

United Nations
Nations UniesInternational Criminal Tribunal
for the former Yugoslavia
Tribunal Pénal International
pour l'ex-Yougoslavie

“SREBRENICA” (IT-02-60/1)

**MOMIR
NIKOLIĆ****MOMIR NIKOLIĆ***Convicted of persecutions on political, racial and religious grounds*

From July 1995 until the end of the war, Assistant Commander for Security and Intelligence of the Bratunac Brigade of the Bosnian Serb Army

- Sentenced to **20 years' imprisonment**

*Crimes convicted of (examples):***Persecutions on political, racial and religious grounds (crimes against humanity)**

- Momir Nikolić participated in the murder of thousands of Bosnian Muslim civilians, including men, women, children and elderly persons.
- He participated in the cruel and inhumane treatment of Bosnian Muslim civilians, including severe beatings at Potočari and in detention facilities in Bratunac and Zvornik.
- He terrorised Bosnian Muslim civilians in Srebrenica and Potočari.
- He destroyed personal property and effects belonging to the Bosnian Muslims.
- He forcibly transferred Bosnian Muslims from the Srebrenica enclave.

Born	20 February 1955 in Bratunac, Bosnia and Herzegovina
Indictment	Initial: 26 March 2002; made public on 2 April 2002; amended joinder: 27 May 2002
Arrested	1 April 2002, by the multinational Stabilisation Force (SFOR)
Transferred to ICTY	2 April 2002
Initial appearance	3 April 2002, pleaded not guilty to all charges
Guilty plea	7 May 2003, pleaded guilty to persecutions
Trial Chamber judgement	2 December 2003, sentenced to 27 years' imprisonment
Appeals Chamber judgement	8 March 2006, sentence reduced to 20 years' imprisonment
Serving sentence	11 April 2007, transferred to Finland to serve the remainder of his sentence; credit was given for time served since 2 April 2002

STATISTICS

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

TRIAL CHAMBER SENTENCING JUDGEMENT	
<i>2 December 2003</i>	
Trial Chamber I	Judge Liu Daqun (presiding), Judge Volodymyr Vassilenko, Judge Carmen Maria Argibay
Counsel for the Prosecution	Peter McCloskey, Stefan Waespi, Antoinette Issa, Anne Davis
Counsel for the Defence	Veselin Londrović, Stefan Kirsch

APPEALS	
Appeals Chamber	Fausto Pocar (presiding), Mohamed Shahabuddeen, Mehmet Güney, Andresia Vaz, Theodor Meron
Counsel for the Prosecution	Peter Kremer
Counsel for the Defence	Rock Tansey, R.J. Livingston
Judgement	8 March 2006

RELATED CASES	
<i>by geographical area</i>	
BLAGOJEVIĆ & JOKIĆ (IT-02-60) "SREBRENICA"	
ERDEMOVIĆ (IT-96-22) "PILICA FARM"	
KARADŽIĆ & MLADIĆ (IT-95-5/18) "BOSNIA AND HERZEGOVINA" & "SREBRENICA"	
KRSTIĆ (IT-98-33) "SREBRENICA-DRINA CORPS"	
MILOŠEVIĆ (IT-02-54) "KOSOVO, CROATIA & BOSNIA"	
OBRENOVIĆ (IT-02-60/2) "SREBRENICA"	
ORIĆ (IT-03-68)	
PERIŠIĆ (IT-04-81)	
POPOVIĆ <i>et al.</i> (IT-02-88) "SREBRENICA"	
STANIŠIĆ & SIMATOVIĆ (IT-03-69)	
TOLIMIR (IT-05-88/2) "SREBRENICA"	
TRBIĆ (IT-05-88/1) "SREBRENICA"	

INDICTMENT AND CHARGES

The initial indictment against Momir Nikolić was confirmed on 26 March 2002 and made public on 2 April 2002.

