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## **About the Organisation**

Since the armed conflict in Bosnia and Herzegovina came to an end, the challenges faced in prosecuting war crimes, the issues tackled and achievements attained throughout the process of determining responsibility have been the subject of numerous comprehensive studies by international organisations and experts in war crimes trials and post-conflict justice. Criticisms levelled at the judicial processing of those responsible for war crimes and other serious violations of international law in Bosnia and Herzegovina have been neither rare nor few in number. Yet, an area that remains insufficiently studied is the relationship with and attitudes to the achievements and scope of these processes experienced by one of the most important groups involved therein: war crimes survivors and the families of victims.

This study, which is supported by the Konrad Adenauer Foundation's (KAS) Rule of Law Programme South East Europe and conducted by the Pravnik Association from Sarajevo, aims to use the perceptions of survivors and family members of victims to shed light on the issues, hurdles and achievements of the process of determining criminal responsibility before Bosnian courts for the genocide in Srebrenica. On the basis of in-depth interviews carried out with survivors and the family members of victims, an attempt has been made to answer the question of how satisfied they are with what has been achieved to date in processing those responsible – including whether the judicial processes have met their expectations, whether those responsible for war crimes have been adequately punished and whether they feel that justice has been served for the crimes they were subjected to.

The Konrad Adenauer Foundation's Rule of Law Programme South East Europe is designed as a regional programme covering ten South East European countries: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Kosovo, Montenegro, North Macedonia, Republic of Moldova, Romania and Serbia. The Programme focuses on the sustainable consolidation of a democratic rule of law in the targeted countries across five subject areas: 1) Constitutional law and jurisdiction, 2) procedural law, 3) protection of human and minority rights, 4) promotion of independent judiciaries and 5) coping with the past by legal means.

In February 1997, KAS opened its Foundation Office in Bosnia and Herzegovina and by late 2000 this international office became responsible for the Foundation's activities in Bosnia and Herzegovina, Croatia, Serbia and Montenegro. Since 2001 the Foundation Office in Bosnia and Herzegovina has been responsible exclusively for project activities in Bosnia and Herzegovina. In Bosnia and Herzegovina, the Foundation focuses on three primary goals and activity areas: functional political parties in a parliamentary democracy, the integration of Bosnia and Herzegovina into the European Union and coming to terms with the past and reconciliation.

Since 2006, the Pravnik Association has come to play an important role in civil society working on transitional justice, the rule of law and human rights. The International Summer School Sarajevo ISSS, organised in strategic partnership with the Konrad Adenauer Foundation's Rule of Law Programme South East Europe, has become one of the most well-known international and regional summer schools for transitional justice and human rights. The ISSS is organised under the auspices of the Presidency of Bosnia and Herzegovina and the Mayor of Sarajevo, who recognise the importance of the Pravnik Association's efforts to bring together young people interested in transitional justice, the rule of law and human rights in Bosnia and Herzegovina.

Marijana Toma is a long-standing associate of the Pravnik Association and has been a lecturer at the ISSS since 2010. Since 2002 she has participated in numerous national, regional and international initiatives in the field of transitional justice. She has worked on documenting war crimes at the Humanitarian Law Center, as a consultant for reparations for war crimes victims at IOM and on issues of education and transitional justice at the UNDP in Serbia. Marijana is a graduate of history from the University of Belgrade and holds a master's degree in transitional justice from the University of Cape Town, South Africa.

## **Introduction**

The breakup of the Socialist Federal Republic of Yugoslavia began in late June 1991, following declarations of independence by Slovenia and Croatia, precipitating a number of international and internal armed conflicts. The first clashes began in Croatia (1991-1995) and Slovenia (June-July 1991), later spreading to Bosnia and Herzegovina (BiH) (1992-1995), Kosovo (1998-1999) and Macedonia (February-August 2001). In the wars fought across the former Yugoslavia from 1991 to 2001, more than 130,000 people lost their lives<sup>1</sup>, around 4.5 million fled or were displaced and the families of around 10,000 missing people are still searching for their loved ones.<sup>2</sup>

The international armed conflict in Bosnia and Herzegovina was the longest and most devastating of the wars in the former Yugoslavia. It lasted from April 1992 to late 1995 and resulted in nearly 100,000 people being killed.<sup>3</sup> Serbia and Croatia intervened intensively in this conflict between Bosniaks, Serbs and Croats through aid and support provided to either Bosnian Serbs or Croats, respectively. The war in BiH ended with the November 1995 Dayton Agreement, which also defined the administrative and constitutional order in Bosnia and Herzegovina and its two entities, the Federation of BiH and the Republika Srpska.

Large-scale and systematic crimes were committed during the war in Bosnia and Herzegovina, aimed at carrying out ethnic cleansing across the whole territory. These included mass killings of civilians and prisoners of war; holding tens of thousands of civilians and prisoners of war in concentration camps and torture centres where they were subjected to various forms of inhuman treatment; systematic rape of women and men, as well as other forms of sexual violence such as forced pregnancies; and large numbers of victims disappeared in operations designed to eliminate evidence through mass concealment and/or complete destruction of human remains. Additionally, cultural and historical monuments – especially places of worship – were destroyed

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<sup>1</sup> Coalition for RECOM figures. Ending the silence surrounding secret mass graves and the fates of the missing. Available at: <https://www.recom.link/bhsc/prekid-cutnje-o-tajnim-grobnicama-sudbini-nestalih-u-ratovima-na-podrucju-bivse-sfrj/>. Accessed: 23/01/2021.

<sup>2</sup> According to data from the International Committee of the Red Cross, on the International Day of the Disappeared in late August 2016 it was announced that around 10,700 people are still missing across former Yugoslavia. Available at: <https://www.icrc.org/en/document/human-rights-day-missing-persons-yugoslavia>. Accessed: 23/01/2021.

<sup>3</sup> Mirsad Tokača, *Bosanska knjiga mrtvih – Ljudski gubici u Bosni i Hercegovini (Bosnian Book of the Dead: Human Losses in Bosnia and Herzegovina 1991-1995)*, Istraživačko dokumentacioni centar Sarajevo, Fond za humanitarno pravo, Sarajevo 2012.

en masse and whole communities were nearly or completely wiped out from areas where they had lived for centuries.

Of the many crimes brought before international and local courts, those committed by the Army of Republika Srpska and Bosnian Serb forces in Srebrenica in July 1995 stand out in terms of their legal qualification. In only a few days that July, these forces killed more than 8,000 Bosniaks: mostly men and boys who had been captured in and around Srebrenica after this UN-protected “safe area” fell to forces under the command of Ratko Mladić. In a series of verdicts handed down by the International Criminal Tribunal for the former Yugoslavia (ICTY) against the political leaders and members of the armed forces of Republika Srpska, this crime was ruled to constitute genocide and these events were determined to be an attempt to destroy the Bosniak community in eastern Bosnia. In addition to ICTY rulings, in the 2007 case of *Bosnia and Herzegovina v. Serbia* for violation of the Convention on Prevention and Punishment of the Crime of Genocide, the International Court of Justice found that Serbia had violated its obligation to prevent the genocide in Srebrenica and to bring the perpetrators of this crime to justice.<sup>4</sup>

In 1993, the UN Security Council, acting in accordance with Chapter VII of the United Nations Charter, passed Resolution 827 to establish an International Criminal Tribunal tasked with prosecuting those responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia from 1 January 1991 (ICTY). The court’s founders saw in the ICTY a mechanism that would, among other things, restore international peace and security, halt further crimes and bring to justice those responsible for the most serious violations of international law.<sup>5</sup> From its establishment until late 2004 when the last indictments were issued, the ICTY indicted 161 persons for the most serious violations of international law committed in the former Yugoslavia.

Among them were the former president of Serbia and the Federal Republic of Yugoslavia, Slobodan Milošević; a slew of high-ranking members of the armed forces of Republika Srpska, including its chief of the general staff, Ratko Mladić; the former president of Republika Srpska,

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<sup>4</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007. Available at: <https://www.icj-cij.org/en/case/91/judgments>.

<sup>5</sup> UNSC Resolution 827, 25 May 1993, S/RES/827 (1993).

Radovan Karadžić; two former chiefs of the general staff of the Yugoslav Army, Momčilo Perišić and Dragoljub Ojdanić; high-ranking political, military and police officials from Serbia from the time of the Kosovo war, Nikola Šainović, Milan Milutinović, Nebojša Pavković, Vladimir Lazarević, Sreten Lukić and Vlastimir Đorđević; the commanders of Croatian forces during Operation Storm, generals of the Croatian Army and Police, Ante Gotovina, Ivan Čermak and Mladen Markač; the former prime minister of Kosovo and KLA commander, Ramuš Haradinaj; et cetera.

## **Establishing Responsibility for the Srebrenica Genocide**

### **War Crimes Trials**

#### **- Trials Before the International Criminal Tribunal for the Former Yugoslavia**

The ICTY Prosecution indicted 20 individuals for crimes committed in Srebrenica in July 1995. The court found 16 individuals guilty of crimes committed in Srebrenica across nine cases. Seven of these were convicted of the crime of genocide.<sup>6</sup> Radovan Karadžić, president of Republika Srpska and commander-in-chief of the Army of the Republika Srpska (*Vojaska Republike Srpske*; VRS) until July 1996, was sentenced to life in prison for genocide, crimes against humanity and violations of the laws or customs of war.<sup>7</sup> Ratko Mladić, commander of the Main Staff of the VRS, was sentenced before the Trial Chamber to life in prison for genocide, crimes against humanity and violations of the laws and customs of war (appeal proceedings are underway).<sup>8</sup> Zdravko Tolimir, assistant commander for intelligence and security for the Main Staff of the VRS, was sentenced to life in prison for genocide, crimes against humanity and violations of the laws and customs of war.<sup>9</sup> Vujadin Popović, lieutenant colonel and assistant chief of security for the Drina Corps of the VRS, was sentenced to life in prison for genocide, crimes against humanity and violations of the laws and customs of war.<sup>10</sup> Ljubiša Beara, colonel and chief of security for the Main Staff of the VRS, was sentenced to life in prison for genocide,

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<sup>6</sup> IRMCT, Remember Srebrenica Genocide, available at: <https://www.irmct.org/en/mip/srebrenica-24>.

<sup>7</sup> Prosecutor v. Radovan Karadžić IT-95-5/18 and MICT-13-55, available at: <https://www.irmct.org/en/cases/mict-13-55>.

<sup>8</sup> Prosecutor v. Ratko Mladić IT-09-92 and MICT-13-56, available at: [https://www.icty.org/bcs/case/mladic i https://www.irmct.org/en/cases/mict-13-56](https://www.icty.org/bcs/case/mladic%20i%20mict-13-56).

<sup>9</sup> Prosecutor v. Zdravko Tolimir (IT-05-88/2), available at: <https://www.icty.org/bcs/case/tolimir>.

