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Enemy of Justice? Secrecy in Domestic War Crimes Trials in Serbia

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ABSTRACT

Secrecy is an essential element in war crimes trials, as it protects vulnerable individuals and sensitive information, ensuring trials can proceed effectively. However, secrecy often conflicts with principles of public justice, undermining the legitimacy and societal acceptance of trial processes and judgements. This, in turn, can limit the transformative potential of war crimes trials for post-conflict societies. We examine this tension between secrecy and publicity in the war crimes jurisprudence of Serbian courts. Drawing on an analysis of 164 final judgements issued between 1999 and 2019, we show that courts employ anonymization excessively and inconsistently. We document a typology of redaction techniques – including electronic patches, manual redactions, and coded substitutions – that are applied inconsistently not only across courts but also within individual documents. Similar types of information (such as names of defendants and victims, addresses, or crime locations) are sometimes redacted and sometimes left visible, reflecting the absence of harmonized standards. To assess the broader impact of these practices, we supplement our analysis with fieldwork, including interviews with legal practitioners and civil society actors. We reveal how excessive and erratic redactions of judgements obstruct transparency, impair the capacity of civil society to analyze trials, and constrain efforts to foster critical engagement with war crimes. Our study also reveals the limits of empirical methods when applied to irregularly redacted materials. The inconsistent anonymization precluded the use of advanced statistical techniques and constrained the scope of analysis. This has broader implications for research design in transitional justice, particularly when relying on digital data sources in environments with weak information governance. We conclude that reform is needed to standardize redaction practices, and that digitization alone cannot substitute for transparency. War crimes trials can only fulfil their social and historical function if protective secrecy is balanced with meaningful public access to court records.

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Introduction

Secrecy is an essential element in war crimes trials. Secrecy is a practice that "involves norms about the control of information, whether limiting access to it, destroying it, or prohibiting or shaping its creation."[1] By secrecy in the trial setting, we mean specifically "all processes that allow any actor (working in or with a court) to withhold information from others or otherwise limit the public dissemination of information arising from a trial or the workings of [a] court."[2] Secrecy helps protect vulnerable individuals and sensitive information, and by doing so makes trials possible and effective. But secrecy also is in tension with commitments to public justice, which is important to the legitimacy of courts and makes their work socially useful. In post-conflict contexts, these tensions are increased: war crimes trials can contribute to accountability after conflict, but the ways in which they can do that may require more transparency even as the exigencies of trials require greater secrecy.

Judicial secrecy takes various forms, including hearings closed to the public or certain parties, provisions to protect witnesses during or after testimony, and restricted access to documents – or, as we examine in this paper, redactions to documents that are otherwise public. Redaction, which refers to the selective masking or removal of information from a document manually or electronically, represents a visible attempt to balance the competing interests of publicness and efficacy. Redaction allows documents to be made public while protecting specific information within them, giving a court flexibility and the public partial access.

Most courts have formal commitments to make their processes and decisions public,[3] subject to defined and regulated exceptions that serve protective purposes.[4] But while secrecy techniques are often applied in a technocratic or bureaucratic fashion, they also allow for considerable discretion, and inevitably are open to strategic abuse. Like any technique of secrecy, redaction affords the redactor a measure of discretion in deciding what and how much information to hide. When this happens – or even when it is thought possible that it is happening – the fairness, or perceived fairness, of the trial can be affected. If redaction is extensive or patterned (concealing particular types of information), it can reduce public trust and confidence in the judiciary,[5] or increase scepticism and suspicion among outsiders.[6] It also makes more difficult the work of processing and deploying courtroom justice for broader social purposes.

In this article, we conduct mixed-method research, deploying a descriptive quantitative analysis of an original corpus of judgements from war crimes trials (1999–2019) issued by Serbian courts, which we supplement with qualitative analysis of interviews with research

[1] Gary T. Marx, "Censorship and Secrecy: Social and Legal Perspectives," in *International Encyclopedia of the Social and Behavioral Sciences* (2001), http://web.mit.edu/gtmarx/www/cenandsec.html (accessed 11 August 2025).
[2] Timothy William Waters, "But You Must Not Pronounce the Names: Testifying in Secret at a War Crimes Trial," *Georgetown Journal of International Law* 55 (2024): 443–71, section IIA.
[3] International Criminal Court, *Reporting on the ICC: A Practical Guide for Media* (accessed October 2024), https://www.icc-cpi.int/sites/default/files/2023-02/2023-journal-guide.pdf.
[4] *Rome Statute of the International Criminal Court*, 17 July 1998, in force 1 July 2002, as amended (UNTS 2187/38544), art. 72; *Strafprozeßordnung* (German Criminal Procedure Code), 7 April 1987, as amended 25 March 2022, §68; U.S. Department of Justice, *Criminal Resource Manual*, https://www.justice.gov/archives/jm/criminal-resource-manual-2054-synopsis-classified-information-procedures-act-cipa (accessed 11 August 2025).
[5] Kristina Kalajdžić, *Analiza stanja transparentnosti i otvorenosti pravosudnih organa* (Belgrade: Partneri Srbija, 2023), 7.
[6] Marlise Simons, "Genocide Court Ruled for Serbia without Seeing Full War Archive," *New York Times*, 9 April 2007.

participants with expertise in human rights prosecutions in Serbia conducted from 2019 to 2024. We find that final judgements in Serbian war crimes trials exhibit complex, unsystematic, and unnecessary forms of redaction. Specifically, our analysis reveals that redactions are not only inconsistently applied across courts, but also often within a single judgement. We find instances where a defendant's name is redacted on one page but exposed on another, or where entire passages are obscured while adjacent references to the same individual remain visible. These inconsistencies suggest a lack of procedural coherence and reveal the technical and bureaucratic fragility of the redaction process.

Relating our empirical findings to our qualitative research, we also argue that these redaction practices have practical consequences. Secrecy undermines Serbian civil society's engagement with the trial processes and outcomes, and thereby its efforts to address denial and contestation of war crimes committed by Serbs. As Ristić has argued, "the transformation of the trial proceedings in the collective memory about justice after war crimes requires the involvement of a much larger circle of actors than those who are ready to participate in trial proceedings."[7] To the extent that such trials and judgements can contribute to meaningful efforts to assign responsibility or reckon with the past – the work of *Vergangenheitsbewältigung* – secrecy makes that work more difficult. In particular, the arbitrary and excessive use of redaction in Serbia constitutes an additional barrier to transitional justice, with direct implications for European Union (EU) policy on post-conflict reconstruction.

Our analysis of redactions as a type of secrecy in domestic war crimes trials offers a new perspective on the effectiveness of criminal justice as a transitional justice mechanism, and its capacity to fulfil normative goals in post-conflict societies, including fostering knowledge about atrocities, enabling historical reckoning, and supporting education about a society's violent past. Transitional justice scholars have assessed the value of international and domestic war crimes trials primarily by examining their procedural dynamics and how they are received in affected societies. Studies of trial processes have examined bias in judicial decision-making – for example, by analyzing verdicts in relation to defendants' ethnicity, rank or membership in state military or paramilitary forces,[8] or by examining how the gender composition of judicial panels influences sentencing outcomes in cases of conflict-related sexual violence.[9] Increasingly, scholars have turned their attention to the transcripts produced by the courts to gain insight into trial processes, including memory and forgetting in victims' testimonies,[10] treatment and

[7] Katarina Ristić, *Imaginary Trials: War Crime Trials and Memory in Former Yugoslavia* (Leipzig: Leipziger Universitätsverlag, 2014), 15.

[8] James Meernik and Kimi King, "The Sentencing Determinants of the International Criminal Tribunal for the Former Yugoslavia: An Empirical and Doctrinal Analysis," *Leiden Journal of International Law* 16, no. 4 (2003): 717–50; Barbora Holá, Alette Smeulers, and Catrien Bijleveld, "International Sentencing Facts and Figures: Sentencing Practice at the ICTY and ICTR," *Journal of International Criminal Justice* 9, no. 2 (2011): 411–39; James Meernik, "Sentencing Rationales and Judicial Decision Making at the International Criminal Tribunals," *Social Science Quarterly* 92, no. 3 (2011): 588–608; Ivor Sokolić, Denisa Kostovicova, Lanabi La Lova and Sanja Vico, "Are Domestic War Crimes Trials Biased?," *Journal of Peace Research* (2025), available at https://doi.org/10.1177/00223433241292143.

[9] Kimi Lynn King and Megan Greening, "Gender Justice or Just Gender? The Role of Gender in Sexual Assault Decisions at the International Criminal Tribunal for the Former Yugoslavia," *Social Science Quarterly* 88, no. 5 (2007): 1049–71.

[10] Kristen Perrin, "Memory at the International Criminal Tribunal for the Former Yugoslavia (ICTY): Discussions on Remembering and Forgetting within Victim Testimonies," *East European Politics and Societies* 30, no. 2 (2016): 270–87.

assessment of witnesses,[11] defendants' expression of remorse,[12] the projection of nationalism,[13] the language of the rationale for decisions,[14] and the use of transcripts as a historical record.[15] However, these studies have focused on the public, visible aspects of trial documents, generally neglecting the issue of redaction and its potential impact on the inferences scholars draw and their policy implications. In contrast, we attend to the parts of the trial process that are invisible – elements that shape proceedings precisely through, and because of, their absence.

A related and more voluminous body of scholarship has focused on trials' societal effects. It has revealed the instrumental use of war crimes trials by political elites;[16] evaluated perceptions of trial processes as unfair, and of courts – particularly international tribunals – as illegitimate;[17] and assessed the impact of international human rights prosecutions on democracy and the rule of law;[18] along with examining a range of mechanisms that mediate these effects, such as local conflict and justice narratives.[19] Studies focusing on perceptions of criminal trials have considered the issue of access to court documents (above all, translation into local languages),[20] but have generally overlooked how redactions affect the practical utility of these documents and the ability of local actors to challenge narratives of impunity in post-conflict societies.

Relatedly, we contribute to the rapidly developing body of research on digitization and transitional justice. Our study relies on digitization and empirical methods to identify patterns of redaction, but also demonstrates the limitations of those methods. We thereby temper scholarly expectations that technology can democratize transitional justice by fostering broader engagement from interested publics.[21] In part, this is due to the limitations of current technology, but it is also a function of social practice: we show that, in

[11] Inger Skjelsbæk, *The Political Psychology of War Rape: Studies from Bosnia and Herzegovina* (London: Routledge, 2012); Henry Alexander Redwood, *The Archival Politics of International Courts* (Cambridge: Cambridge University Press, 2021); Gabrielė Chlevickaitė, Barbora Holá, and Catrien Bijleveld, "Suspicious Minds? Empirical Analysis of Insider Witness Assessments at the ICTY, ICTR and ICC," *European Journal of Criminology* 20, no. 1 (2023): 185–207.

[12] Olivera Simić and Barbora Holá, "A War Criminal's Remorse: The Case of Landžo and Plavšić," *Human Rights Review* 21 (2020): 267–91.

[13] Tim Meijers and Marlies Glasius, "Expression of Justice or Political Trial?: Discursive Battles in the Karadžić Case," *Human Rights Quarterly* 35, no. 3 (2013): 720–52.

[14] Sokolić, Kostovicova, La Lova and Vico, "Are Domestic War Crimes Trials Biased?"

[15] Iva Vukušić, *Serbian Paramilitaries and the Breakup of Yugoslavia: State Connections and Patterns of Violence* (London: Routledge, 2023).

[16] Omar G. Encarnación, "Justice in Times of Transition: Lessons from the Iberian Experience," *International Studies Quarterly* 56, no. 1 (2012): 179–92.

