

## **Bosnian Court Prepares for First Hague Case**

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Local war crimes chamber officials say first UN tribunal referral reflects international confidence in Bosnian judicial institutions.

The Hague tribunal is expected to refer its first case to Bosnia and Hercegovina's newly-established national war crimes chamber in the coming weeks. The move has been welcomed by local officials, but some victims' groups with a dim view of the UN court's record wonder whether the new chamber will fare any better.

A three-judge "referral bench" at the tribunal ruled on May 17 that proceedings against former Bosnian Serb soldier Radovan Stankovic should be heard before the specialist chamber of the state court in Sarajevo.

Lawyers for Stankovic, who is charged with enslaving and raping Muslim and Croat women in the eastern Bosnian town of Foca in 1992, now have 15 days to file their objections. But if appeals judges uphold the decision, Stankovic could be transferred to Bosnia within a month.

The referral of indictments against low- and mid-ranking defendants to national courts in the Balkans forms a key element of plans to finish all trials and appellate proceedings in The Hague by the end of 2010.

And representatives of the Sarajevo court – which opened in March following intensive work by local and international experts, and the passing of whole tracts of new legislation – have made it clear they are keen to get started.

At the same time, Bosnian victims groups have shown mixed reactions to the decision to refer the Stankovic case to Sarajevo.

Foca became notorious during the war in Bosnia for the huge numbers of women there who were subjected to brutal beatings, sexual assaults and rapes following the takeover of the town by Serb forces in 1992.

Prosecutors allege that Stankovic, who was aged 23 at the time, ran a house where women and girls as young as 12 were kept and were repeatedly raped. He faces four counts of crimes against humanity and four counts of violations of the laws or customs of war.

With more than 50 suspects awaiting trial in The Hague, some ten indictees still at large and just a few more years for the UN court to complete its work, it is hoped that referrals to national jurisdictions in the Balkans with help clear the backlog.

Hague tribunal rules allow for appropriate war crimes cases to be referred either to the country where the crimes in question are alleged to have taken place, or where the accused was arrested, or to any other state that is willing and able to conduct a fair trial.

Prosecutors say the case of Stankovic, who was detained by NATO troops in his home near Foca in 2002, fulfils all three of these conditions for a trial in Bosnia. They have argued that the Sarajevo court, with its

multi-ethnic staff and international contingent, is perfectly capable of conducting a fair trial.

If the judges' ruling this week is upheld at the appeals stage, Hague prosecutors will proceed to forward their evidence against Stankovic to Bosnian state prosecutors. Protective measures for nine witnesses will also be carried over into proceedings in the state court.

Analysts believe that Stankovic is unlikely to be in the dock before August.

However, the accused appears to be less than taken with the idea of a Sarajevo trial. At a hearing to discuss the possibility of a referral earlier this year, he had to be forcibly escorted from the courtroom after he refused to curtail a heated tirade about the Bosnian justice system.

But officials in Bosnia are overwhelmingly positive about the decision to refer his case.

"[This decision] shows the confidence the international community has in the judicial institutions of Bosnia and Hercegovina," the head of the Bosnian state court's war crimes chamber Vaso Marinkovic said at a press conference on May 18.

On the same day, the international community's High Representative in Bosnia, Lord Paddy Ashdown, expressed optimism about the implications of this development.

"It means that Bosnia and Hercegovina can now be a full partner with the [UN court] in trying Hague indictees under entirely domestic auspices," he said.

The Hague tribunal's representative in Sarajevo, Matias Hellman, told IWPR that the move to refer the Stankovic case marks only "a first step", with many more cases likely to follow.

Hague prosecutors have so far submitted requests for 17 other indictees to be referred to local courts in the Balkans. Eleven of these, they argue, should be tried in Bosnia.

In a speech to senior members of the Organisation for Security and Cooperation in Europe in Vienna on May 19, Hague tribunal chief prosecutor Carla Del Ponte reported that, in addition, her office has already begun to refer more than 60 cases in which investigations have been carried out but indictments have not yet been issued.

Most local victims' groups are pleased with the referral process, but some of those who have been critical of the Hague's record wonder whether the Bosnian chamber will fare any better.

Slavisa Jovicic, deputy president of the Republika Srpska association of former camp inmates, said, "The Hague tribunal is a failed project. It has spent millions of dollars and now it is looking how to get away from doing its job.

"The Hague had three aims: justice, truth and reconciliation. Not one of these was achieved. I hope the state court is not going to be just a copy of The Hague because it would be a catastrophe," he said.

Bakira Hasecic, president of the organisation Women Victims of War, whose members come from all over Bosnia, said devolving cases to Bosnia was a “catastrophic mistake”.

She claimed that the Sarajevo court lacks resources, including sufficient numbers of prosecutors, judges and even detention cells.

However, local officials insist that the war crimes chamber is ready and able to try its first defendants. Edita Pejovic, the court’s outreach spokesperson, told IWPR that it was “fully prepared” to receive cases from the tribunal.

“All [the chamber’s] international judges have great experience in the courtroom dealing with the most serious crimes including war crimes,” she said.

“All legislation that deals with the issue of war crimes, including ... protection of witnesses, is prepared carefully and harmonised with the highest international standards. And the decision of the referral bench shows their confidence in the local institutions to perform the trials in most professional and fair manner.”

She added that the Sarajevo court had a major advantage over its counterpart in The Hague. “The local institutions are permanent and do not have time limitations, so war crimes trials will be held as long as necessary,” she said.

“Besides that, justice has to be served as close to the victims as possible in order to give them at least legal compensation.”

On May 19, it was announced that under a new agreement with the Hague tribunal, the Organisation for Security and Cooperation in Europe, OSCE, is to take on the role of monitoring trials referred by Hague tribunal judges to national courts in the Balkans.

A tribunal insider told IWPR that under this arrangement, any trial seen to be falling short of international standards for fairness could be returned to the Hague court.

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