

**EXTERNAL**

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**THE FEDERAL REPUBLIC OF YUGOSLAVIA - TORTURE AND UNFAIR TRIAL OF MUSLIMS IN THE SAND\_AK REGION)<sup>1</sup>**

**THE ARREST AND TRIAL OF HAJRIZ KOLAŠINAC AND CO-DEFENDANTS**

**Currently imprisoned: Hajriz Kolašinac, Fadil Ugljanin, Hajro Aljkovi\_ , D\_email Etemovi\_ , Šef\_et Gra\_anin, Ned\_ib D\_ipko Hod\_i\_;**

**Released pending appeal: Hodo Jakupovi\_ , Ibrahim Fakovi\_ , Alija Halilovic, Jonuz Škrijelj, Šefkija Rašljanin, Rifat Dupljak, Jakup Hod\_i\_ ,Safet Zilki\_ , Adem Hasi\_ , Mustafa Ali\_ , Mirsad Hod\_i\_ , Hajriz Fejzovi\_ , Zekerija Hajrovi\_ , Zuhdija Hod\_i\_ , Asim Ša\_irovi\_ , Mersad Plojevi\_ , Murat Muši\_ and Šemsudin Ku\_evi\_ .**

**Background:** The Sand\_ak is an historical region in the Federal Republic of Yugoslavia (FRY), straddling areas of western Serbia and eastern Montenegro. Muslims, the descendants of Slavs who converted to Islam during the centuries of Ottoman (Turkish) occupation of much of the Balkans, account for about half of its population . In the former Yugoslavia, they were recognized as a distinct national group, mostly living in Bosnia-Herzegovina and the Sand\_ak area. The Muslim population of the Sand\_ak area traditionally feels strong ties with the Muslims of neighbouring Bosnia-Herzegovina.

In October 1991, at a time when declarations of regional autonomy or independence were rife throughout former Yugoslavia, a referendum was held in Sand\_ak, organized by the Muslim National Council.<sup>2</sup> In this referendum, the organizers claimed, 98.9 per cent of the voters who participated (some 75 per cent of the Muslim population) voted in favour of autonomy for the Sand\_ak region. The Yugoslav authorities rejected this referendum as illegal and void, and in Bijelo Polje in Montenegro some of the alleged organizers were briefly arrested.

With the outbreak of armed conflict in Bosnia-Herzegovina in 1992, the situation in the Sand\_ak became very tense. During 1992 and 1993 thousands of Muslims left the Sand\_ak after Muslim homes, businesses or cars were destroyed by Serb or Montenegrin paramilitaries and political extremists (some operating from Serb-controlled areas in Bosnia-Herzegovina). There were also cases in which Muslims were murdered or abducted in the Sand\_ak area. Although the FRY authorities publicly condemned such crimes, they frequently appeared unable or unwilling to offer effective protection to Muslims and there were indications that the paramilitaries had support from circles within the military and police in the FRY. Instances where perpetrators of violence against Muslims have been identified and brought to justice have been rare.

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<sup>1</sup> Also spelt Sanjak. This region is officially now known as Raška, after a mediaeval Serbian kingdom situated roughly in the same area.

<sup>2</sup> A coalition of various Muslim political parties and organizations.

Many Muslims responded to the situation of insecurity and fear by seeking to obtain weapons and arms - as was generally happening throughout the territories of former Yugoslavia. The authorities have sought to prevent this by carrying out mass arms searches in the Sandak. Sandak Muslims have complained that the Serbian and Montenegrin population have not been subjected to similar searches, although they too have in many cases armed themselves. For example, in January and February 1994 police carried out mass house searches of Muslims in Prijepolje, arresting over 400 people, although it is reported that in most cases no arms were found. Many of those arrested were reportedly severely beaten. During 1995, instances of searches and associated ill-treatment of this kind appear to have been much reduced.

In 1993 and early 1994 some 50 Sandak Muslims were arrested on charges of conspiring to establish - by means of force - the Sandak region as an independent state. In October and December 1994, 45 of them were convicted at two separate trials (in Novi Pazar in Serbia and Bijelo Polje in Montenegro) and sentenced to between one and seven years' imprisonment. At their trials the defendants rejected the charges against them, though some admitted distributing arms, which they said they had done to ensure the self-defence of the Muslim population.

### **The trial of 24 Muslims before the District Court of Novi Pazar**

The defendants at this trial (who include Hajriz Kolašinac, Fadil Ugljanin, Hajro Aljković, Džemal Etemović, Šefet Gračanin and Nedžad Hodžić currently serving prison sentences), are all Muslims from the area of the Sandak which lies within Serbia; several of them are prominent members of the main Muslim political party in Serbia, the Stranka Demokratske Akcije<sup>3</sup> (Party of Democratic Action, led by Sulejman Ugljanin).<sup>4</sup>

On the evening of 22 May 1993, in a coordinated action, police arrested 11 of the defendants. In accompanying searches police claimed to have found a large quantity of weapons and ammunition, including 18 automatic rifles, 1700 rounds of different types of ammunition and over seven kilograms of explosives. Further arrests took place in the course of the following months. The defendants were investigated under Article 116, in conjunction with Article 136 of the FRY Criminal Code ("association for the purpose of hostile activity" and "undermining the territorial integrity of the FRY by the use of violence"), on charges of having been involved in organizing Muslim paramilitary groups in the Sandak.

