

# Prosecutor v Vujadin Popovic et al, Case No IT-05-88-T (15 October 2009)

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## Introduction

The trial judgement in *Prosecutor v Vujadin Popovic et al* was handed down on 10 June 2010.<sup>1</sup> The case, which concerned crimes related to the fall of the United Nations' 'safe areas' of Srebrenica and Zepa in July 1995, involved seven co-accused, 315 witnesses and 5,383 exhibits admitted during more than three years of proceedings. To date, it is the largest trial in the history of the International Criminal Tribunal for the former Yugoslavia (ICTY).

The judgement confirmed that genocide was committed against the Muslims of Eastern Bosnia in July 1995 and, for the first time at the ICTY, considered the crime of conspiracy to commit genocide. It is particularly significant because two of the accused, former Bosnian Serb army<sup>2</sup> officers Vujadin Popovic<sup>3</sup> and Ljubisa Beara,<sup>4</sup> were convicted of genocide and sentenced to life imprisonment. A third, Drago Nikolic,<sup>5</sup> was convicted of aiding and abetting genocide and sentenced to 35 years imprisonment. The remaining four, Radivoje Miletic,<sup>6</sup> Ljubomir Borovcanin,<sup>7</sup> Vinko Pandurevic<sup>8</sup> and Milan Gvero,<sup>9</sup> were convicted of crimes against humanity and/or violations of the laws and customs of war and received sentences ranging between five and 19 years imprisonment for their respective roles in these crimes.<sup>10</sup> Other noteworthy findings relate to the specific intent requirement for the direct commission of genocide versus aiding and abetting genocide, and whether convictions for both genocide and conspiracy to commit genocide would be duplicative and unfair to an accused.

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<sup>1</sup> The Trial Chamber consisted of Presiding Judge Carmel Agius (Malta), Judge O-Gon Kwon (Republic of Korea), Judge Kimberly Prost (Canada) and Judge Ole Bjorn Stole (Norway, Reserve Judge).

<sup>2</sup> *Vojaska Republika Srpska* (VRS).

<sup>3</sup> Lieutenant Colonel Popovic was the Chief of Security of the VRS Drina Corps, one of six VRS corps subordinated to the Commander of the VRS Main Staff, General Ratko Mladic.

<sup>4</sup> Colonel Beara was the Chief of the Security Administration of the VRS Main Staff.

<sup>5</sup> 2nd Lieutenant Nikolic was the Chief of Security of the VRS Zvornik Brigade (a VRS Drina Corps unit).

<sup>6</sup> General Miletic was the Chief of the Administration for Operations and Training of the VRS Main Staff.

<sup>7</sup> Borovcanin was the Deputy Commander of the *Republika Srpska* Ministry of Interior Special Police Brigade. He was re-subordinated to the VRS from approximately 11–18 July 1995.

<sup>8</sup> Lieutenant Colonel Pandurevic was the Commander of the VRS Zvornik Brigade.

<sup>9</sup> General Gvero was the Assistant Commander for Morale, Legal and Religious Affairs of the VRS Main Staff.

<sup>10</sup> At the time of publication, a number of these convictions and the underlying findings are subject to appeal.

## **I. Factual Findings and the Joint Criminal Enterprises to Forcibly Remove and Murder**

The accused were found to be individually responsible for committing or aiding and abetting the crimes of which they were convicted. Two were also found liable as superiors. Those accused convicted of committing (as opposed to aiding and abetting) crimes were found guilty through their participation in one of two joint criminal enterprises (JCEs) found to have existed during the relevant period. The first was a plan ‘of the Bosnian Serb political and military leadership to forcibly remove the Bosnian Muslim population from Srebrenica and Zepa’ (the ‘JCE to Forcibly Remove’).<sup>11</sup> The second JCE was to murder the able-bodied Bosnian Muslim men from Srebrenica (the ‘JCE to Murder’).<sup>12</sup>

### **A. Background**

On 16 April 1993, the United Nations Security Council declared the east Bosnian town of Srebrenica a ‘safe area’ after a year of conflict between Bosnian Serbs and Bosnian Muslims in the region. Zepa was declared a ‘safe area’ three weeks later. The ‘safe areas’ existed for over two years, supervised by the United Nations Protection Force (UNPROFOR).<sup>13</sup>

