and with their hands tied, and escorted them in groups of ten to a field by the hangar where they shot them in the back. In this manner, they killed several hundred civilians aged 17 to 60. He thereby committed the criminal offence of war crimes against the civil-ian population.

He was sentenced on 27 January 2016 to 10 years in prison.

DRAGAN MAKSIMOVIĆ
Case: Kalesija

**Dragan Maksimović** was a member of the Reconnaissance Detachment of the First Brčko Brigade of the VRS – the Šekovačka Guard when, on 16 June 1992, he killed five Bosniak civilians – two women and three children – in Caparde near Kalesija. He thereby committed the criminal offence of war crimes against the civilian population. Serbia's Office of the War Crimes Prosecutor took over the indictment against Maksimović from the BiH Prosecutor's Office.

He was sentenced on 6 June 2018 to six years and two months in prison.

RAMADAN MALJOKU
Case: Uroševac

**Ramadan Maljoku** was a member of the Kosovo Liberation Army (KLA) when, on 21 June 1999, in the area of Gornja Nerodimlja near Uroševac, he led a group of four uniformed and armed individuals and together with them abused several Serb civilians, including women. They were subjected to intimidation, bodily harm and unlawful detention. They thereby committed the criminal offence of war crimes against the civilian population. Maljoku concluded an agreement with the Office of the War Crimes Prosecutor, pleading guilty to the charges in the indictment.

He was sentenced on 19 March 2019 to 18 months in prison.

MIOMIR JASIKOVAC
Case: Srebrenica

**Miomir Jasikovac** was a member of the VRS Zvornik Brigade. After the fall of Srebrenica in 1995, he took part in the capture of a number of civilians in the wider Zvornik area (Orahovac, Ročević, the Dam in Petkovci also known as the Red Silt Dam). Having being detained at these locations, several hundred civilians from Srebrenica were executed, and according to the judgement, Jasikovac took part in the execution of at least 300 civilians. The BiH Prosecutor's Office raised an indict-

ment against Jasikovac, charging him with genocide and the killing of 2,300 persons. Only a few days after the indictment was raised, Jasikovac was charged in Serbia for war crimes and the killing of around 300 persons.

He was sentenced on 13 January 2023 to five years in prison.

## Plea Agreements for Aiding Hague Fugitives

Plea agreements were concluded before the Higher Court in Belgrade with ten individuals accused of helping conceal Hague fugitives Ratko Mladić and Stojan Župljanin. Nikola Tepić, in whose flat Župljanin was arrested, was sentenced to house arrest (with an ankle monitor) for one year, while the others received conditional sentences of one year.

The agreements were concluded in 2011 and 2012 with the following individuals:

KOVILJKO LOVRE
MLAĐEN MARJANOVIĆ
VINKA MARJANOVIĆ
SLOBODAN KOPRIVICA
MILORAD KOPRIVICA
NIKOLA TEPIĆ
BRANISLAV MLADIĆ
VLADIMIR LIJESKIĆ
MIROSLAV JEGDIĆ
LJUBIŠA LAZIĆ

# Table: Overview of Concluded Plea Agreements

## Legenda

ARBiH* - Military/police/political structures of the Republic of BiH

HV* - Military/police/political structures of the Republic of Croatia (Croatian Army)

HVO* - Military/police/political structures of Herceg-Bosna

JNA and VJ* - Military/police/political structures of Yugoslavia

NO* - Military/police/political structures of the Autonomous Province of Western Bosnia (National Defence)

