

SENTENCED “FOR IDEOLOGICAL AND POLITICAL REASONS”? THE REHABILITATION OF DRAGOLJUB “DRAŽA” MIHAJOVIĆ IN SERBIA

Osuđen „iz ideoloških i političkih razloga“? Rehabilitacija Dragoljuba „Draže“ Mihailovića u Srbiji

ABSTRACT *The author analyses the current process pertaining to the legal rehabilitation of Dragoljub “Draža” Mihailović, the leader of the Yugoslav Army in the Fatherland, by first placing the process in relation to European-wide trends of coming to terms with the past. He then moves to a discussion of the Serbian law on rehabilitation, where he points to a number of contradictions and inconsistencies, particularly with regard to the issue of whether war criminals can be rehabilitated. The author then turns to a historical analysis of Mihailović’s wartime activities, with particular emphasis on the issues of treason and war crimes. It is the author’s main argument that Mihailović became embroiled in various forms of collusion with the enemy, although these varied considerably over time. More importantly, however, Mihailović violated a number of legal principles of international humanitarian law, which means that he would have been sentenced today by any court applying the highest international standards of due process. While this would make him ineligible for rehabilitation according to recent political statements and the law of 2011, complications might arise due to the fact that Mihailović’s case will be heard in accordance with a previous law from 2006.*

KEY WORDS History, historiography, Second World War, genocide, war crimes, international law, rehabilitation, Mihailović, Yugoslavia, Serbia

APSTRAKT Autor analizira tekuće procese koji se tiču pravne rehabilitacije Dragoljuba “Draže” Mihailovića, vođe Jugoslovenske vojske u otadžbini, tako što prvo dovodi taj proces u vezu sa evropskim trendovima suočavanja sa prošlošću. Zatim se prelazi na raspravu o srpskom zakonu o rehabilitaciji, gde se ukazuje na niz protivrečnosti i nedoslednosti, naročito u pogledu pitanja da li se i ratni zločinci mogu rehabilitovati. Autor se zatim okreće istorijskoj analizi Mihailovićevih aktivnosti tokom rata, s posebnim naglaskom na pitanja izdaje i ratnih zločina. Autorov glavni argument jeste da je Mihailović bio upleten u različite oblike saradnje s neprijateljem, iako je njihov karakter dosta varirao tokom vremena. Još je, međutim, važnije to što je Mihailović prekršio niz načela međunarodnog humanitarnog prava, što znači da bi ga danas svaki sud, primenjujući najviše međunarodne standarde pravičnog sudskega, osudio zbog toga. Iako bi to onemogućilo njegovu rehabilitaciju prema nedavnim političkim izjavama iz zakona iz 2011, komplikacije

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bi mogle nastati usled činjenice da će se Mihailovićev slučaj razmatrati prema odredbama ranijeg zakona, iz 2006. godine.

KLJUČNE REČI *Istorijska istoriografija, Drugi svetski rat, genocid, ratni zločini, međunarodno pravo, rehabilitacija, Mihailović, Jugoslavija, Srbija*

Background

In March 2012, the regional High Court in Belgrade postponed a controversial legal process pertaining to the rehabilitation of Dragoljub "Draža" Mihailović, the leader of the *Jugoslav Army in the Fatherland* (Jugoslovenska vojska u otadžbini, JVO) during the Second World War. The reason was that Mihailović had to be provided with an opportunity to appear in person before the proceedings could continue (Radio 021, 2012). There was of course not much hope of this happening, given that he was sentenced to death for treason and war crimes on 15 July 1946 and executed two days later.

The court's decision to reopen the Mihailović case rekindled dormant conflicts over the history of the Second World War in Serbia. Veterans of the *People's Liberation Movement* (Narodnooslobodilački pokret, NOP) protested against what they argued represented a falsification of history (Vijesti, 2012), while Croatian Foreign Minister Jandroković warned that rehabilitation would be a "bad thing" for Serbia (Blic, 2012). Although downplaying the possibility of serious repercussions, the EU parliamentarian Jelko Kacin also voiced his opposition:

The essence of the law is to lift collective responsibility from certain national groups, as well as the victims of the communist government. Draža Mihailović, as the symbol of chauvinism and war crimes committed in the name of creating a Greater Serbia, has no business [being included] in such efforts (Tanjug, 2012a).

Kacin's statement caused disquiet among Serbian politicians, with a seemingly irritated deputy Minister of Justice, Slobodan Homen, complaining that EU representatives on the one hand criticize Serbia for not having an independent judiciary, and then interfere with the implementation of a law the EU had pressured the country into adopting in the first place (Tanjug, 2012b). Refuting criticism from Croatia, he also added that it was not possible to compare the JVO and Draža Mihailović to the Ustašas in the Independent State of Croatia (Nezavisna Država Hrvatska, NDH), since the latter were fascists who fought on the side of Nazi Germany, while France, the United Kingdom and the United States accepted the former as allies. In a dismissal of the risk that Četnik war criminals might be rehabilitated, he stated that "of course there were war criminals on that [the Četnik] side as well, but they are and will not become rehabilitated" (Novosti, 2012).

Mihailović and Social Memory in Serbia

Homen's assertive comments exemplify a profound transformation of Serbian social memory concerning the Second World War since the 1980s. Although he embodied the act of treason in socialist Yugoslavia, Mihailović today represents a positive historical figure and a victim of oppression in the eyes of many Serbs. Even though the transformation derives primarily from developments that are endemic to Serbia, it also connects to a European-wide process of identity-formation around the motto “unity in diversity” (see Botti, 2010). Moreover, the fact that laws “directly link a given vision of the past with the will to construct something in the present and in the future” (Botti, 2010: 344) explains why restorative justice measures often have become associated with the EU integration process. While the Treaty of the European Union does not contain any explicit demands concerning rehabilitation and restitution, references to the rule of law (Treaty of the EU, 2002: art. 6) have often led to such demands being posed, either by groups who lost property after the Second World War, or by states seeking to protect minorities within prospective EU member countries. The laws that are adopted nonetheless often result in a rather selective implementation of justice. The Czech law on restitution, for instance, excludes the 2.6 million ethnic Germans who were deported according to the Beneš Decrees, while Polish lawmakers rescinded a restitution law out of a fear that it would be followed by thousands of lawsuits pertaining to lost Jewish property (see Barkan, 2000: 135; Tyszka, 2010: 316).