### **B. The JCE to Forcibly Remove**

Between March and July 1995, pursuant to a policy promulgated by Bosnian Serb President Radovan Karadzic in a document entitled ‘Supreme Command Directive 7’, the VRS restricted the delivery of humanitarian aid to the Bosnian Muslim population in Srebrenica and Zepa.<sup>14</sup> Restrictions were also imposed on the rotation of UNPROFOR personnel and their supplies of fuel, communications equipment, weapons, ammunition, food and water.<sup>15</sup> On 6 July, the VRS launched active combat operations against the Srebrenica enclave. On 9 July, President Karadzic authorised the VRS to capture the town of Srebrenica itself. After two further days of intensive shelling, and an ineffective attempt by UNPROFOR to halt the VRS advance with air strikes, Srebrenica fell to the VRS on the afternoon of 11 July 1995.<sup>16</sup>

Approximately 20,000 Bosnian Muslim women, children, elderly and some men fled to the UNPROFOR compound at Potocari, five kilometres north of Srebrenica.<sup>17</sup> Overcrowding, heat, fear, poor hygiene and lack of food, water and medical supplies

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<sup>11</sup> Judgement at [1087].

<sup>12</sup> *Ibid* [1050].

<sup>13</sup> *Ibid* [86]–[101].

<sup>14</sup> *Ibid* [199] and [227–241].

<sup>15</sup> *Ibid* [228]–[229] and [239]–[241].

<sup>16</sup> *Ibid* [242]–[260].

<sup>17</sup> *Ibid* [191] and [263]–[266].

caused the humanitarian situation to deteriorate rapidly.<sup>18</sup> At the same time, 10,000-15,000 Bosnian Muslims, primarily men aged 16 to 65, started moving in a single-file column through the woods towards Bosnian Muslim-held territory.<sup>19</sup> On 12 July, Bosnian Serb forces took control of Potocari and forcibly transferred 10,000-15,000 people to Bosnian Muslim-held territory. The remaining people were removed on 13 July.<sup>20</sup> Ten men were executed in Potocari during the forcible transfer, which was found to be a natural and foreseeable consequence of this JCE.<sup>21</sup>

On 14 July 1995, the VRS attacked the Zepa enclave.<sup>22</sup> A ceasefire agreement providing for the removal of the population from Zepa was signed on 24 July and implemented from 25–27 July.<sup>23</sup> Many of the men from Zepa fled across the Drina River to Serbia.<sup>24</sup>

The Trial Chamber's definition of the temporal scope of this JCE is significant because it recognised that the physical act of forcibly transferring the Bosnian Muslim population from Srebrenica and Zepa in July 1995 was the culmination of a much broader criminal plan. Thus, limiting aid to the enclaves, the military attacks and the terrorising and inhumane and cruel treatment of the population in Srebrenica and Potocari were all seen as 'intrinsic steps to the ultimate aim to force the Bosnian Muslim populations out of the enclaves'.<sup>25</sup>

### **C. The JCE to Murder**

On 12 and 13 July, Bosnian Muslim men in Potocari aged between around 15 and 65 were separated from their families and transported to detention sites in the nearby town of Bratunac,<sup>26</sup> where an unknown number were executed.<sup>27</sup> By late afternoon on 13 July, approximately 6,000 men from the column fleeing through the woods had also surrendered to, or were captured by, Bosnian Serb forces stationed along two stretches of road which the column was attempting to cross.<sup>28</sup> Over 1,000 were executed at sites along these stretches of road.<sup>29</sup> The remaining prisoners were transported north to the Zvornik area,

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<sup>18</sup> Ibid [309]–[315].

<sup>19</sup> Ibid [267]–[271].

<sup>20</sup> Ibid [302]–[341].

<sup>21</sup> Ibid [354]–[361], [794] and [1088] (Judge Kwon dissenting).

<sup>22</sup> Ibid [682].

<sup>23</sup> Ibid [702]–[721].

<sup>24</sup> Ibid [725]–[738].

<sup>25</sup> Ibid [1086].

<sup>26</sup> Ibid [319] and [338]–[340].

<sup>27</sup> Ibid [446]–[463] and [794].