The trial before the District Court of Novi Pazar, which started on 31 January 1994, was adjourned many times and ended only in October 1994. By that time, a number of defendants had already spent nearly 18 months in detention. All the defendants were found guilty, and they were sentenced to terms of imprisonment ranging from one to six years. Ten defendants who received sentences of less than five years' imprisonment were freed at the end of the trial, pending appeal to the Supreme Court of Serbia. Nine other defendants<sup>5</sup> had already been released from custody earlier. Hajriz Kolašinac, Fadil Ugljanin, Hajro Aljković, Džemal Etemović, Šefet Gračanin and Nedžad Hodžić remain in prison.

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<sup>3</sup> Affiliated to its namesakes in Bosnia-Herzegovina (led by Bosnian President Alija Izetbegović) and Montenegro.

<sup>4</sup> Sulejman Ugljanin did not return from a visit to Turkey in July 1993.

<sup>5</sup> Including a 25th defendant, who was believed to have left the country after his release in October 1993, and whose case was suspended by the prosecution.

### **A summary of Amnesty International's concerns with regard to Hajriz Kolašinac and his co-defendants:**

Amnesty International is concerned about allegations made by Hajriz Kolašinac and his co-defendants that following arrest they were beaten and otherwise ill-treated by police officers, and were forced to make self-incriminating statements. The organization is also concerned that a witness was reportedly similarly ill-treated, in an unsuccessful attempt to make him testify for the prosecution, and was not protected against further ill-treatment after he had failed to give the desired testimony in court.

Amnesty International is concerned that these allegations were not promptly and thoroughly investigated by the authorities.

Amnesty International is also concerned that the defendants were denied a fair trial. This concern arises out of the fact that the court, having failed to thoroughly investigate these allegations, based its conviction of the defendants very largely on the statements which had allegedly been extorted from them by torture and other coercion. Secondly, the defendants' access to their lawyers and their lawyers' access to the full court files were restricted in various ways, thus undermining their right to defence.

Amnesty International has similar concerns with regard to another group trial of Sandak Muslims who were convicted in Bijelo Polje in Montenegro in December 1994.

Both national law and international human rights treaties which the FRY has recognized as legally binding (including the *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*) prohibit torture and ill-treatment and exclude the use in court of statements made by the accused as a result of torture or ill-treatment as evidence against the accused.

### **Defendants**

1. Hajriz Kolašinac, a teacher from Novi Pazar, one of the leaders of the SDA in Serbia; arrested 1 June 1993 (sentenced to six years' imprisonment - currently detained).
2. Fadil Ugljanin, born 5 March 1954, from Novi Pazar ; arrested 22 May 1993 (sentenced to five years' imprisonment - currently detained).
3. Hajro Aljković, an accountant from Novi Pazar (sentenced to five years' imprisonment - currently detained).
4. Džemal Etemović, from Novi Pazar; arrested 22 May 1993 (sentenced to five years' imprisonment - currently detained).
5. Šefik Gračanin, from Novi Pazar; first arrested in May 1993, then released; re-arrested in June 1993 (sentenced to five years' imprisonment - currently detained).

6. Mustafa Ali\_, president of the local SDA council for the 2nd municipal district of Novi Pazar (sentenced to three years' imprisonment - released pending appeal).
7. Hodo Jakupovi\_, born 1 May 1928, from Novi Pazar, member of the SDA council in the 5th municipal district of Novi Pazar; arrested 22 May 1993 (sentenced to four years' imprisonment - released pending appeal).
8. Ibrahim Fakovi\_, born 17 October 1956, from Novi Pazar; arrested 22 May 1993 (sentenced to four years' imprisonment - released pending appeal).
9. Alija Halilovi\_, from Novi Pazar. Together with Sulejman Ugljanin he compiled for the SDA a "program for the economic development of Sand\_ak" (sentenced to four years' imprisonment - released pending appeal).
10. Jonuz Škrijelj, born 13 August 1948, from Novi Pazar; arrested 22 May 1993 (sentenced to four years' imprisonment - released pending appeal).
11. Adem Hasi\_, born 9 September 1970, from Novi Pazar; arrested 22 May 1993 (sentenced to three years' imprisonment - released pending appeal).
12. Šefkija Rašljanin, born 24 September 1958, from the village of Mur near Novi Pazar; arrested 22 May 1993 (sentenced to four years' imprisonment - released pending appeal).
13. Mirsad Hod\_i\_, from Sjenica (sentenced to 30 months' imprisonment - released pending appeal).
14. Jakup Hod\_i\_, from Sjenica (sentenced to four years' imprisonment - released pending appeal).
15. Safet Zilki\_; arrested 22 May 1993 (sentenced to three years' imprisonment - released pending appeal).
16. Rifat Dupljak, president of the local SDA council in the village of Trnava near Novi Pazar (sentenced to four years' imprisonment - released pending appeal).
17. Ned\_ib D\_ipko Hod\_i\_, from Novi Pazar; former bodyguard to Sulejman Ugljanin; arrested 9 June 1993 (sentenced to five years' imprisonment - currently detained).
18. Hajriz Fejzovi\_, born 14 March 1952, from Novi Pazar; arrested 22 May 1993 (sentenced to two years' imprisonment - released pending appeal).
19. Zekerija Hajrovi\_, from Tutin (sentenced to two years' imprisonment - released pending appeal).
20. Asim Ša\_irovi\_, born 13 July 1958, from Novi Pazar; arrested 22 May 1993 (sentenced to one year's imprisonment - released pending appeal).