Another important aspect is that Yugoslavia, while experiencing a similar political system to its central European EU neighbours, travelled along a *Sonderweg* of sorts to democracy. First, it underwent an autochthonous socialist revolution, which means that a substantial part of the population took an active part in the NOP and sympathized with the utopian promises of socialist self-management. Second, it descended into chaotic and brutal wars twice during the twentieth century. On both occasions, the end of war resulted in a reckoning with the past through domestic and international legal institutions. These were: the Commission for the Establishment of Crimes Perpetrated by the Occupants and their Helpers within the Country (Državna komisija za utvrđivanje zločina okupatora i njihovih pomagača u zemlji; henceforth War Crimes Commission) and various courts after 1945; and the International Criminal Tribunal for the former Yugoslavia (ICTY) in the 1990s. Tribunals and truth commissions have since become an integral part of most “transitional justice packages”, which include efforts to reach an “authoritative history” about past conflicts (for more on reconciliation and history, see Cole, 2007; Dalsheim, 2007). However, such efforts tend to be problematic in situations where ethno-political communities cultivate seemingly irreconcilable views about the reasons for past transgressions. Forced to simplify complex historical realities, courts often end up propagating a rather moncausal explanation for past conflicts to populations saturated with “official historiography” (see Kostić's chapter in this volume).

The revolutionary identity, recent memories of war and hands-on experience with “courtroom history” are important to include in an analysis of the way in which Serbia has handled its transition to democracy, since such factors had a profound effect on the shaping of social memory. Rather than viewing pro-Četnik discourse as part of a Gramscian “cultural hegemony” (Femia, 1981), it seems more fruitful to acknowledge that competing narratives often coexist in a segmented rather than sequential relationship. “Official historiographies” thus share “memory space” with local or family histories (McConnell, 2000: 28), which although less visible in public are often mediated across generational boundaries (Hayden, 1995: 175). While such stories coexist in all societies, they become particularly sensitive to political change in authoritarian political systems that suppress alternative interpretations of the past. In socialist regimes, for instance, the master narrative often sought to influence the way in which the individual expressed his role as a loyal citizen. Once the political system lost its legitimacy and competing narratives could be freely expressed, individuals were able to abandon a role that could no longer be reconciled with another one placed higher in what symbolic interactionists refer to as a person’s “salience hierarchy” (Merolla, Serpe, Stryker, and Schultz, 2012; Stryker, 2007), for instance, when identities begin to centre on religious affiliations that are perceived to be irreconcilable with a person’s role as a party member. The accumulation of such shifts may result in profound changes in public discourse, even though manifestations of attitude-related symbolic acts (such as the wearing of the *šajkača* hat or a cockade) do not necessarily signify a profound shift in attitudes. As Kuran (1998: 649-50) points out, an increased incidence of a type of behaviour might create social pressure on others to behave in a similar fashion, even though they do not necessarily share the ideas premised on that particular behaviour.

Even though it is not the aim of this article to explore in detail the change in Serbian social memory since the 1980s, it is nevertheless important to appreciate that past experiences have had an effect on the shaping of current debates. Once the communist system could no longer sustain its monopoly on historical “truth”, centring on the concept of *brotherhood and unity*, socialist self-management and Tito’s leading role in the non-aligned movement, alternative histories entered the public domain for unrestricted consumption. The first was cultivated by the Serbian diaspora throughout the Cold War and was based on the idea that Mihailović was an innocent patriot and freedom fighter who had been sentenced to death for treason and war crimes in a communist show trial (e.g. Topalović, 1968). The second surfaced in the 1980s and can be related to the ideas of academicians Dobrica Ćosić (1992: 42) and Veselin Đuretić’s (1985: 256) of the Serbs as the true victims of communist ideology, which had pitted “Serb against Serb” in a senseless fratricidal war (see also Skoko, 2000). This “tragedy trope” today forms part of a Serbian discourse about the war, as expressed by film director Radoš Bajić concerning the new television series that is being produced contemporaneously with the ongoing legal process in Belgrade:

I decided, with the greatest respect to the victims of fratricidal war, regardless of which side they were on, to tell primarily the story of the Serbian people who suffer the effects of tragic historical divisions. ... Ravna Gora is primarily a film based on historical events, which to a substantial degree will tell of something that until recently was unimaginable, to speak of the Ravna Gora Movement alongside the partisans, to speak of the great martyr [velikomučenik] colonel Mihailović alongside Tito (Tanjug, 2012c).

All of these tropes became popularized during the 1980s, not least in Vuk Drašković’s novel *Nož* and Danko Popović’s *Knjiga o Milutinu* (for a comparative analysis, see Trtak, 2003). However, a closer look also reveals a qualitative change, which occurred in the 2000s. More specifically, it was not until the traditional-legalist government under Vojislav Koštunica had supplanted the quasi-socialist Milošević regime that the positive re-evaluation of Mihailović moved from the sphere of historiography, fiction and public discourse into the realm of law. The issue thereby received an entirely different normative importance.

The Law(s) on Rehabilitation and the Legal Process

The adoption of the Serbian law on rehabilitation resulted from political bargaining at the domestic level and EU integration. Debates peaked in September 2011, when Serbian parliamentarians were presented with a draft law, which provided all citizens except those who had served in “quisling and occupying military formations” with an avenue for legal rehabilitation and restitution. While the Serbian Renewal Movement (Srpski pokret obnove, SPO) demanded that JVO soldiers should be defined as veterans of the People’s Liberation War (Novosti, 2011), representatives of the Union of Vojvodina Hungarians (Savez vojvodanskih Mađara, SVM) posited that the draft law would violate the basic human rights of those Hungarians who were drafted into the Axis forces. SVM party officials argued that such provisions were tantamount to collective punishment on the basis of national belonging and therefore violated EU norms (RTS, 2011).

The controversy over definitions was easily resolved by the removal of references to both partisans and Četniks from the law, but the issue of collective punishment turned out to have far wider implications. Once Budapest accepted the arguments of the Hungarian minority and threatened to veto Serbia’s EU candidacy (Vesti online, 2011), the Serbian parliament chose to amend the law so it would conform with principles of individual responsibility. This was done through an addition, which stipulated that only those members of the occupying or collaborationist forces who had participated in war crimes were exempt from the right to rehabilitation and, by default, restitution. In addition, if a court reached the conclusion that a plaintiff had not committed any war crimes, it could overturn the previous ruling “if a legal or administrative decision was made in violation of the

principles of the rule of law or generally accepted standards pertaining to human rights and freedoms" (Zakon o rehabilitaciji, 2011: art. 1).