<sup>28</sup> Ibid [380]–[398].

<sup>29</sup> On 13 July, 15 men were executed at Jadar River, 150 were executed at Cerska Valley, approximately 22 were executed at Rasica Gaj, 10–15 were executed at Sandici and at least 1,000 were executed at the Kravica Warehouse. See Judgement at [408]–[445] and [794].

along with the men who had been separated in Potocari, where they were executed and buried over the next three days.<sup>30</sup> Smaller scale executions continued until late July.<sup>31</sup> In September and October 1995, the five largest primary mass graves were exhumed and the bodies reburied at smaller secondary gravesites.<sup>32</sup>

The Trial Chamber found that to date, at least 5,336 individuals executed following the fall of Srebrenica have been positively identified through DNA analysis. The Trial Chamber further noted that given the ongoing discovery and exhumation of graves, as well as the ongoing DNA identification process, the final number could be as high as 7,826.<sup>33</sup>

The crimes of murder, extermination and cruel and inhumane treatment were found to be part of the common purpose of the JCE to Murder.<sup>34</sup> Killings committed through participation in the JCE to Murder were also found to constitute an underlying act of genocide.<sup>35</sup>

## 2. Legal Findings

### A. Genocide

The crime of genocide is punishable under Article 4 of the ICTY Statute ('Statute'), which reflects Articles II and III of the Genocide Convention and customary international law.<sup>36</sup> The Trial Chamber found that genocide was committed against the Muslims of Eastern Bosnia in July 1995.<sup>37</sup> The Muslims of Eastern Bosnia form a substantial part of the Bosnian Muslim people, who are a protected group within the meaning of Article 4 of the Statute.<sup>38</sup>

#### 1. The Underlying Acts of the Srebrenica Genocide

The underlying acts of the Srebrenica genocide were found to be the mass murder of the Bosnian Muslim men and the serious mental and bodily harm which the murder operation and its aftermath inflicted on the Muslims of Eastern Bosnia.<sup>39</sup> The men targeted by the

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<sup>30</sup> Between 800 and 2,500 were executed at Orahovac on 14 July. Over 800 were executed at Petkovci Dam on 14 – 15 July. Over 1,000 were executed at Kozluk on 15 July and 1,000 – 2,000 were executed at Branjevo Farm and the Pilica Cultural Centre on 16 July. *See* Judgement at [475]–[550] and [794].

<sup>31</sup> Above n 11 at [565]–[599] and [794].

<sup>32</sup> *Ibid* [600]–[606].

<sup>33</sup> *Ibid* [664].

<sup>34</sup> *Ibid* [1073].

<sup>35</sup> *Ibid* [1175] and [1310].

<sup>36</sup> *Ibid* [807]; Convention on the Prevention and Punishment of the Crime of Genocide, New York, 9 December 1948.

<sup>37</sup> *Ibid* [863].

<sup>38</sup> *Ibid* [840] and [865].

<sup>39</sup> *Ibid* [841]–[847].

murder operation suffered serious bodily and mental harm through the anxiety of being separated from their families, the fear and terror caused by uncertainty over their ultimate fate, ‘intolerable conditions’ of detention, physical and verbal abuse and the execution process itself.<sup>40</sup> The surviving family members and loved ones of those killed suffered serious mental harm through the anxiety caused by the separations at Potocari, the uncertainty over their future, fear for their loved ones, and the ‘perpetual uncertainty’ in which many continue to exist. The Trial Chamber was satisfied that these survivors suffered ‘profound physical and psychological harm’ as a result of the murder operation.<sup>41</sup> The forcible removal of the Bosnian Muslim population was not found to be an underlying act of genocide.

