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ICTY Appeals Chamber Sentence in the *Šljivančanin* Case and its Echo in Serbia

The Appeals Chamber of *the International Criminal Tribunal for the former Yugoslavia* (ICTY) passed May 5, 2009 the final judgement in the *Šljivančanin* case of war crimes on the „Ovčara” farm near Vukovar, where 194 prisoners of war, including sick and wounded patients of a hospital, were executed in November 1991¹. The original sentence was increased from five to seventeen years. The Appeals Chamber altered the Trial Chamber’s judgement inasmuch as **Veselin Šljivančanin** was found guilty for “aiding and abetting by omission the murder of war prisoners” -- a charge dismissed in the Trial Chamber’s judgement -- while the part of the judgement finding him guilty for aiding and abetting by omission the mistreatment of prisoners of war at Ovčara was upheld. The Appeals Chamber concluded that **Šljivančanin** -- at the time of the Vukovar operation a Yugoslav People’s Army (JNA) Major and presently retired Lt. Colonel -- is responsible for transferring more than four hundred prisoners of war under the control of Territorial Defense and paramilitary units, since at the moment of JNA unit’s withdrawal he could have known that those prisoners would be executed. The Appeals Chamber also concluded that **Šljivančanin** had realized that “the killing of the prisoners of war at Ovčara had become a likely occurrence, but failed to take action to ensure the continued protection of prisoners of war”. It concluded that the murder of those prisoners would have been much less likely had **Šljivančanin** secured military police’s return to Ovčara. Consequently, his failure to act in accordance with the laws and customs of war significantly contributed to the murder of prisoners of war.

Immediately after the news of the Appeals Chamber judgement was released in Serbia, an eruption of angry criticism and dissatisfaction flooded the public scene.

¹ A comprehensive account of the trial and all related events is to be found at:
<http://jurist.law.pitt.edu/paperchase/2009/05/icty-increases-sentence-for-officer.php>



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Reactions in the media are best visible in headlines. Here is a sample:

Kurir (daily): PUNISHMENT WITHOUT CRIME, SCANDAL, CRIME² CONTINUED.

Press (daily): A NEW HAGUE RAPE OF SERBIA, ŠLJIVANČANIN GETS 17 YEARS!

Politika (daily): ŠLJIVANČANIN'S SENTENCE TRIPLED.

Glas javnosti (daily): ŠLJIVANČANIN'S SENTENCE TRIPLED.

Media reports insisted on the first instance sentence being tripled, and did not conceal their astonishment, without bothering to deal with the crime **Veselin Šljivančanin** was tried and convicted for. The attitude expressed by the *National Council for Hague Cooperation* nurtured such approach with its statement that "the drastic increase of the sentence for defendant Šljivančanin in the second instance on the basis of evidence which was known already in the first instance trial will be hard to understand for the Serbian public... It will further reduce or even minimize the trust of the Serbian public in Hague's impartiality".

Public statements made by state dignitaries and politicians, government officials and opposition leaders alike (with the exception of *Liberal Democratic Party's* Chairman **Čedomir Jovanović**) matched this eruption of dissatisfaction and hurt feelings.

Boris Tadić, President of the Republic: „A very disappointing decision of the Hague Tribunal“;

Dragan Šutanovac, Defense Minister: „Utterly inappropriate“;

Aleksandar Vučić, Deputy chairman of the *Serbian Progressive Party*: „Šljivančanin sentence is anti-legal and unjust“;

Serbian Progressive Party: „A scandalous sentence“...

Rasim Ljajić, Labor and Social Policy Minister who is also Chairman of the *National Council for Hague Cooperation*, did not hide his disappointment and openly asked how one can expect the cooperation with the ICTY to continue if such sentences are pronounced. It is with this statement that Mr. **Ljajić** caters to the segment of the public opinion that considers the ICTY to be a political and anti-Serb institution. In an attempt to underline his discontent, he went on to announce that he would bring up the Appeals Chamber judgement in a complaint to Chief Prosecutor **Serge Brammertz!**

In a political atmosphere where the country's political elite -- including its Head of State -- unreservedly stands up to defend **Veselin Šljivančanin** and directly or indirectly accuse the ICTY of being biased, anti-Serb and politicized, citizens' comments published

² Meaning: Crime against the Serbs.



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upon the announcement of the judgement come as no surprise: in 90% of more than five hundred readers' comments sent to daily newspapers (*Politika, Kurir, Press*) and electronic media such as B92's website, negative assessment of the **Šljivančanin** sentence prevails, while understanding and open support for war crimes and their perpetrators is a rule rather than an exception. The online edition of the *Politika* daily (a „national institution” partly owned by the government) carried the following comment by one of its readers: „Ustashi³ and not prisoners of war were killed at Ovčara! Šljivančanin is a hero!”

This comment, though not the only of the kind, represents the essence of the sentiments cherished in much of Serbia's public opinion which perceives the Appeals Chamber judgement as „an evil and a continuation of an Inquisition crusade against Serbia”. This statement epitomizes the feeling of victimization and suffering the Serbian nation allegedly suffers, and the politicians in Serbia support and nourish.

Outlook:

Public reactions to the **Šljivančanin** sentence represent a direct consequence of Serbian politicians' habit to nurture a feeling of injustice inflicted on the Serbs, a feeling which has been induced by means of the 1990s war propaganda. This feeling dominates the public discourse in Serbia of today again.

Should there be no clear awareness of the cruelty of crimes Serbian „heros” such as **Šljivančanin** are tried and convicted for, the prevailing moral pollution and the growing support to the atrocities of the 1990s wars -- that mentally have not ended yet -- will continue to represent a dominant feature of Serbia's political, intellectual and cultural environment. It is therefore highest time that the political elite comprehends and takes upon itself the responsibility for the shaping of the public opinion into realising that the policies of 1990s wars were wrong, and the crimes committed can not be justified with artificial symmetries and complaints to the effect that others have not been made accountable.

Until that happens, it will be only understandable that defendant **Šljivančanin's** wife publicly addresses President **Tadić** and relies on this statement on ICTY's injustice when demanding from him to bring her husband back home from The Hague.

³ An equivalent of German SS troops in the *quisling* regime in the so-called “Independent State of Croatia” (1941-45).