It seems that EU politicians have paid little attention to the wider implications of the 2011 law, which could lead to hundreds of fascists and other collaborators being rehabilitated alongside innocent victims of human rights abuses. This notwithstanding, Kacin's reference to the "spirit of the law" not "intending" to allow one or the other case to be heard seems to contradict the "European values" that EU politicians usually champion in public. While it is legitimate to question the usefulness of this type of proceeding, arbitrarily excluding a citizen of Serbia – in this case Mihailović's grandson – from the right to have his case heard would probably represent a violation of the universal human rights principles enshrined in the European Convention on Human Rights (European Convention, 1950: art. 13–14).

However, Homen's criticism was also out of place, since he was either misinformed or he misrepresented the legal situation by linking the Mihailović case to EU pressure. As a matter of fact, it was the Serbian parliament and not the EU which decided to include a provision in the 2011 law stipulating that cases filed earlier would be decided according to the regulations in a previous law adopted in 2006. This might turn out to be a crucial difference, since the law from 2006 does not explicitly exempt war criminals from the right to rehabilitation. The fact that a non-adversarial procedure (*vanparnični postupak*) will be used means that there is no opposing side in the courtroom, and only the plaintiff enjoys the right of appeal. A retrial can therefore only happen if Mihailović is denied rehabilitation, and those opposing the ruling cannot challenge the verdict (except maybe by taking the case to the Supreme Court of Serbia and possibly to Strasbourg).

In order to avoid political manipulation and secure its legitimacy, the court will need to explain that its mandate is limited to the assessment of whether the proceedings in 1946 violated present-day standards insofar as the rule of law and human rights are concerned. The issue of Mihailović's legal guilt is in principle outside the court's jurisdiction, even though discussion of this aspect will probably prove unavoidable when making an assessment of whether procedural errors were committed. An example of such a situation is where a defendant might have had his rights violated according to contemporary principles of due process,² while at the same time being objectively guilty of war crimes.

Some of the cases handled by the High Court in Belgrade are illustrative of the difficulty lawyers might face in the courtroom. In the case of Prince Paul Karadžorđević, for instance, the court concluded that the War Crimes Commission

² The proceedings could for instance be criticized for not including an appeal process. However, military law at the time, either in Yugoslavia or other countries, did not allow appeals. The same thing was true for the Nazi war criminals who were sentenced by the Nürnberg military tribunal in the late 1940s.

did not have a mandate to declare the Prince a war criminal since he left the country before the outbreak of war on 6 April 1941. (According to its statutes, the commission could only rule on crimes perpetrated after the beginning of the war.) The court also ruled that the communist authorities had wrongly accused him of signing Yugoslavia’s entry into the Tripartite Pact in March 1941 (Prime Minister Dragiša Cvetković and Foreign Minister Alexandar Cincar-Marković were the actual signatories) (Viši sud, 2011a: 6–15). However, the same court chose not to overturn a ruling from 1946, in which a person from Sandžak was punished for collaborating with the German security service. In its judgement, the court ventured into a rather speculative discussion about whether the defendant was a police informer, even suggesting this might have been the case without presenting any new evidence whatsoever (Viši sud, 2011b). Critics might therefore wonder how it is that Karađorđević, who as the head of state was co-responsible for Yugoslavia’s entry into the Tripartite pact, was sentenced “for political and ideological reasons”, while the defendant from Sandžak was not? After all, both were sentenced according to regulations that did not follow “generally accepted standards pertaining to human rights and freedoms”.

Another problem is that the courts sometimes end up legitimizing a controversial interpretation of wartime history. In the Karađorđević case, for instance, the court related a rather problematic historical overview, apparently authored by the plaintiff, Jelisaveta Karađorđević. It *inter alia* contained the claim that a mere 1700–1800 Jews and Roma were murdered in the NDH, which cannot be classified as anything other than Holocaust denial (Viši sud, 2011a: 5). This “legal” rewriting of Serbian Second World War history reached a point of logical inconsistency in 2008, when the district court in Šabac rehabilitated two gendarmes who on the 7 July 1941 were shot and killed in a skirmish with communists in Bela Crkva (an event that later symbolized “The Day of Uprising” in Serbia). The court concluded that the policemen had been killed not in their capacity as representatives of an illegitimate government, but “for ideological and political reasons” (cited according to Radanović, 2012). One is left wondering whether the courts in Serbia would find the killing of any collaborators with the puppet Nedić regime legitimate, considering that all those who refused to accept the German occupation logically rebelled for a political reason? This type of reasoning effectively delegitimizes all underground movements during the war, including the French *Résistance* and the Norwegian *Hjemmefront*.

These examples illustrate that when applying contemporary legal norms in an entirely different historical, political and legal context, judgements will inevitably risk being based on superficial and decontextualized analyses of the past. Even though the law of 2006 does not explicitly exempt war criminals from the right to be rehabilitated, Homen’s statement illustrates the difficulty in concluding that Mihailović’s rights were violated without addressing whether he was guilty as charged or not. Therefore, one cannot discuss the issue of Mihailović’s rehabilitation

process in isolation from a historical analysis and an analysis of some of those aspects of international humanitarian and war crimes law that today form part of Serbian legislation.

“Europe’s First Guerrilla Leader” or a Traitor?

Turning to Mihailović’s role in the Second World War, it is important to keep in mind that a “Četnik organization” never existed in the sense of a group of individuals under a unified command. The term “Četnik” was used by several organizations that had no or only a token connection with the JVO. Kosta Pećanac’s Četniks in Serbia proper, for instance, collaborated openly with the Germans from the beginning of the occupation (Tomasevich, 2001: 194–95). In addition, there was the *Militari Volontari Anticomunista* (MVAC) in the Italian zone of occupation along the Croatian coast. The organization attracted those Četniks from various factions (some of which had ties to the JVO) who wanted to become “legalized” in accordance with an Italian-Croatian agreement from June 1942 (*ibid.*). In order to avoid a rather complicated discussion pertaining to subordination and control, the analysis below focuses on those armed groups that paid some form of allegiance to Mihailović.

The fact that Mihailović was accepted as the legal representative of the Yugoslav government-in-exile in London in November 1941 must be taken fully into account when assessing the JVO and its role in wartime Yugoslavia. Since Mihailović was not formally subordinated to the German occupation authority according to a binding agreement, his organization did not have the same relationship to the Germans as the Nedić government in Serbia, Ante Pavelić and the Ustašas in the Independent State of Croatia (Nezavisna Država Hrvatska) or even Dimitrije Ljotić’s Serbian fascist organization *Zbor*. Nor was the JVO ideology fascist in classic terms, as it did not include, for instance, corporatist ideas, totalitarian thought-patterns or the “leader principle”. The JVO can best be described as a military organization with leaders who for the most part espoused Serbian nationalist, royalist and traditionalist ideals.