<sup>10</sup> Prosecutor v. Popović et al IT-05-88, available at: <https://www.icty.org/case/popovic>.

crimes against humanity and violations of the laws and customs of war.<sup>11</sup> Drago Nikolić, second lieutenant and chief of security for the Zvornik Brigade of the VRS, was sentenced to 35 years in prison for aiding and abetting genocide, crimes against humanity and violations of the laws and customs of war.<sup>12</sup> Radislav Krstić, chief of staff/deputy commander of the Drina Corps of the VRS and commander of the Drina Corps (from 13 July 1995), was sentenced to 35 years in prison for aiding and abetting genocide, crimes against humanity and violations of the laws and customs of war.<sup>13</sup>

For crimes committed in Srebrenica in July 1995, Momir Nikolić, assistant commander for security and intelligence of the Bratunac Brigade of the VRS, was sentenced to 20 years in prison for crimes against humanity having entered a guilty plea.<sup>14</sup> Radivoje Miletić, chief of the Department for Operational Training of the VRS Main Staff, was sentenced to 18 years in prison for crimes against humanity and violations of the laws and customs of war.<sup>15</sup> Dragan Obrenović, chief of staff and deputy commander of the 1<sup>st</sup> Zvornik Infantry Brigade of the Drina Corps of the VRS and acting commander of the Zvornik Infantry Brigade, was sentenced to 17 years in prison for crimes against humanity.<sup>16</sup> For participation in the Srebrenica operation, Ljubomir Borovčanin, deputy commander of the Special Police Brigade of the Ministry of Interior (*Ministarstvo unutrašnjih poslova*; MUP) of the Republika Srpska and commander of joint MUP units subordinated to the Drina Corps of the VRS, was sentenced to 17 years in prison for crimes against humanity and violations of the laws and customs of war.<sup>17</sup> Vidoje Blagojević, commander of the Bratunac Brigade of the VRS, was sentenced to 15 years in prison for crimes against humanity and violations of the laws and customs of war.<sup>18</sup> Vinko Pandurević, lieutenant colonel and commander of the Zvornik Brigade of the Drina Corps of the VRS, was sentenced to 13 years in prison for crimes against humanity and violations of the laws and customs of war.<sup>19</sup> Dragan Jokić, chief of engineering of the Zvornik Brigade of the VRS, was sentenced to nine

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<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Prosecutor v. Radislav Krstić IT-98-33, available at: <https://www.icty.org/bcs/case/krstic>.

<sup>14</sup> Prosecutor v. Momir Nikolić IT-02-60/1, available at: <https://www.icty.org/bcs/case/nikolic>.

<sup>15</sup> Prosecutor v. Popović et al IT-05-88, available at: <https://www.icty.org/case/popovic>.

<sup>16</sup> Prosecutor v. Dragan Obrenović IT-02-60/2, available at: <https://www.icty.org/bcs/case/obrenovic>.

<sup>17</sup> Prosecutor v. Popović et al IT-05-88, available at: <https://www.icty.org/case/popovic>.

<sup>18</sup> Prosecutor v. Blagojević & Jokić IT-02-60, available at: [https://www.icty.org/bcs/case/blagojevic\\_jokic](https://www.icty.org/bcs/case/blagojevic_jokic).

<sup>19</sup> Prosecutor v. Popović et al IT-05-88, available at: <https://www.icty.org/case/popovic>.

years in prison for crimes against humanity and violations of the laws and customs of war.<sup>20</sup> Milan Gvero, assistant commander for morale, legal and religious affairs of the VRS Main Staff, was sentenced to five years in prison for crimes against humanity<sup>21</sup>, and Dražen Erdemović, a soldier in the 10<sup>th</sup> Sabotage Detachment of the VRS, was sentenced to five years for crimes against humanity.<sup>22</sup>

The former president of Serbia and Yugoslavia, Slobodan Milošević, was also charged with genocide before the ICTY but he died in custody in 2006 before the first-instance verdict could be handed down.<sup>23</sup> The ICTY Prosecution also charged former chief of the General Staff of the Yugoslav Army, Momčilo Perišić, with crimes committed in Srebrenica, however, he was acquitted of these charges in February 2013.

By the end of this year, first-instance verdicts are also expected for Jovica Stanišić, head of the State Security Service of the MUP of Serbia, and Franko Simatović, an employee in the Second Administration of the State Security Service, in a retrial before the International Residual Mechanism for Criminal Tribunals.<sup>24</sup>

#### **- Establishing Responsibility for Crimes Committed in Srebrenica Before the Courts of Other Countries**

Individuals charged with crimes committed in Srebrenica have also been prosecuted before other courts. Following the 2005 emergence of video tape showing the execution of six Bosniaks in the vicinity of the village of Trnovo by members of the Scorpions from Šid unit in the summer of 1995, Slobodan Medić, the unit commander, along with Branislav Medić, Pero Petrašević and Aleksandar Medić were convicted of war crimes against civilians before the War Crimes Chamber of the Higher Court in Belgrade (then the District Court).<sup>25</sup> In addition to these verdicts,

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<sup>20</sup> Prosecutor v. Blagojević & Jokić IT-02-60, available at: [https://www.icty.org/bcs/case/blagojevic\\_jokic](https://www.icty.org/bcs/case/blagojevic_jokic).

<sup>21</sup> Prosecutor v. Popović et al IT-05-88, available at: <https://www.icty.org/case/popovic>.

<sup>22</sup> Prosecutor v. Erdemović IT-96-22, available at: <https://www.icty.org/bcs/case/erdemovic>.

<sup>23</sup> Prosecutor v. Slobodan Milošević IT-02-54, available at: [https://www.icty.org/bcs/case/slobodan\\_milosevic](https://www.icty.org/bcs/case/slobodan_milosevic).

<sup>24</sup> Available at: <https://www.irmct.org/bcs/cases/mict-15-96>.

<sup>25</sup> The verdict omits the fact specified in the indictment that the six victims had been transferred from Srebrenica and, in so doing, separates these executions from the killings at Srebrenica without foundation. Available at: [http://www.hlc-rdc.org/Transkripti/skorpioni\\_1.html](http://www.hlc-rdc.org/Transkripti/skorpioni_1.html).

following a plea bargain admitting his participation in the mass killing of several hundred Bosniaks from Srebrenica at Branjevo farm, the Higher Court in Belgrade sentenced Brano Gojković, a member of the 10<sup>th</sup> Sabotage Detachment of the VRS, to ten years in prison.<sup>26</sup>

Croatian courts have found members of the Scorpions unit, Slobodan Davidović and Milorad Momić, guilty of same crime: the execution of six Bosniak men and boys in Trnovo.

A trial of members of the Jahorina Training Centre of the MUP of Republika Srpska Special Police Brigade is currently underway before the Higher Court in Belgrade. The accused – Nedeljko Milidragović, commander of the 2<sup>nd</sup> platoon of the 1<sup>st</sup> Company and members of the 2<sup>nd</sup> platoon, Milivoje Batinica, Aleksandar Dačević, Boro Miletić, Jovan Petrović and Dragomir Parović, along with members of the 1<sup>st</sup> platoon of the First Company, Aleksa Goljanin and Vidosav Vasić – are charged with the killing of at least 1,313 Bosniak civilians on 14 July 1995 inside and in the immediate vicinity of the warehouse of the cooperative farm in the village of Kravica.<sup>27</sup>

#### **- Establishing Responsibility for Crimes Committed in Srebrenica Before the Court of BiH**

According to research conducted by the Srebrenica Memorial Center and the Sarajevo-based Post-Conflict Research Center, courts in Bosnia and Herzegovina have to date convicted 25 individuals, of whom 13 have been found guilty of genocide and/or aiding abetting the act of genocide (whether convicted or in first-instance verdicts). They include: Radomir Vuković, a police officer from the 2<sup>nd</sup> Detachment of the Special Police Brigade of the MUP of Republika Srpska who participated in the imprisonment of Bosniaks around Srebrenica and the killing of hundreds of them in the Kravica warehouse on 13 July 1995<sup>28</sup>, was sentenced to 20 years in prison<sup>29</sup>; Željko Ivanović, a special police officer and member of the 3<sup>rd</sup> Skelani platoon of the 2<sup>nd</sup> Detachment of the Šekovići Special Police Brigade of the MUP of Republika Srpska, who

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<sup>26</sup> Available at: <http://www.hlc-rdc.org/Transkripti/srebrenica-branjevo.html>.

<sup>27</sup> Available at: <http://www.hlc-rdc.org/Transkripti/srebrenica.html>.

<sup>28</sup> Second-instance verdict, The Prosecutor's Office of Bosnia and Herzegovina v. Radomir Vuković & Zoran Tomić, 17/12/2014., S1 1 K 006124 15 Kžk 2.

<sup>29</sup> Available at: <http://www.sudbih.gov.ba/predmet/2556/show>.

participated in the imprisonment of Bosniaks around Srebrenica and the killing of hundreds of them in the Kravica warehouse on 13 July 1995<sup>30</sup>, was sentenced to 20 years in prison<sup>31</sup>; Petar Mitrović, who as a member of the 3<sup>rd</sup> Skelani platoon as part of the 2<sup>nd</sup> Detachment of the Šekovići Special Police participated in the imprisonment of hundreds of Bosniaks around Srebrenica and the killing of hundreds of them in the Kravica warehouse on 13 July 1995<sup>32</sup>, was sentenced to 20 years in prison<sup>33</sup>; Milenko Trifunović, commander of the 3<sup>rd</sup> Skelani platoon as part of the 2<sup>nd</sup> Detachment of the Šekovići Special Police, Brane Džinić, a special police officer of the 2<sup>nd</sup> Detachment of the Šekovići Special Police, and Aleksandar Radovanović, Slobodan Jakovljević and Branislav Medan, special police officers of the 3<sup>rd</sup> Skelani platoon as part of the 2<sup>nd</sup> Detachment of the Šekovići Special Police, who were convicted of participating in the forcible displacement of Bosniaks from Srebrenica, the imprisonment of hundreds of them around Srebrenica and the killing of hundreds of them in the Kravica warehouse on 13 July 1995<sup>34</sup>, were all sentenced to 20 years in prison<sup>35</sup>; Duško Jević, deputy commander of the Special Police Brigade and commander of the Jahorina Training Centre of the Special Police Brigade of the MUP of Republika Srpska, and Mendeljev Đurić, commander of the 1<sup>st</sup> Company of the Jahorina Training Centre of the Special Police Brigade of the MUP of Republika Srpska, were convicted of aiding members of the joint criminal enterprise by the military and civilian leadership of the Republika Srpska, who engaged in efforts to partially eliminate Bosniaks as a group by forcibly removing around 40,000 women, children and elderly men and the killing of 7,000 to 8,000 Bosniak men<sup>36</sup> and were therefore sentenced to 20 years in prison<sup>37</sup>; Milorad Trbić, who as deputy chief of security for the Zvornik Brigade of the VRS and the person in charge of leading the brigade's military police company, participated in the forcible removal of the Bosniak population from the Srebrenica enclave and the killing and burial of military-age

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<sup>30</sup> Second-instance verdict, The Prosecutor's Office of Bosnia and Herzegovina v. Željko Ivanović, 18/06/2014, S1 1 K 003442 14 Kžk 2.