## 2. The Special Intent for Genocide

The Trial Chamber found that the scale and nature of the murder operation, the targeting of the victims, the systematic and organised manner in which it was carried out and the ‘plain intent to eliminate every Bosnian Muslim male who was captured or surrendered’ proved that certain members of the Bosnian Serb forces intended to destroy the Muslims of Eastern Bosnia as a group.<sup>42</sup> The Trial Chamber noted that the killings were not spontaneous. They were carried out by many different people at different sites which indicated coordination rather than coincidence. Also, the killings were not the result of panic or a response to a military threat because they targeted men who had already surrendered and no efforts were made to distinguish between civilians and soldiers.<sup>43</sup> The simultaneous forcible transfer of the Bosnian Muslim population, although found not to constitute an underlying act of genocide, was relied on as further evidence of intent to destroy.<sup>44</sup> These findings are consistent with previous ICTY Appeals Chamber jurisprudence from the *Krstic* and *Blagojevic* cases, as well as the International Court of Justice’s judgement in the *Bosnia v Serbia* genocide case.<sup>45</sup>

## 3. The Convictions for Committing and Aiding and Abetting Genocide

Beara and Popovic were convicted of committing genocide.<sup>46</sup> They committed underlying acts of genocide<sup>47</sup> through their participation in the JCE to Murder,<sup>48</sup> while their genocidal

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<sup>40</sup> Ibid [844]–[845].

<sup>41</sup> Ibid [846]–[847].

<sup>42</sup> Ibid [856].

<sup>43</sup> Ibid [858]–[860].

<sup>44</sup> Ibid [843] and [862].

<sup>45</sup> *Krstic* [IT-98-33-A] (Appeals Chamber) (19 April 2004) at [33]; *Blagojevic* [IT-02-60-A] (Appeals Chamber) (9 May 2007) at [123]; Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v Serbia and Montenegro*), 26 February 2007, para 190.

<sup>46</sup> Above n 11 at [2104]–[2105].

<sup>47</sup> Ibid [1175] and [1310].

intent manifested itself through their significant participation in the murder operation. Beara was a ‘driving force behind the enterprise’ whose contributions evidenced his ‘grim determination to kill as many as possible as quickly as possible’.<sup>49</sup> Popovic’s intent was evident through his ‘robust participation’ in all aspects of the killing operation.<sup>50</sup> Their genocidal intent was further demonstrated through repetitive destructive and discriminatory acts, their words, and their involvement in the mass killings with knowledge that they would contribute to the destruction of the group.<sup>51</sup>

Nikolic was convicted of aiding and abetting genocide. He was not convicted of committing genocide because, although he participated in the JCE to Murder and knew of the genocidal intent of others, the Trial Chamber did not find that Nikolic himself had genocidal intent.<sup>52</sup> In its analysis, the Trial Chamber compared Nikolic’s involvement in the murder operation with that of Beara and Popovic, the ‘architects’ of the murder operation.<sup>53</sup> While a comparative analysis is not in itself unreasonable, it does not appear that the Trial Chamber fully considered that the comparatively lesser nature of Nikolic’s involvement may simply have reflected the more limited scope of his military authority rather than a lack of intent. The Trial Chamber also may have conflated motive and intent in finding that a reasonable explanation for Nikolic’s conduct was his blind dedication to his work rather than possession of the intent to destroy.<sup>54</sup>

## **B. Conspiracy to Commit Genocide**

### **I. The Law of Conspiracy**

The *Popovic* case was the first at the ICTY to consider the crime of conspiracy to commit genocide, although it had been dealt with previously at the International Criminal Tribunal for Rwanda (ICTR).<sup>55</sup> The Trial Chamber adopted the elements of the crime as found by the ICTR, noting that ‘as an inchoate crime, it is the agreement itself that is punishable—the crime is completed at the time the agreement is completed—regardless of whether

<sup>48</sup> Ibid [1168] and [1302].

<sup>49</sup> Ibid [1314].

<sup>50</sup> Ibid [1178]–[1179].

<sup>51</sup> Ibid [1180] and [1318].

<sup>52</sup> Ibid [1397]–[1415].

<sup>53</sup> Ibid [1410].

<sup>54</sup> Ibid [1414].