[17] Phil Clark, *Distant Justice: The Impact of the International Criminal Court on African Politics* (Cambridge: Cambridge University Press, 2018); Dan Saxon, "Exporting Justice: Perceptions of the ICTY among the Serbian, Croatian, and Muslim Communities in the Former Yugoslavia," *Journal of Human Rights* 4, no. 4 (2005): 559–72; Meernik and King, "The Sentencing Determinants of the International Criminal Tribunal for the Former Yugoslavia: An Empirical and Doctrinal Analysis" ; Geoff Dancy, Bridget Marchesi, and Lesley Pruitt, "The Justice Balance: When Transitional Justice Improves Human Rights and Democracy," *Human Rights Quarterly* 42, no. 2 (2020): 370–400.

[18] Diane F. Orentlicher, *Shrinking the Space for Denial: The Impact of the ICTY in Serbia* (New York: Open Society Institute, 2008); Lara J. Nettelfield, *Courting Democracy in Bosnia and Herzegovina: The Hague Tribunal's Impact in a Postwar State* (New York: Cambridge University Press, 2010); Javier Padilla, "Is Satisfaction with Democracy Higher after Transitional Justice Trials?" *Political Behavior* (2025): 1–44, available at ttps://link.springer.com/article/10.1007/s11109-025-10007-9.

[19] Ivor Sokolić, *International Courts and Mass Atrocity: Narratives of War and Justice in Croatia* (Basingstoke: Palgrave Macmillan, 2019).

[20] Kirsten Campbell, "The Laws of Memory: The ICTY, the Archive, and Transitional Justice," *Social & Legal Studies* 22, no. 2 (2013): 247–69.

[21] Tobias Blanke and Caroline Kristel, "Integrating Holocaust Research," *International Journal of Humanities and Arts Computing* 7, nos. 1–2 (2013): 41–57; Iva Vukušić, "The Archives of the International Criminal Tribunal for the Former Yugoslavia," *History* 98, no. 332 (2013): 623–35.

post-conflict societies, access to information that digitization theoretically enables is often accompanied by suppression of publicly available information in practice. This, in turn, has a direct impact on research. We expose the limitations of digitization in studying the complex, stochastic materials in the corpus of court judgements. Digitization allows greater availability and access to different kinds of data for researchers. However, the highly irregular nature of the data – primarily resulting from inconsistent official anonymization practices – restricts the types of analysis. In this case, it made impossible predictive analysis and computational modelling, which could have provided a quantitative evaluation of the conditions under which redactions occurred, or allowed us to explore their relationship to various aspects of the trials and individual-level data, including information on charges, defendants, and witnesses. These limitations suggest implications for reordering the priorities of reform efforts to benefit not only post-conflict transitional justice processes directly but also the researchers and civil society groups studying them.

This paper is organized as follows. First, we examine the theoretical and practical framework of secrecy in trials, with a focus on the unique position of war crimes trials in transitional societies. Next, we discuss the position of courts and reception of war crimes judgements within Serbian society. Then, we present descriptive statistical findings with evidence of excessive, inconsistent, and varied anonymization practices. We subsequently contextualize our empirical findings, drawing on evidence collected during fieldwork in Serbia to analyze the impact of anonymization on society's ability to understand and engage with trials and judgements. Finally, we conclude with observations on digitization and publicness. We contend that inadequate reforms and technical capacities enable excessive secrecy, hindering efforts to address responsibility for war crimes. We also present the policy implications of our research.

The Theoretical and Practical Framework of Secrecy in Trials

The Rationale and Impact of Secrecy in Trials in Post-Conflict Transitions

A fair and transparent process is important to the work of courts and to their social value.[22] Courts depend on fair processes – more precisely, the perception that their processes are fair – for their legitimacy and authority.[23] Societies, in turn, depend on access to those processes to derive utility from the work of courts. This is a dynamic, mutually constituting process: when we say, for example, that justice must be done and seen to be done, we speak both about fundamental fairness as a good unto itself and the social effects of a fair justice system.

Because of this interaction, a non-transparent process – one that is highly secret or closed to outsiders – presents special challenges for a trial's authority, social reception, utility, and efficacy. Secrecy can interfere with the flow of information that individuals and institutions need to make sense of the work of courts, retain confidence in its fairness, and use judicial processes for social cohesion and transformation.[24] Trials and trial records

[22] Tom R. Tyler and Jonathan Jackson, "Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation and Engagement," *Psychology, Public Policy, and Law* 19, no. 3 (2013): 126–45.

[23] Justice Collaboratory, "Procedural Justice," Yale Law School, https://law.yale.edu/justice-collaboratory/procedural-justice (accessed 3 October 2024).

[24] But see Ida Koivisto, *The Transparency Paradox* (Oxford: Oxford University Press, 2022), who argues that limits to transparency can contribute to law's legitimacy.

have an important social function: they create accounts of human rights violations and historical narratives of conflict that societies can use to confront the past critically. Yet, by keeping some of their processes secret, trials can be used for an opposite purpose: secrecy can shield institutions and actors from facing full, public responsibility.

Nonetheless, all modern judicial systems use secrecy in varying degrees to protect interests that might be affected by trial, and indeed to make trials possible, practical, and efficient. Secrecy is typically invoked when individuals would be placed at risk or when sensitive information, such as trade secrets[25] or national security information could be compromised.[26] Secrecy is useful – even necessary – for courts to operate, but is also in tension with the imperative for courts to render public justice.

Secrecy can affect perceptions of courts as authoritative and reliable,[27] both because it makes the judicial process non-transparent and because secrecy, not being randomly distributed, may benefit certain actors more than others. Secrecy thus affects both substantive fairness and perceptions of fairness. In addition, secrecy makes it more difficult for individuals and civil society actors to make use of court processes and judgements in their own work, whether in monitoring governmental actions or promoting social reform.

These concerns are generic because secrecy can appear in any sort of trial. But secrecy is particularly common in trials that involve national security, organized crime, or especially vulnerable populations, such as children or victims of sexual violence. War crimes and atrocity trials typically involve most or all of these elements, and so, unsurprisingly, are consistently among the most secretive. In addition, these trials are affected by secrecy in another way because of their connection to periods of post-conflict transition and judicial reform.

War crimes trials are often associated with periods of political transition and are called on to serve a double purpose: not just to process past harms, but to contribute to broader transformations – democratization, establishment of the rule of law, and reform of the judicial system itself. Effective justice mechanisms are essential for maintaining social stability, particularly in transitional contexts,[28] and are also important for institutional reform during transitions to uphold accountability.[29]

Human rights prosecutions can occur immediately after wrongdoing, or decades later, and indeed may themselves constitute a late phase of transition. Argentina's 2016 Operation Condor trial – concerning crimes committed in the 1970s – opened new avenues for accountability for past atrocities in South America, highlighting the role of public hearings and extensive evidentiary presentation in the transitional process.[30] Individual trials can

[25] Nico Grant, Cecilia King, and Mickle Tripp, "'Unprecedented' Secrecy in Google Trial as Tech Giants Push to Limit Disclosures," *The New York Times*, 26 September 2023, updated 4 October 2023, https://www.nytimes.com/2023/09/26/technology/google-antitrust-trial-secrecy.html (accessed 11 August 2025); Luke Goldstein, "The Secret Trial," *The American Prospect*, 28 November 2023, https://prospect.org/justice/2023-11-28-google-secret-trial/ (accessed 11 August 2025).

[26] U.S. Foreign Intelligence Surveillance Court, "About the Foreign Intelligence Surveillance Court," https://www.fisc.uscourts.gov/about-foreign-intelligence-surveillance-court (accessed October 3, 2024).

[27] Conference of State Court Administrators, *Courting Public Trust and Confidence: Effective Communication in the Digital Age*, n.d., 4–5, https://cosca.ncsc.org/__data/assets/pdf_file/0020/86015/COSCA-Policy-Paper-Courting-Public-Trust.pdf.

[28] *Task Force on Justice, Justice for All – Final Report* (New York: Center for International Cooperation, 2019).

[29] *International Center for Transitional Justice, "Institutional Reform,"* https://www.ictj.org/institutional-reform (accessed October 3, 2024).

[30] Francesca Lessa, "Argentina's Operation Condor Trial Opens Up New Paths to Accountability for Past Atrocities in South America and Beyond," *LSE Latin America and Caribbean Blog*, 1 August 2019, https://blogs.lse.ac.uk/

also function as proxies for larger systems of oppression. Especially when crimes were numerous or the previous regime was in power for a long time, systematic adjudication of all its criminal acts may not be possible. In such cases, individual trials take on a symbolic character or may be explicitly used for repudiation of the whole system.[31]

The public nature of trials serves an additional purpose when crimes were conducted in secret or denied. In a typical trial, the facts may be well established and only culpability is at issue. In situations of transition, however, narratives about past criminality may be profoundly contested, such that the acts themselves are entirely denied or contextualized. In such cases, public trials (and other public mechanisms, such as commissions of investigation) not only establish facts and assign individual responsibility but may contribute to working through broader claims about responsibility for historical wrongs – *Vergangenheitsbewältigung* in the German context. For certain crimes, such as enforced disappearance, official secrecy is an element; the "right to truth" movement is linked to the belief that in such cases courts not only assign individual responsibility but also serve a public truth-discovering function.[32] This suggests the possibility for trials to contribute not only to determining facts, but also to reconfiguring historical memory, which we discuss below.

In addition, trials can themselves contribute to reform of judicial institutions that were previously complicit with or co-opted by authoritarian regimes.[33] High-profile trials can act as catalysts for broader reforms in conflict societies, especially reform of judicial institutions,[34] and reinforce public and institutional commitment to the transition from one system to another.[35]

Trials are thus an important element of that strategic transformation, especially to the degree they are seen to contribute to shared truth, responsibility, and reconciliation. These are ambitious goals, which make the tension between secrecy and publicness especially problematic in transitional contexts, because the transformative and reconciliatory potential of trials depends on their publicness.[36] This "authoritative narrative

latamcaribbean/2019/08/01/argentinas-operation-condor-trial-opened-up-new-paths-to-accountability-for-past-atrocities-in-south-america-and-beyond/ (accessed October 3, 2024).

[31] Lessa, "Argentina's Operation Condor Trial Opens Up New Paths to Accountability for Past Atrocities in South America and Beyond."

[32] Office of the United Nations High Commissioner for Human Rights, *Promotion and Protection of Human Rights: Study on the Right to Truth: Report of the Office of the United Nations High Commissioner for Human Rights*, E/CN.4/2006/91, 8 February 2006, 46–9, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/106/56/PDF/G0610656.pdf?OpenElement (accessed 3 October 2024); Fabián Salvioli, "International Legal Standards Underpinning the Pillars of Transitional Justice – Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation, and Guarantees of Non-recurrence," *Human Rights Council*, A/HRC/54/24, 10 July 2023, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G23/126/71/PDF/G2312671.pdf?OpenElement (accessed 11 August 2025).

[33] Corbin Lyday and Jan Stromsem, *Rebuilding the Rule of Law in Post-Conflict Environments* (Washington, DC: USAID, May 2005), 8–11, 39–47, https://www.usaid.gov/sites/default/files/2022-05/USAID-Post_Conflict_ROL_508.pdf; Conference of State Court Administrators, *Courting Public Trust and Confidence: Effective Communication in the Digital Age*, n.d., https://cosca.ncsc.org/__data/assets/pdf_file/0020/86015/COSCA-Policy-Paper-Courting-Public-Trust.pdf (accessed October 3, 2024).

[34] International Criminal Tribunal for the Former Yugoslavia (ICTY), "Development of the Local Judiciaries," n.d., https://www.icty.org/en/outreach/capacity-building/development-local-judiciaries (accessed October 3, 2024); Katherine Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (New York: W.W. Norton, 2012).

[35] Bojana Djokanovic, "Argentina's Rule-of-Law Approach to Addressing a Legacy of Enforced Disappearances," International Commission on Missing Persons, n.d., https://www.icmp.int/news/argentinas-rule-of-law-approach-to-addressing-a-legacy-of-enforced-disappearances/ (accessed October 3, 2024).