<sup>31</sup> Available at: <http://www.sudbih.gov.ba/predmet/2599/show>.

<sup>32</sup> Second-instance verdict, The Prosecutor's Office of Bosnia and Herzegovina v. Petar Mitrović, 22/01/2014, S 1 K 014264 13 Kžk.

<sup>33</sup> Available at: <http://www.sudbih.gov.ba/predmet/2543/show>.

<sup>34</sup> Second-instance verdict, The Prosecutor's Office of Bosnia and Herzegovina v. Milenko Trifunović, Brane Džinić, Aleksandar Radovanović, Slobodan Jakovljević & Branislav Medan, 23/01/2014, S1 1 014263 13 Kžk.

<sup>35</sup> Available at: <http://www.sudbih.gov.ba/predmet/2429/show>.

<sup>36</sup> Second-instance verdict, The Prosecutor's Office of Bosnia and Herzegovina v. Duško Jević & Mendeljev Đurić, 03/03/2017, S1 1 K 003417 16 Kžk 15.

<sup>37</sup> Available at <http://www.sudbih.gov.ba/predmet/2655/show>.

men from Srebrenica<sup>38</sup>, was sentenced to 20 years in prison<sup>39</sup>; Slavko Perić, deputy commander for security of the 1<sup>st</sup> Battalion of the Zvornik Brigade of the VRS, who as a participant in the joint criminal enterprise with other members of the VRS and the RS MUP, with the common plan and goal to permanently and forcibly remove the whole Bosniak civilian population from the UN designated safe area of Srebrenica and to capture, imprison, forcibly transfer and quickly kill and bury Bosniak military-age men and boys from the Srebrenica enclave<sup>40</sup>, was sentenced to 11 years in prison<sup>41</sup>; and Ostoja Stanišić, commander of the 6<sup>th</sup> Battalion of the Zvornik Brigade of the VRS, offered assistance to members of the VRS and RS MUP in enacting their plan to permanently and forcibly remove the whole Bosniak civilian population from the UN designated safe area of Srebrenica and kill more than 7,000 men and boys<sup>42</sup>, was sentenced to five years in prison.<sup>43</sup>

In October 2020, the Court of Bosnia and Herzegovina issued a first-instance verdict for genocide against Srećko Aćimović, commander of the 2<sup>nd</sup> Battalion of the Zvornik Brigade of the Army of the Republika Srpska, declaring that from 14 to 16 July 1995 he consciously offered assistance to members of the joint criminal enterprise whose plan and goal was to imprison and quickly kill and bury military-age Bosniak men from the Srebrenica enclave, forcibly remove women, children and elderly men from the enclave and, in doing so, to eliminate them as a group.<sup>44</sup> Aćimović was sentenced to nine years in prison.<sup>45</sup>

The Court of Bosnia and Herzegovina also convicted Franc Kos, commander of the 1<sup>st</sup> Bijeljina platoon, 10<sup>th</sup> Sabotage Detachment of the VRS Main Staff, Stanko Kojić, Vlastimir Golijan and Zoran Goronja, members of the 10<sup>th</sup> Sabotage Detachment of the VRS Main Staff, who participated in the execution of more than 800 Bosniak men and boys in the UN safe area of

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<sup>38</sup> Second-instance verdict, The Prosecutor's Office of Bosnia and Herzegovina v. Milorad Trbić, 19/01/2015, S1 1 K 017791 14 Kžk (veza X-KRŽ-07/386).

<sup>39</sup> Available at: <http://www.sudbih.gov.ba/predmet/2451/show>.

<sup>40</sup> Second-instance verdict, The Prosecutor's Office of Bosnia and Herzegovina v. Momir Pelemiš & Slavko Perić, 18/10/2012, S1 1 K 00379 12 Kžk 10.

<sup>41</sup> Available at: <http://www.sudbih.gov.ba/predmet/2566/show>.

<sup>42</sup> Second-instance verdict, The Prosecutor's Office of Bosnia and Herzegovina v. Ostoja Stanišić, 11/10/2018, S1 1 K 010315 17 Kžk.

<sup>43</sup> Available at: <http://www.sudbih.gov.ba/predmet/3001/show>.

<sup>44</sup> Available at: <http://www.sudbih.gov.ba/predmet/3513/show>.

<sup>45</sup> Ibid.

Srebrenica at the Branjevo farm<sup>46</sup>, of crimes against humanity and sentenced Kos to 35, Kojić to 32, Goronja to 30 and Golijan to 15 years in prison.<sup>47</sup> Božidar Kuvelja, a police officer serving in the 2<sup>nd</sup> platoon of the 1<sup>st</sup> Company of the Jahorina Training Centre, indicted for searching settlements in the wider Potočari area together with the other members of this company with the aim of gathering the civilian Bosniak population at the Potočati Collection Centre, separating civilian Bosniak males and transferring them to the so-called White House in Potočari where they were subjected to mistreatment and participating in the execution of a group of around 100 surviving Bosniak males at the Kravica warehouse<sup>48</sup> was sentenced to 20 years in prison for crimes against humanity.<sup>49</sup> Mladen Blagojević, a member of the military police of the Bratunac Light Infantry Brigade of the VRS was indicted, together with other members of this brigade, for separating men from women and children and the killing five prisoners in the Vuk Karadžić elementary school in Bratunac<sup>50</sup> and sentenced to seven years in prison for crimes against humanity.<sup>51</sup> Srećko Bošković was indicted for killing a minor Bosniak civilian (15) by firing shots from an automatic rifle while dressed in a VRS uniform,<sup>52</sup> was sentenced to eight years in prison for a war crime against the civilian population.<sup>53</sup>

Five people were convicted before the Court of Bosnia and Herzegovina for crimes committed in and around Srebrenica in July 1995 having concluded plea bargains with the Prosecution: Dragan Crnogorac, a member of the Jahorina Training Centre of the Special Police Brigade of the MUP of Republika Srpska, was sentenced to 13 years in prison after pleading guilty to the killing of around 10 captured Bosniak civilians and wounded in Sandići, municipality of Bratunac on 13 July 1995 (crimes against humanity)<sup>54</sup>; Marko Boškić, a member of the 10<sup>th</sup> Sabotage Detachment of the VRS Main Staff, was sentenced to 10 years in prison after pleading

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<sup>46</sup> Second-instance verdict, The Prosecutor's Office of Bosnia and Herzegovina v. Franc Kos, Vlastimir Golijan & Zoran Goronja, 15/02/2013, S1 1 K 003372 12 Kžk 13 (veza X-KR-10/893-1).

<sup>47</sup> Available at: <http://www.sudbih.gov.ba/predmet/2697/show>.

<sup>48</sup> Second-instance verdict, The Prosecutor's Office of Bosnia and Herzegovina v. Božidar Kuvelja, 19/11/2013, S1 1 K 004050 13 Kžk 15.

<sup>49</sup> Available at: <http://www.sudbih.gov.ba/predmet/2776/show>.

<sup>50</sup> Second-instance verdict, The Prosecutor's Office of Bosnia and Herzegovina v. Zdravko Božić et al., 05/10/2009, X-KRŽ-06/236.

<sup>51</sup> Available at: <http://www.sudbih.gov.ba/predmet/2453/show>.

<sup>52</sup> Second-instance verdict, The Prosecutor's Office of Bosnia and Herzegovina v. Srećko Bošković, 25/01/2016, S1 1 K 017133 15 Krž 4.

<sup>53</sup> Available at: <http://www.sudbih.gov.ba/predmet/3344/show>.

<sup>54</sup> Verdict, 12/05/2011, S1 1 K 005805 11 KrI. Available at: <http://www.sudbih.gov.ba/predmet/2801/show>.

guilty to participating in the execution of several hundred captured Bosniaks at the Branjevo farm in the village of Pilice, municipality of Zvornik (crimes against humanity)<sup>55</sup>; Vaso Todorović, a special police officer of the 2<sup>nd</sup> Detachment of the Šekovići Special Police, was sentenced to six years in prison for assisting in killing, deportation and forcible removal as crimes against humanity committed in Srebrenica in July 1995, having reached a plea bargain with the Prosecutor's Office of Bosnia and Herzegovina<sup>56</sup>; Milivoje Ćirković, a member of the Jahorina Training Centre of the Special Police Brigade (SPB) of the MUP of Republika Srpska, was sentenced to five years in prison for crimes against humanity<sup>57</sup>; and Zoran Kušić, a member of the Jahorina Training Centre of the Special Police Brigade of the MUP of Republika Srpska, plead guilty to a crime against humanity in which, acting on the orders of his commanding officer, he took the life of one detained male Bosniak near the Kravica warehouse on 14 July 1995.<sup>58</sup>

The Court of Bosnia and Herzegovina has acquitted the following men of crimes committed in and around Srebrenica: Miloš Stupar, Momir Pelemiš, Dragan Nešković and Zoran Ilić (crimes against humanity), Neđo Ikonić and Goran Marković, Zdravko Božić, Željko Zarić and Zoran Živanović, Aleksandar Cvetković, Marko Milošević, Miladin Stevanović, Goran Sarić, Slavko Milanović (crimes against humanity), Zoran Tomić, Milan Bogdanović (crimes against humanity), Velibor Maksimović, Dragiša Živanović and Milovan Matić. The Supreme Court of Republika Srpska confirmed the acquittals issued by the Municipal Court of Bijeljina for Dejan Radojković, commander of the 3<sup>rd</sup> platoon of the Jahorina Training Centre of the Special Police Brigade of the MUP of Republika Srpska.<sup>59</sup>

#### - Ongoing Cases Before the Court of BiH

Proceedings are underway before the Court of Bosnia and Herzegovina against Mile Kosorić and Momčilo Tešić, members of the Vlasenica Brigade of the VRS, who are charged with genocide

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<sup>55</sup> Verdict, 19/07/2010, X-KR-10/928. Available at: <http://www.sudbih.gov.ba/predmet/2692/show>.

<sup>56</sup> Verdict, 22/10/2008, X-KR-06/180-1. Available at: <http://www.sudbih.gov.ba/predmet/2546/show>.

<sup>57</sup> Verdict, 28/09/2009, X-KR-10/1029. Available at: <http://www.sudbih.gov.ba/predmet/2705/show>.

<sup>58</sup> Verdict, 11/03/2011, S1 1 K 004837 11 Kro. Available at: <http://www.sudbih.gov.ba/predmet/2772/show>.