<sup>55</sup> See e.g., *Seromba* [ICTR-2001-66-A] (Appeals Chamber) (12 March 2008) at [207–225]; *Nahimana* [ICTR-99-52-A] (Appeals Chamber) (28 November 2007) at [893–912]; *Ntagerura* [ICTR-99-46-A] (Appeals Chamber) (7 July 2006) at [90]–[93].

genocide is actually committed as a result of the agreement'.<sup>56</sup> Significantly, conspiracy to commit genocide was also found to be a continuing crime, meaning that even though individual criminal liability arises the moment the agreement is concluded, the conspiracy itself continues and others will thus become liable if they join the conspiracy after the conclusion of the initial agreement.<sup>57</sup>

## 2. Separate Convictions for Genocide and Conspiracy to Commit Genocide

The Trial Chamber found that by 13 July 1995, certain members of the Bosnian Serb forces had 'entered an agreement and thus a conspiracy to commit genocide'.<sup>58</sup> However, the Trial Chamber held that an accused should not be convicted both of conspiracy to commit genocide and the substantive offence of genocide because 'the full criminality of the accused is accounted for by a conviction for genocide ... a further conviction for the inchoate crime of conspiracy would be duplicative and unfair to the accused'.<sup>59</sup> The Trial Chamber noted that convictions for both were not impermissibly cumulative but held that there was a risk of prejudice to the accused resulting from multiple convictions for the same act.<sup>60</sup> The Trial Chamber also held that there was less justification for punishing a conspiracy when the substantive offence is actually committed, particularly where proof of the substantive offence is the main evidence from which the existence of the conspiracy is inferred.<sup>61</sup>

There are several problems with the Trial Chamber's findings on this issue. First, the wholly different *actus reus* of the two crimes suggests that convictions for both would not be duplicative. Second, given that convictions for both are not impermissibly cumulative (as the Trial Chamber itself noted), it is perhaps more appropriate that any perceived prejudice to the accused be addressed at the sentencing stage rather than the conviction stage.<sup>62</sup> Third, it is unclear whether the criminal responsibility of an accused found guilty of both crimes could ever be reflected fully by a conviction solely for committing genocide (even where the conviction is based on participation in a JCE) because this fails to reflect that the accused was *also* a party to a prior agreement to carry out the genocide. Fourth, a separate conviction for each crime means that they can be considered independently on appeal and thus a successful appeal against one would not necessarily exclude the other. For this reason, Trial Chambers should not have the discretion to exclude a conviction

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<sup>56</sup> Above n 11 at [868].

<sup>57</sup> Ibid [870]–[876].

<sup>58</sup> Ibid [886].

<sup>59</sup> Ibid [2127]. The Trial Chamber noted that there was equivocal ICTR case law on this issue and found only limited assistance from the *travaux préparatoires* of the Genocide Convention and national case law.

<sup>60</sup> Ibid [2118]–[2119] and [2123].

<sup>61</sup> Ibid [2124]–[2125].

<sup>62</sup> See *Celebici* [IT-96-21-A] (Appeals Chamber) (20 February 2001) at [405].

once the elements of the crime have been proven and where the conviction would not be impermissibly cumulative.

### **C. Murder, Extermination, Forcible Transfer and Persecution**

#### **I. Murder, Extermination, Forcible Transfer and Persecution as Crimes against Humanity**

The general elements for crimes against humanity were found to have been satisfied. There was an armed conflict in existence at the relevant time and the acts alleged were committed during this armed conflict. There was also a widespread or systematic attack directed at a civilian population of which the perpetrators' acts were a part.<sup>63</sup> The presence of Bosnian Muslim army members in the enclaves prior to and during the attack was not found to have altered the fundamentally civilian nature of the population.<sup>64</sup>

The specific elements of four separate crimes against humanity were also found to have been established. First, the execution of the Bosnian Muslim men constituted murder.<sup>65</sup> Second, these murders constituted extermination because they had been carried out on a massive scale.<sup>66</sup> Third, the forcible transfer of the women, children and elderly from Potocari<sup>67</sup> and Zepa,<sup>68</sup> the civilian component of the column which fled Srebrenica into the woods<sup>69</sup> and the men from Zepa who fled to Serbia,<sup>70</sup> was of a sufficiently serious nature to constitute an 'other inhumane act'. Fourth, the underlying acts of murder, cruel and inhumane treatment of civilians, terrorising civilians and forcible transfer were committed with the intent to discriminate on political, racial or religious grounds and thus constituted persecution.<sup>71</sup>

In relation to the crime of persecution, the Trial Chamber stated the law correctly but appears to have applied it erroneously by considering the gravity of the underlying acts individually and not cumulatively.<sup>72</sup> By not assessing the cumulative effect of these acts, the Trial Chamber excluded 'destruction of personal property' as an underlying persecutory act because it was not equal in gravity to crimes against humanity enumerated in the Statute.<sup>73</sup>

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<sup>63</sup> Above n 11 at [759]–[761]. Article 5 requires that an attack be widespread *or* systematic. In this case, the Trial Chamber found that the attack was both.