OVK* - Military/police/political structures of Kosovo

VRS* - Military/police/political structures of Republika Srpska

VSK* - Military/police/political structures of the Republic of Serbian Krajina

| First and last name | Court where convicted | Case | Year of judgement | Sentence | Formation/ Entity/State | Phase of proceedings |
|---|---|---|---|---|---|---|
| Dražen Erdemović | ICTY | Pilica Farm, Srebrenica | 1998 | 5 | VRS* | during trial |
| Damir Došen | ICTY | Keraterm Camp, Prijedor | 2001 | 5 | VRS* | during trial |
| Dragan Kolundžija | ICTY | Keraterm Camp, Prijedor | 2001 | 3 | VRS* | during trial |
| Duško Sikirica | ICTY | Keraterm Camp, Prijedor | 2001 | 15 | VRS* | during trial |
| Stevan Todorović | ICTY | Bosanski Šamac | 2001 | 10 | VRS* | during trial |
| Milan Simić | ICTY | Bosanski Šamac | 2002 | 5 | VRS* | during trial |
| Predrag Banović | ICTY | Keraterm Camp, Prijedor | 2003 | 8 | VRS* | during trial |
| Dragan Nikolić | ICTY | Sušica Camp, Vlasenica | 2003 | 20 | VRS* | during trial |
| Momir Nikolić | ICTY | Srebrenica | 2003 | 20 | VRS* | during trial |
| Dragan Obrenović | ICTY | Srebrenica | 2003 | 17 | VRS* | during trial |
| Biljana Plavšić | ICTY | Bosnia and Herzegovina | 2003 | 11 | VRS* | during trial |
| Milan Babić | ICTY | Republic of Serbian Krajina | 2004 | 13 | VSK* | during trial |
| Ranko Češić | ICTY | Brčko | 2004 | 18 | VRS* | during trial |
| Miroslav Deronjić | ICTY | Glogova, Bratunac | 2004 | 10 | VRS* | during trial |
| Miodrag Jokić | ICTY | Dubrovnik | 2004 | 7 | JNA and VJ* | during trial |
| Darko Mrđa | ICTY | Vlašić Mountain, Prijedor | 2004 | 17 | VRS* | during trial |
| Miroslav Bralo | ICTY | Lašva Valley, Ahmići | 2005 | 20 | HVO* | during trial |
| Ivica Rajić | ICTY | Stupni Do, Vareš | 2006 | 12 | HVO* | during trial |
| Dragan Zelenović | ICTY | Foča | 2007 | 15 | VRS* | during trial |

| First and last name | Court where convicted | Case | Year of judgement | Sentence | Formation/ Entity/State | Phase of proceedings |
|---|---|---|---|---|---|---|
| Veiz Bjelić | Court of BiH | Vlasenica | 2008 | 5 | ARBiH* | during trial |
| Dušan Fuštar | Court of BiH | Keraterm Camp, Prijedor | 2008 | 9 | VRS* | during trial |
| Paško Ljubičić | Court of BiH | Ahmići, Vitez | 2008 | 10 | HVO* | during trial |
| Idhan Sipić | Court of BiH | Ključ | 2008 | 8 | ARBiH* | during trial |
| Slavko Šakić | Court of BiH | Bugojno | 2008 | 8.5 | HVO* | during trial |
| Vaso Todorović | Court of BiH | Srebrenica | 2008 | 6 | VRS* | during trial |
| Gordan Đurić | Court of BiH | Koričanske Stijene, Vlašić | 2009 | 8 | VRS* | during trial |
| Damir Ivanković | Court of BiH | Koričanske Stijene, Vlašić | 2009 | 14 | VRS* | during trial |
| Zoran Marić | Court of BiH | Jajce | 2009 | 15 | VRS* | during trial |
| Stojan Perković | Court of BiH | Rogatica | 2009 | 12 | VRS* | during trial |
| Rade Veselinović | Court of BiH | Hadžići | 2009 | 7.5 | VRS* | during trial |
| Marko Boškić | Court of BiH | Zvornik Srebrenica | 2010 | 10 | VRS* | during trial |
| Ljubiša Četić | Court of BiH | Koričanske Stijene, Vlašić | 2010 | 13 | VRS* | during trial |
| Elvir Jakupović | Court of BiH | Travnik | 2010 | 5 | ARBiH* | during trial |
| Dragan Rodić | Court of BiH | Drvar | 2010 | 8 | VRS* | during trial |
| Miroslav Anić | Court of BiH | Kiseljak and Vareš | 2011 | 15 | HVO* | during trial |
| Dragan Crnogorac | Court of BiH | Srebrenica | 2011 | 13 | VRS* | during trial |
| Pavle Gajić | Court of BiH | Bihać | 2011 | 7 | VRS* | during trial |
| Enes Handžić | Court of BiH | Bugojno | 2011 | 8 | ARBiH* | during trial |

