

Serbian Ex-Officials Seek Acquittals for Kosovo Convictions

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Appeal concerns four convictions for Serbian assault on Kosovo Albanians in 1999.

Lawyers for four Serbian former officials told the Hague tribunal this week why they believe their clients should be acquitted of convictions for war crimes in Kosovo in 1999.

Defence and prosecution lawyers presented the court with arguments for their respective appeals in the cases of Nikola Sainovic, a former deputy prime minister of the Federal Republic of Yugoslavia, former Yugoslav army generals Nebojsa Pavkovic and Vladimir Lazarevic, and police commander Sreten Lukic, all of whom were convicted in 2009.

A fifth individual convicted in the same case, former Yugoslav army chief-of-staff Dragoljub Ojdanic, dropped his appeal earlier this year, and prosecutors are not appealing against his sentence.

In February 2009, the trial chamber convicted the five men 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 also 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 the [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.”

Sainovic, Pavkovic and Lukic, were found guilty of murder, persecution, and forcible transfer and sentenced to 22 years in prison. Lazarevic and Ojdanic were convicted of deportation and forcible transfer and given 15-year sentences.

Another defendant in the same case, former Serbian president Milan Milutinovic, was acquitted of all charges. (See **Milutinovic Acquittal Gets Mixed Reaction**.)

As Sainovic, Pavkovic, Lukic and Lazarevic appeal against their convictions, prosecutors are appealing for longer sentences for them.

At the beginning of this week’s appeals hearing, Sainovic’s defence counsel Toma Fila asked for his client to be acquitted, arguing that this was “a realistic demand as the verdict makes no sense, yields no logic, and cannot be supported by facts”.

According to the 2009 verdict, Sainovic acted as “a political coordinator for Serb forces in Kosovo”.

Fila sought to dispute this finding by arguing that Sainovic had no authority over the army or police.

“In addition, there is a discrepancy between the verdict and the indictment which clearly makes no sense,” Fila told judges. “According to the indictment, [Sainovic] was the commander of the Joint Military and Police Staff in Kosovo and was therefore directly responsible for everything that happened, but when this proved to be untrue or not quite tenable as an argument, he suddenly became ‘the political coordinator’.”

Fila described the Joint Military and Police Staff as “more of a debate and discussion club than a real command” structure.

The defence lawyer argued that the police and military functioned properly “even during the NATO bombing campaign”. They had their own chains of command and did not need Sainovic to “carry out anything”.

Fila described his client as “a simple bureaucrat with no executive decision powers and no significant assertive influence over anyone”.

“Sainovic was a member of the Socialist Party of Serbia and he did hold public office, by merits of which he was present at different meetings and in different structures. However, he did not have any decision making or executive powers, and to claim that – knowing Serbia’s legal system and constitutional order – would be ridiculous”, Fila said.

“He was not in any way close to [former Serbian president] Slobodan Milosevic,” Fila added. “Their contact was minimal and only limited to courtesy and formalities”.

Fila said that Milutinovic, who was Serbian president from 1997 until 2002, was much closer to Milosevic than his client.

"To be honest, I believe someone swapped Milutinovic and Sainovic while writing the verdict [in 2009] and understanding the facts. That's the only argument I can give, and this is injustice which needs to be addressed," the lawyer told the court.

He also disputed the existence of a "joint criminal enterprise" whose aim was to expel Albanians from Kosovo.

"It seems very illogical that Serbia [would have] chosen the worst possible opportunity to expel the Albanians, which was at the time of the NATO bombing", he said.

Responding to these arguments, prosecutor Peter Kraemer wondered aloud whether the defence lawyer had "actually read the verdict".

"The existence of a joint criminal enterprise is not based merely on patterns of crimes, but on a number of other things such as the sudden and significant increase of the presence of Serb troops on the ground at the eve of the NATO bombing, discrimination of Albanian civilians, provision of weapons to Serb civilians, and cover-up activities carried out by Serb authorities," Kraemer said.

"While I do agree with the claim that the police and military kept their chains of command during the NATO campaign, we mustn't forget that Sainovic and the Joint Military and Police Staff were part of those chains, and that the chains of command were used by Sainovic and the Joint Command to carry out Milosevic's orders," he added.

Once Fila had wrapped up his case, the defence counsel for Pavkovic, John Ackerman, took the stand. He said that his client's verdict was "unjust and political".

According to Ackerman, Pavkovic did everything he could to prevent crimes, and issued "two dozen orders urging the respect of international law, human rights, and prevention of crimes".

"So how can someone who repeats twice a week that crimes must not occur actually be part of a joint criminal enterprise?" Ackerman asked the judges.

He then presented a sheet with an overview of orders of this kind, saying that "it is unheard in international warfare that a commander had ever issued so many such orders, and was so actively involved in making sure that crimes did not happen".

Responding to Ackerman's arguments, prosecutor Kraemer said another document existed, "one which clearly shows that Pavkovic knew about the meetings and orders and reports [from Kosovo], which made him very aware of the criminal acts against Kosovo Albanians. And yet he failed to do anything."

"You see, these are much more important points, ones that show the real essence of the problem, and not just symbolic orders and papers written and issued knowing that they would never be respected," Ackerman said.

Defence lawyers for Lazarevic and Lukic also called for acquittals for their clients.

The appeals judgement will be rendered in due course.

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