<sup>64</sup> *Ibid* [761].

<sup>65</sup> *Ibid* [796].

<sup>66</sup> *Ibid* [806].

<sup>67</sup> *Ibid* [925] and [937].

<sup>68</sup> *Ibid* [951] and [962].

<sup>69</sup> *Ibid* [930] and [937] (Judge Kwon dissenting).

<sup>70</sup> *Ibid* [958]–[961] (Judge Kwon dissenting).

<sup>71</sup> *Ibid* [963]–[1004].

<sup>72</sup> *Ibid* [966].

<sup>73</sup> *Ibid* [1000]–[1001].

However, given that all seven accused were ultimately convicted of persecution based on one or more of the underlying acts found to have been committed, the effect of this apparent error was negligible.

## **2. Murder as a Violation of the Laws and Customs of War**

The general elements for violations of the laws and customs of war were found to have been proven. There was an armed conflict, the crimes alleged were closely related to the armed conflict, and the victims were taking no active part in hostilities at the time of their deaths.<sup>74</sup> The specific elements of murder were also found to be proven and the killing of the Bosnian Muslim men thus constituted murder as a violation of the laws and customs of war.<sup>75</sup>

## **3. Cumulative Convictions**

Convictions for murder and extermination as crimes against humanity are impermissibly cumulative because these crimes do not contain mutually distinct elements (the only difference being that extermination requires killing on a large scale).<sup>76</sup> Where both are proven, a conviction will be entered only for extermination because its commission necessarily entails the commission of murder and thus is a more specific offence.<sup>77</sup> Murder as a violation of the laws and customs of war, however, contains mutually distinct elements and thus a conviction for this crime is not impermissibly cumulative with a conviction for extermination or murder as a crime against humanity.

Beara, Popovic and Nikolic were each convicted of both extermination as a crime against humanity and murder as a violation of the laws and customs of war. The accused Miletic, however, was convicted only of murder as a crime against humanity, despite the elements of murder as a violation of the laws and customs of war also having been satisfied. The Trial Chamber appears to have reasoned that because Miletic's liability for murder arose as a natural and foreseeable consequence of the JCE to Forcibly Remove, the foreseeable crime (murder) should fall under the same Article of the Statute as the common purpose crimes (crimes against humanity).<sup>78</sup> However, the jurisprudence contains no such requirement. Thus, once the elements of both crimes had been satisfied and the Trial Chamber deemed that convictions for both were not impermissibly cumulative, separate convictions should have been entered for each crime so that each could be subject to the appeals process independently.

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<sup>74</sup> Ibid [744]–[747].

<sup>75</sup> Ibid [796].

<sup>76</sup> Ibid [2114]; *Stakic* [IT-97-24-A] (Appeals Chamber) (22 March 2006) at [366].

<sup>77</sup> Ibid [2111]; *Galic* [IT-98-29-A] (Appeals Chamber) (30 November 2006) at [163]; *Krstic* [IT-98-33-A] (Appeals Chamber) (19 April 2004) at [218].

<sup>78</sup> Ibid [1727].

### 3. Individual Criminal Responsibility of the Accused

#### A. *Ljubisa Beara and Vujadin Popovic*

Beara and Popovic were described by the Trial Chamber as ‘architects’ of the murder operation.<sup>79</sup> Beara organised the detention of prisoners, scouted for execution sites, recruited personnel, secured engineering equipment for burials, oversaw executions and conveyed orders ‘from the top’ to kill all the prisoners.<sup>80</sup> Popovic also organised the separation, detention, transport, execution and burial of the prisoners and was personally present at all but one of the major execution sites in the Zvornik area.<sup>81</sup> Both were convicted of committing genocide, extermination and persecution as crimes against humanity and murder as a violation of the laws and customs of war.<sup>82</sup> They were sentenced to life imprisonment.

