



## APPEAL JUDGEMENT

# Convictions for Kosovo crimes upheld for four senior Serbian officials

On 23 January, the Appeals Chamber partially granted the appeals of both the Defence and the Prosecution in the Šainović et al. case involving four Serbian senior officials from the political, military, and police establishment of the Federal Republic of Yugoslavia (FRY) and Serbia. In its judgement, the Appeals Chamber reduced the sentence of Nikola Šainović from 22 to 18 years of imprisonment, the sentence of Sreten Lukić from 22 to 20 years of imprisonment, and the sentence of Vladimir Lazarević from 15 to 14 years in prison. The 22 year sentence of Nebojša Pavković was affirmed.

The case concerned crimes committed by Serbian forces in Kosovo between March and May 1999 when, after the start of the NATO bombing of Yugoslavia, a campaign of violence was launched against the Kosovo Albanian civilian population, during which many were forcibly displaced, incidents of killing and sexual assault took place, and mosques were intentionally destroyed. During the relevant period the four appellants occupied some of the most senior positions in the Federal Republic of Yugoslavia and Serbia: Šainović was Deputy Prime Minister of the FRY, Pavković was commander of the 3rd Army of the Army of Yugoslavia (VJ), Lazarević was commander of the VJ Priština Corps, and Lukić head of the Serbian Ministry of the Interior (MUP) staff in Priština.

The Appeals Chamber confirmed the Trial Chamber's finding that, during the spring of 1999, in all of the 13 Kosovo municipalities where specific crimes were charged, "forces of the FRY and Serbia deliberately and forcibly displaced Kosovo Albanian civilians both within and outside of Kosovo" and that during the forcible displacement of the Kosovo Albanian population, the FRY and Serbian forces killed hundreds of individuals, destroyed or damaged mosques, and sexually assaulted Kosovo Albanian women.

The Chamber also confirmed, Judge Tuzmukhamedov dissenting in relation to Šainović, the Trial Chamber's conclusion that Šainović, Pavković and Lukić are guilty of participation in a joint criminal enterprise (JCE) with the goal of forcibly displacing the Kosovo Albanian population, and are individually responsible for a number of crimes found to constitute crimes against humanity and violations of the laws or customs of war. Similarly, the Appeals judges confirmed that Lazarević bears individual responsibility for aiding and abetting crimes against humanity.

With regards to the appeals made by the Defence, the Chamber granted a number of them and vacated various convictions as a result. Among other things, the Appeals Chamber presented its conclusions as to Lazarević's arguments that the Trial Chamber had erred in convicting him for aiding and abetting the crimes of deportation and inhumane acts (forcible transfer), since his alleged acts and omissions were not specifically directed to assist these crimes. The Appeals Chamber, after a careful examination of the jurisprudence of the ICTY and the ICTR, as well as customary international law, concluded, Judge Tuzmukhamedov



dissenting, that "specific direction" is not an element of the aiding and abetting mode of liability. Thus, Lazarević's challenge was dismissed.

The Chamber also granted, in part, some of Prosecution's grounds of appeal regarding sexual assaults, but declined to enter new convictions on appeal.

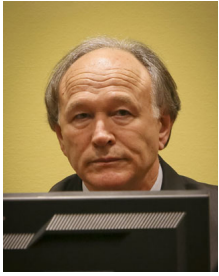
Regarding the appeals from all parties concerning sentencing, the Appeals Chamber found merit in the arguments of the Prosecution, Šainović, and Lukić pertaining to the Trial Chamber's failure to individualise the sentences, as well as Lukić's arguments regarding the assessment of his surrender as a mitigating circumstance. Overall, the Chamber stated that "in light of the circumstances of this case, as well as the gravity of the crimes for which the appellants are responsible, and taking into account the principle of proportionality, a limited reduction in the sentences imposed by the Trial Chamber is warranted in relation to Mr Šainović, Mr Lazarević, and Mr Lukić".

Judge Liu Daqun appended a partially dissenting opinion and a declaration, and Judge Arlette Ramarosan and Judge Bakhtiyar Tuzmukhamedov appended dissenting opinions.

The Šainović et al. trial counts among the Tribunal's largest and most complex. Trial proceedings began on 10 July 2006 against six accused, including Milan Milutinović, the former president of Serbia, and Dragoljub Ojdanić, chief of the General Staff of the VJ. The proceedings concluded on 27 August 2008. The Trial Chamber heard oral testimony from a total of 235 witnesses, and admitted over 4,300 exhibits. First instance judgement was passed on 26 February 2009. In addition to the four convictions, the Trial Chamber acquitted Milutinović of all charges and Ojdanić was convicted to 15 years of imprisonment for aiding and abetting war crimes and crimes against humanity. The Office of the Prosecutor and Ojdanić's defence withdrew their appeals in January 2013, and he was granted early release on 10 July 2013.