[36] Kim Christian Priemel, "A Story of Betrayal: Conceptualizing Variants of Capitalism in the Nuremberg War Crimes Trials," *The Journal of Modern History* 85, no. 1 (2013): 69–108.

theory"[37] supposes that trials can produce definitive, authoritative accounts of crimes – including, often, of a conflict's origins and meaning – that provide a basis for rejecting competing, denialist narratives,[38] which in turn opens space for societies to engage in the work of accepting responsibility and, ultimately, reconciling divided populations.[39] Critically, it is courts' procedural neutrality and fairness that contribute to their reliability and authority, in turn producing their reconciliatory potential. This depends on the public integrity of the process, not simply punishment or a particular outcome – "the information revealed about past crimes in public trials may be as important"[40] – though it may often feel implicit that a particular (guilty) verdict is essential.[41]

In transitional contexts, therefore, secrecy may pose significant challenges for translating a court's process into the work of social transformation. If courts are supposed to produce authoritative narratives, but their work is secret, their authority may be challenged, either by sincere actors or by opponents who instrumentalize the lack of transparency to promote alternative narratives and corrosive scepticism.

The Background: The Serbian War Crimes Trials and the Regulation of Secrecy

Our study focuses on Serbia's war crimes courts, which have made their judgements publicly accessible but have also, as a practice, made considerable redactions in those judgements. This makes Serbian war crimes trials a relevant case to study when and under what conditions secrecy is used in judgements, and with what effect. When redacting documents, Serbian courts have relied on techniques of pseudonymization and anonymization. Pseudonymization refers to techniques that ensure data can no longer be attributed to a specific person through replacement or omission of personal data; anonymization entails the complete removal of personal data, information about events, or evidence presented in the court proceedings.[42] The term anonymization is frequently used to cover both types of redactions, so this is the term we employ in our study.

The impetus for domestic war crimes trials in Serbia reflects a complex interplay of historical events and institutional as well as political reactions. The collapse of the Yugoslav state in the early 1990s, and the decade of wars that followed, involved the Yugoslav People's Army, effectively controlled by Serbia, and later the armed forces and security forces of Serbia, as well as numerous informal forces, driven both by elite-led policies and popular sentiment. Individuals from both formal and informal forces committed atrocities during the wars – massacres, sexual violence, indiscriminate attacks – that were at

[37] Timothy William Waters, "A Kind of Judgment: Searching for Judicial Narratives After Death," *George Washington International Law Review* 42 (2010): 279–94.

[38] Diane F. Orentlicher, *Shrinking the Space for Denial: The Impact of the ICTY in Serbia* (New York: Open Society Institute, May 2008).

[39] Richard Ashby Wilson, *Writing History in International Criminal Trials* (Cambridge: Cambridge University Press, 2011).

[40] Luis Moreno Ocampo, "Beyond Punishment: Justice in the Wake of Massive Crimes in Argentina," *Journal of International Affairs* 53, no. 2 (1999): 669–89.

[41] Mark Kersten, "Acquittals and the Battleground over the ICC's Legitimacy," *Justice in Conflict*, 14 March 2019, https://justiceinconflict.org/2019/03/14/acquittals-and-the-battleground-over-the-iccs-legitimacy/ (accessed October 3, 2024); Mark Ellis, "The Latest Crisis of the ICC: The Acquittal of Laurent Gbagbo," *Opinio Juris*, 28 March 2019, http://opiniojuris.org/2019/03/28/the-latest-crisis-of-the-icc-the-acquittal-of-laurent-gbagbo/ (accessed October 3, 2024).

[42] Republika Srbija, "Pravilnik o zameni i izostavljanju (pseudonimizaciji i anonimizaciji) podataka u sudskim odlukama," Apelacioni sud u Beogradu, Su br. I-1 58/17, 12 October 2017, arts. 1 and 3. http://www.bg.ap.sud.rs/uploads/Pravilnik-o-zameni-i-izostavljanju-podataka-u-sudskim-odlukama_101122.pdf (accessed 7 August 2024).

times denied or hidden, but at other times acknowledged, contextualized, or even celebrated.

After the fall of President Slobodan Milošević in 2000, whose regime was integrally involved in the wars throughout the former Yugoslavia during the 1990s and who had been indicted by the International Criminal Tribunal for the Former Yugoslavia (ICTY) for crimes in Kosovo, Bosnia and Herzegovina, and Croatia, Serbia's transition to democracy lacked a clear break with the legacy of violence. There was no lustration and no agreed commitment in the post-Milošević period to address Serbs' responsibility for human rights violations,[43] although for a brief period some efforts were led by pro-European Prime Minister Zoran Đinđić, who played a critical role in delivering President Milošević to the ICTY. None of the members of the former regime faced responsibility in Serbia itself for war crimes and human rights violations, nor were they excluded from state institutions. The lack of lustration also means that the judiciary continued to be staffed with members of the previous regime that had been implicated in the conduct of violence.[44] Over time, and especially since the coming to power of the Serbian Progressive Party in 2012 led by Aleksandar Vučić, who became Prime Minister in 2014, the government has openly condoned public celebration of convicted war criminals.[45] Official resistance to addressing wrongdoing from the wars of the 1990s was paralleled at the societal level, marked by a culture of contesting and denying Serbs' responsibility for war crimes.[46] As a result, Serbia's domestic judicial reckoning with the mass violence of Yugoslavia's dissolution was, in many respects, driven by external pressures, including the politics surrounding the international tribunal and EU relations, though it also converged with the agendas of domestic actors, including political elites and civil society organizations.

Initially, criminal trials were conducted at the ICTY. Domestic war crimes trials (in Serbia but also in other countries in the region) were spurred on by the 2003 announcement of the planned closure of the ICTY.[47] The ICTY's completion strategy included the referral of intermediate and lower-level accused to the region of the former Yugoslavia and the transfer of investigative material to state courts.[48] It also envisaged sustained support for building the capacity of local legal institutions to administer criminal justice.[49] These institutional developments converged with the new Serbian leadership's interest in distancing itself from the nationalist politics of the Milošević era. Especially after

[43] Ivan Vejvoda, "Serbia After Four Years of Transition," in *Western Balkans: Moving On*, ed. Judy Batt, Chaillot Paper no. 70 (Paris: Institute for Security Studies, 2004), 37–53.

[44] Vojin Dimitrijević, "Domestic War Crimes Trials in Serbia, Bosnia-Herzegovina, and Croatia," in *War Crimes, Conditionality and EU Integration in the Western Balkans*, ed. Judy Batt and Jelena Obradović, Chaillot Papers, no. 116 (Paris: EU Institute for Security Studies, 2009), 83–100, 86.

[45] Katarina Ristić, "The Media Negotiations of War Criminals and Their Memoirs: The Emergence of the 'ICTY Celebrity'," *International Criminal Justice Review* 28, no. 4 (2018): 391–405.

[46] Eric Gordy, *Guilt, Responsibility, and Denial: The Past at Stake in Post-Milošević Serbia* (Philadelphia: University of Pennsylvania Press, 2013); Jelena Obradović-Wochnik, *Ethnic Conflict and War Crimes in the Balkans: The Narratives of Denial in Post-Conflict Serbia* (London: I.B. Taurus, 2013); Nenad Golčevski, Johannes von Engelhardt and Hajo G Boomgaarden, "Facing the Past: Media Framing of War Crimes in Post-Conflict Serbia," *Media, War & Conflict* 6, no. 2 (2013): 117–33; Denisa Kostovicova, "Civil Society and Post-Communist Democratization: Facing a Double Challenge in Post-Milošević Serbia," *Journal of Civil Society* 2, no. 1 (2006): 21–37.

[47] International Criminal Tribunal for the Former Yugoslavia (ICTY). *Completion Strategy*. https://www.icty.org/en/about/tribunal/completion-strategy (accessed August 7, 2024).

[48] Ibid. Fausto Pocar, "The ICTY's Completion Strategy: Continuing Justice in the Region," *Proceedings of the ASIL Annual Meeting*, vol. 103 (2009), 222–6.

[49] International Residual Mechanism for Criminal Tribunals (IRMCT), *Development of the Local Judiciaries*, United Nations, https://www.icty.org/en/outreach/capacity-building/development-local-judiciaries (accessed October 3, 2024).

Đinđić's assassination in 2003, the new leadership was keen to signal to the international community – and the EU in particular – its determination to address the legacy of wrongdoing.[50] Embracing the norm of non-impunity was supposed to demonstrate Serbia's commitment to European values.

The legal basis for domestic trials was established with the 2003 Law on Organization and Competence of Government Authorities in War Crimes Proceedings.[51] It set the framework for the transfer of cases from the ICTY to Serbia and for cases initiated by the Serbian courts.[52] In 2003, the War Crimes Chambers of the Belgrade District Court, commonly known as the "Special Court for War Crimes", and the War Crimes Prosecution Office were established.[53] Several other district courts across Serbia also began conducting war crimes trials. Additionally, agreements with neighbouring Bosnia and Herzegovina and Croatia enabled the transfer of cases to Serbian courts from these countries.

This emerging infrastructure, including new and existing legislation and codes that were being reformed at the same time, regulated public access to trials and trial documents.[54] The 2003 law also established principles concerning publicness,[55] as did the revised Code on Criminal Proceedings, which establishes a general right to public access to court proceedings and to court documents with certain limitations, such as national security, public law and morals, the interests of minors, and the privacy of parties involved in the proceedings.[56]

However, redaction of judgements has also been regulated by individual courts. Alongside general principles, individual courts rely on the Law on Free Access to Information of Public Importance[57] and the Law on the Protection of Personal Data[58] – balancing the public's right to access information of public importance against the court's obligation to protect personal data.[59] In general, all courts are expected to apply the regulation on anonymization of the Supreme Court of Cassation, but some have adopted their own regulations.[60] Regulations

[50] Katarina Ristić, "Our Court, Our Justice: Domestic War Crimes Trials in Serbia," *Südost-Forschungen* 75, no. 1 (2016): 165–85.

[51] *Zakon o organizaciji i nadležnosti državnih organa u postupku za ratne zločine*, *Službeni glasnik RS*, no. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011 (dr. zakon), 6/2015, and 10/2023, https://www.paragraf.rs/propisi_download/zakon_o_organizaciji_i_nadleznosti_drzavnih_organa_u_postupku_za_ratne_zlocine.pdf (accessed October 3, 2024).

[52] Siniša Važić, "Suđenja za ratne zločine u Srbiji," *Vreme*, 3 March 2005, https://www.vreme.com/dodatno/sudjenja-za-ratne-zlocine-u-srbiji/ (accessed October 3, 2024).

[53] Dimitrijević, "Domestic War Crimes Trials," 83–100.

[54] Nihad Ukić, "Pravo na javno suđenje," *Glasnik Advokatske komore Vojvodine* 84, no. 3 (2012): 216–26.

[55] *Zakon o organizaciji i nadležnosti državnih organa*, br. 67/2003 et seq.

[56] *Zakonik o krivičnom postupku*, Službeni glasnik RS, br. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 (Odluka Ustavnog suda), 62/2021 (Odluka Ustavnog suda). https://www.tuzilastvorz.org.rs/public/files/pages/2021-06/zkp_%D0%9D.pdf (accessed October 3, 2024). This code was adopted in 2011, replacing the previous version from 2001. The 2001 code, in turn, replaced the earlier code dating back to 1997.

[57] *Zakon o slobodnom pristupu informacijama od javnog značaja*, *Službeni glasnik RS*, nos. 120/2004, 54/2007, 104/2009, and 36/2010. https://www.poverenik.rs/sr/закони/881-закон-о-слободном-приступу-информацијама-од-јавног-значаја-пречишћен-текст-сл-гласник-рс-120-04,-54-07,-104-09-i-36-10.html (accessed October 3, 2024).