<sup>59</sup> Detektor, "Radojkoviću potvrđena oslobađajuća presuda" ("*Radojković's Acquittal Confirmed*"), 11 April 2014, available at: <https://detektor.ba/2014/04/11/radojkovicu-potvrđena-oslobađajuća-presuda-2/>.

in Srebrenica.<sup>60</sup> The same indictment originally also covered Borislav Stojišić and Rajko Drakulić, however, they have been assigned a separate case as they cannot be reached by the judiciary.<sup>61</sup> Arrest warrants for Stojišić and Drakulić have been issued by the Court of Bosnia and Herzegovina.<sup>62</sup>

The trial of Rade Garić, commander of the Intervention Platoon of the Vlasenica Brigade, who is charged with persecution of the Bosniak population of Srebrenica in July 1995, is underway.<sup>63</sup> Proceedings against Miodrag Josipović, chief of the Bratunac Public Security Centre and member of the Police Forces Staff of the Zvornik Public Security Centre, Branimir Tešić, deputy commander of the Bratunac Police Station, Dragomir Vasić, commander of the Police Forces Staff in Zvornik and chief of the Zvornik Public Security Centre, Danilo Zoljić, commander of the Special Police Unit of the Zvornik Public Security Centre and Radomir Pantić, commander of the 1<sup>st</sup> Company of the Special Police Unit of the Zvornik Public Security Centre.<sup>64</sup>

In January 2020, the Court of Bosnia and Herzegovina confirmed the indictment under which Milomir Savčić, the commander of the 65<sup>th</sup> Mechanised Protection Regiment of the VRS, is charged with genocide in Srebrenica. The trial is underway.<sup>65</sup>

The Court of BiH also confirmed several indictments raised for crimes committed in Srebrenica against persons who are beyond the reach of the judicial authorities of Bosnia and Herzegovina. In mid-June 2008, the Court of BiH confirmed the indictment of Milisav Gavrić, a member of the Bratunac Police Station and deputy commander of the Srebrenica Police Station, for crimes against humanity in connection with the genocide in Srebrenica.<sup>66</sup> Gavrić lives in Serbia and occasionally makes public appearances.<sup>67</sup>

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<sup>60</sup> Available at: <http://www.sudbih.gov.ba/predmet/3711/show>.

<sup>61</sup> Available at: <http://www.sudbih.gov.ba/predmet/3850/show>.

<sup>62</sup> Available at: <https://www.interpol.int/How-we-work/Notices/View-Red-Notices#2018-12068>; <https://www.interpol.int/How-we-work/Notices/View-Red-Notices#2018-3234>.

<sup>63</sup> Garić is also being tried for persecution of the Bosniak population of Vlasenica in 1992, available at: <http://www.sudbih.gov.ba/predmet/3888/show>.

<sup>64</sup> Available at: <http://www.sudbih.gov.ba/predmet/3333/show>.

<sup>65</sup> Available at: <http://www.sudbih.gov.ba/predmet/4058/show>.

<sup>66</sup> Available at: <http://www.sudbih.gov.ba/predmet/2547/show>.

<sup>67</sup> Alo, “Za anale – Policajca izlečili Parovi” (“*One for the Annals: Policeman Healed by Parovi TV Show*”), 21 January 2016, available at: <https://www.alo.rs/vip/rijaliti/policajca-izlecili-parovi/30363/vest>.

In January 2016, the indictment of Radoslav Janković, an intelligence officer in the Department for Security and Intelligence Affairs at the VRS Main Staff who lives in Serbia and is charged with aiding and abetting genocide, was confirmed.<sup>68</sup>

In mid-December of the same year, the Court of BiH confirmed the indictment of the head of the Department for Security and Intelligence Affairs and member of the Staff of the Drina Corps, Svetozar Kosorić, for assisting participants of a joint criminal enterprise in full knowledge of their intention to exterminate the Bosniak population through killing, forcible transfer and inflicting grievous bodily and mental harm to members of this group.<sup>69</sup> According to the latest available information, Kosorić resides permanently in Serbia.<sup>70</sup> He has been indicted by the Court of BiH.<sup>71</sup>

In January 2018, the Court of BiH also confirmed the indictment for genocide in Srebrenica raised against Tomislav Kovač, commander of the Police Forces Staff of the MUP of Republika Srpska and deputy minister and minister of the MUP of Republika Srpska, who currently resides in Serbia.<sup>72</sup>

In October 2020, the Court of BiH confirmed the indictment for genocide against Zoran Malinić, commander of the Military Police Battalion of the 65<sup>th</sup> Mechanised Protection Regiment of the VRS Main Staff.<sup>73</sup> Malinić lives in Belgrade.<sup>74</sup>

## **Extrajudicial Establishment of Facts About the Genocide in Srebrenica**

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<sup>68</sup> Available at: <http://www.sudbih.gov.ba/predmet/3560/show>.

<sup>69</sup> Available at: <http://www.sudbih.gov.ba/predmet/3650/show>.

<sup>70</sup> Detektor, Svetozar Kosorić optužen za genocide u Srebrenici (*Svetozar Kosorić indicted for genocide in Srebrenica*), 16 December 2016, available at: <https://detektor.ba/2016/12/16/svetozar-kosoric-optuzen-za-genocid-u-srebrenici/>.

<sup>71</sup> Available at: <https://www.interpol.int/How-we-work/Notices/View-Red-Notices#2017-134486>.

<sup>72</sup> Available at: <http://www.sudbih.gov.ba/predmet/3709/show>.

<sup>73</sup> Available at: <http://www.sudbih.gov.ba/predmet/4509/show>.

<sup>74</sup> Radio Sarajevo, “Jeziva lista zločina: Zoran Malinić osumnjičen za genocide u Srebrenici” (“*Heinous Catalogue of Crimes: Zoran Malinić Suspected of Genocide in Srebrenica*”), 9 October 2020, available at: <https://radiosarajevo.ba/vijesti/bosna-i-hercegovina/uhapsen-jedan-od-odgovornih-za-genocid-u-srebrenici-pogledajte-listu-zlocina/392550>.

By 2021, two extrajudicial investigative bodies have been established in Bosnia and Herzegovina with the aim of determining the facts surrounding events in and around Srebrenica in the summer of 1995. The Government of the Republika Srpska established the Commission for Investigation of Events in and around Srebrenica between 10 and 19 July 1995, more commonly known as the Srebrenica Commission, primarily as the result of pressure from the High Representative for Bosnia and Herzegovina due to Republika Srpska's refusal to comply with the decision of the Human Rights Chamber that ordered Republika Srpska to make public the whole truth about crimes committed in Srebrenica in early July 1995. The commission was tasked with taking over all investigative and other operations with the aim of establishing "the full truth about events in and around Srebrenica between 10 and 19 July 1995, in order to achieve lasting peace and confidence building in Bosnia and Herzegovina".<sup>75</sup> The commission was given six months (from the date of its formation) to complete this task and the government instructed its institutions – the Ministry of Justice of Republika Srpska, the Ministry of the Interior of Republika Srpska, the Ministry of Defence of Republika Srpska, the Intelligence-Security Service, the General Staff of the Army of Republika Srpska and the Secretariat for Cooperation with the ICT – to fully support the commission.<sup>76</sup> The following were appointed as members of the commission: Marko Arsović<sup>77</sup>, as chair of the commission, Milan Bogdanović, Milorad Ivošević, Đorđe Stojaković, Gojko Vukotić, Gordon Bacon and Smail Čekić.<sup>78</sup> The Office of the High Representative (OHR) and the International Criminal Tribunal in the Hague (ICTY) were granted observer status. It was intended that the commission would determine the facts about the aforementioned crimes in Srebrenica, their scale, who ordered them and who committed them, including events pertaining to the invasion of Srebrenica, the attempt to evacuate the population, the humanitarian crisis, the situation in Potočari, the situation in the mixed column, as well as ascertaining the fate and location of missing persons, information on new locations of individual and mass graves,

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<sup>75</sup> Report, Commission for Investigation of the Events in and around Srebrenica between 10 and 19 July 1995, 26.

<sup>76</sup> Ibid.

<sup>77</sup> The then chair of the commission, Marko Arsović, stepped down on 20 April 2004. Milan Bogdanić was appointed as the new chair and Željko Vujadinović was appointed by the Government of Republika Srpska to the vacated place on 17 May 2004. Ibid.

<sup>78</sup> Gordon Bacon and Smail Čekić were nominated by the High Representative for Bosnia and Herzegovina (Bacon was nominated as a representative of the international community, Čekić as a representative of the survivors). Ibid.

identification of victims and also the gathering of relevant facts on other events of significance for the commission.<sup>79</sup>

Due to the exceedingly tight deadline for completing these tasks, the commission relied above all on gathering data and evidence from the relevant institutions of the Republika Srpska, while the part of its activities regarding applied international and local criminal law to establish the facts relied on ICTY conclusions from the case against Radislav Krstić that pertained to the historical context and the facts established by this judgement.<sup>80</sup> Initially the commission faced pressures from and in compliance by the Republika Srpska institutions from which it was to gather relevant information but, thanks to the intervention of the Office of the High Representative, it was able to complete its tasks. Due to the constraints of time and the High Representative's request that the investigation be concluded quickly, the commission focused on locating victims' remains and compiling lists of Srebrenica victims who were then filed as missing, which focused its activities exclusively on investigating the fate of Bosniaks during the period of 10-19 July 1995.<sup>81</sup> The commission's first report was published in June 2004, with an addendum regarding events in and around Srebrenica from 10 to 19 July 1995 being published on 15 October 2004, after the Government of Republika Srpska extended the deadline for the completion of the commission's activities following the High Representative's intervention.<sup>82</sup>

In preparing its report and the addendum to the report, the commission relied on documentation gathered from the institutions of Republika Srpska, including certain documents of the Main Staff of the Army of Republika Srpska, as well as a number of daily, weekly, monthly and annual reports from the Ministry of the Interior and its departments, a smaller number of documents from the Federation of Bosnia and Herzegovina, Serbia and Montenegro (including documentation from the Ministry of Interior and the Security Information Agency of Serbia and the Ministry of Defence of Serbia and Montenegro), as well as from the Hague tribunal. Additionally, the then president and prime minister of Republika Srpska, Dragan Čavić and Dragan Mikerević, joined its efforts to gather information on the locations of mass graves.

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<sup>79</sup> Ibid., pp. 3-4.

<sup>80</sup> Ibid., pp. 4-5.

<sup>81</sup> Ibid.

<sup>82</sup> Addendum to the Report of 11 June 2004 on the Events in and around Srebrenica between 10 and 19 July 1995, 15/10/2004.

