#### CASE INFORMATION SHEET



# "SUŠICA CAMP" (IT-94-2)

# United Nations Nations Unies International Criminal Tribunal for the former Yugoslavia Tribunal Penal International pour I'ex-Yougoslavie

# DRAGAN NIKOLIĆ



#### DRAGAN NIKOLIĆ



Also known as 'Jenki'; Commander of the Sušica detention camp in the municipality of Vlasenica, eastern Bosnia and Herzegovina, from early June 1992 until its closure in late September 1992

- Sentenced to 20 years' imprisonment

#### Convicted of:

Persecutions on political, racial and religious grounds, murder, sexual violence, torture (crimes against humanity)

- Nikolić subjected Muslim and other non-Serb detainees to murder, rape and torture and participated in creating and maintaining an atmosphere of terror in the camp.
- He killed nine non-Serb detainees in the Sušica camp. The oldest of his victims was a 60-year-old man whose ordeal lasted for seven days during which he was beaten unconscious on several occasions.
- Regardless of the victims' calls for the beatings to stop, Nikolić continued to punch, kick and beat the detainees with weapons such as wooden bats, iron bars, axe handles, rifle butts, metal knuckles, metal pipes, truncheons and rubber tubing with lead inside. The injuries inflicted by him during the beatings were in some instances fatal. In some cases, beatings conducted by him lasted for 45 minutes at a time.
- Nikolić personally removed and facilitating the removal of female detainees from the hangar where they were interned, in the knowledge that the removal of the women was for the purposes of rape and other sexually abusive conduct.
- He beat two detainees with iron bars, wooden bats and rifle butts for approximately 90 minutes. He also admitted torturing three other male detainees in a similar manner.

Born	26 April1957 in Vlasenica, Bosnia and Herzegovina
Indictment	Initial: 4 November 1994; first amended: 12 February 1999;
	second amended: 15 February 2002; third amended: 31 October
	2003
Arrested	20 April 2000, by the multinational Stabilisation Force (SFOR)
Transferred to ICTY	21 April 2000
Initial and further appearances	28 April 2000; 18 March 2002; 27 June 2003, pleaded not guilty
	to all charges at each appearance
Guilty Plea	4 September 2003, pleaded guilty to all charges
Trial Chamber sentencing judgement	18 December 2003, sentenced to 23 years' imprisonment
Appeals Chamber judgement	4 February 2005, sentenced to 20 years' imprisonment
Sentence served	21 June 2006, transferred to Italy to serve the remainder of his
	sentence; credit was given for time served since 21 April 2000;
	early release effective on 20 August 2013

As the plea agreement was reached before the beginning of trial, no trial was necessary.

TRIAL CHAMBER SENTENCING JUDGEMENT		
18 December 2003		
Trial Chamber II	Judge Wolfgang Schomburg (presiding), Judge Carmel A. Agius, Judge	
	Florence Ndepele Mwachande Mumba	
Counsel for the Prosecution	Upawansa Yapa, Patricia Sellers-Viseur, Bill Smith	
Counsel for the Defence	Howard Morrison, Tanja Radosavljević	

APPEALS	
Appeals Chamber	Judge Theodor Meron (presiding), Judge Fausto Pocar, Judge Mohamed
	Shahabuddeen, Judge Mehmet Güney, Judge Inés Mónica Weinberg de
	Roca
Counsel for the Prosecution	Mark McKeon, Susan Lamb, Steffen Wirth
Counsel for the Defence	Howard Morrison, Tanja Radosavljević
Judgement	4 February 2005

RELATED CASES
BLAGOJEVIĆ & JOKIĆ (IT-02-60) "SREBRENICA"
ERDEMOVIĆ (IT-96-22) "PILICA FARM"
KARADŽIĆ (IT-95-5/18) "BOSNIA AND HERZEGOVINA" & "SREBRENICA"
KRSTIĆ (IT-98-33) "SREBRENICA-DRINA CORPS"
MILOŠEVIĆ (IT-02-54) "KOSOVO, CROATIA & BOSNIA"
MLADIĆ (IT-09-92) "BOSNIA AND HERZEGOVINA" & "SREBRENICA"
NIKOLIĆ, DRAGO (IT-02-63) "SREBRENICA"
OBRENOVIĆ (IT-02-60/2) "SREBRENICA"
ORIĆ (IT-03-68)
PERIŠIĆ (IT-04-81)
PLAVŠIĆ (IT-00-39 & 40/1) "BOSNIA AND HERZEGOVINA"
POPOVIĆ et al. (IT-02-88) "SREBRENICA"
STANIŠIĆ & SIMATOVIĆ (IT-03-69)

# INDICTMENT AND CHARGES

Nikolić was the first person to be indicted for war crimes in the former Yugoslavia. The initial indictment was confirmed on 4 November 1994. The first amended indictment was issued on 12 February 1999.