[58] *Zakon o zaštiti podataka o ličnosti*, *Službeni glasnik RS*, no. 87/2018. https://www.poverenik.rs/sr/закони4/2970-закон-о-заштити-података-о-личности-сл-гласник-рс-бр-87-2018-од-13-11-2018.html (accessed October 3, 2024).

[59] Viši sud u Beogradu, *Informator o radu*, 23 April 2024, 107. https://www.bg.vi.sud.rs/sekcija/95/informator-o-radu.php (accessed October 20, 2024).

[60] Information provided by the Supreme Court of Cassation, Belgrade, 30 September 2024. The Supreme Court of Cassation and the Court of Appeal in Belgrade adopted regulations on anonymization in 2010, while the Higher Court in Belgrade implemented its regulations in 2017. See Milica Kostić, *Pravo javnosti da zna o suđenjima za ratne zločine u Srbiji* (Beograd: Fond za humanitarno pravo, 2016) , 19; Republika Srbija, "Pravilnik o minimumu anonimizacije sudskih odluka," Viši sud u Beogradu, Su I-1 br. /17, 5 July 2017, 116 in Viši sud u Beogradu, *Informator o radu*. In

on anonymization were not standardized across different courts, and not all courts have adopted their own rules. While redactions of war crimes judgements generally followed the same principles as those for other crimes, special provisions were applied. The regulation of the Supreme Court of Cassation exempts those accused of crimes against humanity and other acts defined by international law from anonymization protections, as, for example, reflected in the regulation used by the Higher Court in Belgrade.[61]

Reforms of the normative framework regulating transparency in domestic war crimes trials were also closely integrated with Serbia's Europeanization process, aiming at a comprehensive transformation in line with EU norms, rules, and values.[62] When Serbia achieved EU candidate status in 2012, domestic war crimes trials, which had been the subject of annual reporting by the EU Commission, were incorporated into the accession negotiations. Chapter 23, one of the 35 chapters of the *acquis communautaire* – the accumulated legislation, legal acts, and court decisions that constitute the body of EU law – outlined standards for an efficient judiciary based on the rule of law and set out priorities for Serbia's domestic war crimes investigations and trials.[63] This led the Serbian government to adopt a number of strategic documents outlining and guiding reforms, including those related to war crimes prosecutions – such as the Action Plan for Chapter 23[64] – as well as successive National Strategies for the Processing of War Crimes (the first covering 2015–2020 and the second covering 2021–2026).[65]

The EU's reform priorities addressed anonymization, but focused on general data protection norms, without relating them specifically to war crimes trials. This separation was mirrored in Serbia's reform plans,[66] which addressed access to public information and protection of personal data more broadly. Ultimately, public access to trials and redaction standards developed within an evolving, ambiguous, and fluid normative framework in the context of a post-conflict transitional society where Serbs' participation and responsibility for war crimes were widely contested. The rules regulating war crimes trials were a part of broader sectoral reforms.[67]

other cases, regulations were implemented after a significant delay. The Prosecutor's Office for War Crimes, an institution established in 2003 to conduct war crimes trials in Serbia, adopted its regulation in 2019.

[61] Republika Srbija, "Pravilnik o zameni i izostavljanju (pseudonimizaciji i anoninimizaciji) podataka u sudskim odlukama," Vrhovni kasacioni sud, I Su-1 176/16, 20 December 2016 (accessed 5 August 2024); Republika Srbija, "Pravilnik o minimumu anonimizacije sudskih odluka,"Viši sud u Beogradu.

[62] Katy A. Crossley-Frolick, "The European Union and Transitional Justice: Human Rights and Post-Conflict Reconciliation in Europe and Beyond," *Contemporary Readings in Law and Social Justice* 3, no. 1 (2011): 33–57; Evald Verovšek, *Memory and the Future of Europe: Rupture and Integration in the Wake of Total War* (Manchester: Manchester University Press, 2021).

[63] European Commission, "Chapters of the Acquis/Negotiating Chapters," https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/glossary/chapters-acquis-negotiating-chapters_en (accessed October 10, 2024); Pregovaračka grupa za Poglavlje 23, *Akcioni plan za Poglavlje 23* (Belgrade: Republika Srbija, April 2016), https://www.mpravde.gov.rs/files/Akcioni%20plan%20PG%2023.pdf (accessed 23 September 2024).

[64] Fond za humanitarno pravo, *Peti izveštaj o sprovođenju Nacionalne strategije za procesuiranje ratnih zločina*.

[65] Nacionalna strategija za procesuiranje ratnih zločina za period od 2021. do 2026. godine, *Službeni glasnik RS*, no. 97 (15 October 2021), https://pravno-informacioni-sistem.rs/eli/rep/sgrs/vlada/strategija/2021/97/1 (accessed 27 September 2024); Radio Slobodna Evropa, "Vlada Srbije usvojila Strategiju za procesuiranje ratnih zločina," 14 October 2021, https://www.slobodnaevropa.org/a/srbija-strategija-ratni-zlocini/31509659.html (accessed 23 September 2024).

[66] Pregovaračka grupa za Poglavlje 23, *Akcioni plan za Poglavlje 23* (April 2016), 108–10, https://www.mpravde.gov.rs/files/Akcioni%20plan%20PG%2023.pdf; Nacionalna strategija za procesuiranje ratnih zločina za period od 2021. do 2026. godine. https://pravno-informacioni-sistem.rs/eli/rep/sgrs/vlada/strategija/2021/97/1.

[67] Gordy, *Guilt, Responsibility, and Denial: The Past at Stake in Post-Milošević Serbia* ; K. H. Brodersen, "The ICTY's Conditionality Dilemma: On the Interaction of Influences of the European Union's Conditionality Policy and the

Research Design, Data, and Methods

To evaluate the redaction of court judgements and its implications in a post-conflict society, we apply an explanatory sequential mixed-methods design. This type of mixed-methods research entails quantitative research – which has "a greater emphasis in addressing the study's purpose" – followed by qualitative research that further explains the quantitative results and their implications.[68] For the quantitative stream of the study, we compiled an original corpus of 164 judgements from Serbian war crimes trials. The documents are in Serbian, span the period from 1999 to 2019, and encompass all publicly accessible documents. They were downloaded from the website of the Humanitarian Law Centre (Fond za humanitarno pravo, FHP in Serbian), an NGO based in Belgrade that collated all available judgements (*presude* and *rešenja*).[69] The corpus encompasses legal cases involving 180 individual defendants. We examined both scanned and optically recognized versions of the documents. Table 1 displays the fifteen courts and the number of judgements they issued at each level of review.[70]

The documents reviewed include judgements issued at three separate levels of review, including first instance (initial) and second instance (appeals). A final level of review issues final judgements. As one progresses to a higher instance (from district to appellate to final), each court level reviews the judgements made by the lower instance.[71] Because documents at all three levels contain personal data on trial participants, they also include redactions. To analyze the documents, we conducted a manual page-by-page review of all judgements, systematically recording the types of redactions and the information redacted.

For the qualitative stream, we conducted seventeen semi-structured interviews[72] in Serbia from 2019 to 2024 – including legal practitioners, civil society members such as human rights activists and think tank analysts, monitors with international organizations, and journalists – all of whom interact with the courts and rely on information provided in these judgements for the analysis of practice. These interviews were doxastic, serving as "a research instrument for investigating experience, beliefs, attitudes, or feelings of respondents," as opposed to epistemic interviews, where a researcher and respondent co-create knowledge.[73] In the context of mixed-methods research, we used these

International Criminal Tribunal for the Former Yugoslavia on the Development of Rule of Law in Serbia," *European Journal of Crime, Criminal Law, and Criminal Justice* 22, no. 3 (2014): 219–48.

[68] John W. Creswell and Vicki L. Plano Clark, *Designing and Conducting Mixed Methods Research*, 3rd ed. (Thousand Oaks, CA: SAGE Publications, 2018), 63.

[69] *Pregled arhive FHP*, n.d., Fond za humanitarno pravo, http://www.hlc-rdc.org/?cat=234 (accessed 3 October 2025). The judgements are part of the FHP Archive, obtained from other institutions with which the NGO has cooperated over the past 30 years. Initial judgements are referred to as *presuda*, second instance and final judgements as *presuda* or *rešenje* (decisions), depending on whether the higher court upheld, altered, or dismissed the lower court's ruling. We refer to all these documents as judgements.

[70] The names of courts are retained as they appeared at the time the judgements were issued, although some have been altered as a result of subsequent reforms.

[71] For the network of courts in Serbia, see *Ministarstvo pravde, Republika Srbija*, https://www.mpravde.gov.rs/sr/sekcija/35791/mreza-sudova.php (accessed 8 August 2024). There is a separate military court system, which has handled a small number of cases that we do not review.

[72] The Research Ethics Committee of the London School of Economics and Political Science approved this research, including the interviews with human participants (ref. 000630). The co-author who conducted the interviews complied with all ethical requirements related to conducting interviews on sensitive topics in post-conflict contexts, including obtaining informed consent.

[73] Svend Brinkmann, *Qualitative Interviewing: Conversational Knowledge through Research Interviews*, 2nd ed. (New York: Oxford University Press, 2022), 74, table 3.1.1.

Table 1. Courts: counts of documents.

Court	First instance	Second instance	Final decision
Appellate Court in Belgrade	0	44	15
Appellate Court in Niš	0	3	2
Constitutional Court	0	0	1
District Court in Belgrade	18	0	0
District Court in Niš	1	0	0
District Court in Požarevac	2	0	0
District Court in Prokuplje	2	0	0
High Military Court in Belgrade	0	1	0
Higher Court in Belgrade	45	8	0
Higher Court in Niš	3	1	0
Higher Court in Požarevac	0	1	0
Higher Court in Prokuplje	0	1	0
Military Court in Niš	1	0	0
Supreme Court of Cassation	1	0	2
Supreme Court of Serbia in Belgrade	0	2	10

Note: The numbers in the columns represent the counts of documents in the dataset.

interviews to better understand our quantitative findings,[74] which also guided the profile of our respondents selected for research.

The community of experts in Serbia closely following war crimes trials is small. Interviewees were identified through a snowball sampling method. The point of information saturation was used to determine that sufficient information was collected. Analytic deduction was then applied to interview data to identify recurring observations across individual cases.[75] In this research, the observations of interest concerned the interviewees' experiences of the redaction of judgements and, more broadly, the transparency of war crimes trials.

Typology of Anonymization in Serbia's Domestic War Crimes Trial Judgements

We present a summary of key statistics derived from our manual analysis of all 164 court judgements in the dataset. The average document is 19,190 words (SD = 28) and 41 pages (SD = 57). Seventy-three documents were judgements at the first instance, sixty-one at the second instance, and thirty were issued at the final level. First-instance judgements are typically longer, as they outline the evidence and make the initial ruling on the case based on presented facts and claims. On average, first-instance judgements are sixty-four pages, while second-instance judgements are thirty pages and third-instance judgements are typically eight pages.

Redactions

To construct a typology of redactions, we conducted a manual analysis of each page of every judgement, totalling 6,706 pages, and were able to draw conclusions both about the types of redaction techniques and the types of information being redacted. We

[74] Christopher Blattman, "From Violence to Voting: War and Political Participation in Uganda," *American Political Science Review* 103, no. 2 (2009): 243.
[75] Brinkmann, *Qualitative Interviewing*, 74.

identified several distinct techniques, which exhibit variation not only among different courts but also within individual judgements. Drawing from the context provided by the text in close proximity to redactions, we conclude that many of the redactions are intended to withhold individual-level data. Yet, because some redactions, as we show below, withhold several lines of text, we cannot precisely conclude that only personal data are redacted. We observe wide variation in terms of whose information is likely redacted – whether that referring to a defendant, a witness, or a victim – as well as what type of information is redacted. Mostly, the information appears to refer to a person's date of birth, address, ID number, profession, marital status, and other personal circumstances.[76] However, redactions are also applied to geographic locations (most often, we posit, when instances of violence are referred to).