Although it encountered significant obstruction by Republika Srpska institutions<sup>83</sup>, the commission did manage to gather information on the existence of 32 hitherto unknown and unprocessed mass graves containing the remains of Bosniaks killed in and around Srebrenica from 10 to 19 July 1995 (of which four were primary and 28 were secondary and tertiary burial sites).<sup>84</sup> The Federal Commission for Missing Persons determined that it had had no information about eight of these graves (including two primary burial sites) and that it had some information on three locations but without precise data on the micro-location of the grave sites.<sup>85</sup> A second task within the commission's purview was to compile as precisely as possible a list of names of those who were missing as a result of events in Srebrenica between 10 and 19 July 1995, with particular focus on 1,849 for whom applications had been submitted to the Human Rights Chamber and the Constitutional Court of Bosnia and Herzegovina.<sup>86</sup> The commission was able to fulfil this part of its task and publish the list of names in its Analysis of Applications Submitted to the Human Rights Chamber and the Constitutional Court of Bosnia and Herzegovina. The commission published information on how the list of all missing persons was compiled in its Addendum to the 15 October 2004 Report confirming that, according to all gathered data on missing persons based on comparing and analysing available sourced, between 7,000 and 8,000 people were missing/killed in the genocide in Srebrenica.<sup>87</sup>

In its conclusions<sup>88</sup>, the commission called on the relevant institutions (particularly the judiciary) to continue the work of investigating, documenting and processing crimes and to cooperate with the Hague tribunal. Additionally, the commission also made recommendations pertaining to institutional reform – i.e. the review of continued employment in governmental bodies, institutions and public services of individuals suspected of war crimes. The commission also

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<sup>83</sup> By mid-April 2004, as it stated in its report, the commission had obtained no significant information on the locations of mass graves due to obstruction by the relevant Republika Srpska institutions. As a result of this, the then High Representative for Bosnia and Herzegovina, Paddy Ashdown, ordered the head of the VRS Main Staff and the chief of the government's Secretariat for Relations with the ICTY to step down, while the then minister of defence, Milovan Stanković, and minister of the interior, Zoran Đerić, were warned that they must provide the commission with the information it was seeking. At the same time, President Čavić and Prime Minister Mikerević were asked to take responsibility for the commission's activities and success. Only after these interventions was the commission able to continue its activities unhindered.

<sup>84</sup> Report, Commission for Investigation of the Events in and around Srebrenica between 10 and 19 July 1995, 26.

<sup>85</sup> *Ibid.*, 27

<sup>86</sup> *Ibid.*, 33.

<sup>87</sup> Addendum to the Report of 11 June 2004 on the Events in and around Srebrenica between 10 and 19 July 1995, 15/10/2004, 17.

<sup>88</sup> *Ibid.*, 33-34.

called on the relevant institutions to continue gathering information on mass graves and to speed up the exhumation and identification of remains because any delay in resolving these issues would be, “an additional injustice for the victims”. Finally, the commission proposed that the leadership of Republika Srpska pay homage to the Srebrenica victims and apologise to victims’ families.

Having considered the commission’s report, on 28 October 2004 the Government of Republika Srpska adopted conclusions<sup>89</sup> that accept the report and its conclusions, finding it to be “historical fact” and “proof of the maturity of the institutions of Republika Srpska and the Serbian people”. According to the government’s evaluation, by establishing this commission Republika Srpska had shown a determination to face the truth and the events of the war, seeing the commission’s work as the basis for further steps by its institutions (particularly the police and judiciary) in the investigation, documentation and research of war crimes.<sup>90</sup> Additionally, the government pledged to continue working on determining the fate of missing persons and expressed commiserations, sincere regrets and apologised to the families of the victims “for the tragedy that took place”.<sup>91</sup>

On 22 June 2004, even before the commission concluded its work, the president of Republika Srpska, Dragan Čavić, stated in a public address to the people of Republika Srpska that the events of July 1995 are, “a black page in the history of the Serbian people. Participants in this crime can have no justification before anybody or anything. He who committed such a crime and who may have done it in the name of his people, committed a crime against his own people.”<sup>92</sup> Addressing the families of the victims, Čavić said, “I cannot know whether this address of mine will bring any relief to the relatives of killed Bosniaks, who are victims of war crimes committed by Serbs. I understand and sympathise with the pain of those who are still looking for their loved ones. Everyone has a right to justice. And they will believe in justice if they know the true fate of their loved ones and if those who committed crimes are punished.”

Even though the commission’s activities have been evaluated as an institutional step that is insufficient relative to the responsibility for crimes committed in Srebrenica during the war in

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<sup>89</sup> Conclusion of the Government of Republika Srpska, 02/1-020-1301/04, 28/10/2004.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> A statement by Dragan Čavić, 22/04/2004, available at: <https://www.youtube.com/watch?v=jsB-Wvia3fl>.

Bosnia and Herzegovina<sup>93</sup>, the commission has come under much greater and fiercer criticism from Serbian nationalist circles – both in Republika Srpska and in Serbia. Its work was called into question and politicians like Dragan Čavić who supported it saw a rapid decline in their political power and electoral support – he lost the presidential election and soon left the Serbian Democratic Party and joined the opposition. Nationalist voices in Republika Srpska, particularly Milorad Dodik, the most powerful political figure in the Serbian entity of Bosnia and Herzegovina, never forgave Čavić for his stance on Srebrenica.<sup>94</sup> Under Dodik’s leadership the Republika Srpska authorities have done all they can to challenge the commission’s findings – from providing long-term financing to projects aiming to deny facts about the nature of the Srebrenica crimes, such as the Historical Project Srebrenica<sup>95</sup>, to official revision of the commission’s work. This nationalist backlash reached its peak in August 2018 when the National Assembly of the Republika Srpska annulled the commission’s 2004 report – a move that was followed by the Government of Republika Srpska. In February 2019, the Government of Republika Srpska established the Independent International Commission of Inquiry on Sufferings of All People in the Srebrenica Region Between 1992 and 1995, as well as a similar body investigating the suffering of Serbs in Sarajevo<sup>96</sup>. The establishment of these bodies was met with criticism and condemnation by Srebrenica survivors, as well as by local, regional and international experts – primarily because of the credibility and integrity of their members, among whom are those who have denied the genocide in Srebrenica in their public announcements and work, those who have testified in defence of Slobodan Milošević at the Hague tribunal and, more generally, those who are not experts on the war in Bosnia and Herzegovina.<sup>97</sup>

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<sup>93</sup> Tanja Topić, *Otvaranje najmračnije stranice (Turning the Darkest Page)*, 01/07/2004, *Vreme*, available at: <https://www.vreme.com/cms/view.php?id=384060>.

<sup>94</sup> Aleksandar Trifunović, *Četvrt veka neisplativog pomirenja: Esej o 25 godina sećanja na Srebrenicu (A Quarter of a Century of Fruitless Reconciliation: An Essay About 25 Years of Srebrenica Remembrance)*, Friedrich Ebert Stiftung, July 2020.

<sup>95</sup> The District Public Prosecutor’s Office in Banja Luka has issued a warrant for the arrest of Stefan Karganović, the director of this project, who is suspected of tax evasion to the tune of BAM 100,000 since he spent a BAM 2 million grant from the Government of Republika Srpska without keeping any records of how the money was used. Available at: <https://www.blic.rs/vesti/republika-srpska/poternica-za-karganovicem-raspisana-jer-se-nije-pojavljivao-na-saslusanjima/7dtpdn6>.

<sup>96</sup> Haris Rovčanin, *Controversial Report Highlights Serb Victims in Wartime Sarajevo*, 13/04/2021, *Balkan Insight*, available at: <https://balkaninsight.com/2021/04/13/controversial-report-highlights-serb-victims-in-wartime-sarajevo/>.

<sup>97</sup> *Srebrenica Genocide Denial Report 2020*, May 2020, *Challenges in the Process of Coming to Terms with the Past in Bosnia and Herzegovina*, 36-37.

## **The Challenges of Coming to Terms with the Past in Bosnia and Herzegovina**

Due to the scale of crimes committed during the war in Bosnia and Herzegovina and the great number of victims, coming to terms with the legacy of the crimes of the 1990s is one of the indispensable preconditions for the process of reconciliation between the communities of Bosnia and Herzegovina and their peaceful future. Since the end of the war, war crimes trials and the processing and punishing the perpetrators of crimes have been the most important applied strategy for coming to terms with the past, not only in Bosnia and Herzegovina but in all of the countries that emerged from the former Yugoslavia. Expectations placed on criminal justice and the institutions tasked with administering it were great and manifold, not only by the communities of survivors and the families of the victims and missing, but also by civil society organisations and the international community. They were expected to determine responsibility by prosecuting many thousands of perpetrators of large-scale war crimes and uproot impunity in their own societies, contribute to justice for the victims, establish the facts on which future narratives of the past would be based and, ultimately, to institute a process of reconciliation between the communities of Bosnia and Herzegovina.

War crimes trials in Bosnia and Herzegovina began while the conflict was still underway. These trials initially took place in parallel with proceedings at the ICTY, however, due to a lack of coordination between prosecutor's offices and concerns about the fairness of trials before local courts, the Rome Agreement was concluded in 1996, which created the Rules of the Road procedure that granted the ICTY oversight over criminal prosecutions in Bosnia and Herzegovina (the Bosnian authorities submitted materials on every case for review to the ICTY prior to enacting arrests or raising indictments)<sup>98</sup>. This was in force until August 2004, when the ICTY transferred its authority to the newly established Prosecutor's Office of Bosnia and Herzegovina.

The mid-2002 adoption of the Law on the Court of Bosnia and Herzegovina complicated the existing organisational structure of this court by establishing new special departments, Section I

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<sup>98</sup> OSCE, Observations on the National War Crimes Processing Strategy and its 2018 Draft Revisions, including its relation to the Rules of the Road "Category A" cases, 2018.

for war crimes and Section II for organised crime, economic crime and corruption. Some time later, in 2003, the Law on the Prosecutor's Office of Bosnia and Herzegovina was adopted, on the basis of which a Special Department for War Crimes was formed within the Prosecutor's Office. This department processed three kinds of cases: a) cases in which the ICTY had issued an indictment but had not begun proceedings and had handed the case over to Bosnia and Herzegovina<sup>99</sup>; b) cases in which the tribunal had concluded its investigation but had not raised an indictment; and c) cases that the Prosecutor's Office of Bosnia and Herzegovina had initiated independently.

In order to speed up the process of resolving a large number of war crimes cases in a systematic manner, in September 2007 the Ministry of Justice of Bosnia and Herzegovina founded a working group tasked with developing the National Strategy for war crimes and resolving issues pertaining to war crimes, which was adopted in 2008. The strategy defined the systematic approach to the problem of processing a large number of war crimes cases by prosecutors and courts in Bosnia and Herzegovina, including issues regarding timeframes, capacity, criteria and administration mechanisms, issues of regional cooperation, harmonisation of judicial practice, protection and support for victims and witnesses, financial questions and oversight over the implementation of the strategy.<sup>100</sup> Particular emphasis was placed on the timeframes for processing war crimes: the strategy foresaw that the most complex and highest priority cases would be completed within seven years (by 2015), while for the processing of other cases a deadline of 15 years was envisaged (by the end of 2023), which proved too tight a deadline to adhere to.

