



Humanitarian Law Center

**Participation of the
Humanitarian Law Center
in War Crimes Prosecutions in Serbia**

April 2012

In 2003, the Humanitarian Law Center (HLC) strongly supported the establishment of the Prosecutor's Office and the judicial councils for war crimes in Serbia. In the absence of communication and cooperation among the countries in the region, the HLC facilitated support from the Ministry of Justice of the Republic of Croatia for the first trial for war crimes committed in Croatia (the *Ovcara* case). By the end of 2011, as many as 70 victims and witnesses from other countries had testified before the Higher court in Belgrade¹ at the HLC's invitation. The HLC handed a video recording of the execution of Muslims from Srebrenica to the Office of the War Crimes Prosecutor (OWCP), based on which the OWCP pressed charges against members of the Scorpions police unit. The HLC enabled the families of victims from Croatia, Bosnia and Herzegovina, and Kosovo to monitor trials. The HLC represented, and continues to represent, victims' families in every major war crimes case before trial chambers of the Higher Court in Belgrade – War Crimes Department.

The OWCP has publicly praised the support provided by the HLC. Having filed a criminal complaint against the commander of the 549th Motorized Brigade of the Yugoslav Army (VJ) for war crimes against Albanian civilians in the village of Trnje/Ternjë in Kosovo, a spokesman for the OWCP, Bruno Vekaric, said: "We agreed that she [Natasa Kandic] would provide statements from Albanian witnesses, which we, for objective reasons, were unable to obtain. These statements have just arrived along with the criminal complaint. These statements are, as you know, very important for the implementation of the procedure."² A few days after the HLC had filed a criminal complaint against the former commander and 15 other members of the 37th Detachment of the Special Police Units, the OWCP ordered the Serbian Interior Ministry to detain four individuals, against whom the HLC had filed a criminal complaint.³ With the start of criminal proceedings for war crimes in the village of Cuska/Qushk in Kosovo, Bruno Vekaric, in his capacity of a Deputy Prosecutor for War Crimes, told daily newspaper *Danas* that the WCP had had great support from EULEX and the HLC: "Natasa Kandic has provided great help with the investigation and communication with witnesses, as well by providing access to the archives and documents in her possession about this case. We examined the data, and two other war crimes cases will arise from this case."⁴

¹ The former District Court in Belgrade.

² RTV B92, 05/09/2008.

³ On 03/06/2009, the HLC filed a criminal complaint against the Commander of the former 37th Detachment of the Special Police Units and 15 members of the same detachment.

⁴ *Danas*, 04/17-18/2010; Bruno Vekaric, Deputy Prosecutor for War Crimes of the Republic of Serbia.

However, selective and politically motivated indictments, the absence of criminal proceedings against senior military and police officers, exemption from criminal liability of defendants without valid evidence, and not acting upon criminal complaints that have been filed, have forced the HLC to become more critical of the work of the OWCP. Having decided not to release its negative findings to the public, the HLC compiled its Extended Report on Irregularities in War Crimes Proceedings in the Republic of Serbia, which was submitted as a confidential document on November 15, 2010 to the most important public bodies in the Republic of Serbia, the OWCP, the Ministry of Justice, the Ministry of the Interior of the Republic of Serbia (MUP), the Court of Appeal in Belgrade, the State Prosecutor of Serbia, the President of Serbia and the European Commission Delegation to Serbia).⁵

The HLC met with representatives of European Commission Delegation to Serbia, the State Prosecutor of Serbia, Minister of Justice, and an advisor on NGOs to the Minister of the Interior to discuss the report. Only the advisor to the Minister of the Interior did not have independent knowledge of most allegations disclosed in the HLC report. The Advisor to the Minister was aware of the complaints about the conduct of the Witness Protection Unit (WPU), but he strongly argued that the Minister had no powers over the WPU.

I Criticism and the OWCP's Response

1. In the Extended Report on Irregularities in War Crimes Proceedings in the Republic of Serbia, the HLC notes the following important cases of abuse of office and unlawful conduct by the MUP, the WPU and OWCP:
 - public support from the Minister of the Interior for members of the 37th PJP Detachment who had been arrested on suspicion of involvement in mass murder and other war crimes in Kosovo;
 - disclosure of the contents of criminal complaints against members of the 37th PJP Detachment, which led to the disclosure of the identity of, and threats against, witnesses (former members of the PJP);
 - the illegal and unjustified removal of Natasa Kandic as the legal representative of the plaintiff during the investigation into the case *37th PJP Detachment*;
 - pressure on witnesses during investigations, in order to force them not to testify;

⁵ HLC Confidential Report sent on 11/15/2010 to state institutions; published on 03/10/2011.