We first review the different techniques observed.

Black Electronic Patch Redactions

A prevalent type of redaction consists of black electronic patches that obscure words and collocations of words. These patches were identified in sixty-one documents (37%). Most patches exhibit complete opacity (Figure 1). Most are relatively small and cover individual words or small groups of words, but some obscure whole sentences or paragraphs.

White Electronic Patch Redactions

Another technique to redact individual-level information involves the application of white electronic patches, similarly characterized by complete opacity. These patches were identified in fourteen documents (9%), five of which also included black electronic patches (Figure 2).

Manual Redactions

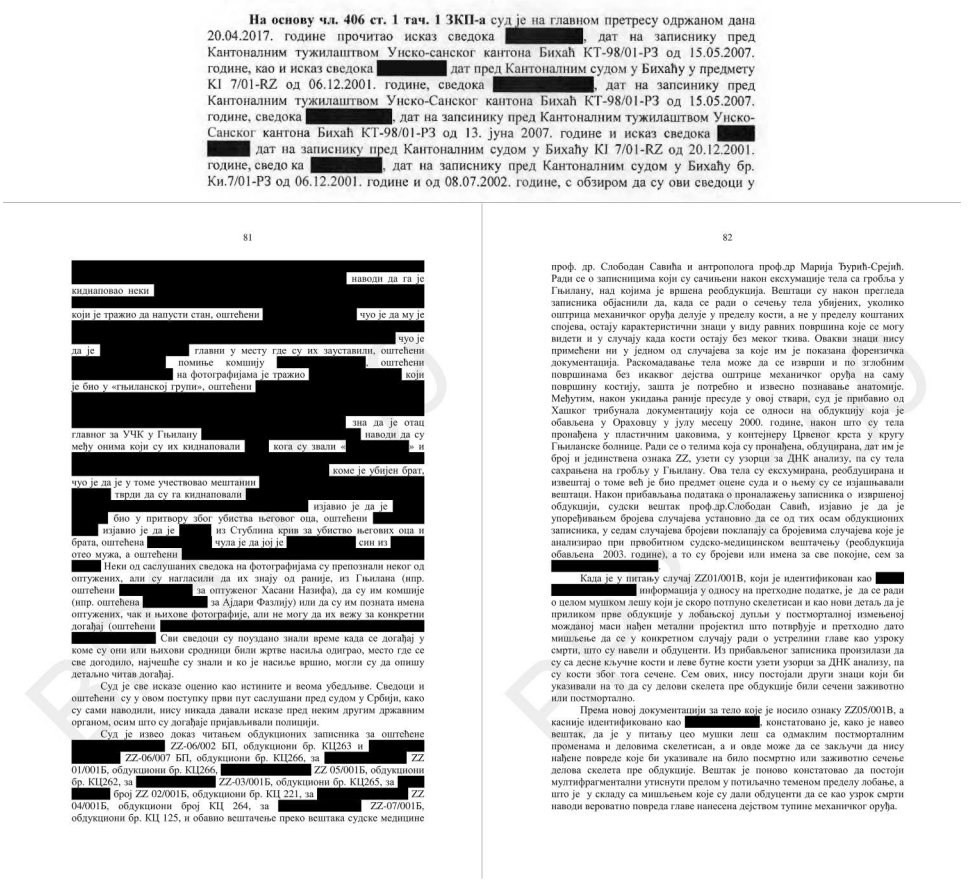
In forty-eight documents (30%), redactions were manually applied, using a black marker or pen (Figure 3). Three of the documents that employed this type of redaction also included black electronic patches. Additionally, three of the documents corrected in this manner left the capitalized letters unredacted, facilitating the identification of the individual's name (Figure 3, the example in the middle).

We have identified thirteen (8%) documents where manual redactions made with markers were of extremely poor quality, permitting a reader to make out individual-level information, including identities, intended to be concealed (Figure 3, bottom).

Coded Substitution

Another method substitutes protected data with letters or alphanumeric combinations, such as "AA" (Figure 4, top) or words such as "One" and "Two" (Figure 4, bottom). Our analysis identified eighty-three documents (50%) employing this approach, making it the most prevalent correction method. However, in most instances, documents using this method disclosed the individual-level information of certain individuals and locations while withholding that of others whose information should have been redacted as well.

[76] Existing regulations typically require anonymization of information about an individual's name, surname, date and place of birth, identification number, passport or driving licence (and similar documents), address, biometric data, and medical records. See Republika Srbija, "Pravilnik o zameni i izostavljanju (pseudonimizaciji i anonimizaciji) podataka u sudskim odlukama," Apelacioni sud u Beogradu.



На основу чл. 406 ст. 1 тач. 1 ЗКП-а суд је на главном претресу одржаном дана 20.04.2017. године прочитао исказ сведока [redacted], дат на записнику пред Кантоналним тужилаштвом Унско-санског кантона Бихаћ КТ-98/01-РЗ од 15.05.2007. године, као и исказ сведока [redacted] дат пред Кантоналним судом у Бихаћу у предмету КІ 7/01-RZ од 06.12.2001. године, сведока [redacted], дат на записнику пред Кантоналним тужилаштвом Унско-Санског кантона Бихаћ КТ-98/01-РЗ од 15.05.2007. године, сведока [redacted], дат на записнику пред Кантоналним тужилаштвом Унско-Санског кантона Бихаћ КТ-98/01-РЗ од 13. јуна 2007. године и исказ сведока [redacted] дат на записнику пред Кантоналним судом у Бихаћу КІ 7/01-RZ од 20.12.2001. године, сведо ка [redacted], дат на записнику пред Кантоналним судом у Бихаћу бр. Ки.7/01-РЗ од 06.12.2001. године и од 08.07.2002. године, с обзиром да су ови сведоци у

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[redacted] наводи да га је киднаповао неки [redacted] који је тражио да напусти стан, оштећени [redacted] чуо је да му је [redacted] чуо је да је [redacted] главни у месту где су их заустављали, оштећени [redacted] поминье комшију [redacted] оштећени [redacted] на фотографијама је тражио [redacted] који је био у «тњиланској групи», оштећени [redacted] зна да је отац главног за УЧК у Тњилану [redacted] наводи да су међу онима који су их киднаповали [redacted] кога су звали «[redacted]» и [redacted] коме је убијен брат, чуо је да је у томе учествовао мештанин [redacted] тврди да су га киднаповали [redacted] изјавио је да је [redacted] био у притвору због убиства његовог оца, оштећени [redacted] изјавио је да је [redacted] из Ступлина крив за убиство његових оца и брата, оштећена [redacted] чула је да јој је [redacted] син из [redacted] отео мужа, а оштећени [redacted] Неки од саслушаних сведока на фотографијама су препознали неког од оптужених, али су нагласили да их знају од раније, из Тњилана (нпр. оштећени [redacted] за оптуженог Хасани Назифа), да су им комшије (нпр. оштећена [redacted] за Ајдари Фазлију) или да су им позната имена оптужених, чак и њихове фотографије, али не могу да их везу за конкретни догађај (оштећени [redacted] Сви сведоци су поуздано знали време када се догађај у коме су они или њихови сродници били жртве насиља одиграо, место где се све догодило, најчешће су знали и ко је насиље вршило, могли су да опишу детаљно читав догађај.

Суд је све исказе оценио као истините и веома убедљиве. Сведоци и оштећени су у овом поступку први пут саслушани пред судом у Србији, како су сами наводили, нису никада давали исказе пред неким другим државним органом, осим што су догађаје пријављивали полицији.

Суд је извео доказ читањем обдукционих записника за оштећене [redacted] ZZ-06/002 БП, обдукциони бр. КЦ263 и [redacted] ZZ-06/007 БП, обдукциони бр. КЦ266, за [redacted] ZZ 01/001Б, обдукциони бр. КЦ266 [redacted] ZZ 05/001Б, обдукциони бр. КЦ262, за [redacted] ZZ-03/001Б, обдукциони бр. КЦ265, за [redacted] број ZZ 02/001Б, обдукциони бр. КЦ 221, за [redacted] ZZ 04/001Б, обдукциони број КЦ 264, за [redacted] ZZ-07/001Б, обдукциони бр. КЦ 125, и обавно вештачење преко вештака судске медицине

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проф. др. Слободан Савића и антрополога проф.др Марија Ђурић-Срејић. Ради се о записницима који су сачињени након ексхумације тела са гробља у Тњилану, над којима је вршена реобдукција. Вештаци су након прегледа записника објаснили да, када се ради о сечењу тела убијених, уколико оштрица механичког оруђа делује у пределу кости, а не у пределу коштаних спојева, остају карактеристични знаци у виду равних површина које се могу видети и у случају када кости остају без меког ткива. Овакви знаци нису примећени ни у једном од случајева за које им је показана форензичка документација. Раскомадавање тела може да се изврши и по изглобним површинама без икаквог дејства оштрице механичког оруђа на саму површину костију, зашта је потребно и извесно познавање анатомије. Међутим, након укидања раније пресуде у овој ствари, суд је прибавио од Хашког трибунала документацију која се односи на облукцију која је обављена у Ораховцу у јулу месецу 2000. године, након што су тела пронађена у пластичним џаковима, у контејнеру Црвеног крста у кругу Тњиланске болнице. Ради се о телима која су пронађена, обдуцирана, дат им је број и јединствена ознака ZZ, узети су узорци за ДНК анализу, па су тела сахрањена на гробљу у Тњилану. Ова тела су ексхумирана, реобдуцирана и извештај о томе већ је био предмет оцене суда и о њему су се изјашњавали вештаци. Након прибављања података о проналажењу записника о извршеној обдукцији, судски вештак проф.др.Слободан Савић, изјавио је да је упоређивањем бројева случајева установио да се од тих осам облукционих записника, у седам случајева бројеви поклапају са бројевима случајева које је анализирао при првобитном судско-медицинском вештачењу (реобдукција обављена 2003. године), а то су бројеви или имена за све покојне, сем за [redacted]

Када је у питању случај ZZ01/001B, који је идентификован као [redacted] информација у односу на претходне податке, је да се ради о целом мушком лешу који је скоро потпуно скелетисан и као нови детаљ да је приликом прве обдукције у лобањској дупљи у постмортално измењеној мождано маси нађен метални пројектил што потврђује и претходно дато мишљење да се у конкретном случају ради о устрелини главе као узроку смрти, што су навели и обдуценти. Из прибављеног записника произилази да су са десне кључне кости и леве бутне кости узети узорци за ДНК анализу, па су кости због тога сечене. Сем ових, нису постојали други знаци који би указивали на то да су делови скелета пре обдукције били сечени заживотно или постмортално.

Према новој документацији за тело које је носило ознаку ZZ05/001B, а касније идентификовано као [redacted] констатовано је, како је навео вештак, да је у питању цео мушки леш са одмаклим постморталним променама и деловима скелетисан, а и овде може да се закључи да нису нађене повреде које би указивале на било посмртно или заживотно сечење делова скелета пре обдукције. Вештак је поново констатовао да постоји мултифрагментални утиснути прелом у потиљачно теменом пределу лобање, а што је у складу са мишљењем које су дали обдуценти да се као узрок смрти наводи вероватно повреда главе нанесена дејством тупине механичког оруђа.