Nikolić was apprehended by the multinational Security Force (SFOR) in Bosnia and Herzegovina on 20 April 2000 and transferred to the Tribunal on 21 April 2000. On 28 April 2000, at his initial appearance, he entered a plea of not guilty to all counts in the first amended indictment. The second amended indictment was issued on 15 February 2002. Nikolić also pleaded not guilty to that indictment.

The third and final amended indictment of 27 June 2003 arose out of the first discussion between the parties of a possible plea agreement (see below). This amendment only rearranged the legal assessment, without any changes to the factual basis, and was further orally amended and ultimately accepted by the Trial Chamber during the guilty plea hearing of 4 September 2003 and filed on 31 October 2003.

Nikolić was charged on the basis of individual criminal responsibility (Article 7(1) of the Statute of the Tribunal) with:

• Persecutions on political, racial and religious grounds; murder; sexual violence; torture (crimes against humanity, Article 5).

### PRE-TRIAL PROCEEDINGS - RULE 61:

In certain instances where the Tribunal has been unable to obtain custody of an accused, it has proceeded under Rule 61 of its Rules of Procedure and Evidence. In such proceedings a full Trial Chamber examines an indictment and the supporting evidence in public and, if it determines that there are reasonable grounds for believing that the accused committed any or all of the crimes charged, confirms the indictment and issues an international arrest warrant. The latter is intended to ensure that the accused will be arrested if he crosses international borders. In addition, if the Prosecutor satisifies the Chamber that failure to service the arrest warrant on the accused was due to the failure or refusal of a State to cooperate with the Tribunal, the Chamber shall so certify. The President of the Tribunal, in consultation with the presiding judges of the Trial Chambers, may then notify the Security Council of such failure or refusal by a State. A Rule 61 hearing is not a trial *in absentia* and does not provide for a finding of guilt.

A Rule 61 hearing in the Nikolić case took place from 9 to 13 October 1995. This hearing was the first ever application of Rule 61. On 20 October 1995, the Trial Chamber issued its decision, confirming that there were reasonable grounds for believing that Nikolić had committed the crimes he had been charged with. It further provided for the issuance of international warrants for his arrest to be transmitted to all States. Additionally, the Chamber asked the President of the Tribunal to inform the Security Council about the situation.

On 31 October 1995, the President of the Tribunal brought the matter to the attention of the Security Council. This was the first time such an intervention took place.

### PLEA AGREEMENT/GUILTY PLEA

The Tribunal's Rules of Procedure and Evidence provide for a plea agreement procedure (Rule 62 *ter*). The Prosecutor and the Defence may agree that, upon the accused entering a plea of guilty to the indictment or to one or more counts of the indictment, the Prosecutor can apply to the Trial Chamber to amend the indictment accordingly and ask for a sentence within a specific range or agree to the sentencing range suggested by the Defence. The Trial Chamber is not bound by any such agreement.

On 4 September 2003, the Trial Chamber held a hearing to consider a confidential joint motion for consideration of a plea agreement between Nikolić and the Office of the Prosecutor. This motion reflected a negotiated plea agreement whereby the accused agreed to plead guilty to all four counts of the indictment (the indictment was amended during the motion hearing) and to the general legal allegations and additional facts as stated in the third amended indictment filed on 31 October 2003.

The Trial Chamber, satisfied that the guilty plea entered by the accused was made voluntarily and with full understanding of all the terms of the agreement, entered a finding of guilt. The plea agreement was reached prior to the start of trial, and therefore no trial was necessary.

# STATEMENT OF DRAGAN NIKOLIĆ

"Your Honours, I am fully aware of all the things with which I am charged. I am aware of the acts that I have committed, and I confess to them count by count as they were read out to me here. I pleaded guilty, and I assume full responsibility for the acts that I have committed.

How do I feel about the things that I did in those three months that I spent in the Sušica camp? Only I know that. But I genuinely feel shame and disgrace. But as you heard here, on the one hand, I carried weapons in Sušica, I wore a uniform; and on the other hand, there is the fact that there were women there, aged the same as my mother, there were children there, there were people who used to be friends of mine, whom I used to see over the years in cafes, on sports fields, and playgrounds, with whom I spent summer vacations. And when I think about all of this, it turned into a nightmare that is pursuing me these days and that I see over and over again in my sleep. The question arises why did I do all that? I had enough time to think about it, 11 years. But it is still hard to find an answer to that question.