21. Mersad Plojevi\_, arrested 22 May 1993 (sentenced to one year's imprisonment - released pending appeal).

22. Murat Muši\_, from Novi Pazar (sentenced to one year's imprisonment - released pending appeal).

23. Zuhdija Hod\_i\_, from Novi Pazar (sentenced to 18 months' imprisonment - released pending appeal).

24. Šemsudin Ku\_evi\_, SDA leader in Tutin (sentenced to one year's imprisonment - released pending appeal).

A 25th defendant, Nasuf Halilovi\_, who had been under investigation with this group, but was provisionally released from custody in October 1993, did not appear at the trial and was believed to have fled the country.

### **Lawyers**

According to newspaper reports, ten lawyers defended the accused. They included local lawyers Esad Duljevi\_, Ramiz Crnišanin, Mehmed Hot and Ze\_ir Bre\_anin, two lawyers from Kosovo: Faruk Korenica and Azem Vllasi, and Rajko Danilovi\_ from Belgrade.

### **Judges**

Pre-trial investigation proceedings were conducted by the investigating judge Milomir Jovi\_evi\_ from the District Court of Novi Pazar. The trial took place before a bench of five of this court. The presiding judge during the first part of the trial (31 January 1994 until 17 February 1994), was Dragoje Tapušкови\_, a judge from the District Court of Kraljevo. The trial was adjourned indefinitely on 18 February 1994, after judge Tapušкови\_ was seriously injured in a traffic accident. The trial resumed on 25 May 1994, with Dragomir Lelovac, again from the District Court of Kraljevo, as the presiding judge.

### **Prosecutor**

Milonja Kali\_anin, the district public prosecutor of Novi Pazar.

### **Indictment**

The indictment was filed on 18 October 1993. The aggravating Article 136 ("association for the purpose of hostile activity") had been dropped by the prosecution and the defendants were indicted under Article 116 in conjunction with Article 138, with making "preparations" to undermine the integrity of the FRY.

The defendants were accused that "from May 1991 to May 1993, in Novi Pazar, Sjenica, Tutin and elsewhere, together with Sulejman Ugljanin, Sokol Ahmetovi\_ and [two others],<sup>6</sup> they plotted criminal acts undermining the territorial integrity of the state". Allegedly, they aimed to

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<sup>6</sup> All four had evaded arrest by leaving the country, according to media reports.

create by force an independent state of Sand\_ak, to include the territory of six communes in Serbia and six in Montenegro. They were accused of making military plans, founding military and police formations, with a "general military command for Sand\_ak" and local military commands for main towns and districts. It is also claimed that they organized training for terrorist groups and organized special units to attack military installations. Furthermore, it was claimed that they illegally amassed weapons, ammunition and explosives, giving rise to additional charges under Article 33 of the Serbian Law on weapons and ammunition.

The following is a brief summary of the charges against the individual defendants:

**Hajriz Kolašinac:** organized a "general military command for Sand\_ak", of which he was the commander; drafted the guidelines for "war plans"; selected and sent 250 people from Sand\_ak to undergo military training in Turkey. He also held meetings with Sefer Halilovi<sup>7</sup> in Sarajevo and travelled to Turkey where he visited military camps where Sand\_ak Muslims were being trained.

**Fadil Ugljanin:** chief of the "general military command for Novi Pazar"; made a "war plan" for this town; involved in the theft of 260 kilograms of explosives from a warehouse at the Gradac quarry near Tutin; received from Sokol Ahmetovi<sup>54</sup> automatic rifles and a great quantity of ammunition, which he distributed among members of military formations; trained commando teams in the mining of bridges, roads, railway tracks and strategic economic and military facilities.

**Hajro Aljkovi<sup>5</sup>:** member of the "general military command for Sand\_ak"; recruited a considerable number of persons whom he trained in handling explosives; prepared acts of sabotage, for which he worked out plans and maps; formed small groups for "liquidating" individuals; visited "war commands" in other Sand\_ak towns and distributed illegally obtained weapons (11 pistols and 3 rifles).