| First and last name | Court where convicted | Case | Year of judgement | Sentence | Formation/ Entity/State | Phase of proceedings |
|---|---|---|---|---|---|---|
| Zoran Kušić | Court of BiH | Srebrenica | 2011 | 5 | VRS* | during trial |
| Osman Šego | Court of BiH | Bugojno | 2011 | 5 | ARBiH* | during trial |
| Novica Tripković | Court of BiH | Foča | 2011 | 8 | VRS* | during trial |
| Zdravko Mihaljević | Court of BiH | Kiseljak and Vareš | 2011 | 6 | HVO* | during trial |
| Šaban Đelilbašić | Court of BiH | Turbe, Travnik | 2012 | 6 | ARBiH* | before start of trial |
| Elvir Đelibašić | Court of BiH | Turbe, Travnik | 2012 | 6 | ARBiH* | before start of trial |
| Rasema Handanović | Court of BiH | Konjic | 2012 | 5.5 | ARBiH* | during trial |
| Radivoja Soldo | Court of BiH | Konjic | 2015 | 5 | VRS* | during trial |
| Milivoje Ćirković | Court of BiH | Srebrenica | 2016 | 5 | VRS* | during trial |
| Mićo Jovičić | Court of BiH | Štrpci, Rudo and Višegrad | 2016 | 5 | VRS* | during trial |
| Stojan Kenjalo | Court of BiH | Bosanski Novi, Novi Grad | 2016 | 7 | VRS* | during trial |
| Zoran Kenjalo | Court of BiH | Bosanski Novi, Novi Grad | 2016 | 5 | VRS* | during trial |
| Dragan Balaban | Court of BiH | Bosanski Novi, Novi Grad | 2016 | 7 | VRS* | during trial |
| Damir Lipovac | Court of BiH | Derventa | 2016 | 7 | HVO* | during trial |
| Dario Slavuljica | Court of BiH | Teslić Miće | 2016 | 8 | VRS* | during trial |
| Miroslav Perić | Court of BiH | Vojno Camp, Mostar | 2017 | 1 | HVO* | during trial |
| Goran Pavković | Court of BiH | Prozor | 2018 | 1 | HVO* | during trial |
| Goran Višković | Court of BiH | Vlasenica and Milići | 2021 | 8 | VRS* | during trial |

| First and last name | Court where convicted | Case | Year of judgement | Sentence | Formation/ Entity/State | Phase of proceedings |
|---|---|---|---|---|---|---|
| Damir Miskin | Court of BiH | Mostar and Nevesinje | 2022 | 4 | VRS* | before start of trial |
| Novica Tripković | Court of BiH | Foča | 2022 | 8 | VRS* | during trial |
| Mustafa Hota | Cantonal Court in Sarajevo | Grabovica, Mostar | 2003 | 9 | ARBiH* | during trial |
| Enes Šakrak | Cantonal Court in Sarajevo | Grabovica, Mostar | 2003 | 10 | ARBiH* | during trial |
| Milorad Rodić | Cantonal Court in Sarajevo | Sarajevo | 2004 | 5 | VRS* | during trial |
| Konstantin Simonović | Basic Court in Brčko | Luka, Brčko | 2005 | 6 | VRS* | during trial |
| Mirko Pantić | Cantonal Court in Tuzla | Zvornik | 2006 | 3.5 | VRS* | during trial |
| Željko Mitrović | Cantonal Court in Sarajevo | Sarajevo | 2009 | 2 | VRS* | during trial |
| Petar Arsenić | Cantonal Court in Bihać | Sanski Most | 2010 | 10 | VRS* | during trial |
| Dragan Zjajić aka Zjajo | Cantonal Court in Livno | Glamoč | 2010 | 4 | VRS* | during trial |
| Miroslav Grbić | Cantonal Court in Bihać | Bosanski Petrovac | 2011 | 3 | VRS* | during trial |
| Mustafa Odobašić | Cantonal Court in Bihać | Velika Kladuša | 2011 | 7 | NO* | before start of trial |
| Neđo Trifković | Cantonal Court in Bihać | Sanski Most | 2011 | 10 | VRS* | during trial |
| Mitar Milinković | Cantonal Court in Bihać | Sanski Most | 2011 | 10 | VRS* | during trial |
| Nedeljko Šikman | Cantonal Court in Bihać | Ključ | 2011 | 7.5 | VRS* | during trial |
| Safet Delić | Cantonal Court in Bihać | Velika Kladuša | 2012 | 3.5 | ARBiH* | during trial |
| Jovica Tadić | Cantonal Court in Bihać | Bihać | 2012 | 12 | VRS* | during trial |
| Zoran Tadić | Cantonal Court in Bihać | Bihać | 2012 | 12 | VRS* | during trial |