In order to understand the military and political developments that led to the ultimate demise of the JVO, it is important to keep in mind that Mihailović based his entire war strategy on two key assumptions. The first was that the allies would eventually win the war, which would lead to the re-establishment of the Karađorđević dynasty on the Yugoslav throne. The second was that an all-out uprising must be postponed until the allies landed on the Balkan Peninsula, which would result in his organization emerging victorious from the war. The communists, for their part, adopted a much more active strategy, while hoping that Yugoslavia would be liberated by the Soviet Union. Combined with the communists’ long-term goal of a socialist revolution, these conflicts over ideology and strategy were at the centre of the civil war, which erupted in the autumn of 1941. Fearing that the

communists would take the initiative and thereby become his foremost competitors for power once the allies won the war, Mihailović decided to do away with the NOP before the arrival of the allies (Lazić, 1997: 55; Tomasevich, 1975).

Mihailović needed arms to wage a successful war against the communists, which could only be found in large quantities among the Germans and Italians. It was with this aim in mind that he organized the infamous meeting in the village of Divci with representatives of the German *Abwehr* in November 1941. Having recently won some major victories against the NOP, and being fully aware of Mihailović’s long-term goals, the German High Command proved uninterested in cooperating with the JVO. The German representative at the meeting was therefore instructed simply to inform Mihailović that the *Wehrmacht* would soon put an end to communism in Serbia. He should therefore refrain from a pointless struggle, or risk the complete destruction of his troops. It is clear from the minutes that Mihailović sought cooperation with the Germans, and even downplayed his ties with the government-in-exile in order to overcome their intransigence:

I am not a representative of London or any other country. Therefore, I care neither about your present or future intentions. But measures are being undertaken in Serbia, which will prevent the shedding of blood of the innocent. The Communists will continue to provoke attacks to kill the innocent. Nedić was unable to break through; it was impossible to act openly. ... It is not my intention to fight the occupiers, because as a general staff officer, I know the power of both forces.³

Regardless of this initial failure to win over the Germans to the idea of a long-term collaboration, documents show that German units often tolerated the presence of Četniks in their areas of operation, repeatedly entering into various forms of “tactical cooperation”.⁴ The most well-known of such instances was during *Fall Weiss* (known in Yugoslavia as the Fourth Enemy Offensive or the “Battle of the Neretva”) in early 1943, when Montenegrin and Herzegovinian Četnik units fought alongside the Germans against the NOP (Colić 1988: 112, n. 117). In addition, the Četniks and Germans repeatedly developed a form of tacit agreement, which facilitated the inclusion of Četniks under the German umbrella. However, Mihailović’s troops were much more successful at establishing more long-term cooperation with the Italians, who exploited inter-ethnic tensions in order to disavow the Ustašas and further their own political and military agenda (Rodogno, 2006; for an NDH official’s view on the matter, see Vrančić, 1943). On 30 November 1941, for instance, Boško Todorović secured an agreement with Pietro Castagnero of the

³ National Archives and Records Administration, Washington, T-311, roll 1457, frs. 1314–29. Archival sources will henceforth be quoted according to this system: archive holding/collection; roll; e.g. NAW/T-311/1457/1314–29.

⁴ See e.g. the report on the situation in Dalmatia from 19 November 1943, in which it is stated that: “Četnik leaders receive orders and instructions from German base commanders concerning security and reconnaissance operations” (NAW/T-314/566/342).

“Pusteria” Division concerning the takeover of Foča (VA/ANDH/75/22/5-2). Similar agreements were reached between other ranking Četniks and the Italians throughout the NDH (Jelić-Butić, 1986; Petrović, 1982).

Following the severe military setbacks suffered during *Fall Weiss*, the capitulation of Italy in September 1943 and the transferral of the political initiative to the communists at the second conference of the Anti-fascist Council for the National Liberation of Yugoslavia (Antifašističko veće narodnog oslobođenja Jugoslavije, AVNOJ) in November the same year, the JVO ceased to be a leading military force on Yugoslav soil. By early 1944, Mihailović’s fraternizing with the enemy had become an embarrassment to the allies. Having realized that the JVO used its resources to combat Tito’s forces while “doing very little or nothing against the enemy” (Hansard, 22 February 1944), Winston Churchill finally decided to withdraw support from the Četniks. When subsequently asked whether he had considered renewing the contacts, he simply brushed the issue aside by saying that “the decision which we made some time ago, to dissociate ourselves from General Mihailovitch, was in every way justified” (Hansard, 18 July 1944).

Churchill’s decision also put pressure on the government-in-exile to follow suite, and in late August 1944 King Peter relieved Mihailović of all his duties (*Zbornik DNOR XIV*: 4, doc. no. 213). On 12 September, the BBC broadcast a speech in which the King ordered all patriots to place themselves under Tito’s command. In a clear warning to Mihailović, he condemned “strongly the misuse of the King’s name and the authority of the Crown, with which attempts have been made to justify cooperation with the enemy and to provoke divisions among the people” (*Zbornik DNOR XIV*: 4, 1985: doc. no. 215).

The conclusion is that Mihailović and his troops collaborated closely with the Italian occupying forces, while wishing to and occasionally cooperating with the *Wehrmacht*. The question, of course, is whether this in itself warrants defining him as a traitor? The fact that Mihailović and the Četniks hoped for an allied victory in the end leads Nikolić (2012: 565–66) to conclude that he cannot be defined as a collaborator. It would seem more relevant, however, to base any assessment of Mihailović on his *actions* rather than his *thoughts*. With due respect to different interpretations of available documents, I find it impossible to define in particular the cooperation with the Italians as anything other than collaboration with the enemy. Finally, the refusal to abide by King Peter’s order constitutes flagrant insubordination, which stripped Mihailović of his legitimacy and reduced the JVO to a renegade fighting force. It is therefore difficult to understand how the fact that he spent the last months of the war – and even the first months after the end of it, when the Tito-Šubašić agreement was still in place – opposing the person the head of state had ordered him to accept as his superior can be defined as anything other than treacherous behaviour.