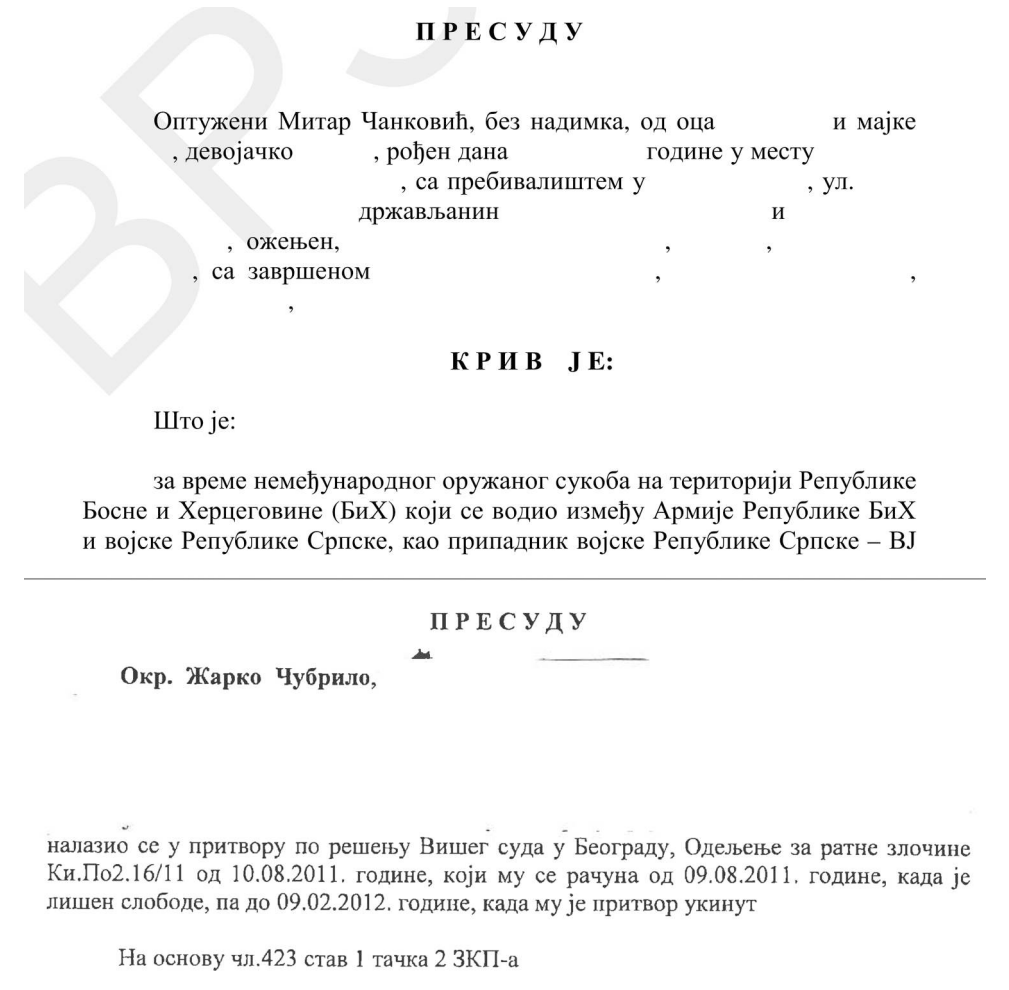
Figure 1. Black electronic patches.

Note: The example at the top shows black electronic patches covering single or small groups of words. *Higher Court in Belgrade, first instance judgement, 27 December 2018*. The short redactions appear to cover the names of witnesses, as most follow the words *iskaz svedoka* (statement of the witness). Another example shows black electronic patches covering groups of words. *Higher Court in Belgrade, first instance judgement, 19 September 2012*. The watermark indicates the case ID.

Among the eighty-three documents employing coded substitutions, thirty-eight also used black electronic patches, seven used white electronic patches, and twenty employed handwritten methods.

Our analysis of different redaction techniques points to varying technical capabilities and approaches within different courts. In part, these divergent practices reflect the time span within which the trials took place and the sentences were published. For example, the regulation of the Court of Appeal in Belgrade stipulates different types of anonymization depending on whether the judgements are available in electronic or print form. If electronic, it envisages replacements with letters, e.g. AA, BB, CC, or with periods of ellipsis (…). If redaction is made to a print copy, information is to be covered with black patches (presumably manually).[77] Yet, in

[77] Republika Srbija, "Pravilnik o zameni i izostavljanju (pseudonimizaciji i anonimizaciji) podataka u sudskim odlukama,". Apelacioni sud u Beogradu. Also, see Republika Srbija, "Pravilnik o zameni i izostavljanju (pseudonimizaciji i anoninimizaciji) podataka u sudskim odlukama, Vrhovni kasacioni sud.



ПРЕСУДУ

Оптужени Митар Чанковић, без надимка, од оца и мајке , девојачко , рођен дана године у месту , са пребивалиштем у , ул. држављанин и , ожењен, , , са завршеном , , ,

КРИВ ЈЕ:

Што је:

за време немеђународног оружаног сукоба на територији Републике Босне и Херцеговине (БиХ) који се водио између Армије Републике БиХ и војске Републике Српске, као припадник војске Републике Српске – ВЈ

ПРЕСУДУ

Окр. Жарко Чубрило,

налазио се у притвору по решењу Вишег суда у Београду, Одељење за ратне злочине Ки.По2.16/11 од 10.08.2011. године, који му се рачуна од 09.08.2011. године, када је лишен слободе, па до 09.02.2012. године, када му је притвор укинут

На основу чл.423 став 1 тачка 2 ЗКП-а

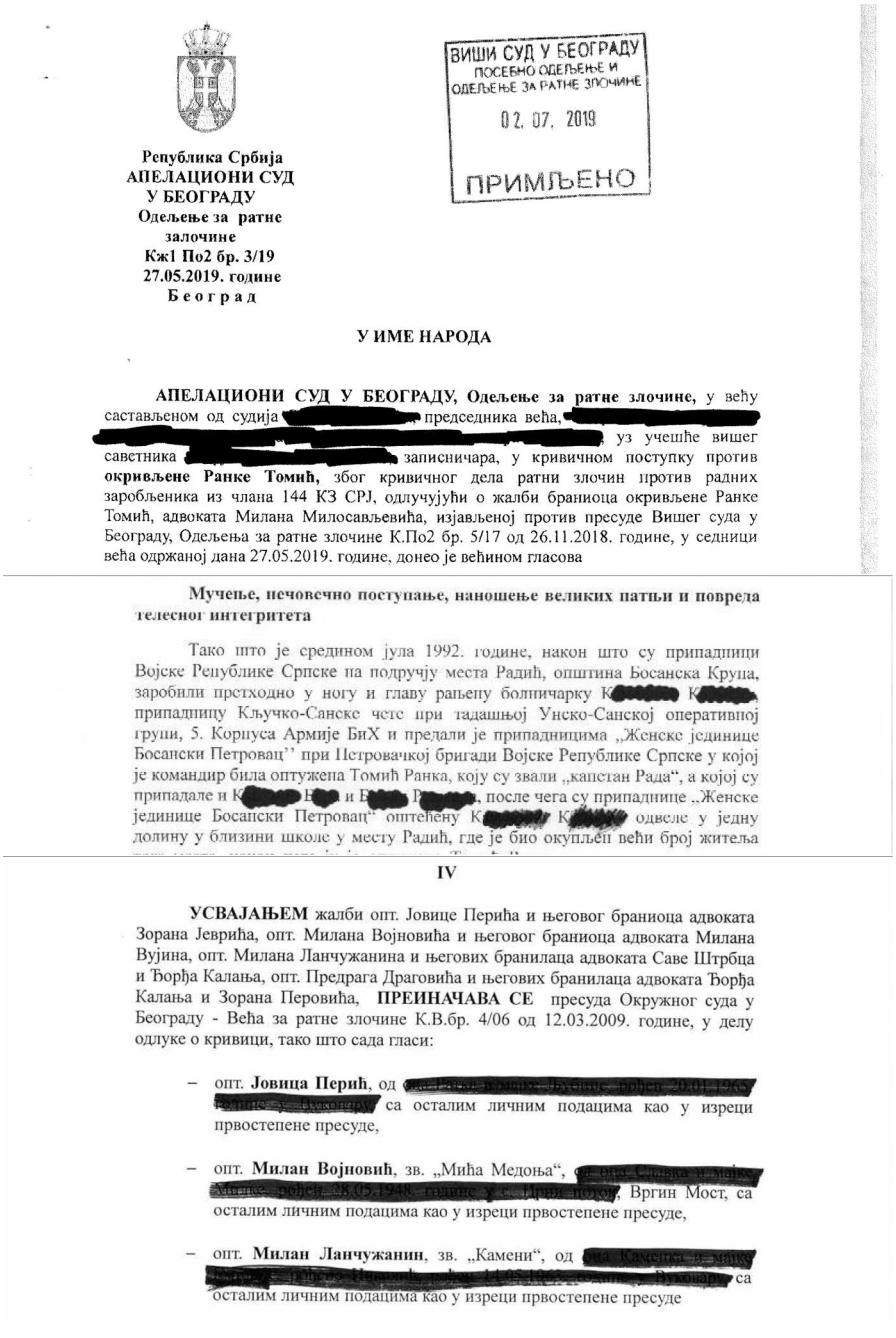
Figure 2. White electronic patches.

Note: The example at the top shows white electronic patches covering single words or small numbers of words, apparently including individual and place names and dates. *Higher Court in Belgrade, first instance judgement, 18 May 2016*. The extent of redaction is more difficult to discern than with black patches – in this case, commas indicate their extent. The example at the bottom shows white electronic patches covering groups of words. *Higher Court in Belgrade, first instance judgement, 6 April 2015*.

practice, the techniques are combined: for instance, we found twenty documents that use a combination of coded substitution and handwritten redaction, and thirty-eight documents where coded substitution was used with black electronic patches.

Observations on Inconsistent Redaction Practices

Our analysis found that each anonymization technique was inconsistently applied both across and within individual documents. First, different types of actors were redacted inconsistently across the judgements. In some cases, the names of defendants, lawyers,



Република Србија
АПЕЛАЦИОНИ СУД
У БЕОГРАДУ
Одељење за ратне
злочине
Кж1 По2 бр. 3/19
27.05.2019. године
Београд

ВИШИ СУД У БЕОГРАДУ
ПОСЕБНО ОДЕЉЕЊЕ И
ОДЕЉЕЊЕ ЗА РАТНЕ ЗЛОЧИНЕ
02. 07. 2019
ПРИМЉЕНО

У ИМЕ НАРОДА

АПЕЛАЦИОНИ СУД У БЕОГРАДУ, Одељење за ратне злочине, у већу састављеном од судија [redacted] председника већа, [redacted] уз учешће вишег саветника [redacted] записничара, у кривичном поступку против **окривљене Ранке Томић,** због кривичног дела ратни злочин против радних заробљеника из члана 144 КЗ СРЈ, одлучујући о жалби браниоца окривљене Ранке Томић, адвоката Милана Милосављевића, изјављеној против пресуде Вишег суда у Београду, Одељења за ратне злочине К.По2 бр. 5/17 од 26.11.2018. године, у седници већа одржаној дана 27.05.2019. године, донео је већином гласова

Мучење, нечовечно поступање, наношење великих патњи и повреда телесног интегритета

Тако што је средином јула 1992. године, након што су припадници Војске Републике Српске на подручју места Радић, општина Босанска Крупа, заробили претходно у ногу и главу рањену болничарку К[redacted] К[redacted], припадницу Кључко-Санске чете при тадашњој Унско-Санској оперативној групи, 5. Корпуса Армије БиХ и предали је припадницима „Женске јединице Босански Петровац'' при Петровачкој бригади Војске Републике Српске у којој је командир била оптужена Томић Ранка, коју су звали „капетан Рада", а којој су припадале и К[redacted] Н[redacted] и Р[redacted] Р[redacted], после чега су припаднице „Женске јединице Босански Петровац" оптужену К[redacted] К[redacted] одвеле у једну долину у близини школе у месту Радић, где је био окупљен већи број житеља