| First and last name | Court where convicted | Case | Year of judgement | Sentence | Formation/ Entity/State | Phase of proceedings |
|---|---|---|---|---|---|---|
| Zoran Berga | Cantonal Court in Bihać | Bihać | 2012 | 11 | VRS* | during trial |
| Željko Babić | Cantonal Court in Bihać | Bihać | 2012 | 12 | VRS* | during trial |
| Goran Mihajlović | Cantonal Court in Bihać | Bihać | 2012 | 10 | VRS* | during trial |
| Slobodan Dragić | Cantonal Court in Bihać | Ključ | 2014 | 5 | VRS* | before start of trial |
| Predrag Bajić | Cantonal Court in Bihać | Ključ | 2014 | 13 | VRS* | during trial |
| Siniša Babić | Cantonal Court in Bihać | Ključ | 2014 | 7 | VRS* | during trial |
| Nenad Bajić | Cantonal Court in Bihać | Ključ | 2014 | 7.5 | VRS* | during trial |
| Amir Ćoralić | Cantonal Court in Bihać | Cazin | 2015 | 1 | NO* | during trial |
| Safet Kovačević | Cantonal Court in Bihać | Bihać | 2015 | 1 | ARBiH* | during trial |
| Dževad Mahmutović | Cantonal Court in Bihać | Bihać | 2015 | 1 | ARBiH* | before start of trial |
| Radomir Škiljević | Cantonal Court in Bihać | Zvornik | 2015 | 3.5 | VRS* | during trial |
| Redžep Beganović | Cantonal Court in Bihać | Cazin | 2016 | 1 | NO* | during trial |
| Sefer Dervišević | Cantonal Court in Bihać | Cazin | 2016 | 1 | ARBiH* | during trial |
| Mustafa Omerćehajić | Cantonal Court in Bihać | Velika Kladuša | 2016 | 2 | NO* | during trial |
| Sead Dizdarević | Cantonal Court in Zenica | Tešanj | 2017 | 1 | ARBiH* | during trial |
| Hasid Dželalagić | Cantonal Court in Bihać | Cazin | 2018 | 5 | ARBiH* | during trial |
| Niko Lovrić | Cantonal Court in Mostar | Neum | 2018 | 1 | HVO* | during trial |
| Arman Bajrić | Cantonal Court in Mostar | Mostar | 2019 | 1yr 2m | HVO* | during trial |