War Crimes

One does not have to go very far in the analysis of primary documents originating from within the JVO before coming across persuasive evidence that the violence and forced expulsions effected by JVO troops were an integrated part of the organization’s agenda. The Banja Luka lawyer Stevan Moljević’s memorandum “Homogenous Serbia” (*Homogena Srbija*) is among the most important documents describing what soon became Četnik policy. It was written in late June 1941; in other words, before Moljević became a member of the CNK (this happened in August although he did not meet with Mihailović personally until May 1942, see below). Moljević believed the multi-ethnic character of Yugoslavia had been detrimental to Serbian national interests, since it prevented the establishment of a functioning “homogenous” Serbian state. He therefore argued that

the resettlement and exchange of populations, in particular Croats from the Serb and the Serbs from Croat territories, is the only way in which to establish a border and create better relationships between them, and thus remove the danger of a repetition of the terrible crimes that were perpetrated in the previous and in particular the present war, in all areas where Serbs and Croats lived intermingled, and where the Croats and Muslims had a plan to exterminate the Serbs (VA/Ča/144/4/1-2).

Archival records show how Moljević’s ideas were soon integrated into JVO policy. In late December 1941, Moljević sent another letter to Dragiša Vasić, which shows that it was envisaged that the “homogenization” of the territory would happen by force. Much in line with previous policy documents, he argued that it would be impossible to achieve these goals due to the fact that Četnik military capacity had been “madly squandered”. Key territories indicated on an enclosed map should be seized in order to “cleanse them before anyone can react”. Thereafter, “the road will be open – for the Croats to Croatia and for the Muslims to Turkey or Albania” (VA/Ča/12/32-2). Moljević’s plan was read and annotated by Mihailović and his close associate Zaharije Ostojić, which dispels any doubt about them not being privy to its contents. Instead of dissociating himself from Moljević, Mihailović merely mentioned that his comments could be found on an enclosed map, which unfortunately seems to have been lost. However, two other maps in the Četnik archival collections are of interest. One is probably a reproduction made by the NDH authorities in 1943 on the basis of captured information from a četnik source (cf. VA/Ča/7/38/2; *Zbornik DNOR XIV*: 2, 1983: doc. no. 28, p. 168). The other contains detailed statistics on “population transfers”, envisaging that 2.6 million non-Serbian Yugoslavs should be deported from Moljević’s “Homogenous Serbia”, including “all minorities down to the last person”.⁵

⁵ (VA/Ča/7/36/2). There are certain differences between this map and Moljević’s memorandum. Most important among these is that the drafters (it is still unknown who) envisaged the creation of a “corridor” all the way to Bratislava.

The ensuing communications between Mihailović, Moljević and Dragiša Vasić provide further incriminating evidence pertaining to the Četnik leader's involvement in the planning and organization of mass crimes against civilians. On 23 April 1942, Moljević sent Mihailović a revised version of his memorandum, in which he complained that the government-in-exile had lost touch with "the will of the people", which purportedly included the desire to create a "homogenous Serbia". In another letter to Mihailović, Vasić for his part referred to Moljević's December memorandum in a very positive tone:

In any case, the thoughts presented in this memorandum deserve our closest attention, because they have been reached after consultations with Serbs from all our regions and because they in any case come from our best and most competent people. I have also studied the map regarding the delineation of borders with the Croats *and seen your comments* [my emphasis]. I will immediately tell you my opinion, which I will enclose with this letter. ...

This part of the document shows that Mihailović had not only read Vasić's comments, but also thought that a fait accompli – which evidently included the acquisition of territory and subsequent expulsion of non-Serbs – could be achieved following a victory over the communists. Moreover, while Moljević did not explain in detail how to achieve the ethnic homogenization of Serbia, Vasić elaborated quite substantially in his letter to Mihailović, suggesting that use should be made of historical experience:

I remember very well the situation in which Europe found itself after the last war. The warring countries were so much involved with their own problems, that they so to speak could not follow what the others were doing and which measures they are taking inside their own borders. In the first year following the war, one could have annihilated a considerable amount of one's undesired population, while nobody would care. Consequently, if we are wise, the question of cleansing or resettling and exchanging of populations will not be that difficult (VA/Ča/12/31/2).

Moljević met Mihailović for the first time shortly after this exchange (Zečević, 2001b: 620) and the fact that the two became close associates is evident from the minutes of the post-war legal proceedings. When asked about their cooperation, Moljević explained that Vasić and Mihailović shared a desk (Zečević, 2001a: 636). Mihailović, for his part, confirmed that Vasić, Moljević and himself made all the political and military decisions in unison, even though Moljević "was absorbed with questions pertaining to Bosnia and the creation of overviews and statistical data" (Zečević, 2001a: 465). He also tried to pin the blame for the extrajudicial killing of captured partisans on Vasić, while nevertheless conceding that it was he and not Vasić who was responsible for issuing all orders to the military forces (Zečević, 2001a: 466).

During the legal proceedings, the prosecutor read a passage from a notebook, in which Mihailović allegedly commented that one would have to prepare for the

deportation of Muslims and Croats. While denying the accusation, Mihailović made the following important remark:

Concerning the resettlement of Muslims, it was my ultimate goal to throw out all minorities during the period of interregnum; that is, all those who could not be thrown out later, and those were the Germans, the Hungarians and the Romanians (Zečević, 2001a: 591).

This quote is highly informative as it shows that Mihailović conceded to having planned to “ethnically cleanse” populations, while also showing there was a very direct connection between Moljević’s memorandum, Vasić’s letter and some other Četnik policy documents. The conclusion can only be that Mihailović was part of a political and military body that planned the commission of war crimes. Moreover, he was the commander of the JVO forces and therefore issued the orders to put such plans into effect.

Implementation of Ideology

The mass killings and expulsions of civilians that followed the formulation of the Četnik political and strategic agenda belong to one of the most tragic episodes of the Second World War in Yugoslavia. More precisely, the JVO troops committed a whole range of massacres and forced expulsions that affected in particular the Muslims of Bosnia and Herzegovina and the Sandžak region, but also Croats in Dalmatia and Serbian NOP sympathisers. It is noteworthy that these killings were not the result of various breakdowns in the command and control system. This is for instance evident from a report by Pavle Đurišić, dated 6 January 1943, concerning a “cleansing” operation in the Muslim-inhabited Sandžak:

Everything is happening exactly *according to plan* [my emphasis]. Rade has burned 15 houses, killed 10 Muslims and burned 5 inside their houses. Certain villages that are bases for the Muslims have to be burned and I have ordered that (Zbornik DNOR XIV: 2, 1983, doc. no. 4).