**D\_email Etemovi<sup>5</sup>:** worked on the recruitment, training and arming of sabotage groups and snipers. He took part in the theft of explosives from the Gradac quarry in Tutin. According to plans which he helped prepare, Etemovi<sup>5</sup> was to lead various actions, aimed at sabotaging two military barracks, a railway line, a bridge and sections of roads. He also distributed illegally acquired weapons.

**Sef\_ et Gra\_ anin:** chief of the military command in the 2nd municipal district of Novi Pazar; procured a movie projector and films providing instruction on sabotage; compiled a list of safe hiding-places in his neighbourhood.

**Ned\_ ib D\_ ipko Hod\_ i<sup>5</sup>:** sent Muslims from the Sand\_ak to receive military training in Turkey, where he also stayed himself and led a group of 80 people; kept - in his father's house - a "large" quantity of weapons: four automatic rifles and five other guns.

The remaining defendants were charged with similar offences, such as: illegally possessing and distributing arms; organizing and leading "military commands"; recruiting personnel for paramilitary units; planning future actions to be carried out by these units;

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<sup>7</sup> Then commander of the Bosnian Government Army.

involvement in the theft of explosives from the Gradac quarry in Tutin; attending military training in Turkey.

## **Trial**

The trial was observed by an observer from the Humanitarian Law Fund, a Belgrade-based human rights organization. The first trial session, on 31 January 1994, was attended by representatives from the British, French, German and Turkish embassies. A session of the trial on 25 May 1994 was attended by two representatives of the British embassy.

Amnesty International has press reports of the trial, but these provide only a limited view of trial proceedings; the following summary, therefore, does not claim to give a complete account of all aspects of these proceedings.

The trial started on 31 January 1994. Reports describe a heavy police presence around the court building in Novi Pazar. On the very first day of the trial the lawyers requested that all statements made by the accused to the investigating judge be removed from the court files,<sup>8</sup> on the grounds that they constituted inadmissible evidence. They argued that these statements had been extorted by ill-treatment and intimidation; further, that they must be regarded as statements taken by police or State Security officers (SDB)<sup>9</sup> (which under Yugoslav law are inadmissible evidence), since they were made on SDB premises, in the presence of SDB personnel, in the absence of the lawyers and with the investigating judge playing a purely formal role. The court refused this request. The lawyers then lodged an appeal with the Supreme Court of Serbia, and the trial was adjourned to 9 February.

The trial resumed on 9 February 1994, apparently after the Supreme Court of Serbia had rejected the lawyers' appeal. The prosecutor read out the indictment, largely based on statements recorded by the investigating judge, in which the defendants confessed to many of the charges against them.

In as far as the defendants had confessed to (part of) the charges against them during pre-trial investigation, they retracted these confessions at their trial. The only charge most of them admitted to was having possessed one or more guns and some ammunition - in some cases, with an official permit. They said they felt they needed these weapons for self-defence, in case of attack by Serbian paramilitaries, who had been openly active in the Sandak area at the time. As for their confessions, most defendants stated they had made these as a result of ill-treatment and intimidation by police and SDB officers. Some also claimed they had signed "confessions" which they had not made but which had been compiled by SDB officers or the investigating judge. Several defendants told the court that during pre-trial investigation they had not been questioned

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<sup>8</sup> *The lawyers in fact demanded that the statements taken by the investigating judge be treated as statements taken by police or SDB (which by law are inadmissible evidence), and that they therefore be removed from the court file before the trial began.*

<sup>9</sup> *Acronym for Slu\_ba Dr\_avna Bezbednosti; State Security Service.*

about military units and military commands and plans to create a state of Sand\_ak, and that they first heard about these matters when the indictment was issued.

**Hajriz Kolašinac** denied being the chief of any "general military command for Sand\_ak" or knowing anything about it. He said he had been involved in an informal group consisting of Sokol Ahmetovi\_, Hodo Jakupovi\_, Rifat Kurtašinovi\_ and Hajro Aljkovi\_, which had discussed issues relating to the security of the Muslim population in the Sand\_ak, as they felt alarmed by the presence of Serb paramilitary groups in the region. They had also written down a number of principles concerning methods of self-defence. He denied he had been involved in any kind of secret activity. He said he had left this group at the end of 1991 as he disagreed with the views of Sokol Ahmetovi\_ who held that the Muslim population should be armed. He said that he had received from Sokol Ahmetovi\_ two pistols and 400 bullets which he had registered with the local authorities.

**Fadil Ugljanin** stated that the indictment exaggerated the number of automatic rifles he had distributed (allegedly 54). He claimed he had given eight rifles to Hodo Jakupovi\_, eight to Rifat Zilki\_ and one each to Adem Hasi\_ and Murat Muši\_. A day later he distributed guns to six young men who were brought to him by Sokol Ahmetovi\_. He had obtained these weapons from a depot in a disused hydro-electrical plant in Novi Pazar, to which Ahmetovi\_ had given him the keys. He denied the other charges against him. He reportedly wept in court, alleging that he had been psychologically tortured in jail, and as a result had made a false "confession".