| First and last name | Court where convicted | Case | Year of judgement | Sentence | Formation/ Entity/State | Phase of proceedings |
|---|---|---|---|---|---|---|
| Smail Mević | Cantonal Court in N. Travnik | Travnik | 2019 | 1 | ARBiH* | during trial |
| Haris Skelić | District Court in Doboj | Derventa | 2024 | 1 | HVO* | before start of trial |
| Milan Škrbić | Higher Court in Belgrade | Sanica, Ključ | 2013 | 7 | VRS* | during trial |
| Marko Crevar | Higher Court in Belgrade | Sremska Mitrovica | 2015 | 1.5 | JNA and VJ* | during trial |
| Žarko Milošević | Higher Court in Belgrade | Sotin, Vukovar | 2015 | 9 | JNA and VJ* | during trial |
| Brano Gojković | Higher Court in Belgrade | Branjevo, Srebrenica | 2016 | 10 | VRS* | during trial |
| Dragan Maksimović | Higher Court in Belgrade | Kalesija | 2018 | 6yr 2m | VRS* | during trial |
| Maljoku Ramadan | Higher Court in Belgrade | Uroševac | 2019 | 1.5 | OVK* | during trial |
| Miomir Jasikovac | Higher Court in Belgrade | Srebrenica | 2023 | 5 | VRS* | before start of trial |
| Josip Bikić | County Court in Split | Lora, Split | 2009 | 4 | HV* | during trial |
| Milan Pavlović | County Court in Osijek | Šibenik | 2018 | 4.5 | JNA and VJ* | during trial |
| Boško Previšić | County Court in Osijek | Gabela, Čapljina | 2018 | 8 | HVO* | during trial |
| Marinko Stojanović | County Court in Zagreb | Kiseljak and Vareš | 2022 | 4 | HVO* | during trial |

# List of frequent abbreviations

**ARBIH** or **Army of RBiH** – Army of the Republic of Bosnia and Herzegovina – the official armed forces of the Republic of Bosnia and Herzegovina (1992–1995)

**BiH** – Bosnia and Herzegovina – After its proclamation of independence in March 1992, the official name of the country was the Republic of Bosnia and Herzegovina. Based on the Dayton Agreement of 1995 and the new Constitution that followed, the official name was changed to "Bosnia and Herzegovina". According to the Dayton Agreement, Bosnia and Herzegovina consists of two political entities with their own parliaments and governments: the Federation of Bosnia and Herzegovina, whose population is mostly made up of Bosniaks and Bosnian Croats, and Republika Srpska, whose population is mostly made up of Bosnian Serbs. In addition to the two entities, there is also the self-governing administrative unit of the Brčko District.

**CPC** – Criminal Procedure Code – the fundamental law determining the rules of criminal procedure in a country

**FBiH** – Federation of Bosnia and Herzegovina – one of the entities of BiH

**HV** – Croatian Army – official armed forces of the Republic of Croatia, founded in 1991

**HVO** – Croat Defence Council – Croat armed forces in BiH from 1992 to 1995

**JNA** – Yugoslav National Army – official armed forces of the Socialist Federal Republic of Yugoslavia (1945–1992)

**ICTY** – International Criminal Tribunal for the former Yugoslavia – founded by the United Nations in 1993 to try crimes committed during the conflicts in the Balkans in the 1990s. The seat of the Tribunal was in The Hague, Netherlands, which is why it is often referred to by the public and in the literature as the Hague Tribunal.

**ICTR** – International Criminal Tribunal for Rwanda – established in 1995 with the task of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and neighbouring states between 1 January and 31 December 1994. This Tribunal was based in Arusha, Tanzania, with offices in Kigali, Rwanda.

**RH** – Republic of Croatia

**RS** – Republika Srpska – one of the entities of BiH

**RSK** – Republic of Serbian Krajina – an internationally unrecognised, self-proclaimed para-state in the territory of Croatia between 1991 and 1995

**SVK** – Serbian Army of Krajina – armed forces of the Republic of Serbian Krajina from 1991 to 1995

**UNPROFOR** – The United Nations Protection Force – the first United Nations peace mission in Croatia and BiH (1992–1995)

**VJ** – Army of Yugoslavia – armed forces of the Federal Republic of Yugoslavia, which was comprised of Serbia and Montenegro (1992-2006)

**VRS** – Army of Republika Srpska – Serb armed forces in BiH (1992–1995)

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# List of interviewees

*We conducted a total of 17 interviews while doing research for this publication. The interviews were conducted in 2020 and 2021 and the interviewees are listed here alphabetically with descriptions relevant at the time of their interviews. The interviews were conducted in person, via digital platforms or in writing (e-mail correspondence). We are especially grateful to everyone who took the time to share their experiences and thoughts on this topic with us. This publication would not have been possible without their insights, recommendations and trust.*

**Ahmić**, **Armin** (2021) - President of the Citizens Association of 1992-1995 War Victims "16 April" Ahmići, Vitez, BiH. This association is a key organiser of the commemoration for the 116 civilians killed in Ahmići near Vitez, BiH.

