

**Summary of ECHR-complaint by Nuhanović and Mustafić c.s.**

The refusal properly to investigate, under criminal law, the involvement of Karremans c.s. in the deaths of the applicants' family members in Srebrenica in 1995 with a view to prosecuting them for these crimes, constitutes a violation of Article 2 of the Convention (the right to life), in particular the duty duly to investigate fatal incidents by carrying out an independent and effective investigation:

- a) The Military Chamber acknowledged that accessory crimes fall under the scope of Article 2 of the Convention, but it erroneously assumed that the fact that Karremans c.s. were complicit in these crimes had a bearing on the required rigour of the subsequent investigation. The Military Chamber failed to underpin why the level of criminal participation in the act of the crime would have an influence on the intensity of the ensuing investigation under Article 2. The Court's case law shows no signs of differentiation in terms of the intensity of the rigour of the investigation
- b) The number of deaths bears absolutely no relevance for the scope or intensity of the investigation. It is shocking for the applicants to note that the Military Chamber seems to downplay the seriousness of the deaths of the applicants' family members by numerically weighing them against the wider genocide on thousands committed around that time by the VRS.
- c) The investigation conducted by the PPS was not independent. The Ministry of Defence exerted undue pressure on the PPS not to prosecute the proposed suspects throughout the procedure. The investigation that followed and the ultimate decision of the PPS shows signs of political influence. As set out in the facts, it took the PPS unnecessarily long to arrive at a decision, with long periods of unexplained inactivity. Also, the PPS decided not to prosecute against the advice of the Reflection Chamber and two of the chief prosecutors, who were of the opinion that prosecution – or at least a proper criminal investigation – was called for. The applicants submit that the PPS must have been put under pressure not to prosecute by, most likely, the Ministry of Defence which has an interest in maintaining the status quo.
- d) The domestic court overseeing the investigation of the PPS – the Military Chamber – was also not free of influence. This was possibly exerted by the Ministry of Defence, which appointed one of the judges. Support of the Military Chamber's lack of independence is found in the merits of its decision: its refusal to commission further investigation, its contradictory finding on points of law and fact, its teleological reasoning and its overstepping of its competence under article 12 CCP. The Military Chamber showed a bias towards the applicants and protectionism towards the accused; its reasoning discloses strong indications of a desire to avoid that the accused will have to stand trial and may be convicted.
- e) The Government have failed expeditiously to deal with the investigation, notwithstanding strong indications that crimes had been committed.
- f) The investigation was not effective. The PPS has consistently refused the request of the applicants to provide first-hand testimony on the alleged crimes. The applicants do not understand why they have never been heard by the PPS in the context of their own complaint. In the same vein, the PPS omitted to interview the accused on the relevant events. This led to a substantial information gap in the Military Chamber's decision, in turn leading to flawed and on points contradictory reasoning.
- g) It was up to the next-of-kin, the applicants, to bring a claim on behalf of their deceased family members. The Government have not taken responsibility for the conduct of investigative procedures.
- h) The PPS has failed to use its power to compel the Ministry of Defense to disclose relevant information and the Military Chamber failed to use its power to compel the PPS to disclose the advice of the Reflection Chamber and other relevant evidence.