**Hajro Aljkovi\_** denied all charges against him. He said he had never handled explosives, given military training, worked out sabotage plans or distributed weapons, and that he had confessed to these activities only because of the threats and the physical and psychological torture he had been subjected to in prison. He said he had never been a member of a "general military command", and did not even know of its existence. He told the court that he had been a member of a Novi Pazar "peace council" which had been set up because of concern about Serbian paramilitary forces.

**D\_email Etemovi\_** had reportedly, during investigation proceedings, admitted that Muslim paramilitary formations existed and were illegally arming themselves, that military training was taking place in Turkey, and that this was all organized by the SDA and its leaders. At the trial, he denied everything, including the specific charges against him. When called upon to explain the explosives stolen in Tutin, he claimed that while on a visit to Tutin with friends he had by chance encountered Sokol Ahmetovi\_ who had asked them to help him carry and transport some packages. He did not know what they contained. According to a press report, when he was shown by the judge "lists of army units" and "sabotage plans", he claimed he had merely copied these out. He claimed he had signed his "confession" after SDB inspectors threatened the safety of his family.

**Šef\_et Gra\_anin** denied being the chief of a military command in his municipal district, and said he had no knowledge of its existence. He told the court that Sokol Ahmetovi\_ had offered him for free an automatic rifle, which he had accepted out of fear of paramilitaries. When shown by the judge a receipt which appeared to record the distribution of arms (nine weapons, mostly automatic rifles) to his "military unit", he told the court that this was a false document which he had actually signed at the police station in Kraljevo after police officers had promised him there would be no court proceedings if he signed it. He explained that he was released from detention the day after he signed, and then called Sokol Ahmetovi\_ and obtained a list of people to whom



arms had been given. He said he had intended to collect these weapons and hand them over to the police, but SDB inspectors had already collected them. He was detained again in June 1993. He alleged that he was threatened while in detention, and that the clerk present at his questioning told him: "You should all be sent back to Novi Pazar in coffins". He claimed that the investigating judge compiled and wrote his confession, which he had signed under compulsion.

Sef\_et Gra\_anin further told the court that he suffered from chronic ulcers and complained that the prison doctor in Kraljevo had told him he was malingering, although he vomited blood for 20 days. He said that after transfer to Novi Pazar prison he was admitted to hospital for ten days and claimed he had lost 34 kilos during his detention.

The remaining defendants denied the charges against them, except the possession and distribution of one or more weapons, which they said was motivated by fear of Serbian paramilitary groups. They said they had made "confessions" to SDB officers under pressure, and later had repeated (or failed to retract) these "confessions" before the investigating judge, out of fear of further ill-treatment or threats to their families.

**Ibrahim Fakovi\_** told the court that, together with Hodo Jakupovi\_ and Alija Halilovi\_, he had been member of a "peace council" in Novi Pazar 5th municipal district, which was concerned with maintaining peace in the area. This council had three subcommittees. The indictment, he claimed, had "transformed" the council and its subcommittees into "battalions" and "companies".

**Alija Halilovi\_** reportedly told the court: "Firstly, I don't feel guilty for having a rifle, since it is a man's duty to defend his honour, family and home from possible attacks by Serbian paramilitary units and individuals... Muslims are constantly being killed, kidnapped, their houses are set on fire and destroyed, their property robbed, and no one is protecting them. What could we do but protect ourselves ? I did not keep a rifle in order to create a state of Sand\_ak and no sane person would think that such a state could be created by force and against an army as powerful as the Yugoslav Army, especially since the Serbian population has been armed with a great quantity of weapons".

**Šefkija Rašljanin** said he had signed his "confession" under threat from SDB officers who told him: "Think about what you're doing, because you'll be back in our hands".

### **Witnesses**

The prosecution called various witnesses, but it appears that almost none of them incriminated the defendants. Thirteen witnesses admitted that they had received or bought guns, but not from any of the defendants. Some other witnesses refused to give testimony.

One witness, **Munir Šaboti\_**, a shopkeeper, was called by the prosecution on 19 September 1994 and was expected to testify about "military preparations" in the 5th municipal district of Novi Pazar. However, he told the court that he had no knowledge of paramilitary formations in Novi Pazar. He said he was not a member of any such formation, but a humanitarian activist, responsible for providing humanitarian aid to the people of the 5th municipal district of Novi Pazar. He also alleged that police officers had beaten him to force him to give false testimony against the defendants. He said that police officers had written out a statement and told him to learn it by heart and repeat it in court (see below).

Several witnesses told the court that they had been given weapons by Sokol Ahmetovi\_, in payment of debts he claimed to be unable to pay. The lawyer Esad Duljevi\_ described the role of

Sokol Ahmetovi\_, who according to almost all defendants and witnesses was the key figure in arms transactions, as "unclear". He suggested that Sokol Ahmetovi\_, who had apparently left the country, might have been an SDB agent-provocateur.