On 17 May 2002, Trial Chamber II granted a Prosecution motion seeking to join the case against Momir Nikolić with that of Vidoje Blagojević, Dragan Obrenović and Dragan Jokić (IT-02-53). The Trial Chamber ordered that the four accused be jointly charged and tried and that the Prosecution file an amended joinder indictment. This indictment was filed on 27 May 2002 under case number IT-02-60.

According to the operative indictment, Momir Nikolić was mobilised into the army on 18 April 1992, when he was stationed at the Headquarters of the Territorial Defence as the Assistant Commander for Intelligence in Bratunac, in eastern Bosnia and Herzegovina. In July 1995, he was assigned to the Bratunac Brigade of the Republika Srpska Army (VRS), where he held the rank of Captain First Class and served as the Assistant Commander for Security and Intelligence, a post he remained in until the end of the war.

The indictment alleged that, in his capacity as Assistant Commander for Security and Intelligence, Momir Nikolić was present in the Bratunac Brigade zone of responsibility from 4 July 1995 to 1 November 1995.

It also charged him as a member of a joint criminal enterprise, the common purpose of which was to forcibly transfer the women and children from Srebrenica enclave to Kladanj, on 12 July and 13 July 1995; and to capture, detain, summarily execute by firing squad, bury, and rebury thousands of Bosnian Muslim men and boys aged 16 to 60 from the Srebrenica enclave from 12 July 1995 until and about 19 July 1995.

It was alleged that Momir Nikolić was individually criminally responsible pursuant to Article 7 (1) of the Statute of the Tribunal for the crimes referred to in Articles 3, 4 and 5 of the Statute of the Tribunal, which he planned, instigated, ordered, and otherwise aided and abetted in the planning, preparation, and execution of these charged crimes. The word "committed" in the indictment, did not intend to suggest that the accused necessarily physically and personally perpetrated any of the crimes charged. "Committing" the crimes can be accomplished by virtue of participation in the joint criminal enterprise.

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

- Genocide or alternatively complicity to commit genocide (genocide, Article 4),
- Extermination, murder, persecutions on political, racial and religious grounds, inhumane acts (forcible transfer) (crimes against humanity, Article 5),
- Murder (violations of the laws or customs of war, Article 3).

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 6 May 2003, a hearing on the "Joint Motion for Consideration of Plea Agreements between Momir Nikolić and the Office of the Prosecutor" was held before the Trial Chamber. The Chamber asked the parties to amend the Plea Agreement and on 7 May 2003, Momir Nikolić pleaded guilty to count 5 of the indictment - persecutions on political, racial and religious grounds, a crime against humanity. The Trial Chamber accepted the amended Plea Agreement and entered a finding of guilt, subject to the understanding that the Prosecution agreed to withdraw, without prejudice to either party, the remaining five counts against Momir Nikolić. Additionally, in the Plea Agreement, Momir Nikolić agreed to testify in other proceedings before the Tribunal, including other trials related to Srebrenica. On September 2003 Momir Nikolić testified in the trial of Blagojević and Jokić, his two former co-accused, for eight days.

STATEMENT OF MOMIR NIKOLIĆ

"Your Honours, by this statement, I wish to explain to you in the simplest and shortest way possible the reasons for my guilty plea to Count 5 of the Indictment. I arrived at this decision on my own, without any kind of pressure, threat, or persuasion by my counsel or by the Prosecutors, and I decided to come before this Tribunal and admit that a crime happened in Srebrenica in which I myself participated and for which I expect adequate punishment.

I sincerely wish before this Chamber and before the public, especially the Bosniak public, to express my deep and sincere remorse and regret because of the crime that occurred and to apologise to the victims, their families, and the Bosniak people for my participation in this crime. I am aware that I cannot bring back the dead, that I cannot mitigate the pain of the families by my confession, but I wish to contribute to the full truth being established about Srebrenica and the victims there and for the government organs of Republika Srpska, and all the individuals who took part in these crimes should follow in my footsteps and admit to their participation and their guilt, that they should give themselves in and be held responsible for what they have done.

By my guilty plea, I wanted to help the Tribunal and the Prosecutors to arrive at the complete and full truth and the victims, their brothers, mothers, and sisters should - I wanted to avoid their being subjected to additional suffering and not to remind them of this terrible tragedy.