The fact that Mihailović was involved in war crimes is evident from his annotation a few days earlier that “Pavle will initiate a punitive expedition on the left bank of the Lim River on [Orthodox] Christmas Eve” (Zbornik DNOR XIV: 2, 1983: doc. no. 6). On 10 January, Đurišić reported that his troops had killed 400 Muslim fighters and 1000 civilians in the sectors of Pljevlja, Sjenica and Peć, while burning 33 villages, at a cost of 14 Četniks. Đurišić complained that the “high number” of Serbian losses had been inflicted “not because of bad leadership on the part of the officers, but because the soldiers were incautious and because of their heroic attacks on the Muslims, who were locked up in their houses” (Zbornik DNOR XIV: 2, 1983: doc. no. 8). Rather than initiating any type of criminal investigation or relieving numerous documents show that Mihailović was fully aware of other atrocities as well. On 24 August 1942, for instance, Vladimir Zečević informed him that Četniks as well as civilians were participating in the plunder of eastern Bosnia,

while officers did nothing to stop this happening, “which casts a very bad light on our holy cause” (*Zbornik DNOR XIV:1*, 1981: doc. no. 151). Information about the extent to which Četnik troops massacred innocent civilians even prompted the Prime Minister, Slobodan Jovanović, who was otherwise a great supporter of Mihailović, to demand a full report on 11 December (Dizdar and Sobolevski, 1999: doc. 98).

Even though Mihailović was informed about his troops murdering thousands of civilians, he insisted that those killed were soldiers who died due to “collateral damage” or were killed by rogue elements. He for instance attributed the massacres in Sandžak to “ancient hatreds” between various clans, although conceding that “one cannot justify one bestiality with another” (Zečević, 2001b: 2235). At the same time, however, he repeatedly ventured into relativization and denials:

The presiding judge: Ostojić’s report from 24 August 1942. “Yesterday we completed the operation on Ustikolina from the town Jahorina. The Ustašas were well beaten. According to current information 500 dead and around one to two thousand slaughtered Muslims. All troops were good fighters, even better looters...” Dispatch 554 from 4 September 1942 from Ištvan, Baćović: “I returned from a journey in Herzegovina. Four of our battalions – around 900 people – moved on 30 August over Ljubiški, Imotski and arrived at the sea in the vicinity of Makarska. 17 Ustaša villages burned, 900 killed, a few Catholic priests were skinned alive. The flag was stuck in the sea for the first time since the fall and people cheered King Peter and Draža...”.

The accused Mihailović: I think these 900 were Ustašas.

The presiding judge: Yes, according to him children are Ustašas. Among them were Ljubica Antičević (Zečević, 2001a: 1635).

It appears that different methods of killing were used, depending on the gender of the victims. In Foča, for instance, men often had their throats cut on the railway bridge and were then dumped into the river. Women and children were simply crammed into houses, which were then set alight. Alko Dekan later described the terror experienced by thousands of innocent civilians:

This winter (1943), the Četniks after different kinds of torture killed my three small children, Bajro Bukova’s children, the wife and four children of Derviš Mujanović, Fata and Džana Mujanović, then the old man Ramo Dekan, one of Hadžo Dekan’s children, and then burned them together with their homes. In other words, a total of 15 people were killed. It was the work of Četniks from our neighbouring village of Zavajit (Hrvatski državni arhiv [HDA]/212/2, kut. “Muslimani”).

The fact that locally mobilized Četniks participated in the massacres is sometimes used in the apologist literature to explain away the responsibility of commanders as a result of “revenge”. The problem with this argument is that it fails to explain why massacres of non-Serb men, women and children happened in one village after another captured by the JVO, but were almost non-existent in the NOP-controlled areas. Moreover, only ten per cent of the 1240 registered civilian victims

in Foča were Serbs in 1941 (Cvetković, 2009: 117). This is also confirmed in a letter by Jevđević and Baćović from August 1942, describing the region as the only “still preserved area of Herceg-Bosna” (*Zbornik DNOR XIV*: 1, 1981: doc. no. 161).

The extent of the massacre in Foča is further confirmed by Dragutin Očko, a soldier and driver in the regular NDH *Domobranstvo* army who had the misfortune to be captured and locked up with 83 other soldiers in Foča. After being forced to drive for the Četniks, Očko became privy to much of the terror. In his subsequent report to NDH authorities, he explained how Četniks would brag about the number of Muslims they had slaughtered on returning to the barracks in the evening. He did not see the killings himself, but overheard the commanding officer Sergije Mihailović saying, “we have rid ourselves of the enemy; we have killed 5000 Muslims in Foča and Goražde” (VA/ANDH/75/23/5-4). This was the first major massacre perpetrated by the JVO during the war. It was followed by another in August 1942, which although it might not have been explicitly ordered “cost the lives of 300 women and children” (*Zbornik DNOR*: XIV: 1, 1981: doc. no. 161). Following a third instance of mass killing in February 1943, Đurišić reported:

Casualties. Our total casualties were 22 dead, of which two due to accidents, and 32 wounded. The Muslims lost 1200 fighters and 8000 other victims: women, old people and children. ... It is estimated that there are 2000 refugees in Čajniče, and a part of them managed to cross the Drina before designated units cut off possible retreat routes in that sector. All of the remaining civilians were annihilated (*Zbornik DNOR XIV*: 2, 1983: doc. no 34).

The importance of Đurišić’s and similar reports to Mihailović cannot be overstated, since they prove Mihailović’s direct involvement in war crimes. This is also why some authors seek to question the validity of such documents. The publicist Samardžić (2010: 29–31) for instance among other things argues that the report cannot have been written by Đurišić: since he was with Mihailović on 13 February and would not have written that he was in the field (“položaj”) at that moment; since the purported falsifier used Croat words and wrote longer sentences; since Đurišić “would never” use the term “heroj” for “hero”, but “junak”; since only Croats wrote dates followed by a period (e.g. “7.” for “seventh”); and since Mihailović had forwarded a message to Ostojić, informing him that “Pavle is telling his men not to touch the Muslims there” (*Zbornik DNOR XIV*: 2, 1983: doc. no 42, 212). The author also questions whether Đurišić signed the document.

However, a closer look suggests that most of these arguments are quite spurious. First, it is simply not possible to make any definitive judgement about the signature, while a linguistic analysis would require more text to work with for comparison than a single short report. In addition, Samardžić confirms that the document of 10 January is authentic, while obviously overlooking the fact that it contains references to “heroic” (“herojski”, rather than “junački”) attacks on Muslims locked up in their houses that Đurišić would “never” use. Third, documents originating from the government in exile show a considerable variation in the dating

system (cf. AJ/382/8/479, 502, 506 517) and such inconsistencies are also present in Četnik documents (e.g. VA/Ča/170/48/3; 170/28/4; 170/16/1-1). Fourth, the reference to Đurišić saying that Muslims should not be killed refers to operations in Kalinovik subsequent to the killings described in the document. (It also appears from the context that he wanted no killings in order to avoid provoking German and Ustaša retaliation.) Most surprisingly, however, the author goes through this entire exercise only to quote an NDH source at the end, according to which 1500 people, primarily civilians, were indeed killed by the Četniks. The argument is completely irrelevant, since, from a legal perspective, it would matter hardly anything whether Mihailović was responsible for 1500 or 8000 deaths (it is of course very unlikely that the perpetrators counted bodies). Moreover, statistical analyses show that 90 per cent of the Muslim victims in Foča were killed by Četnik units, which according to Cvetković (2009: 118) illustrates “the intention to eliminate them [the Muslims] from the territory of this municipality”.