- release from detention of those involved in mass killings and other serious war crimes committed in Kosovo;
- unlawful and arbitrary conduct of officers and members of the WPU; humiliation, intimidation and torture (by turning off electricity and heating in the home of protected witnesses, months-long delays in payments of financial compensation and organized assaults on children and families of witnesses) in an attempt to force the witnesses not to testify about war crimes committed by their former colleagues and superiors in the PJP, or to identify other persons, mainly members of the PJP and MUP, who would be willing to testify about the crimes;
- interrupting the witness protection program and protection of their families, without a formal decision and/or explanation;
- indifference of the deputy war crimes prosecutor to the statements of witnesses to the most serious war crimes, and his open and persistent attempts to persuade them not to testify;
- abuse of office and illegal actions by the Deputy Prosecutor for War Crimes, manifested in his failure to initiate criminal proceedings, despite the testimony of four former policemen against an officer. They alleged that he had killed ethnic Albanians in Kosovo in front of them and others in the 37th PJP Detachment; the preparation of the aforementioned police officer to falsely testify as a defense witness in the ICTY case against Milosevic, Sainovic et al, and against the police general Vlastimir Djordjevic; finally, his launching of an investigation into the case of the police officer, only after the HLC had pointed out his crimes in its criminal complaint;
- after the release of Radoslav Mitrovic and four other members of the former 37th PJP Detachment, the HLC received information from multiple sources that the prosecutor Stankovic had "settled it" so that custody of the defendants would be terminated and that he had received large sums of money from Mitrovic. The HLC executive director personally informed the War Crimes Prosecutor Vladimir Vukcevic and Bruno Vekaric, at the time spokesman of the OWCP about this. In the presence of Prosecutor Vukcevic, Bruno Vekaric said that he had heard at the Serbian Ministry of Justice "that someone has received the money and informed the Prosecutor Vukcevic about it."
- in its confidential Report, the HLC, among other things, explained that the legality and appropriateness of the work and conduct of the Prosecutor Dragoljub Stankovic in the

investigation into the murder of the Bytyqi brothers must be investigated. Specifically, that Zoran Stankovic, a police inspector of the SUP in Prokuplje, who had been tasked with escorting the Bytyqi brothers from prison to the border was a relative of Prosecutor Stankovic, and that therefore, Prosecutor Stankovic was obliged to request that he be recused from serving on this particular case. There is reasonable suspicion that the Prosecutor Stankovic abused his office and acted unlawfully in the examination of inspector Zoran Stankovic about his role in escorting and the subsequent murder of the Bytyqi brothers;

- in the confidential Report, the HLC informed the responsible institutions in Serbia that it had obtained information from several sources about the unprofessional conduct of the WPU, its intimidation of war crimes witnesses, its misuse of the funds at its disposal, and its establishment of private relationships with protected witnesses in organized crime cases.
2. Regarding the request of the Ministry of Justice and the OWCP of the Republic of Serbia to extradite Jovan Divjak, the HLC on March 5, 2011 issued the following statement: "On March 3, 2011, at Vienna airport, a retired General of the Army of Bosnia and Herzegovina, Jovan Divjak, was arrested based on the same indictment on the basis of which Ejup Ganic had been arrested in July 2010. The British courts released Ejup Ganic, concluding that the Office of the Serbian War Crimes Prosecutor had abused the process before the court, having initiated proceedings against Ganic for political purposes. The Deputy War Crimes Prosecutor, Milan Petrovic, who represented the Republic of Serbia, was described by the British judge as an unreliable witness. However, this did not prevent the OWCP from initiating a review and a reversal of arrest warrants and indictments that were not based on solid evidence. In February 2011, according to a warrant approved by the OWCP of the Republic of Serbia, while crossing the territory of Bosnia and Herzegovina, a Croatian veteran Tihomir Purda was arrested. The only evidence that the OWCP publicly presented was a statement made under duress during his detention in a camp in Serbia, in the first half of 1992. Under strong pressure from international institutions, the OWCP dropped the demands for Purda's extradition on the grounds that subsequently collected evidence showed that Purda was not guilty; the charges against two other suspected Croatian war veterans were also dropped.