Due to the overly ambitious timeframes outlined for the completion of the most complex and highest priority cases and due to issues with the implementation of goals set out by the 2008 strategy, in 2017 the Council of Ministers of Bosnia and Herzegovina established the Working Group for Amendments to the National War Crimes Processing Strategy, which was ready in 2018 but was only adopted by the Council of Ministers in September 2020.<sup>101</sup> As of 2017, according to the Revised National War Crimes Processing Strategy, the Prosecutor's Office of

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<sup>99</sup> In line with Rule 11 *bis* of the Rules on Procedure and Evidence.

<sup>100</sup> Ministry of Justice of Bosnia and Herzegovina, Public Announcement, 29/11/2008, in: Judge Joanna Korner, Processing of War Crimes at the State Level in Bosnia and Herzegovina, report, 2016.

<sup>101</sup> Nermina Kuloglija and Haris Rovčanin, Bosnia Adopts Long-Delayed National War Crimes Strategy, Balkan Insight, 24/09/2018, available at: <https://balkaninsight.com/2020/09/24/bosnian-adopts-long-delayed-national-war-crimes-strategy/>

Bosnia and Herzegovina had more than 562 unsolved war crimes cases in which more than 4,699 known perpetrators were named and almost 600 cases in which the perpetrators remain unknown.<sup>102</sup>

The problems the institutions of Bosnia and Herzegovina are facing in processing war crimes are evident, visible and have been pointed out by representatives of international institutions, local and international experts, civil society institutions and, of course, survivors' communities. One of the gravest criticisms levelled at the Prosecutor's Office of Bosnia and Herzegovina is the focus on achieving statistical results by resorting to processing simpler cases in lieu of prosecuting high-ranking perpetrators.<sup>103</sup> Additionally, the prosecutor's office has resorted to indictments against lower-ranking perpetrators (even though it ought to focus on those in positions of authority or command)<sup>104</sup>; raising multiple separate indictments covering the same event and raising multiple indictments against the same individual, which forces victims and witnesses to testify repeatedly, placing them in danger of being exposed to trauma time and again but also wastes the valuable resources of the prosecutor's office<sup>105</sup>; and has shown inconsistencies in legal definition of and legal issues pertaining to command responsibility.<sup>106</sup> Moreover, in many cases indictments were returned in order to be revised due to the unsatisfactory quality and contents thereof, but also due to the submission of indictments before investigations had been concluded – a result of the insistence on indictments being raised.<sup>107</sup>

Although Bosnia and Herzegovina has made the greatest strides in this process when compared to how other countries are dealing with the legacy of war crimes, many experts and international observers nonetheless conclude that the Prosecutor's Office of Bosnia and Herzegovina is slowing the process of achieving justice for victims as it is failing to process war crimes cases with sufficient quality or efficacy.

## **Perception of Justice by the Victims of the Srebrenica Genocide**

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<sup>102</sup> Revised National War Crimes Processing Strategy, May 2018.

<sup>103</sup> Joanna Korner, *Procesuiranje ratnih zločina na državnom nivou u Bosni i Hercegovini (Processing of War Crimes at the State Level in Bosnia and Herzegovina)*, June 2016. Available at: <http://www.osce.org/bs/bih/247226?download=true>.

<sup>104</sup> *Ibid.*, 23.

<sup>105</sup> *Ibid.*, 24.

<sup>106</sup> *Ibid.*, 26-30.

<sup>107</sup> *Ibid.*, 30-32.

Even though the former Yugoslavia and especially Bosnia and Herzegovina have been at the centre of studies of transitional justice for many years, thus far there have been no comprehensive studies of how the victims themselves perceive transitional justice processes and initiatives on a regional level. Similar studies are also lacking in some of the other countries in the region (Serbia, Montenegro, Kosovo and Croatia). Instead, research efforts have focused on polling public opinion<sup>108</sup>, as well as the attitudes of younger generations, which provide us with valuable insights into how much young people really know about the wars of the past and their attitudes to war crimes. In Bosnia and Herzegovina, a study of this kind was conducted back in 2007 by Professor Sanja Kutnjak Ivković of Michigan State University and John Hagan of Northwestern University but their research focused on perceptions of both the ICTJ and the local judiciary. The findings were published across a number of articles: Pursuit of Justice and the Victims of War in Bosnia and Herzegovina: An Exploratory Study<sup>109</sup>, and The Legitimacy of International Courts: Victims' Evaluations of the ICTY and Local Courts in Bosnia and Herzegovina<sup>110</sup>, by the same authors. Nevertheless, this 2007 study did not focus exclusively on local institutions tasked, among other things, with contributing to achieving justice for the victims. Instead, the focus was primarily on comparing attitudes to and levels of trust in the International Criminal Tribunal for the Former Yugoslavia (ICTY) in contrast to local courts. A similar study was conducted by Refik Hodžić with support from the Izvor Association from Prijedor, which focused on how victims from the Prijedor municipality perceived trials at the ICTY and before local courts for crimes committed in this northwestern Bosnian municipality.<sup>111</sup> In his study, Hodžić showed that – due to the refusal of authorities at the local level or at the level of Republika Srpska to accept the facts, due to soft sentences for perpetrators and the quantity of institutional support suspects received from the local community – the impact of war crimes trials (before international and local courts) on the achievement of justice for victims is

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<sup>108</sup> United Nations Development Programme, Mission in BiH, “Facing the Past and Access to Justice from a Public Perspective”, which provides the results of a public opinion survey on transitional justice, the scope of its strategy and approaches to justice in Bosnia and Herzegovina that was conducted in 2010.

<sup>109</sup> Kutnjak Ivković, S., Hagan, J. (2016). Pursuit of justice and the victims of war in Bosnia and Herzegovina: An exploratory study. *Crime, Law, and Social Change*, 65(1), 1–27;

<sup>110</sup> Kutnjak Ivković, S., Hagan, J. (2017). The legitimacy of international courts: Victims' evaluations of the ICTY and local courts in Bosnia and Herzegovina. *European Journal of Criminology*, Vol. 14(2).

<sup>111</sup> Hodžić, Refik, Living the Legacy of Mass Atrocities: Victims' Perspectives on War Crimes Trials (March 2010). *Journal of International Criminal Justice*, Vol. 8, Issue 1, pp. 113-136, 2010.

highly limited, irrespective of the quantity of facts established in court about crimes committed in Prijedor.<sup>112</sup>

Between January and April 2021, on the initiative of the Konrad Adenauer Foundation in Bosnia and the KAS Rule of Law Programme South East Europe, the Pravnik Association conducted research into how victims whose family members had been killed in Srebrenica and/or are still missing perceive the processes of determining responsibility for crimes committed in Srebrenica that are ongoing before local courts (the Court of Bosnia and Herzegovina) and into their attitudes towards the scope and achievements of justice for victims. The researchers conducted in-depth interviews with the respondents in order to arrive at more detailed and thorough insights into the issues covered by the study.

The vast majority of respondents were women whose male family members were killed in Srebrenica or are still missing.<sup>113</sup> The age range of the respondents was between 47 and 73, with the average age being 62.8.

Before the war 54.84 percent of the respondents had lived in the Bratunac municipality, from where most had ended up with their families in Srebrenica (one person was born in the municipality of Novi Travnik, one in Bijeljina and one in Višegrad but all three lived in Bratunac before the war), 35.48 percent had been born in Srebrenica and 9.78 percent were from Vlasenica. None of those interviewed had returned to Srebrenica after the war and they all now live in the Sarajevo Canton.

Most of the respondents, 80.65 percent, were homemakers, while 9.68 percent were unemployed, 6.45 percent were retired and 3.23 percent were in employment. Of the respondents, 58.06 percent had completed elementary school, 32.36 percent had completed secondary education, 6.45 percent were illiterate, while 3.23 percent declined to provide information about their education.

More than half (54.85%) of the respondents agreed to conduct the interviews using their real name and surname, while 45.16 percent chose to participate anonymously.

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<sup>112</sup> Ibid., 131-136.

<sup>113</sup> All of the information to follow was gathered through in-depth interviews conducted between February and March 2021 with the family members of the victims of the Srebrenica genocide.

All of the respondents were members of a number of victims' associations: the Women's Association of Podrinja-Bratunac, the Movement of Mothers of Srebrenica and Žepa Enclaves, the Organisation of the Families of Shahids and Fallen Soldiers of the Municipality of Ilidža, the Association of Bearers of the Golden Lily and the Golden Police Shield of the Ilidža Municipality. Most of the respondents had participated in the activities of a number of associations and one respondent was the vice president of one such association.

Most of the surviving family members of victims (70.97%) state that they participate in the activities of these associations by helping to make arrangements for commemorations and funerals that are organized every year in Potočari (such as preparing food for participants of marches, visitors, guests and delegations, organising transport and other similar logistical activities) and the same percentage say they participate in organised tours of the memorial site and other commemorations (70.97%). Of the respondents, 9.68 percent say they attended screenings of ICTY trials for war crimes committed in Srebrenica organised by their associations and the same percentage (9.68%) watched the trial and sentencing of Naser Orić before the Court of Bosnia and Herzegovina, while 6.45 percent say they watched some other trials before the Court of BiH. The process of exhuming the remains of genocide victims was also watched by 6.45 percent of respondents as an activity organised by their association. The same percentage of respondents did not participate in any activities organised by these associations, without providing any reasons for this. Finally, 3.23 percent say they perform some administrative tasks in the associations they are members of.

More than half of the respondents have lost two or three members of their immediate family – 61.29 percent have lost a husband, mother, father, brother and/or child.<sup>114</sup> Some 16.13 percent have lost four or more members and one respondent had lost eight family members – her

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<sup>114</sup> For the purposes of the study, we chose to classify immediate family members as members of the household in which the respondent lived before and during the war. In the specific circumstances of Srebrenica and the community therein this meant that the family units could contain several generations – grandparents, parents, children and siblings – if they all inhabited the same household.

husband, two sons and five brothers.<sup>115</sup> Losses in extended families range between ten distant relatives to several dozen and even around a hundred people.<sup>116</sup>

The act of measuring the feeling victims have about whether they have received satisfaction for the suffering they have endured and the loss they have to face on a daily basis is at the same time a measure in which we assess a society's readiness to come to terms with past crimes.<sup>117</sup> In a survey conducted in 2010, the United Nations Development Programme revealed the worrying fact that more than 81 percent of surveyed BiH citizens believe war crimes victims to be a social group neglected by all segments of society – this attitude was shared by 40 percent of all respondents and across practically all categories of respondents, while 41.0 percent thought that the attention paid to victims by the authorities and other organisations was insufficient.<sup>118</sup> In particular, this research highlighted the attitude victims have towards war crimes trials, which by their very nature focus on the perpetrators of war crimes in such a way that victims find it difficult to understand and that not only strengthens the victims' scepticism toward the work and achievements of judicial institutions but also reinforces their distrust of the general scope of criminal justice in the context of coming to terms with the past.<sup>119</sup> Further problems are caused by the relationship between governmental institutions and political elites who provide both practical assistance and support to war crimes indictees and their families, as well as support in terms of the messages they send out and the steps they take, such as the organisation of welcoming committees for perpetrators returning home upon having served their sentences or providing them with verbal and institutional support for active participation in the community and society in which they live.<sup>120</sup>

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<sup>115</sup> Statement, A. M., 05/03/2021.

