

## **On Appeal, Kosovo Convictions Largely Upheld**

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Technical alterations lead to cuts in some sentences for four defendants.

Four former high-ranking Serbian military and political officials this week had their convictions mostly upheld in relation to crimes committed against civilians during the late 1990s conflict in Kosovo.

In 2009, judges convicted Nikola Sainovic, Nebojsa Pavkovic, Vladimir Lazarevic and Sreten Lukic for their role in “a broad campaign of violence directed against the Kosovo Albanian civilian population conducted by forces under the control of the Federal Republic of Yugoslavia and Serbian authorities, during which there were incidents of killing, sexual assault, and the intentional destruction of mosques”.

The judges found that “it was the deliberate actions of these forces during this campaign that caused the departure of at least 700,000 Kosovo Albanians from Kosovo in the short period of time between the end of March and beginning of June 1999. Efforts by [Serbian police] to conceal the killing of Kosovo Albanians by transporting the bodies to various areas of Serbia also suggested that the killings were criminal in nature”.

Three of the men – Sainovic, a former deputy prime minister of the Federal Republic of Yugoslavia, former army general Pavkovic, and ex-police commander Lukic – were found guilty of murder, persecution, and forcible transfer. Each was sentenced to 22 years in prison.

The fourth defendant, high-ranking army commander Vladimir Lazarevic, was convicted of deportation and forcible transfer and sentenced to 15 years.

The men appealed against their convictions, as did a fifth accused, former chief-of-staff of the Yugoslav army Dragoljub Ojdanic, who dropped his appeal in January 2013. Ojdanic, who had been sentenced to 15 years in prison, was granted early release in August 2013.

A sixth co-accused, former Serbian president Milan Milutinovic, was acquitted of all charges in the original 2009 verdict.

During the appeal verdict read in open court on January 24, the bench made some technical alterations to the convictions, which resulted in a few years being shaved off some of the sentences.

Sainovic’s term was reduced from 22 to 19 years; Lazarevic will serve 14 years instead of 15; and Lukic’s term was cut to 20 years from 22. Pavkovic’s 22-year sentence was upheld.

Sainovic’s his conviction for murder and persecution – committed through participation in a joint criminal enterprise (JCE) in relation to eight municipalities – was reversed. The bench also reversed his conviction for deportation and inhumane acts as a member of a JCE in relation to one municipality.

The appeals judges found that the trial chamber “incorrectly found Sainovic not guilty for committing, through his participation in a JCE, persecution through sexual assaults” in three municipalities, but “decline[d] to enter a new conviction against him in this regard”. They came to the same conclusion in Pavkovic’s case with regard to sexual assaults committed in Pristina.

The bench dismissed Pavkovic’s entire appeal, but on its own initiative reversed his convictions as a member of a JCE for deportation in two municipalities, and also reversed his murder conviction as a JCE participant with respect to 274 of the 287 Kosovo Albanians killed during operations in the Reka/Caragoj valley.

Appeals judges reversed Lazarevic’s convictions for aiding and abetting deportation and forcible transfer in three municipalities. At the same time, they found that the trial chamber “incorrectly found Lazarevic not guilty for aiding and abetting” those same crimes in five other areas, but declined “to enter new convictions against him in this regard”.

Lukic saw his convictions for murder and persecution, as a JCE participant, reversed in relation to five municipalities, as well as with respect to 274 of the 287 Albanians killed in the Reka/Caragoj valley.

As they did with his co-defendants, the judges concluded that the trial chamber has incorrectly found Lukic not guilty of sexual assault, through his participation in a JCE, in three municipalities, but declined to enter any new convictions against him.

Perhaps the most striking part of the appeals judgement was the bench’s total rejection of the “specific direction” concept as it relates to aiding and abetting.

Last year, a different appeals bench overturned the conviction of former Yugoslav army chief Momcilo Perisic for aiding and abetting mass crimes in Bosnia, on the grounds that the original trial chamber had “declined to consider whether Mr Perisic specifically directed aid” towards the crimes of the Bosnian Serb army. (See **Yugoslav Army Chief Acquitted on Appeal.**)

That ruling was extremely controversial and some observers argued that it made aiding and abetting almost impossible to prove. (For more on the issues at stake, see **Do Overturned Convictions Undermine Hague Tribunal?.**)

The judges this week noted that the Perisic appeals bench had used two previous cases to support its conclusion that specific direction is “an element of the actus reus [act] of aiding and abetting liability”. However, the Sainovic bench found that these cases conflicted with one another on the matter, and therefore decided to make its own assessment.

“Prior to the Perisic judgement, no independent specific direction requirement was applied by the appeals chamber to any of the facts before it,” the appeals bench noted in their judgement.

“The appeals chamber finds that in assessing the actus reus of aiding and abetting, the trial chamber was not required to determine whether Mr Lazarevic’s acts were specifically directed to assist, encourage, or lend moral support to the commission of the crimes by the [Yugoslav army]. Thus, his arguments to the contrary are dismissed,” Judge Liu Daqun said.

“Specific direction” is likely to make future appearances at the tribunal. Last May, the doctrine was cited in the acquittals of former Serbian intelligence officers Jovica Stanisic and Franko Simatovic. The prosecution has appealed, but a date for a hearing has not been set.

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