### Verdict

On 12 October 1994 the court rendered its verdict. All 24 defendants were found guilty under Article 116, in conjunction with Article 138 of the FRY Criminal Code. The court found that other charges under Article 33 of the Serbian Law on Weapons and Ammunition had not been proved. The defendants were sentenced as follows:

Hajriz Kolašinac - six years' imprisonment;  
 Fadil Ugljanin, Hajro Aljkovi\_, D\_email Etemovi\_, Šef\_et Gra\_anin and Ned\_ib D\_ipko Hod\_i\_ - five years' imprisonment each;  
 Hodo Jakupovi\_, Ibrahim Fakovi\_, Alija Halilovic, Jonuz Škrijelj, Šefkija Rašljanin, Rifat Dupljak and Jakup Hod\_i\_ - four years' imprisonment each;  
 Safet Zilki\_, Adem Hasi\_ and Mustafa Ali\_ - three years' imprisonment each;  
 Mirsad Hod\_i\_ -30 months' imprisonment;  
 Hajriz Fejzovi\_ and Zekerija Hajrovi\_ - two years' imprisonment each;  
 Zuhdija Hod\_i\_ - 18 months' imprisonment  
 Asim Ša\_irovi\_, Mersad Plojevi\_, Murat Muši\_ and Šemsudin Ku\_evi\_ - one year's imprisonment each;

The court suspended the detention of all defendants sentenced to less than five years' imprisonment who had not already been released.<sup>10</sup> Six defendants - Hajriz Kolašinac, Fadil Ugljanin, Hajro Aljkovi\_, D\_email Etemovi\_, Šef\_et Gra\_anin and Ned\_ib Hod\_i\_ were to remain in detention pending appeal.

The verdict was issued in writing only in early February 1995 - nearly four months after the verdict was passed. Only then was it possible for the defendants to appeal against their conviction. By the end of November 1995 the Supreme Court of Serbia had still not ruled on the appeals.

(In the same period, a very similar trial took place in the Montenegrin part of the Sand\_ak area, in the town of Bijelo Polje. There, 21 Muslims, most of them SDA officials, including Harun Had\_i\_ and Rasim Šahman, president and general secretary of the Montenegrin SDA, stood trial in the period from September to December 1994 on similar charges. On 28 December 1994 all of them were found guilty. They were sentenced to terms of imprisonment ranging from two and a half to seven years. As far as is known to Amnesty International, seven of them are currently in prison serving their sentence. )

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<sup>10</sup> It is not known to Amnesty International which defendants had already been released before the end of the trial, and when this happened. It is likely, however, that this group, numbering eight in total, roughly consisted of those who received the shorter prison sentences (not exceeding two and a half years).

## **Information relating to Amnesty International's concerns with regard to denial of fair trial and torture and other ill-treatment**

### **Denial of prompt access to a judge**

Under the FRY Code of Criminal Procedure, the investigating judge should normally examine a detainee - and decide if there are grounds for further detention - within 24 hours from the moment the detainee was first brought before him - which should normally happen on the day of arrest and not in any case later than 72 hours after arrest. Under Article 9 (3) of the *International Covenant on Civil and Political Rights*, "[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power..."

In this case, detainees were first questioned by the investigating judge more than 72 hours after their arrest. For instance, Hajriz Kolašinac was first brought before an investigating judge on 9 June 1993, although he was arrested on 1 June. Moreover, the prosecutor demanded an investigation to be opened on 4 June, after which Hajriz Kolašinac should have been brought before the investigating judge within 24 hours.

### **Reported torture and ill-treatment and coerced statements**

At least seven of the defendants (Hajro Aljkovi\_, Mustafa Ali\_, Jonuz Škrijelj, Mirsad Hod\_i\_, Safet Zilki\_, Rifat Dupljak and Šemsudin Ku\_evi\_) claimed to have been tortured or physically ill-treated during pre-trial investigation.

In addition, all defendants stated at the trial that they had been subjected to threats and intimidation by officers, who tried to force them to make self-incriminating statements, and/or to sign such statements which the SDB had compiled. Most of them had eventually made the desired statements in order, they claimed, to end their psychological ill-treatment. Several defendants made such allegations not only of SDB officers, but also of the investigating judge, Milomir Jovi\_evi\_.

Part of the pre-trial investigation proceedings took place in Kraljevo, and it appears that this is where most of the alleged instances of intimidation and ill-treatment took place.

**Mustafa Ali\_** told the court that he was held in solitary confinement for six weeks, and was beaten and threatened. "They told me I was a criminal, a chauvinist and threatened that they would arrest my family and that I would never see Novi Pazar again. Because of that I had to make up and sign everything the SDB inspectors and the investigating judge required me to".

**Jonuz Škrijelj** told the court that during investigation proceedings he was forced by physical and psychological ill-treatment to sign everything which the SDB inspectors and the investigating judge wanted him to sign.

**Mirsad Hod\_i\_** said he had been held in solitary confinement for six weeks and had been repeatedly beaten by SDB officers. He also alleged that a police officer had threatened to kill him.