#### B. *Drago Nikolic*

Nikolic coordinated the detention of prisoners in the Zvornik area, organised personnel for guarding and executions and was personally present at the Orahovac execution site.<sup>83</sup> He was convicted of aiding and abetting genocide, committing (through participating in the JCE to Murder) murder as a violation of the laws and customs of war and extermination and persecution as crimes against humanity.<sup>84</sup> He was sentenced to 35 years imprisonment.

#### C. *Radivoje Miletic*

Miletic played ‘a pivotal role’ in the JCE to Forcibly Remove. He played a key role in drafting Supreme Command Directive 7; he restricted humanitarian aid to the Bosnian Muslim population and supplies to UNPROFOR; and he advised and kept others informed during the implementation of the plan.<sup>85</sup> He was convicted of committing inhumane acts (forcible transfer) and persecution as crimes against humanity<sup>86</sup> and murder as a crime against humanity for ‘opportunistic’ murders which were committed as a natural and foreseeable consequence of the JCE to Forcibly Remove.<sup>87</sup> He was sentenced to 19 years imprisonment.

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<sup>79</sup> Ibid [1410].

<sup>80</sup> Ibid [1255]–[1294].

<sup>81</sup> Ibid [1096]–[1161].

<sup>82</sup> Ibid [1187]–[1196], [1325]–[1333] and [2104]–[2105].

<sup>83</sup> Ibid [1344]–[1384].

<sup>84</sup> Ibid [1397]–[1428].

<sup>85</sup> Ibid [1716].

<sup>86</sup> Ibid [1720]–[1722] and [1728]–[1735].

<sup>87</sup> Ibid [1724]–[1727] (Judge Kwon dissenting).

#### **D. Ljubomir Borovcanin**

Borovcanin allowed his subordinates to participate in the forcible transfer of the Bosnian Muslim population from Potocari and thus was convicted of aiding and abetting inhumane acts (forcible transfer).<sup>88</sup> He was also convicted of aiding and abetting (by omission) murder as a violation of the laws and customs of law, and extermination and persecutions as crimes against humanity, for failing in his legal duty to protect prisoners at the Kravica Warehouse who were in the joint custody of his subordinates.<sup>89</sup> He was also found to have superior responsibility for failing to punish his subordinates who were involved in the Kravica Warehouse executions.<sup>90</sup> He was sentenced to 17 years imprisonment.

#### **E. Vinko Pandurevic**

Pandurevic commanded one of two VRS tactical groups that captured Srebrenica. He was convicted of aiding and abetting inhumane acts (forcible transfer) and persecution as crimes against humanity. He was found responsible as a superior for murder as a crime against humanity and a violation of the laws and customs of war for failing to prevent his subordinates from participating in the murder operation on 15 and 16 July.<sup>91</sup> He also aided and abetted by omission the murder of ten prisoners who were in the custody of his unit in late July.<sup>1</sup> In mitigation of Pandurevic's sentence, significant weight was given to his decision on 16 July to open a corridor in VRS lines for the remnants of the column of Bosnian Muslim men who had fled Srebrenica to pass through to Bosnian Muslim-held territory. He was sentenced to 13 years imprisonment.

#### **F. Milan Gvero**

Gvero released false information to the media and international organisations during the Srebrenica operation and threatened an UNPROFOR General on 11 July that continued NATO bombing could result in reprisals against UNPROFOR and the Bosnian Muslim civilians in Potocari.<sup>92</sup> The Trial Chamber found that these acts were designed to 'block protective action in favour of the enclave by international authorities, namely UNPROFOR and NATO'.<sup>93</sup> As a result, Gvero was convicted of committing inhumane acts (forcible transfer) and persecution as crimes against humanity.<sup>94</sup> He was sentenced to five years imprisonment and granted early release on 28 June 2010.<sup>95</sup>

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<sup>88</sup> Ibid [1497]–[1501] (Judge Kwon dissenting).

<sup>89</sup> Ibid [1581]–[1586] and [1592]–[1596].

<sup>90</sup> Ibid [1583].

<sup>91</sup> Ibid [2066] and [2073].

<sup>92</sup> Ibid [1814]–[1818].

<sup>93</sup> Ibid [1820].

<sup>94</sup> Ibid [1825]–[1826] and [1832]–[1836].

<sup>95</sup> *Gvero* [IT-05-88-ES] (ICTY President) (28 June 2010).