

## **Srebrenica Sentence Commuted**

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Opinion divided over decision to reduced prison time for Bosnian Serb who admitted involvement in massacre.

The Hague tribunal's appeals chamber has knocked seven years off the prison term given to a man who confessed to his part in the Srebrenica massacre.

Momir Nikolic admitted helping to coordinate what was to become perhaps the most notorious atrocity of the Bosnian war, and the only episode of the conflict which tribunal judges have so far labelled genocide.

He was the first senior Bosnian Serb Army, VRS, officer ever to speak candidly about what occurred. In return, prosecutors dropped most of the charges against him, including genocide, and recommended a maximum sentence of 20 years.

The 27-year jail term, now reduced to 20 on appeal, subsequently handed down by the trial chamber seemed to some observers to undermine the practice of arranging so-called plea agreements at the tribunal.

In the light of such concerns, senior tribunal sources have welcomed the outcome of Nikolic's appeal. But for some analysts, the development has merely revived reservations about the use of plea deals in such cases.

Judge Fausto Pocar upheld all or part of three of the 12 objections put forward by Nikolic's defence counsel against his original sentence.

One was Nikolic's complaint that the judges who heard his case had not properly taken into account his cooperation with the prosecution.

Judge Pocar agreed that the trial chamber's claims that testimony provided by Nikolic was guarded, insufficiently detailed and often evasive were not sufficiently substantiated.

The trial judges were also wrong, he said, to hold against Nikolic that he had lied to prosecutors whilst arranging his plea agreement, claiming responsibility for crimes that he didn't in fact commit. Judge Pocar underlined that Nikolic had later voluntarily confessed to misleading the prosecution and had apologised for doing so.

A second successful ground of appeal was Nikolic's complaint that a translation mistake during his defence counsel's closing argument had been wrongly taken into account when deciding on his sentence.

A comment by Nikolic's lawyer that "around 7,000 men were killed" during the Srebrenica episode in 1995 was rendered as "only 7,000 persons were killed". The judges, declaring themselves "shocked" to hear such a statement, described the use of the word "only" in this context as "shameful".

Thirdly, the appeals judges agreed that, in deciding on Nikolic's punishment, the trial chamber had effectively taken his role in the crimes into account twice, both when considering the gravity of his offences and when pondering the aggravating factors.

A number of other objections put forward by Nikolic were dismissed as baseless. Amongst them were claims that insufficient weight was given to his guilty plea.

Indeed, the trial judges expressed reservations about the appropriateness of a plea agreement in such a serious case. But Judge Pocar pointed out that they had also explicitly described Nikolic's expression of guilt as an important mitigating factor.

The appeals chamber also dismissed complaints that Nikolic's punishment was inconsistent with sentences handed down to others convicted of war crimes at the tribunal, including those involved in the Srebrenica killings.

Vidoje Blagojevic, Nikolic's commanding officer, was sentenced to 18 years after facing trial for crimes at Srebrenica. Dragan Obrenovic, who arranged a plea agreement with prosecutors, got 17 years.

The appeals judges pointed out that each case must be taken on its own merits. In Nikolic's case, the original trial chamber found that he appeared to have taken "a very active - even pro-active - role in ensuring that the operation went forward and was successful."

The outcome of Nikolic's appeal will have done something to assuage fears that the original tough sentence would put off others who might otherwise consider volunteering their guilt.

Kelly Askin, a senior legal officer with the Open Society Justice Initiative, recalled that after the Rwandan prime minister Jean Kambanda admitted war crimes and received a life sentence, there were "understandably few" plea agreements from others suspected of taking part in the genocide there.

During the appeals process in the Nikolic case, even prosecutors joined with the defence in arguing that the original punishment was too harsh, though they stopped short of filing a formal appeal themselves.

Jean Daniel-Ruch, a political advisor to chief prosecutor Carla del Ponte, this week expressed satisfaction with the outcome of Nikolic's appeal, telling IWPR that it was "exactly what we wanted".

Not everyone is so positive, however.

Askin said the original tough sentence handed down to Nikolic had been "applauded" in the Balkans. And she expressed a widely-felt sense of unease about the use of plea agreements at the tribunal, which, she said, have often led to individuals receiving "shockingly low" sentences.

"The survivors in the region see this as negotiating away their responsibility and they deeply resent it," she

said, “especially when most of the charges against them have been dropped in exchange for the guilty plea.”

Eric Markusen, a senior genocide researcher at the Danish Institute for International Studies, expressed similar reservations. “He [Nikolic] played a central role in the biggest mass execution since the Holocaust in Europe and he gets a sentence that in the United States would go to a murderer of one person,” said Markusen.

Nikolic is likely to remain a key witness in future trials relating to the Srebrenica massacre.

He has already provided important insider testimony in the trials of Blagojevic and two other VRS officers who were eventually found guilty of crimes in the enclave, Dragan Jokic and General Radislav Krstic.

His evidence could also prove valuable in a trial due to begin at the tribunal later this year, which concerns the roles played in the Srebrenica atrocity by nine VRS and Bosnian Serb police officers.

Nikolic has said that, following the fall of Srebrenica to the VRS, two of the men due to appear in these proceedings, Vujadin Popovic and Ljubisa Beara, told him that male prisoners were to be shot. Later, Popovic is said to have assigned Nikolic to the massive operation of reburying the victims’ bodies.

Nikolic has also recalled that when he was first been summoned to speak with tribunal prosecutors, Radivoje Miletic, a general also due to face trial for Srebrenica, told him “not to divulge information which would damage the state”.

While all of the nine men have so far pleaded not guilty, this could yet change. One, Milorad Trbic, is already reported by prosecutors to have implicated “several” of his co-accused.

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