**Šemsudin Ku\_evi\_** reportedly stated at the trial: "I was asked to confess and sign a statement composed of only two sentences and I was promised that I would be released immediately

afterwards. I was to sign a statement that military units, emergency headquarters, arms as well as some military training had been organized by Sulejman Ugljanin. Of course I couldn't sign what isn't true...I was taken to Kraljevo, where I was hit, kicked and beaten with truncheons. I remember very well three sorts of truncheons; there was a short one, a long one and an electric one with a handle. The fourth day after my arrest, I was tied to a bar. One of [the officers] pulled out my hair, another opened my mouth and a third tried to pull out my teeth with a pair of pliers. They gave up and started to beat me instead, with music turned on. While beating me on the back with a truncheon they held a scalpel under my nose. Finally they announced they were going to destroy my kidneys. They brought in sacks filled with sand and some written papers. After such prolonged torture and mental exhaustion I reckon I would have signed anything, even a confession that I had killed President Kennedy."

**Hajriz Kolašinac** told the court that SDB officers had threatened to beat him and out of fear he had promised them that he would sign anything they wanted. He said that shortly before he was questioned by the investigating judge, an SDB officer told him: "Our aim is to break Sulejman Ugljanin and you must tell the investigating judge the same as what you have signed before us. If you don't do that, you will be beaten until you do". However, when he was actually brought before the investigating judge for questioning, he "defended himself by silence", that is, he refused to give any statements (this is a defendant's right under Article 218 of the FRY Criminal Procedure Code).

On 14 June he was again brought before the investigating judge to make a statement. According to Hajriz Kolašinac on this occasion he duly made a "confession" after being threatened with physical torture. Kolašinac also told the court that, during his time in the District Prison in Kraljevo: "At night in my cell I heard screams and wailing, but I couldn't make out whether these were tape recordings or they were actually beating somebody".

**Munir Šaboti**, a witness, stated in court that previously, on 31 August 1994, he had been beaten at a Novi Pazar police station by (named) SDB inspectors who wanted him to make statements incriminating some of the defendants. He presented the court with a copy of the statement which the SDB inspectors had given him, telling him he should learn it by heart and then recite it in court. He also showed the court a medical certificate describing the injuries he sustained on 31 August 1994.

(Amnesty International has learned that immediately after giving the above testimony in court, Munir Šaboti was summoned to the police station, where the two SDB officers he had named, together with a third colleague, again beat and kicked him. On behalf of Munir Šaboti, lawyers Mehmed Hot and Rajko Danilovi filed a complaint against these SDB officers on 20 and 26 September 1994. To Amnesty International's knowledge, no investigation has been started against these officers. A report about the ill-treatment of the witness Munir Šaboti was issued in October 1994 by the Humanitarian Law Fund, a human rights organization based in Belgrade).<sup>11</sup>

Responding to these allegations of torture and other ill-treatment, prosecutor Kalić in his final plea on 22 September 1994 said the allegations were not true and that SDB officers had acted in a "friendly" way towards the accused. This claim provoked laughter and indignation in

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<sup>11</sup> "The case of Munir Šaboti: Witness coercion in the Sandžak", Spotlight Report No. 15, October 1994.

the court room, according to a report in the Belgrade daily newspaper *Borba* of 23 September 1994.

Apart from questioning the clerks who took down the statements made by the defendants to the investigating judge (see below), the court appears to have made no attempt to investigate the credibility of the defendants' allegations that they had been tortured, ill-treated or threatened following arrest.

### **National and international legislation prohibiting torture and ill-treatment**

Torture and ill-treatment are prohibited under Yugoslav law. Article 191 of the FRY Criminal Code punishes with up to three years' imprisonment officials who in the performance of their duties physically ill-treat, intimidate or insult another person. Article 65 of the Serbian Criminal Code provides for a sentence of up to five years' imprisonment if the ill-treatment is intended to extract a confession (or up to 15 years if the ill-treatment is very serious). Torture and ill-treatment are also prohibited under the *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* and the *International Covenant on Civil and Political Rights* which were ratified by the Socialist Federal Republic of Yugoslavia (to which the FRY claims to be the successor state).

### **Failure of the court to conduct prompt, thorough, independent and impartial investigations into allegations of torture, ill-treatment and coercion in obtaining statements**

Amnesty International is concerned that the court failed to conduct a prompt, thorough, independent and impartial investigation into the complaints by defendants of torture, ill-treatment and coercion in obtaining statements from them. Under Article 12 of the *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, the authorities are obliged to "proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed..." Further, Article 15 requires that: "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made".

At this trial, the court reportedly did examine the defendants in connection with the manner in which their statements to the investigating judge were made. On 29 July 1994 *Borba* reported that defendants claimed that the investigating judge, when taking their statements, had simply dictated to a clerk from the statement which SDB officers had previously obtained from them, allegedly by ill-treatment and/or threat. Defendants reportedly claimed that SDB officers were present while the investigating judge took their statements, which increased their fear of reprisals. In one case, Fadil Ulgjanin denied in court that he had given any statement to the investigating judge; he claimed that he had defended himself by silence, and the statement purporting to be one made to the investigating judge was in fact one compiled by SDB officers.