Similar problematic refutations of archival documents can also be found in the works of established historians, such as in Kosta Nikolić’s recent monograph on the relationship between the JVO and Italian occupying forces. While duly acknowledging that Mihailović collaborated with the Italians, the author believes this was not primarily part of a grand strategy to destroy communism (which is the most frequent motivation found in Četnik sources), but a consequence of the leadership’s desire to “save” Serbs in the NDH from Ustaša terror.⁶ In order to prove the argument, the author depicts Ustaša mass murders in vivid detail, while paying scant attention to Četnik atrocities. When such issues are addressed, he ventures into a seemingly overcomplicated source analysis. Đurišić’s massacre in Sandžak in January 1943, for instance, is first described as “revenge”. After thus acknowledging that mass killings had happened, the author nevertheless concludes that the figures must have been added in 1946 with the specific aim of discrediting Mihailović (Nikolić, 2012: 223). It is noteworthy that Samardžić uses precisely that document as authentic in his effort to discard the report from February 1943, thus apparently disagreeing with Nikolić’s assertion.

This type of source analysis abounds among authors seeking to question the view of Mihailović as a war criminal. Moreover, they often present a single document as the opposing side’s only “crown evidence” and then focusing their attack on details without taking possible explanations or alternative sources into account. It would for instance not have been all that difficult to consult German reports from April 1943, which confirm the terror and attribute the killings to a systematic campaign by Mihailović’s forces:

⁶ The argument is wholly unconvincing, as Četnik leaders displayed a rather disinterested stance against the killing of Serb civilians if it could serve their purposes. Prior to the second attack on Foča, Jevđević and Baćović for instance expressed delight at the fact that Serbian women and children had been killed, since that could be exploited for propaganda purposes (VA/Ča/170/57/2).

Muslims predominantly inhabit Sandžak. Draža Mihailović's Četniks have nevertheless, in the beginning of this year, in the most horrific manner exterminated the entire Muslim population in the Municipalities of Prijepolje, Pljevlja, Priboj and Gajniče, and driven the rest away [sic] (*Zbornik DNOR*: XII:3, doc. no. 55).

Added to this, of course, is the problem that Mihailović confirmed the existence of these documents during the court proceedings. When asked about whether he knew that Četnik units massacred civilians, he first said: "Dragiša Vasić and I were appalled by Pavle Đurišić's reports; when asked to do one thing he did something else, which truly borders [sic] on a crime" (Zečević, 2001a: 561). After being pressured on the issue, he repeated that he did not believe some of the reports by his subordinates, which in any case came in later (Zečević, 2001a: 562).

These examples show that references to "falsified" or "non-existent" documents are often based on methodologically rather unconvincing analyses. Whether Đurišić accidentally wrote "položaj" on the document or even had someone else transcribe it on the basis of a general summary or dictation is not decisive in any way when it comes to an assessment of the crimes perpetrated. By combining statistical data with official documents and witness statements, it is quite easy to conclude that the "ethnic cleansing" perpetrated by Četnik forces was organized and intentional.

The Yamashita Standard and Mihailović's Responsibility

The underlying assumption behind the efforts to dismiss documents demonstrating Mihailović's involvement in war crimes appears to be that his culpability rests on whether or not he signed a document saying that one should commit mass murder or not.⁷ Even though it of course is legitimate to critically analyze documents, it also is important to take account of the fact that orders pertaining to mass murder are rarely put down on paper, but either issued orally or indirectly alluded to. The fact that Adolf Hitler never signed a specific order to the effect that Jews should be systematically annihilated in Auschwitz and elsewhere, does not mean that he did not intend or was unaware of the Holocaust. As far as Mihailović is concerned, perpetrators were also aware of his predicament should the government-in-exile receive unequivocal evidence of the mass murders. In a report on the political situation from August 1942, Jevđević and Baćović referred to the

⁷This also explains the importance attributed to documents such as Mihailović's instructions to Đorđe Lašić of 20 December 1941, in which calls were made for the "cleansing" of non-Serbs from the Sandžak region (VA/Ča/1/10/1). Nikolić and Samardžić claim the document is an outright falsification (referring to a statement by a person allegedly involved in the manipulations), fabricated for the purposes of the court proceedings in 1946 (e.g. Samardžić, 2010, 21). There exists a variety of other views on the document, which cannot be discussed in detail here.

following argument as to why some Bosnian Četnik leaders thought their troops should not formally be included into the JVO:

This is motivated by the fact that Draža is a member of the London government and as such cannot consent to the liquidation of the Turkish and Croat element without falling out with the government, while if he prevents the [realization of] popular will, his authority, which must remain untouched, will be damaged in the eyes of the people (doc. no. *Zbornik DNOR XIV*: 2, 1981: doc. no. 162).

Insofar as the rehabilitation process is concerned, there is actually not even a need for written orders to exist. Mihailović was the commander of the JVO forces and, according to the Yamashita Standard, therefore carried criminal responsibility for the crimes perpetrated by his subordinates. The standard, which today is better known as the principle of “command responsibility”, is based on the 1907 Hague Convention, the Geneva Conventions and case law. It became part of international law in 1946 during the proceedings against Tomoyuki Yamashita, Japan’s Governor of the Philippines and Commander of the Fourteenth Army Group of the Japanese Imperial Army. Even though Yamashita had not ordered any of the atrocities attributed to his troops, the court found him guilty on the basis of his responsibility as the commander of those troops that terrorized the population (Congress, 1946).

The principle of command responsibility centres on the requirements that: (a) the defendant was or had reason to be⁸ informed about the crimes perpetrated by his troops; and (b) he failed to take sufficient measures to prevent their recurrence or punish the perpetrators (for an overview, see Bantekas, 2004). International Criminal Law has considerably evolved since the 1940s, inter alia through the introduction of the concept of “Joint Criminal Enterprise” (JCE). It was according to the principle of command responsibility that Radoslav Krstić was sentenced for “complicity in genocide” in relation to Srebrenica in 1995 (see IT-98-33 (Krstić), 2001), while Ante Gotovina was accused for participating in a JCE together with other militaries and the political leadership of Croatia in 1995 in order to forcefully expel the Serbian population from Croatia (see ICTY, 2011).⁹ Neither explicitly ordered mass murder and forced expulsions, but they were sentenced on account of their role as senior commanders or as members of a JCE.