Your Honours, I feel that my confession is an important step toward the rebuilding of confidence and coexistence in Bosnia and Herzegovina, and after my guilty plea and sentencing, after I have served my sentence, it is my wish to go back to my native town of Bratunac and to live there with all other peoples in peace and harmony, such as prevailed before the outbreak of the war." (Momir Nikolić, sentencing hearing, 29 October 2003)

TRIAL CHAMBER SENTENCING JUDGEMENT

A written factual basis for the crime and for Momir Nikolić's participation in it was filed with the plea agreement. The factual basis and the indictment, which Momir Nikolić acknowledged to be true, described the criminal acts which were carried out against the civilian population who fled the Srebrenica enclave following the attack and take-over by the Serbs.

In Potočari, women, children and the elderly were separated from the able-bodied men. While the men were detained, their wives and children were placed on buses and forcibly transferred to Muslim-held territory. This forcible transfer was accompanied by acts of terror, humiliation and utter cruelty.

The detained men were moved out of Potočari for execution. Similarly, the men who had escaped from Srebrenica in "the column" were captured and detained, pending execution. At one location, the Branjevo Military-run Farm, approximately 1,200 Bosnian Muslim men who had been captured from the column were executed by automatic weapon fire. In total, over 7,000 men were murdered.

The Trial Chamber found that Momir Nikolić was not unaware of the crimes unfolding following the fall of Srebrenica. Instead, it found that he appeared to be right at the centre of criminal activity as the operation spread from Potočari, to Bratunac and on to Zvornik. Momir Nikolić was present at the Hotel Fontana during the three meetings in which the fate of the Muslim population was discussed and decided. He did not raise any objections to what he was told was the plan: to deport Muslim women and children to Muslim held territory, and to separate, detain, and ultimately kill the Muslim men. Rather than resist, Momir Nikolić recommended possible detention and execution sites. On 12 July 1995, Momir Nikolić was in Potočari - he saw with his own eyes the separation of men from their families. The Trial Chamber found that he did nothing to stop the beatings, the humiliation, the separations or the killings. Further, in the months subsequent to the executions, the Trial Chamber found that Momir Nikolić co-ordinated the exhumation and re-burial of Muslim bodies.

On 2 December 2003, the Trial Chamber sentenced Momir Nikolić for one count of persecutions on political, racial and religious grounds to 27 years' imprisonment.

APPEALS CHAMBER JUDGEMENT

On 30 December 2003, Momir Nikolić filed a notice of appeal against his sentence. On 8 March 2006, the Appeals Chamber rendered its judgement reducing the sentence to 20 years' imprisonment.

Momir Nikolić appealed his sentence, arguing that the Trial Chamber made errors in determining it. Specifically, Momir Nikolić submitted 12 grounds of appeal. The Appeals Chamber accepted three of them. First, it found that the Trial Chamber considered Momir Nikolić's role in the crimes he committed both in determining the seriousness of the crime and, again, as an aggravating circumstance. The Appeals Chamber agreed with the defence that Momir Nikolić's role in the crimes was thus considered twice in determining the sentence. In the opinion of the Appeals Chamber, this was an error by the Trial Chamber.

Second, the Appeals Chamber agreed with both parties that the Trial Chamber relied significantly upon a false translation of remarks made by Momir Nikolić's defence counsel during his closing argument. The defence counsel said that "around 7,000 men were killed" and the translation read that "only 7,000 persons were killed in this campaign". The Appeals Chamber concluded that the Trial Chamber's expression of shock at this statement shows that the translation error had a negative influence on the determination of Momir Nikolić's sentence.

Third, the Appeals Chamber agreed that the Trial Chamber made mistakes when assessing Momir Nikolić's cooperation with the Prosecution and thus attached insufficient weight to this mitigating circumstance.

On 11 April 2007, Momir Nikolić was transferred to Finland to serve his sentence. Credit was given for time served since 2 April 2002.