Defendants and their lawyers referred to other alleged illegalities in connection with these statements - in particular the absence of defence lawyers and the presence of SDB officers in the capacity of court clerks. For instance, it was claimed that one of the clerks who took down statements dictated by the investigating judge was in fact an SDB officer who had previously arrested and interrogated some of the defendants.

When examined by the court (on 28 July 1994) clerks reportedly rejected almost all these allegations. They stated that proceedings had been correctly conducted, the defendants had not been threatened or ill-treated and SDB officers had not been present. However, it became clear in the course of questioning that at least some of the statements had been taken, not on court premises, but in Kraljevo police station. Clerks reportedly also admitted that they were SDB, not court, employees.

In Amnesty International's view the court's examination of the defendants and the clerks falls well short of the thorough investigation which should have been undertaken into the allegations of torture and ill-treatment made by the defendants and their lawyers. In view of this, and in view of the evidence supporting the defence's argument that the defendants' statements were given in circumstances which violated Yugoslav law, the organization believes that the statements are open to too many objections to stand as valid evidence.

### **Restrictions on the defendants' access to their lawyers and on their lawyers' access to evidence**

Amnesty International is also concerned about restrictions - during pre-trial investigation proceedings - on the defendants' access to their lawyers and on their lawyers' access to evidence. The organization believes these restrictions seriously undermined the defendants' right of defence, violating international standards for fair trial. The following are examples:

1. Defendants were questioned by the investigating judge without their lawyer being allowed to be present, whereas at some of these interrogations the public prosecutor was present. Moreover, several defendants claimed SDB officers were also present.
2. Defendants' right to legal counsel was effectively restricted during parts of the pre-trial investigation, by being refused access to their lawyers.
3. Lawyers were not given full access to court files. Various pretexts were used: for instance, that reasons of state security did not permit this, or that the court file was unavailable as it was with the Supreme Court of Serbia, due to the detainees' appeals against their detention orders.
4. Defendants and their lawyers were given copies of court decisions only after prolonged delays, which obstructed their right to appeal against these decisions. For instance, in an appeal to the President of the District Court of Novi Pazar of 20 July 1993, lawyer Faruk Korenica complained he had still not received a copy of the decision to order the detention of his clients and open an investigation against them (of 24 May 1993). As a second example, although the court claimed that a decision had been taken to bar defence counsel from inspecting certain court files, no copy of this decision could be obtained by the defence and consequently it could not be appealed against. As a third example, the court's verdict was issued in writing only on 5 February 1995, nearly four months after the verdict was pronounced, whereas the law says this must be done within eight days, or 15 days in exceptional cases - thus effectively suspending the defendants' right to appeal for well over three months.

### **Denial of an independent and impartial tribunal (selection of judge)**

Article 14 (1) of the *International Covenant on Civil and Political Rights* states that "...In the determination of any criminal charge against him...everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law..." Article 10 of the *United Nations Basic Principles on the Independence of the Judiciary* states: "Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status..."

Amnesty International fears that these provisions were not respected in selecting the presiding judge at this trial. On the contrary, there appears to have been a deliberate policy to ensure that the presiding judge in this case would not be a Muslim from the Sandak area. Judge Tapušković, who presided over the first part of the trial, was brought in from the District court of Kraljevo, although there were apparently Muslim judges available to try the case at the Novi Pazar District court. After the traffic accident in which judge Tapušković was injured, the trial was delayed for over three months, ostensibly because it was not possible to find a replacement - though once again (Muslim) judges were reportedly available at the Novi Pazar court. The trial eventually resumed in June, with judge Lelovac from Kraljevo as presiding judge. Lawyers for the defence established that the President of the Novi Pazar District Court had applied to the President of the Supreme Court of Serbia for assistance in finding a judge since he could not assign the case to a Muslim judge. Amnesty International notes that there are no provisions in FRY law which allow for the selection of judges on the basis of their ethnic or religious background.

### **Amnesty International's recommendations**

Amnesty International calls on the authorities to:

Order a prompt, thorough, independent and impartial investigation into allegations that Hajriz Kolašinac and co-defendants were tortured or otherwise ill-treated following arrest; bring any police officer responsible for their torture or ill-treatment to justice and grant fair and adequate compensation to victims;

Urgently review their cases in accordance with international standards.

Amnesty International further urges the authorities to ensure that in all cases and all circumstances torture and ill-treatment are prohibited; that prompt, thorough, independent and impartial investigations are instituted into allegations of torture and ill-treatment; that coerced statements are excluded from court proceedings; that police officers responsible for acts of torture or ill-treatment are brought to justice and that victims are granted fair and adequate compensation.

Amnesty International additionally urges the authorities to ensure strict compliance with provisions of the FRY Code of Criminal Procedure with regard to the taking of statements from defendants and witnesses; prompt access to a judge for those detained; prompt access for defendants and lawyers to relevant evidence and prompt access for defendants and lawyers to court decisions so as to enable them to appeal against these decisions, if they wish.