I can tell you with complete sincerity I never felt sorry for myself because I was not too young to understand at the time; I was a mature man, 35 -- 35 years old. And my compassion was always directed only at the victims, not only those that I hurt myself or whose families I hurt. All those who were down there at Sušica were victims.

What can I say about it all? I can say that I repent sincerely for all of that. I genuinely repent. I am not saying this pro forma, this repentance and contrition comes from deep inside me, because I knew most of those people from the earliest stage. I knew them well; some of them were my neighbours. I want to avail myself of this opportunity to say to all those who -- whom I hurt, either directly or indirectly, that I apologise to everyone who spent any time in Sušica, be it a month or several months.

I would like, now that I have this opportunity to speak in public, to make even those victims feel the sincerity of my apology and my repentance, even those who were never at the Sušica camp and who are now scattered all over the world as a result of that conflict and the expulsions which made it impossible for them to return home. I am aware, Your Honours, that I will spend a long time in prison, but at the same time I hope that the day will come when I will get out. It is my desire to return to Vlasenica one day to do whatever is in my power, if it is at all possible, for those people to become close again, to return to their homes. I would not for a second like to be a threat to anyone by my mere presence, and if at any moment I should feel that my presence disturbs anybody, I would leave immediately. I would go to see my family, my relatives, and I would keep returning there as long as it takes until the moment comes when I feel that nobody minds my being there any more, to try to help those people start a new life in that town, which after all had not been completely destroyed.

I have admitted to my guilt, and as my counsel said - I wish to repeat it once again - I hope that all the three parties will be encouraged by my confession to assume their part of the responsibility for those terrible acts, because that is the only thing that would make it possible for people to become close again, for the three peoples to become close again in those parts. It should be clear to all of us that we are after all an important factor in this reconciliation and peaceful coexistence. This Tribunal also plays an important part in it. And I am trying to assist the Tribunal in this way. We must never forget about the victims.

I now speak only in my own name, and I wish to say that there were among the victims people with whom I grew up and I wish to reiterate once again my deep and sincere repentance over everything that I had done down there. I hope I will get a chance to redeem myself and to alleviate their suffering. I received a message when my cousin visited me, and I want to thank you, Your Honours, for giving me this opportunity to speak and to say all this, to thank you in my own name and on behalf of my mother and my sister, who are here. I had told them that this would be a public hearing. They wanted me to convey to everyone here that their door is always open, that anyone can come to talk to them, including victims and perhaps even neighbours who were never at Sušica.

I can hardly find the right words, but even so, mere words are not enough. Acts are needed, and I do intend to act for reconciliation for the return of those people who were displaced and expelled. That is my deepest wish." (Dragan Nikolić, sentencing hearing, 6 November 2003)

# TRIAL CHAMBER SENTENCING JUDGEMENT

Nikolić was sentenced for his participation in the persecutions, murder, rape and torture committed against Bosnian Muslim and other non-Serb civilians in the Sušica detention camp in the Vlasenica municipality in eastern Bosnia and Herzegovina. He was a commander of the camp from June 1992 until late September 1992 and it was during this time that the crimes were committed.

On or about 21 April 1992, the town of Vlasenica was taken over by Serb forces consisting of the Yugoslav People's Army, paramilitary forces and armed locals. Many Muslims and other non-Serb residents fled from the Vlasenica area at that time. From the beginning of May 1992 and until September 1992, those who had remained were either deported or arrested. As a consequence of this campaign, by September 1992, virtually no Muslims or other non-Serbs remained in Vlasenica.

In late May or early June 1992, Serb forces established a detention camp run by the military and the local police militia at Sušica. It was the main detention facility in the Vlasenica area and was located approximately one kilometer from the town. The detention camp comprised two main buildings and a small house. The detainees were housed in a hangar which measured approximately 30 by 50 meters. Between late May and October 1992, as many as 8,000 Muslim civilians and other non-Serbs from Vlasenica and the surrounding villages were successively detained in the hangar at Sušica camp. The number of detainees in the hangar at any one time was usually between 300 and 500. The building was severely overcrowded and living conditions were deplorable.

Men, women and children were detained at the camp, sometimes entire families. Women and children as young as eight years old were usually detained for short periods of time and then forcibly transferred to nearby Muslim areas. The men were held in the camp until its closure in late September 1992, and were then transferred to the larger Batković detention camp near the town of Bijeljina.