<sup>116</sup> One respondent stated that the number of male members of his family has been halved, while another respondent stated that only three sisters remained of her immediate and extended family and that she had lost all of the male members of her family, whether immediate or extended.

<sup>117</sup> United Nations Development Programme, Mission in BiH, "Facing the Past and Access to Justice from a Public Perspective", Report.

<sup>118</sup> United Nations Development Programme, Mission in BiH, "Facing the Past and Access to Justice from a Public Perspective", Report. Table no. 18.

<sup>119</sup> According to the study, victims are not made aware nor do they have to know the guarantees criminal proceedings provide to war crimes indictees, such as the right to a fair trial, the possibility of serving preferential sentences or pretrial release on bail, in addition to many other rights governed by international conventions. Ibid., 30.

<sup>120</sup> A small number of civil society organisations from the region shed light on how war criminals live and the social and institutional support they enjoy. Ivica Đikić writes about this in his analysis for the Novosti news website: *Moj je tata zločinac iz rata (My Dad's a War Criminal)*, 04/10/2016, Novosti, available at: <https://www.portalnovosti.com/moj-je-tata-zlocinac-iz-rata>.

The study conducted by the Pravnik Association does not depart much from the assumptions and conclusions drawn by other research studies.

According to information gathered through in-depth interviews, the respondents evaluated the work of various institutions on a scale of 1 to 5.<sup>121</sup>

The respondents rated the work of investigative bodies, prosecutors, the Witness and Victim Support Service of the Court of BiH and trial chambers. They were specifically asked whether they had provided statements to investigating authorities, whether they had been called to testify in court and, if so, whether they were given any kind of support. They were also asked to rate the verdicts handed down by the Court of BiH. Conversations with the respondents also took place about the process of searching for their missing family members, with which institution they filed missing persons reports, whether all of the missing members of their family had been found and received proper burials and other key information about this process.

Although war crimes trials are the predominant approach to dealing with crimes committed during the war in BiH, the interviewed victims from Srebrenica evaluated the scope of criminal justice was evaluated as extremely poor – i.e. unsatisfactory. As many as 87.10 percent of responding family members of victims evaluated the work of these institutions as unsatisfactory – citing as reasons the insufficient efforts invested and the long wait for results. Some of the respondents emphasised their dissatisfaction with the investigative bodies: “The situation is not satisfactory. Some work is being done but not enough.”<sup>122</sup> One member of a victims’ association pointed out that these associations often take on the burden of investigating crimes and their consequences: “for the most part, the Mothers of Srebrenica investigate the locations of missing persons and the sites where mass graves are hidden and the human remains, instead of governmental bodies”, while the prosecutor’s office “drags out its cases”<sup>123</sup>.

Some 16.13 percent of the respondents gave statements to an investigating authority regarding the crimes in which their loved ones were killed. Some did so several times, mostly to investigative bodies in Sarajevo or Tuzla.<sup>124</sup> In none of these cases were the victims later

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<sup>121</sup> 1: Poor-unsatisfactory, 2: satisfactory, 3: good, 4: very good and 5: excellent.

<sup>122</sup> Statement, D. H., 03/03/2021.

<sup>123</sup> Statement, M. D., 03/03/2021.

<sup>124</sup> Statements: M. D., 08/03/2021, H. M., 09/03/2021, D. H., 03/03/2021, N. N., 02/03/2021, N. N., 26/02/2021.

contacted by the investigative body, nobody informed them whether an investigation would be launched, nor were proceedings initiated in any of these cases.<sup>125</sup>

In the case of one respondent's who did give a statement to BiH investigative bodies, the crime in which their family members perished was prosecuted by the ICTY and the perpetrator of the crime, Momir Nikolić, was handed a long prison sentence.<sup>126</sup> Another respondent stated that even though she gave no statement, nor was interviewed as a witness/victim before the Court of BiH, the crime in which her husband was killed was prosecuted by the Court of BiH<sup>127</sup> and that she attended the sentencing of Milorad Trbić, who was found guilty of genocide and sentenced to 20 years in prison.<sup>128</sup>

In the case of the murder of the husbands of two of the respondents, a case was launched before the High Court in Belgrade, where the victims are represented by a lawyer provided by the Humanitarian Law Centre (*Fond za humanitarno pravo*; FHP)<sup>129</sup> and the victims are regularly assisted in attending court dates in Belgrade by the FHP and the Association of Victims and Witnesses of the Genocide in BiH to observe the trial of eight members of the Jahorina Training Centre of the Special Police Brigade of the MUP of Republika Srpska for the killing of at least 1,313 Bosniaks in Kravica.<sup>130</sup> One respondent cited the support victims receive in this process from the Belgrade-based organisation, Women in Black, which also regularly organises commemorative ceremonies in Belgrade, Serbia that are dedicated to the victims of the Srebrenica genocide.<sup>131</sup>

As many as 22.58 percent of the respondents stated that they have never heard of the Witness and Victim Support Service of the Court in BiH and, of those who have heard of this department, almost half said that they do not know of anyone who has been a recipient of their support. Only one respondent said that she knows someone who was a witness before the Court of BiH and

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<sup>125</sup> Ibid.

<sup>126</sup> Statement, D. H., 03/03/2021.

<sup>127</sup> Statement, K. R., 08/03/2021.

<sup>128</sup> See section on: Determining Responsibility for Crimes Committed in Srebrenica Before the Court of BiH.

<sup>129</sup> Statement, H. O., 02/03/2021.

<sup>130</sup> The trial of members of the Jahorina Training Centre of the Special Police Brigade of the MUP of Republika Srpska is ongoing before the High Court in Belgrade. The indictees are Nedeljko Milidragović, commander of the 2<sup>nd</sup> platoon of the 1<sup>st</sup> Company, and members of the 2<sup>nd</sup> platoon Milivoje Batanica, Aleksandar Dačević, Boro Miletić, Jovan Petrović and Dragomir Parović, as well as members of the 1<sup>st</sup> platoon Aleksa Goljanin and Vidosav Vasić. They are charged with killing at least 1,313 Bosniak civilians on 14 July 1995 in and around the Kravica warehouse.

<sup>131</sup> Statement, H. O., 02/03/2021.

received their support<sup>132</sup>. More than half of the respondents did not submit a claim for damages and one of the respondents specifically stated that he expected, “the representatives of BiH institutions to inform him of this possibility and how to exercise his rights and claim damages from RS for crimes committed and property destroyed.”<sup>133</sup> Of those that did file claims for damages, 92.86 percent heard about this as a possibility via their victims’ association, through which the claims were filed. A majority of the claims were filed as part of initiatives by the Movement of Mothers of Srebrenica and Žepa Enclaves before courts in the Netherlands.

Of those respondents that rated the work of the Court of BiH as poor or unsatisfactory (87.10 percent of all respondents), the criticisms they levelled at this institution are that the trials are slow and extremely long<sup>134</sup>. Some of the victims expressed concern that the court allows, “war criminals to walk free, the trials [to] drag on” and, in their view, it is inconceivable that “war criminals are granted release on bail.”<sup>135</sup> They also associate their dissatisfaction with the length and drawn out nature of proceedings with witnesses increasingly dying of natural causes, which is something they express concern about.<sup>136</sup> One respondent also mentioned as an additional problem the threats witnesses and victims receive for taking the stand, which ultimately threatens the war crimes trial process.<sup>137</sup>

Only 6.45 percent of surveyed victims’ family members rated the verdicts handed down by the Court of BiH as good or very good, with the remaining 93.55 percent rating them as poor or unsatisfactory. Above all, they were deemed inadequate and out of proportion to the gravity of the committed crimes.<sup>138</sup> One respondent even evaluated them as, “woeful in relation to the committed acts”<sup>139</sup>, while another said they were, “demeaning for victims”<sup>140</sup> and, “minimal”. Consequently, convicts behave as though they have not been convicted. An additional problem is created by the early release of those convicted of the gravest violations of international law, which the victims not only as the impunity enjoyed by the perpetrators but also as a continuation

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<sup>132</sup> Statement, E. T., 05/03/2021.

<sup>133</sup> Statement, D. H., 03/03/2021.

<sup>134</sup> Statement, M. H., 03/03/2021 and Statement, N. N. (a), 04/03/2021.

<sup>135</sup> Statement, M. H., 03/03/2021.

<sup>136</sup> Statement, K. R., 08/03/2021.

<sup>137</sup> Statement, K. R., 08/03/2021.

<sup>138</sup> Statement, B. H., 03/03/2021.

<sup>139</sup> Statement N. N. (a), 04/03/2021.

<sup>140</sup> Statement, M. H., 03/03/2021.

of the injustice they have endured.<sup>141</sup> For one respondent, the pretrial release of suspects or the early release of convicts who have served some of their sentence shows that employees in the judiciary face obstruction, that they downplay crimes and that they clearly side with the perpetrators.<sup>142</sup> According to this survivor, along with the short sentences handed out to perpetrators, such decisions, “can encourage and lead to a new genocide.”<sup>143</sup>

In none of these cases did the interviewed family members of Srebrenica genocide victims answer in the affirmative that in their case, that of their family or community, justice was served.

In analyses conducted to date of the BiH judiciary’s results and efforts in determining responsibility for crimes committed during the war, little or no attention has been paid to how the process is perceived by the victims’ families and survivors. The focus has mostly been on adhering to established standards, ensuring trial fairness and also achieving greater effectiveness in resolving cases. The suspected criminal is, by the very nature of these institutions, at the heart of their activities, since determining individual criminal responsibility is their primary task. War crimes survivors and victims’ family members, on the other hand, cannot influence the decision-making process of prosecutors and/or judges.<sup>144</sup> Even so, in the context of war crimes trials and transitional justice processes, the role of the victim is not and cannot be reduced to simply another form of evidence.<sup>145</sup> Above all, victims must be properly informed about, among other things, the realistic expectations of the process, their procedural rights, the course of the process and its outcomes. It is particularly important to establish and maintain channels of communication with victims who have been called as witnesses and/or given statements on distressing events so as to prevent them reliving their traumatic experience of evoking the feeling that their suffering is not important enough to be part of the process.<sup>146</sup> As Hodžić noted in his analysis of victims’ perceptions in Prijedor, many victims feel themselves to be in a kind of limbo, vacillating between expectations of inclusion – which create additional feelings of anxiety due to the fear of being exposed to the perpetrators and feelings of inadequacy that arise due to

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<sup>141</sup> Statement, N. N., 09/03/2021.