The [full text of the judgement](#) can be found on the ICTY website.

APPEAL JUDGEMENT



## Đorđević’s responsibility for Kosovo crimes confirmed

On 27 January, the ICTY Appeals Chamber pronounced its judgement in the case of Vlastimir Đorđević, confirming his guilt for crimes committed by Serbian forces during a campaign of terror and violence against Kosovo Albanians during the conflict in Kosovo. The Chamber partially granted the appeals of both the Defence and the Prosecution and reduced Đorđević’s sentence from 27 years in prison to 18 years.

The case concerned events in Kosovo between 1 January and 20 June 1999. During this time, Đorđević was Assistant Minister of the Serbian Ministry of Internal Affairs (MUP) and chief of its Public Security Department (RJB).

In 2011, a Trial Chamber convicted Đorđević for committing war crimes and crimes against humanity through his participation in a joint criminal enterprise (JCE). It also found him guilty on the basis of aiding and abetting the same crimes.

The Appeals Chamber confirmed the Trial Chamber’s finding that, during the time relevant to the indictment, Đorđević participated in a JCE which had the purpose of changing the ethnic balance of Kosovo to ensure Serbian control over the province and was implemented through the crimes of murder, deportation, other inhumane acts (forcible transfer), and persecutions.

The Chamber reversed Đorđević’s convictions on the basis of aiding and abetting the crimes committed in Kosovo. It found that “the criminal conduct of Mr Đorđević is fully reflected in a conviction based solely on his participation in JCE”.

The Appeals Chamber also reversed certain Trial Chamber findings in relation to Đorđević’s responsibility for crimes committed in the implementation of the JCE. Specifically, the Trial Chamber’s findings on deportation and persecutions through deportation with regard to the displacement of persons from Kosovo to Montenegro were overturned as the Appeals Chamber found no support for the existence of a de facto border, a condition necessary to establish the crime of deportations.

Furthermore, the Chamber reversed the first-instance findings on Đorđević’s criminal responsibility in relation to a limited number of specific incidents. These included deportation from Kladernica/Klladërnice (Srbica/Skënderaj municipality), and Suva Reka/Suharekë town, as well as other inhumane acts (forcible transfer) at Brocna/Burojë and Tušilje/Tushilë (Srbica/Skënderaj municipality) and Ćuska/Qyushk (Peć/Pejë municipality). Moreover, Đorđević’s conviction for murder in relation to the killing of 11 individuals at Podujevo/Podujevë town and Mala Kruša/Krushë e Vogël (Orahovac/Rahovec municipality) was reversed. The conviction for the crime of persecutions in relation to these incidents was also quashed.

The Chamber granted the Prosecution’s appeal regarding sexual assaults. It found, Judge Güney and Judge Tuzmukamedov dissenting in part, Đorđević guilty of persecutions through sexual assaults in relation to several incidents, pursuant to the third category of JCE.

Overall, the Appeals Chamber granted one of Đorđević’s grounds of appeal in full, and three grounds in part. It also granted one of the two grounds presented by the Office of the Prosecutor.

Judge Güney appended a partially dissenting and separate opinion and Judge Tuzmukamedov appended a dissenting opinion.

Đorđević was indicted in 2003 but remained on the run until his arrest on 17 June 2007. His trial began on 27 January 2009 and concluded with closing arguments on 13 and 14 July 2010. The trial judgement was pronounced on 23 February 2011.

The [full text of the judgement](#) can be found on the ICTY website.

## FACTS & FIGURES

<p><b>161 INDIVIDUALS INDICTED</b></p> <p>Since the very first hearing (a deferral request in the Tadić case) on 8 November 1994, the Tribunal has indicted a total of <b>161</b> individuals, and has already completed proceedings with regard to <b>141</b> of them.</p> <p><b>18</b> have been acquitted, <b>74</b> sentenced (<b>17</b> have been transferred to serve their sentence, <b>6</b> are awaiting transfer, <b>48</b> have served their term, and 3 died while serving their sentence), and <b>13</b> have had their cases transferred to local courts.</p>	<b>141</b>	Total number of accused whose proceedings have been completed.
	<b>36</b>	Cases terminated (either because indictments were withdrawn or because the accused died, before or after transfer to the Tribunal).
	<b>20</b>	Proceedings are on-going with regard to 20 accused: 4 are currently on trial, and 16 are at the appeals stage.
	<b>35</b>	A further 35 individuals have been or are the subject of contempt proceedings.