With regard to the charges of murder and torture, Nikolić admitted his individual criminal responsibility for the killing of nine people and the torture of five others.

Many of the detained women were subjected to sexual assaults, including rape. Camp guards or other men who were allowed to enter the camp frequently took women out of the hangar at night. When the women returned, they were often distraught and traumatized. The sexual assaults were committed by camp guards, special forces, local soldiers and other men. Female detainees were sexually assaulted at various locations, such as the guardhouse, the houses surrounding the camp, at the Panorama Hotel, a military headquarters, and at locations where these women were taken to perform forced labour. Nikolić allowed female detainees, including girls and elderly women, to be verbally subjected to humiliating sexual threats in the presence of other detainees in the hangar, and facilitated the removal of female detainees by allowing guards, soldiers and other males to have access to these women on a repeated basis and by otherwise encouraging the sexually abusive conduct.

With regard to the charge of persecutions, Nikolić subjected detainees to inhumane living conditions by depriving them of adequate food, water, medical care as well as sleeping and toilet facilities. As a result of the atmosphere of terror and the conditions in the camp, detainees suffered psychological and physical trauma. He further persecuted detained Muslims and other non-Serbs by assisting in their forcible transfer from the Vlasenica municipality. Most of the women and children detainees were transferred either to Kladanj or Cerska in Bosnian Muslim controlled territory.

In determining Nikolić's sentence, the Trial Chamber took into account that the acts of the accused were of an enormous brutality and continued over a relatively long period of time. Additionally, they were not isolated acts, but an expression of systematic sadism, and the accused apparently enjoyed them. Furthermore, Nikolić abused his power, particularly vis à vis the female detainees in subjecting them to humiliating conditions in which they were emotionally, verbally and physically assaulted and forced to fulfil the accused's personal whims. In addition, due to the seriousness and particular viciousness of the beatings carried out by Nikolić, the Chamber considered the conduct charged as torture as being at the highest level of torture

The admission of guilt by Nikolić was accepted by the Chamber as a mitigating factor since the plea reflected Nikolić's acceptance of responsibility for his crimes. The Chamber found that the rationale behind the mitigating effect of a guilty plea at the Tribunal included the fact an accused's guilty plea contributes to establishing the truth about the conflict in the former Yugoslavia and tends to foster reconciliation in the affected communities. Nikolić's co-operation with the Prosecution's investigation and his expression of remorse were also considered by the Chamber when determining the appropriate punishment for his crimes.

On 18 December 2003, the Trial Chamber rendered its judgement, convicting Nikolić on the basis of individual criminal responsibility (Article 7(1) of the Statute of the Tribunal) of:

 Persecutions on political, racial and religious grounds; murder; rape and torture (crimes against humanity, Article 5).

Sentence: 23 years' imprisonment.

## APPEALS CHAMBER JUDGEMENT

On 16 January 2004, Nikolić filed a notice of appeal against the Trial Chamber judgement. The Prosecution filed no appeal. An appeals hearing was held on 29 November 2004.

The Appeals Chamber handed down its judgement on 4 February 2005. The Chamber dismissed the arguments in regards to six of the seven grounds of appeal submitted by the accused. However, when addressing the sixth ground of appeal the Chamber considered the following:

One of the questions before the Appeals Chamber under this ground of appeal was whether the Trial Chamber erred in attaching too much weight to the possibility of an early release. In the plea agreement before the Trial Chamber, the parties had recommended to the Chamber that a sentence of 15 years imprisonment be imposed on the accused. The Chamber, not being bound by the recommendation, decided instead to impose a sentence of 23 years. The Appeals Chamber noted that the Trial Chamber, by imposing a sentence of 23 years, had clearly entered into a calculation to reflect the practice of the Tribunal of granting early release after the convicted person has served two-thirds of his sentence: in this case, after 15 years. The Appeals Chamber considered that the Trial Chamber mechanically - not to say mathematically - gave effect to the possibility of an early release, and by doing so attached too much weight to the possibility of an early release. As a consequence, the Appeals Chamber granted a reduction in the sentence.

The Appeals Chamber rendered its judgement altering the sentence handed down by the Trial Chamber. It reduced Nikolić's sentence from 23 years' to 20 years' imprisonment.

On 21 June 2006, Nikolić was transferred to Italy to serve the remainder of his sentence. Credit was given for the time served since 20 April 2000.

On 20 August 2013, Nikolić was granted early release.