<sup>142</sup> Statement, D. H., 03/03/2021.

<sup>143</sup> Ibid.

<sup>144</sup> OHCHR, Rule of Law tools for post-conflict states: Prosecution initiatives, 2006.

<sup>145</sup> Ibid.

<sup>146</sup> Ibid.

the fear of their statement ‘not being good enough to be included in the process’ – and not having the chance to tell their story in court.<sup>147</sup>

An additional problem arises from the difficulty survivors have with recognising and understanding the complexity of judicial processes or the legislation that governs them, which causes them to be dissatisfied with certain decisions made by prosecutors and judges or with the sentences imposed. On the one hand, it is not unusual for indictees to be released on bail but in the context of war crimes and transitional justice the determination whether the suspect should remain in custody during the proceedings cannot be the only criterion and the attitudes of survivors and victims must be taken into account – particularly if the suspect and survivors live in the same community and visit the same places. In addition to giving rise to fears for their own safety and traumas that cannot heal due to daily encounters with war crimes suspects, the act of releasing suspects on bail also gives rise to feelings of injustice among survivors and the families of victims, since it makes them feel that suspects are more important than victims. This further contributes to deterioration of trust in the judiciary. At the same time, soft sentencing and the frequent practice of taking into account mitigating circumstances in war crimes sentencing renders completely meaningless any sense that these punishments serve to prevent future crimes or that one of the aims of these trials is to contribute to the serving of justice for war crimes victims.

Consequently, it is imperative that the judiciary recognise the importance of communication with survivors’ communities, to keep communication channels open and to ensure ease of access to information that is relevant to the community – such as, for example, explanations of the trial process and what the possible outcomes could be. This would contribute to communities of survivors and the families of victims being included in the process from the very beginning and ‘justice for victims’ will no longer be an empty phrase the judiciary relies on in discussing this topic.

The respondents cited genocide denial as the greatest social problem in the process of coming to terms with the past when it comes to the genocide in Srebrenica. As many as 96.77 percent explicitly stated that national-level legislation needs to be passed in Bosnia and Herzegovina to regulate this practice and determine penalties for those who engage in it. Moreover, 77.42

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<sup>147</sup> Hodžić, Refik, *Living the Legacy of Mass Atrocities: Victims’ Perspectives on War Crimes Trials* (March 2010). *Journal of International Criminal Justice*, Vol. 8, Issue 1, 2010, 124.

percent of the respondents felt that BiH institutions must speed up the process of resolving the fate of those still missing from Srebrenica, find the missing and punish and prosecute those responsible for these crimes. They gave multiple reasons for this: the victims are ageing and passing away and there is a real fear that many of them will never find their family members and will thus not live to see justice served.<sup>148</sup> Additionally, some of the victims frequently encounter those responsible for the murder or disappearance of their family members on the streets of, for example, Bratunac or Vlasenica.<sup>149</sup> One respondent reported feeling extremely unsafe when visiting Srebrenica as she and her children had already been subjected to verbal attacks by their Serbian neighbours<sup>150</sup>. Several participants placed particular emphasis on the issue of returning to their homes and the returnee population, stating that it is important to provide more assistance. This should include compensation for harm endured<sup>151</sup> but also profound changes that would mean designating Srebrenica as a separate district, ‘to return it in some way to the victims, because those who committed the crimes decide on returns, renewal, movement and maintenance of the burial site and commemorations in Potočari.’<sup>152</sup>

## **Conclusion**

The genocide in Srebrenica stands out as a unique crime committed during the wars in former Yugoslavia, above all because it is the only one international legal bodies have defined as genocide but also because it is the final culmination of all operations undertaken against the population of Bosnia and Herzegovina from April 1992 onwards. In spite of the fact that the events in Srebrenica from July 1995 have been defined as genocide by the International Criminal Tribunal for the former Yugoslavia, by the International Court of Justice and in a slew of verdicts by the Court of BiH, the process of genocide denial and revision of established facts has gained momentum in recent years – though it was never truly interrupted.<sup>153</sup> The policy of denying the suffering of victims continues at various institutional and social levels.

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<sup>148</sup> Statement, A. M., 05/03/2021.

<sup>149</sup> Statements: D. H., 03/03/2021, N. N., 09/03/2021, N. N., 08/03/2021.

<sup>150</sup> Statement, Z. A., 05/03/2021.

<sup>151</sup> Statement, N. N., 04/03/2021.

<sup>152</sup> Statement, M. H., 03/03/2021.

<sup>153</sup> Srebrenica Genocide Denial Report 2020, May 2020, 35.

“For the survivors of mass violence and the families of its victims, denial unleashes renewed anguish. Not only does it attempt to invalidate their past suffering, it targets the living memories of these traumas, which are integral to collective processes of identity rehabilitation as well as individual psychological reckoning. For victims and their families, the claims of deniers are a form of humiliation, particularly when they emanate from or are echoed by the upper echelons of society. At this point, genocide denial becomes not just an indignation suffered by a historically persecuted group, but a potential threat. When the violence committed against this group garners political capital, it is impossible to dismiss the portent for renewed violence against the marginalized minority. Genocide denial invigorates and emboldens perpetrators; in the absence of a societal consensus on the historical fact and moral delinquency of past violence, the possibility looms ever more presently that this violence will be repeated.”<sup>154</sup>

It is not surprising, therefore, that most of the surveyed representatives of the community of survivors identified the denial of genocide in Srebrenica as one of the fundamental problems of the society and institutions of Bosnia and Herzegovina. Since 2016, when Gregory Stanton defined genocide as having ten levels, he defined denial as the final phase of genocide.<sup>155</sup> Citing effective measures against genocide denial, Stanton paid particular attention to the criminal justice system – i.e. the verdicts of international and local courts that contradict those who deny, relativize, down play, justify and/or dispute genocide. For genocide denial to be truly eradicated from society, however, justice must be accompanied by other measures: education through schooling and the media about genocide, about the suffering of victims, about the motivations of perpetrators and the need to afford the victims their rights.<sup>156</sup> Only then can we talk about justice being served in the eyes of the victims.

When it comes to dealing with responsibility for the genocide in Srebrenica in the context of Bosnia and Herzegovina as a whole, there are too many challenges for them all to be covered in a small survey. What this survey has shown, however, raises concerns due to the predominant

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<sup>154</sup> Srebrenica Genocide Denial Report 2020, May 2020, 25.

<sup>155</sup> The ten phases are: classification, symbolisation, discrimination, dehumanisation, organisation, polarisation, preparation, persecution, extermination and denial. Available at: <http://genocidewatch.net/genocide-2/8-stages-of-genocide/>.

<sup>156</sup> Ibid.

sense that most of the victims experience war crimes trials and the process of determining responsibility as an open-ended injustice, rather than as a process after which they will feel satisfaction for the suffering they have endured.<sup>157</sup>

In spite of all of the institutional efforts to develop conscientious attitudes to the genocide in Srebrenica – through the prosecution and punishment of the perpetrators and by establishing the facts about the massacres committed in July and August 1995 – the trend since the crime itself but increasingly so in recent years has been for the facts to be denied, the trials to become fewer and farther between, the victims to die unrecognised and for the perpetrators to enjoy increasing state and institutional support from those leading genocide denial.

Recent initiatives by Republika Srpska to form two international commissions staffed by people who do not instil confidence among victim communities because some of them have publically denied the genocide in Srebrenica<sup>158</sup> are a continuation of the entity's ongoing policy to deny and relativize the crime, to humiliate the victims and to embolden and reward the perpetrators. At the same time, war crimes trials are losing momentum and import because of a focus – primarily by the BiH Prosecutor's Office – on predetermined norms that must be fulfilled through set goals<sup>159</sup>, rather than on the essence of the process of determining responsibility for crimes committed. The trials themselves are too long and too slow, sometimes running on for several years, while victims continue to die in increasing numbers without seeing justice served. An additional problem is the lack of a comprehensive system for reparations, which would transform this issue from one of social welfare to one of just and true reparations for the suffering victims have endured. Moreover, the victims who do get an opportunity to testify against perpetrators of war crimes and are awarded compensation from the perpetrator in criminal proceedings (without being transferred to civil court), are often unable to collect the damages because the perpetrators and, in many cases, the governmental institutions of BiH are obstructing this process.<sup>160</sup>

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<sup>157</sup> Statement, N. N., 04/03/2021.

<sup>158</sup> Albina Sorguc, Bosnian Serbs' War Commissions: Fact-Seeking or Truth-Distorting?, Balkan Insight, 25/02/2019, available at: <https://balkaninsight.com/2019/02/25/komisije-rs-a-za-istravanje-ratnih-stradanja-potruga-za-cinjenicama-ili-prekranje-istine/?lang=sr>.

<sup>159</sup> Joanna Korner, Processing of War Crimes at the State Level in Bosnia and Herzegovina, June 2016, 13.

<sup>160</sup> In November 2017, "Mrs A" from BiH, a woman who had survived wartime sexual violence was being represented by the TRIAL International NGO, filed a complaint against Bosnia and Herzegovina with the UN Committee Against Torture precisely because of the authorities failure to fulfil their obligations under the Convention and realise Mrs A's effective and enforceable right to adequate compensation. The Committee ordered Bosnia and Herzegovina to, *inter alia*, pay the compensation. The Committee's ruling required Bosnia and

Returnees to Srebrenica are a particularly sensitive category of survivors affected by these problems – they are exposed to constant provocations and verbal harassment, as well as attacks and insults. Consequently, some of the survey respondents support political calls for Srebrenica to be granted special status beyond the Republika Srpska and amendment of the Election Law according to which elections in Srebrenica would take place on the basis of the pre-war census.<sup>161</sup>

At the same time, the constant obstruction practiced by the institutions of neighbouring Serbia in response to requests from the judiciary of Bosnia and Herzegovina in addition to the daily messages sent out by authorities in Republika Srpska and Serbia are a cause of great concern for the community of victims and survivors, leaving them feeling humiliated and that their suffering goes on unrecognised.

For the reconciliation process in Bosnia and Herzegovina to finally move forward again, several steps must be taken. Above all, the judiciary must focus on substantive issues (such as the prosecution of the most complex cases of genocide, crimes against humanity or the most complex forms of responsibility, accepting court-established facts and their official recognition), a comprehensive reparations programme should be created and tangible assistance should be provided to the returnee population. All of this together would contribute to the reconciliation process, which is indispensable for a peaceful future, not only for Bosnia and Herzegovina but for the whole post-Yugoslav space.

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Herzegovina to establish an effective national system for reparations so that all war crimes victims could receive compensation. To date, BiH has not fulfilled this ruling. For more, see: <https://trial.ba/?p=969>.

<sup>161</sup> Statement, M. H., 03/03/2021.

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