The principles of command responsibility and JCE were recently included in the Serbian criminal law code (*Krivični zakonik*, 2009: ch. 34, art. 375 and 284), and have obvious implications for the Mihailović case. As has been demonstrated, Mihailović either ordered the extrajudicial murder of partisans and civilians, was

⁸“Having reason to be informed” means that the defendant as a superior controls those channels of information through which this type of information is regularly disseminated and therefore should receive such information or has the capacity to acquire it when deemed necessary.

⁹ In November 2012, the appeals chamber of the ICTY reversed the previous ruling (with two of five judges dissenting) by concluding that there was not enough evidence beyond reasonable doubt that a JCE existed (see ICTY, 2012).

part of a JCE planning and organizing the violent removal of non-Serbs or, at an absolute minimum, was fully informed of the fact that his troops were committing numerous criminal acts. From a legal perspective, he therefore should have dissociated himself from Moljević and Vasić by relieving them of their positions in the CNK, and done everything in his power to prevent the recurrence of massacres and to punish the perpetrators. He could even have asked the government-in-exile to issue a radio message stigmatizing the perpetrators as war criminals or, as a last resort, resigned in protest. His failure to take any substantive measures to prevent the massacres or punish the perpetrators combined with the fact that he gave extremists important positions in the JVO leadership serve as important indicators of his criminal responsibility.

Conclusions

It should of course be acknowledged that new facts about the Second World War have led to a questioning of many previous “truths” pertaining to the conflagration, which is beginning to penetrate public consciousness in Serbia. As new evidence emerges, historians face a socialist revolution tarnished by persecution and mass crimes against tens of thousands of innocent civilians alongside those who were morally or legally guilty of killings themselves. The expulsion of *Volksdeutsche* (Janjetović, 1997), the creation of a labour camp system for political prisoners and the mass killing of political opponents at the end of the war (Dulić, 2004) make it an inescapable fact that the Titoist regime based its assumption of power and revolution on crimes against humanity, persecution and deceit.

However, this more negative reappraisal of Tito and the socialist revolution at the end of the war cannot deprive the NOP of its legacy as a uniquely successful uprising against fascism, which no other European country experienced and which gathered people from all ethnic and religious groups in Yugoslavia. Nor can it legitimize the type of positive re-evaluation of Draža Mihailović and the JVO that is under way in Serbia. All things considered, the fact remains that Mihailović headed a Serbian nationalist military and political organization that sought to achieve the re-establishment of a Serb-dominated Yugoslavia after the peace settlement in 1945, and which would include a “Serbian” territory devoid of minorities. Even though it is problematic to equate Mihailović to Vidkun Quisling in Norway or Philippe Pétain in France (the equivalent of whom was Milan Nedić), the pleading for arms at Divci, the collaboration with Axis forces, the fight against the NOP during *Fall Weiss* and elsewhere and, finally, the refusal to place JVO troops under Tito’s command in 1944 meant that Mihailović placed the JVO and himself in opposition to the legal government and those who unequivocally fought against the fascist powers in Europe. The fact that Mihailović hoped for an allied victory in the end and received the Legion of Merit for saving US airmen is therefore irrelevant when making an overall assessment of his legacy, since it merely illustrates the

contradiction between his political practice and his underlying sympathies for the allied cause. When all is said and done, it seems that Mihailović was more anti-communist than anti-fascist, which contributed to his ultimate downfall in more ways than one.

Even though the issue of treason will probably continue to provoke widespread debates in Serbia, the fact that Yugoslavia no longer exists might appear to make the issue somewhat academic. In that sense, it is arguable that, since the fall of communism, it is more relevant to discuss the often overlooked aspects of Četnik war crimes. Although not a fascist organization per se, the JVO organized a number of massacres in which there was clearly an attempt to create an ethnically purified “Serbian” territory through forced expulsions, a policy that Mihailović acknowledged himself as being part of – even while at the same time unconvincingly denying he had said that that Muslims should be deported. The analysis has also shown that the JVO contributed only marginally to the anti-fascist struggle, while focusing the bulk of its activities on fighting those Serbs and others who had joined the NOP in the fight for national liberation. Even though the JVO spoke in the name of “the people”, it only represented a small minority of Serbs – those who chose to join it rather than the NOP. This also testifies to the ability of the communists to organize the resistance in a way that facilitated a truly mobile form of guerrilla warfare throughout the territory of Yugoslavia.

As is shown above, there is no escape from the fact that Mihailović was fully responsible for the killing of tens of thousands of innocent civilians and captured partisans. Given that the principles of JCE and command responsibility have been integrated into the Serbian legal system, Mihailović would logically be refused rehabilitation if his case were to be decided according to the 2011 law. Whether the fact that the 2006 law does not explicitly state that war criminals cannot be exempted from rehabilitation will decide the case remains to be seen. Mihailović was nonetheless a war criminal and would in all likelihood have been found guilty today if his case had been tried by the International Court of Justice, the International Criminal Tribunal for the former Yugoslavia or the Serbian war crimes court. Given Homen’s strong argument that war criminals cannot be rehabilitated in Serbia, this would mean that the legal system, applying international as well as Serbian standards, would logically deny the plaintiff’s request. This, however, will largely depend on whether the law from 2006, which does not explicitly bar war criminals from the right to rehabilitation, is taken literally.

Regardless of the outcome of the Mihailović case, Serbian historians and society are in dire need of a more in-depth discussion of the JVO and its legacy, be it among scholars, in the media or in the schools. It is particularly important to discuss Mihailović’s role in the perpetration of the mass murder of communists and non-Serbian men, women and children in eastern Bosnia, Sandžak and elsewhere. Ever since the 1980s, Serbian historiographies on mass violence have largely focused on

political history and descriptive accounts, in which scholars appear to believe that terror can best be explained by the printing of document collections, or by the listing of one atrocity after another. What is lacking is a new type of research, based on theoretical groundwork from political science, law, sociology and social psychology, which can provide a deeper understanding of the mechanisms of violence and, crucially, the relationship between high level political decision-making and the killing “on the ground”. The fact that Serbian historians with a few exceptions have failed to join current international research trends is a pity, given the amount of archival and other forms of data available in Serbian archives and institutions. More importantly, it means that readers are stuck with many *descriptions* of violence, while having access to only a few in-depth *explanations*.

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