**Baždarević**, **Izet** (2021) - Lawyer from Sarajevo, BiH. Represented several defendants accused of war crimes and was previously a judge in Sarajevo.

**Bulić**, **Ibro** (2021) - Head of Department III and deputy head of the Special Department for War Crimes at the BiH Prosecutor's Office. He was the acting prosecutor in several war crimes cases before the Court of BiH.

**Džidić, Denis** (2021) - Executive Director and Editor of the *Balkan Investigative Reporting Network of BiH* (BIRN). *BIRN* has many years of experience in monitoring war crimes trials, particularly before the courts in BiH, and in creating various databases on established facts about the war in the former Yugoslavia.

**Hodžić**, **Refik** (2020) - Journalist, filmmaker and activist from Prijedor. He has been involved in transitional

justice for over two decades as a journalist, filmmaker, and expert in public information and outreach campaigns. He has dealt with postwar justice and the media primarily in the former Yugoslavia, Lebanon and East Timor. He worked for the International Criminal Tribunal for the former Yugoslavia as a spokesperson and coordinator of ICTY Outreach activities in BiH.

**Ivančić**, **Viktor** (2021) - Journalist and opinion writer from Croatia. One of the founders and editors of the *Feral Tribune* magazine, which was among the first to publish stories about war crimes in Croatia.

**Jukić, Davorin** and **Samardžić, Darko** (2021) - Judges of the Court of BiH with many years of experience with war crimes cases. They were among the first local judges to start working on war crimes cases.

**Karlica**, **Zdravka** (2021) - President of the Organisation of Families of Captured and Killed Fighters and Missing Civilians of Prijedor, BiH.

**Kljaić**, **Marina** (2020) - Lawyer with the Humanitarian Law Center (HLC) in Belgrade, Serbia. The HLC has many years of experience in documenting war crimes in the former Yugoslavia and monitoring war crimes trials, especially in Serbia.

**Kulašić**, **Teufik** (2021) - Prison camp survivor who had been detained in Keraterm and Trnopolje near Prijedor.

**Mesić**, **Jasmin** (2021) - Prosecutor with the Una Sana Canton Prosecutor's Office, BiH. A prosecutor who became particularly prominent in war crimes cases and who has concluded the largest number of plea agreements for war crimes.

**Nuhanović**, **Hasan** (2020) - Former UN translator in Srebrenica, where his father, mother and brother were killed in the genocide. Author of several books,

including *The Last Refuge* and *Under the UN Flag*. He works as a curator and researcher at the Potočari Memorial Center in Srebrenica, BiH.

**Pervanić**, **Kemal** (2020) - Prison camp survivor and founder of the peace organisation *Most Mira*, author of *The Killing Days: My Journey through the Bosnian War*. Author of the film *Pretty Village*, a story about forgiveness, reconciliation and the scope of humanity.

**Ramulić**, **Edin** (2025) - Prison camp survivor, war veteran and peace activist from Prijedor, BiH. He has worked with the BiH Prosecutor's Office on war crimes cases. After the war, he helped returnees, fighting for justice and building trust in Prijedor through the *Izvor* Association of Prijedor Women, the Culture of Memory Foundation and the *Kvart* Youth Centre in Prijedor.

**Šimić**, **Goran** (2021) - University professor, expert in criminal law and transitional justice from Sarajevo. Author of multiple books and academic papers.

**Teršelič**, **Vesna** (2021) - Long-time peace activist, running the *Documenta* Centre for Dealing with the Past in Zagreb, Croatia. *Documenta* closely monitored war crimes trials before Croatian courts.

**Tomić**, **Dragica** (2020) - President of the Association of Families of Killed, Deceased and Missing Croat Defenders from the Homeland War, Konjic, BiH. One of the organisers of the commemoration for killed civilians and soldiers in Trusina near Konjic.