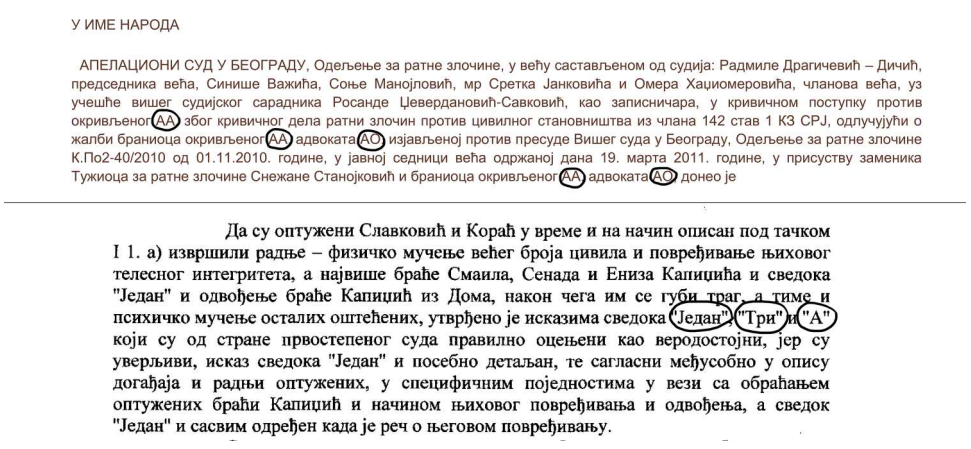
IV

УСВАЈАЊЕМ жалби опт. Јовице Перића и његовог браниоца адвоката Зорана Јеврића, опт. Милана Војновића и његовог браниоца адвоката Милана Вујина, опт. Милана Ланчужанина и његових бранилаца адвоката Саве Штрбца и Ђорђа Калања, опт. Предрага Драговића и његових бранилаца адвоката Ђорђа Калања и Зорана Перовића, **ПРЕИНАЧАВА СЕ** пресуда Окружног суда у Београду - Већа за ратне злочине К.В.бр. 4/06 од 12.03.2009. године, у делу одлуке о кривици, тако што сада гласи:

- опт. **Јовица Перић**, од [redacted] са осталим личним подацима као у изреци првостепене пресуде,
- опт. **Милан Војновић**, зв. „Мића Медоња", [redacted], Вргин Мост, са осталим личним подацима као у изреци првостепене пресуде,
- опт. **Милан Ланчужанин**, зв. „Камени", од [redacted] са осталим личним подацима као у изреци првостепене пресуде

Figure 3. Manual redactions.

Note: Top: manual redactions covering several words. *Higher Court in Belgrade, first instance judgement, 27 December 2018*. Middle: manual redactions with unredacted capital letters. *Higher Court in Belgrade, first instance judgement, 26 November 2018*. Bottom: poor-quality manual redactions. *Appellate Court in Belgrade, second instance judgement, 24 November 2017*.



У ИМЕ НАРОДА

АПЕЛАЦИОНИ СУД У БЕОГРАДУ, Одељење за ратне злочине, у већу састављеном од судија: Радмиле Драгичевић – Дичић, председника већа, Синише Важића, Соње Манојловић, мр Сретка Јанковића и Омера Хаџиомеровића, чланова већа, уз учешће вишег судијског сарадника Росанде Џевердановић-Савковић, као записничара, у кривичном поступку против окривљеног AA због кривичног дела ратни злочин против цивилног становништва из члана 142 став 1 КЗ СРЈ, одлучујући о жалби браниоца окривљеног AA адвоката AO изјављеној против пресуде Вишег суда у Београду, Одељење за ратне злочине К.По2-40/2010 од 01.11.2010. године, у јавној седници већа одржаној дана 19. марта 2011. године, у присуству заменика Тужиоца за ратне злочине Снежане Станојковић и браниоца окривљеног AA адвоката AO донео је

Да су оптужени Славковић и Кораћ у време и на начин описан под тачком I 1. а) извршили радње – физичко мучење већег броја цивила и повређивање њиховог телесног интегритета, а највише браће Смаила, Сенада и Ениза Капиџића и сведока "Један" и одвођење браће Капиџић из Дома, након чега им се губи траг, а тиме и психичко мучење осталих оштећених, утврђено је исказима сведока "Један", "Три" и "А" који су од стране првостепеног суда правилно оцењени као веродостојни, јер су уверљиви, исказ сведока "Један" и посебно детаљан, те сагласни међусобно у опису догађаја и радњи оптужених, у специфичним појединостима у вези са обраћањем оптужених браћи Капиџић и начином њиховог повређивања и одвођења, а сведок "Један" и сасвим одређен када је реч о његовом повређивању.

Figure 4. Symbols as a redaction technique.

Note: Top: symbols (letters or numbers) used as a redaction technique, redacting the identities of the defendant and attorney. *Appellate Court in Belgrade, second instance judgement, 18 March 2011*. Bottom: written-out numbers or letters in quotation marks used to substitute names. Circles added for clarity to identify symbols. *Higher Court in Belgrade, second instance judgement, 8 April 2009*.

victims, witnesses, or judges were redacted,[78] while in others, this information was left visible, including, in one case, sensitive information on members of intelligence and security services. While there is a general rule that defendants' names should not be anonymized, we found that in practice this rule was often inconsistently applied.

Second, there are systematic inconsistencies within individual judgements, especially in longer documents. Often, for example, individual-level information was redacted in one part of the judgement (commonly in the beginning) but revealed in another part (see Figure 2). In one case, the first mention of a sexual violence victim's name was redacted, but the second mention was left in.[79] Many of these inconsistencies are likely the result of inattention or sloppy redaction practices: in one document, a long list of witnesses' names beginning on one page was redacted, while the second half on the next page remained unredacted.

There are also inconsistencies in the redaction of geographical locations related to crime scenes and addresses. In one instance, a person's name was redacted, but the person's address was unredacted two lines below. Even when the regulation specifies redaction of home addresses, identities can be deduced from the highly specific, unredacted details about localities where crimes were committed in the vicinity of victims' homes.

Often these various types of inconsistent redaction occur in a single document. For example, in a forty-three-page judgement issued in 2009: (1) certain pages obscure the precise location of the offence, while others openly disclose it; (2) on the initial page, all personal details of the defendant, apart from his name, are redacted, yet

[78] Although there is no uniform local regulation on anonymization, the names of judges, prosecutors, expert witnesses, defence counsel, translators, and other court clerks should not be anonymized, according to the internal rulebook of the Belgrade Appellate Court. Furthermore, the names of defendants are also not subject to anonymization. See Republika Srbija, "Pravilnik o zameni i izostavljanju (pseudonimizaciji i anonimizaciji) podataka u sudskim odlukama," Apelacioni sud u Beogradu.

[79] For ethical reasons, we do not quote the details of the judgement here.

subsequent pages disclose a potential home address (at the time of the court hearing) within witness testimony; (3) while the personal information pertaining to witnesses and/or the victim is redacted, and the precise location of the crime scene is disclosed, noted as the residence address of the witness' (or victim's) family at the time of the incident.

In sum, we find considerable evidence of inconsistency both within and across judgements. There is some textual evidence that this may be the result of sloppy practice. However, we cannot conclude, from the available evidence, whether there is any patterned practice in the inconsistencies observed, such as whether certain practices are associated with a specific court, judge, defendant, or witness, due to the quality of digitized data, the implications of which we elaborate on below. Nonetheless, we observe that, inconsistencies notwithstanding, courts tend to significantly over-redact information about trial participants, beyond what their particular regulations would require.

We turn now to the effects of inconsistent anonymization on the reception and use of these judgements within the context of Serbia's transition.

Impact of Anonymization on Judicial Transparency and Social Engagement with the Legacy of War Crimes

The inconsistent and excessive use of anonymization in Serbian war crimes trials undermines transparency and hampers broader societal engagement with the trials' outcomes. In this section, we examine how these practices limit public access to information, distort the recognition of victims, contribute to the erasure of historical accountability, and create risks for individuals whose identities are improperly disclosed.

Given the government's role in contesting the responsibility of Serbs for war crimes against non-Serbs, civil society has played a significant role in promoting transitional justice. However, these efforts have been hampered by the lack of transparency in war crimes trials, an issue that extends far beyond the intransparency produced by redaction in judgements. Local human rights NGOs noted the lack of progress in efforts to "make easier access to information on war crimes trials" until 2022[80] – when pressure for reform led to the publication of judgements.[81] In addition, although reporters have been allowed to attend public trial proceedings,[82] in practice it has been difficult to obtain trial schedules.[83] Because trials are not televized, the public at large has not been able to see "a single testimony by a victim, perpetrator, or witness of war crimes, nor the pronouncing of the sentence."[84] The public was thus denied an opportunity to

[80] Fond za humanitarno pravo, *Peti izveštaj o sprovođenju Nacionalne strategije za procesuiranje ratnih zločina* (Beograd, December 2019), 54.

[81] Recently, the Higher Court in Belgrade began publishing anonymized judgements of war crimes trials in which the "public was most interested and that were most frequently requested through the freedom of information requests." Viši sud u Beogradu, "Ministry of Justice, Republic of Serbia," https://www.bg.vi.sud.rs/tekst/3191/baza-odluka-vs-u-beogradu.php (accessed October 3, 2024).

[82] Kostić, *Pravo javnosti da zna o suđenjima za ratne zločine u Srbiji*, 11.

[83] Interview with a reporter. Belgrade, August 2023.

[84] Fond za humanitarno pravo, *Peti izveštaj o sprovođenju Nacionalne strategije za procesuiranje ratnih zločina*, 55. On broader issues with judicial transparency in Serbia's courts and the lack of trust in the judiciary that the lack of transparency breeds, see Damjan Mileusnić, "Ima li kakvog napretka u transparentnosti sudova u Srbiji?" *Otvorena vrata*

confront wrongdoing committed in the nation's name, contributing to "the continuity of denial of war crimes and glorification of [Serbian] victims."[85]

In this context, excessive and unsystematic anonymization of judgements has been vocally criticized by the Belgrade-based Humanitarian Law Centre (Fond za humanitarno pravo, or FHP in Serbian), one of the key human rights NGOs observing and analyzing the Serbian war crimes trials. Anonymization constitutes a significant obstacle for human rights NGOs, as well as for reporters and international organizations, in analyzing proceedings. Excessive anonymization makes even published judgements "unintelligible and inaccessible."[86]

In particular, the FHP has criticized the anonymization of the names of victims or their deceased relatives. The Ombudsman for Information of Public Interest, who adjudicates complaints regarding access to public information, appears to have applied different standards for redacting information about the accused and victims. When responding to requests from the FHP that names of the accused be made public, the Ombudsman referred to the Law on Free Access to Information of Public Interest.[87] In contrast, for victims' names, the Ombudsman referred to the more restrictive Law on Protection of Personal Data,[88] which requires a person's consent to disclose information publicly.[89] The result is that victims' information has been protected – redacted – at a higher level than for the accused. The FHP argued that the public has "an interest and the right to know the identities of the victims" because mentioning the names of victims and their identities "represents a form of satisfaction for the victim and a precondition for acknowledgment of the suffering they endured, primarily, on the basis of their identity."[90]

Debate about the public's right to be informed about war crimes trials has partially shifted to the question of anonymization, owing to frustration among legal practitioners, rights activists, and journalists. One interviewee put it succinctly: "There is the right to information of public interest. We have the right to ask who committed crimes, why they were committed, and what has been blacked out."[91] Human rights analysts are equally concerned. Recognizing a broader social purpose of domestic war crimes judgements, an interviewee told us that "blacking out the sections of judgements is frustrating because the public does not understand what happened, which is one of the reasons why there is no reckoning with the past in Serbia."[92] Owing to anonymization, victims are denied recognition and the patterns of violence, for example where victims of certain ethnicity are targeted, become obfuscated. Furthermore, anonymizing the names of convicted war criminals, as is also the case in Croatia, can lead to

pravosuđa, 24 July 2024, https://www.otvorenavratapravosudja.rs/teme/ostalo/ima-li-ikakvog-napretka-u-transparentnosti-sudova-u-srbiji (accessed October 3, 2024).

[85] Interview with a reporter. Belgrade, August 2023.

[86] Kostić, *Pravo javnosti da zna o suđenjima za ratne zločine u Srbiji*, 16.

[87] *Zakon o slobodnom pristupu informacijama od javnog značaja*, *Službeni glasnik RS*, nos. 120/2004, 54/2007, 104/2009, and 36/2010, https://www.poverenik.rs/sr/закони/881-закон-о-слободном-приступу-информацијама-од-јавног-значаја-пречишћен-текст-сл-гласник-рс-120-04,-54-07,-104-09-i-36-10.html (accessed October 3, 2024).

[88] *Zakon o zaštiti podataka o ličnosti*, *Službeni glasnik RS*, no. 87/2018, https://www.poverenik.rs/sr/закони4/2970-закон-о-заштити-података-о-личности-сл-гласник-рс-бр-87-2018-од-13-11-2018.html (accessed October 3, 2024).

[89] Kostić, *Pravo javnosti da zna o suđenjima za ratne zločine u Srbiji,* 22–4.

[90] Ibid., 27.

[91] Interview with a legal practitioner. Belgrade, July 2023.

[92] Interview with a human rights analyst. Belgrade, July 2023.

"historical amnesia" by separating the atrocities from the individuals who committed them.[93]

Meanwhile, in 2023 the National Convention on the European Union (NCEU), an alliance of civil society organizations, specifically recommended decreasing reliance on anonymized information,[94] reinforcing long-standing concerns of human rights NGOs about excessive anonymization in relation to war crimes judgements.

While these interviewees and organizations point out the negative effects of excessive anonymization of information, others have highlighted the opposite problem: the public disclosure of information that should be anonymized. The Organization for Security and Co-operation in Europe (OSCE), which monitors Serbian war crimes trials, has been particularly critical of the practice in Serbian courts of revealing the identities of protected witnesses, whose personal information ought to be protected by law. Pointing to cases in which, contrary to the law, the names of protected witnesses' relatives were revealed, leading indirectly to identification of the witnesses, the OSCE warns that this "exposes them unnecessarily to additional danger and stress, and deters other potential witnesses from making a statement."[95]

Taken together, these practices may subvert transitional justice. The inconsistent implementation of anonymization places at risk some participants in the legal process;[96] in other cases, these same processes deny the broader society the opportunity to process relevant information when names and details that could be public are blacked out. Making court documents public while anonymizing them excessively allows Serbian courts to create a "mirage of transparency," while the necessary information remains inaccessible.[97] The practice of anonymization has created conditions for the public – already resistant to addressing Serb responsibility for war crimes – to persist in scepticism without being exposed to fuller information. Anonymization is not the only practice driving this trend, but it is nonetheless consequential. As a human rights analyst told us, "anonymization is additionally tying our hands."[98]

The Persistence of Redaction Practices: Judicial Reforms, Transparency, and the Role of the European Union

Next, we evaluate why this practice has persisted. We first turn to the implementation of redactions. As we noted above, we have observed inconsistencies where personal information that should have been redacted is either not anonymized at all or only

[93] Olivera Simić, "Croatian War Convicts Could Soon Erase Their Criminal War Records – Legally," *Balkan Insight*, 10 January 2024, https://balkaninsight.com/2024/01/10/croatian-war-convicts-could-soon-erase-their-criminal-records-legally/ (accessed April 1, 2025).

[94] National Convention on the European Union, *Recommendations 2023* (Belgrade: National Convention on the European Union, 2023), 89, https://eukonvent.org/wp-content/uploads/2023/11/Recommendations-20 (accessed 5 August, 2024).

[95] Damjan Brković et al., *Postupci za ratne zločine u Srbiji (2003–2014): Analiza rezultata praćenja suđenja Misije OEBS-a u Srbiji* (Belgrade: OSCE, 2015). On the development of the legislative framework for the protection of witnesses as a part of the judicial reform in Serbia, see Bogdan Ivanišević, *Against the Current – War Crimes Prosecutions in Serbia* (New York: International Center for Transitional Justice, 2007), 21–2.

[96] Brković et al., *Postupci za ratne zločine u Srbiji*, 78.

[97] Kalajdžić, *Analiza stanja transparentnosti i otvorenosti pravosudnih organa*, 29.

[98] Interview with a human rights analyst, Belgrade, July 2023.

sporadically redacted. According to one observer, it demonstrates "sloppiness" in the work of the judiciary.[99] The NCEU also pointed to the necessity of better education and training of employees who deal with the protection of personal data in public institutions, "especially those who handle a large number of citizens' personal data."[100]

However, another explanation for the persistence of these practices is linked to judicial reform. Serbia's European integration process, and the EU's close monitoring, has been critical in providing direction and benchmarks for implementing reforms. Yet in this context, anonymization in war crimes trials has gone under the radar. Successive EU reports have evaluated various aspects of the trials and have invariably concluded that Serbia needs to "show a genuine commitment for investigating and adjudicating war crimes cases."[101] However, the issue of public access to information about war crimes trials has not been addressed. Similarly, the European Commission (EC) has monitored the implementation of the Law on Personal Data Protection, highlighting a range of issues, but none were linked to the adverse impact of anonymization of war crimes judgements.[102] As a consequence, implementation at the local court level has not been a focused priority of the accession process.

Focusing on the anonymization of judgements provides a new perspective on why war crimes trials in Serbia have been unable to promote either reckoning with wrongdoing committed by Serbs or reconciliation. Anonymization practices constitute another means through which the state controls the narrative about Serbs' involvement in the conflict in the former Yugoslavia and war crimes they committed. Anonymization has become another line of conflict in Serbian society between domestic NGOs advocating for norms of accountability and the Serbian state, which has turned into a promoter of war crimes denial. Not all the effects we observe can be explained as sloppiness or technical shortcomings. These practices likely persist in part due to broader scepticism and resistance within the government towards the project of war crimes trials. Much of the effort has been driven by external pressure and is transactional in nature, with limited internal institutional incentives to address the underlying problems and little pressure from the society at large. Understanding the practice of excessive anonymization in Serbia cannot be divorced from the broader political and ideological context in which reckoning with the state's and society's criminal legacy has been taking place – or has failed to.

Conclusion

This article has evaluated how secrecy is employed by Serbia's courts in war crimes trials. Secrecy is necessary for trial proceedings that involve sensitive data, such as protecting witnesses whose information is crucial to reaching an informed verdict. However,

[99] Interview with an investigative journalist, Belgrade, August 2023.
[100] National Convention on the European Union, *Recommendations 2023, 93.*.
[101] European Union, *Serbia 2021 Report: Commission Staff Working Document*, SWD (2021) 288 final (Strasbourg: European Commission, 19 October 2021), 26, https://neighbourhood-enlargement.ec.europa.eu/system/files/2021-10/Serbia%20Report%202021.pdf (accessed 8 August 2024).
[102] For example, the EC focused more on the adverse impact of irregularities in anonymization on environmental protesters. European Union, *Serbia 2022 Report: Commission Staff Working Document*, SWD (2022) 338 final (Brussels: European Commission, 12 October 2022), 37, https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Serbia%20Report%202022.pdf (accessed 8 August 2024).

secrecy can be used strategically or arbitrarily in ways that hide information critical to the broader societal aims of war crimes trials, such as making a public record or recognizing victims. Properly limited anonymization of trial judgements is an important aspect of transparency and the public's right to information about legal proceedings. These principles are especially significant in relation to domestic war crimes trials, which serve a wide range of normative functions, all of which arguably promote reconciliation, building the rule of law, and democratization.

To better understand the scope, role, and effect of anonymization, we conducted an empirical analysis of redactions in the judgements of Serbian domestic trials and documented the variation in the technical application of redactions as well as substantive inconsistency across and within judgements. Although practice is highly varied, we conclude it amounts to excessive redaction, with significant consequences. On the one hand, excessive anonymization withholds information critical for establishing Serbs' role in the perpetration of war crimes. On the other, it denies victims the opportunity for public recognition or symbolic acknowledgement of their suffering. Furthermore, through anonymization, the Serbian state withholds information from human rights organizations, obstructing their work monitoring war crimes trials and addressing the broader culture of war crimes denial.

In sum, focusing on redactions has direct implications for EU policy and suggests that monitoring of reform processes must be revised to better support transitional justice in post-conflict societies. European integration has promoted transitional justice in Serbia by setting benchmarks for judicial reform, providing financial support, and monitoring the implementation of reforms. However, as our analysis shows, despite the EU's focus on domestic trials, the problems related to anonymized war crimes judgements have remained buried under a set of more generic failings. The EU has been unequivocal in its criticism of the politicization of transitional justice in Serbia – and criticism of domestic war crimes trials has been one aspect of that – but it has not focused its criticism on the specific concerns raised by Serbia's civil society regarding how anonymization hinders their work.

Our attempt to measure levels of secrecy in war crimes prosecutions also brings to the fore the role of digitization as the global practice of transitional justice evolves, with theoretical and practical implications for how we comprehend and capture the effects of transitional justice work. Our research has benefited from technological developments that open new vistas for researchers: considering the scarcity of studies on domestic war crimes proceedings due to the lack of data or limited access to it, the digitization of Serbian war crimes trial judgements provided us with a unique opportunity. The greater access facilitated by digitization not only enabled us to study how reforms in a transitional post-conflict society function in practice, but also to demonstrate how scholars of transitional justice can engage more deeply with these important, yet understudied, domestic processes.

However, as we show, the relationship between digitization and openness is complex; digitization does not automatically lead to greater access to information, as has been argued.[103] On the contrary, in Serbia, anonymization rendered publicly accessible war crimes judgements – paradoxically – unintelligible. The solution to this conundrum may lie in new approaches to scholarly method that would enhance the capacity for digitization to be useful. Samuilov cites particular benefits of artificial intelligence in anonymizing court

[103] Daniela Gavshon and Erol Gorur, "Information Overload: How Technology Can Help Convert Raw Data into Rich Information for Transitional Justice Processes," *International Journal of Transitional Justice* 13, no. 1 (2019): 71–91.

decisions in EU countries, which could also be implemented in Serbia through digitization, provided that obstacles related to inadequate reform implementation and limited technical capacity are overcome.

We conclude by addressing the limitations and lessons for these methods in studying transitional justice. Specifically, we highlight the implications of anonymization for statistical analysis beyond descriptive statistics. We can confidently demonstrate that individual-level data is haphazardly, excessively, and often inadequately redacted, thus exposing information that should be redacted, while redacting information that should be made public.

However, as our study has demonstrated, the underlying documentation is so heterogeneous that ensuring consistent, comparable data presents a considerable challenge, even when materials are digitally available. The arbitrary, inconsistent, and varied nature of redactions precludes the possibility of conducting a robust statistical analysis of redaction patterns, including regressions and correlations, which would have been feasible if the redactions had been systematic. While we can deduce that the techniques deployed, and consequently the quality of redactions, often relate to decisions made at specific courts, progressing beyond this observation proves challenging. Statistical analysis of redaction techniques (e.g. counts of patches per document or per page, patch sizes, relative patch sizes within the document) is unlikely to yield informative results due to the data's incomparability.

Our findings have important practical implications: they point to new reform priorities that better account for the effects of anonymization to support practices that enable fair, efficient, and transparent domestic human rights prosecutions. While judicial reforms and monitoring often focus on building legal frameworks to curb political influence, we show that paying attention to what is redacted – and how – provides an "observable" manifestation of that influence. When applied to war crimes trials, redactions can compromise the integrity of the justice they aim to uphold.

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