The aforementioned cases point to the incompetent and politically motivated conduct of the OWCP that negatively affects the prosecution of war criminals in Serbia. The trust

that victims from neighboring countries, international institutions and NGOs dealing with transitional justice placed in the OWCP after its inception in 2003, has been seriously undermined.

The HLC urges the OWCP to stop initiating politically motivated legal processes and to strengthen its professional capacities by recruiting young lawyers and legal experts, who were not involved in the Prosecution Service under Milosevic's regime."⁶

3. The day after the HLC's public statement, the Serbian War Crimes Prosecutor Vladimir Vukcevic gave an interview to daily newspaper *Politika*. Answering a journalist's question about whether the Serbian judiciary would once again be defeated, this time in the case of Jovan Divjak, Vukcevic replied that the OWCP was not involved in politics.
4. In an opinion piece for *Politika*,⁷ Natasa Kandic criticized the persistent efforts of Serbia and its judiciary to prosecute foreign nationals for crimes they allegedly committed as members of their national armies during the armed conflict with the former JNA. Kandic said that every state should try its own nationals for the war crimes they had committed, because that was the best path to trust and reconciliation in the region. She reminded the public that "in the case of Ganic, the Prosecution was horribly shamed before the British courts, which had assessed that the testimony of the Deputy War Crimes Prosecutor, Milan Petrovic was unreliable." Hence, Kandic added, the OWCP should not make the same mistake in the Divjak case.
5. On the same day, March 9, 2011, the OWCP held a press conference, during which Prosecutor Vukcevic said that he was "not under any pressure from the government, but [that] criticism and pressure came from non-governmental organizations and analysts who deal with war crimes in the media." At the same press conference, Vukcevic accused Natasa Kandic, Sonja Biserko and non-governmental organizations from Bosnia and Herzegovina for having helped Ganic's defense before the British courts with their public statements.⁸
6. On March 10, 2011, Natasa Kandic appeared in a B92 program 'Kaziprst' where she expressed the view that the OWCP had changed its relationship with the HLC once the HLC began criticizing it: "[...]in every single case we helped the OWCP by providing

⁶ "Office of the War Crimes Prosecutor operates unprofessionally, incompetently and politically," HLC Press Release, HLCIndexOut: 019-2617-1, Belgrade, 03/05/2011.

⁷ Nataša Kandić, "Tužilaštvo blokira procesuiranje ratnih zločina u Srbiji," *Politika*, rubrika „Pogledi“ ("Prosecution sabotages war crimes prosecution in Serbia," 'Views' section), 03/09/2011.

⁸ Internet portal S Media, 03/10/2011.

documentation, by bringing witnesses, by contacting institutions in the region. [...] But this is obviously not enough. The OWCP clearly sees non-governmental organizations, and the Humanitarian Law Center, as enemies.”

When asked by the host, Vucinic, why it was so difficult to maintain friendly relations with the OWCP, Natasa Kandic said: “Because this is an old-school institution [...] and all of the prosecutors served under Milosevic. [...] When directly faced with facts about war crimes, they easily issue indictments. But when faced with charges against a general, like Goran Radosavljevic Guri, Obrad Stevanovic or Aleksandar Vasiljevic [...] the indictment becomes an insurmountable obstacle. They simply can’t do it because it is a challenge to their frame of mind and their political views.”

In the same program, Natasa Kandic for the first time publicly revealed that on November 15, 2010 the HLC had sent a confidential report to the OWCP and other state bodies and institutions. She added: “We have learned, although we don’t have evidence, but we have learned from several sources that the release [Radoslav Mitrovic] from prison involved someone being paid. Now, this must be investigated. The OWCP must do it. We have also found out that one prosecutor [...] is trying to persuade some police officers not to testify about the war crimes they witnessed.”⁹

7. On the same day, March 10, 2011, a couple of hours after Natasa Kandic’s appearance on ‘Kaziprst’, the OWCP issued a statement¹⁰ in which it emphasized that “such unsupported and malicious statements by Natasa Kandic, the Director of HLC, degrade and damage the OWCP, and degrade Deputy Stankovic personally.” In the same press release, the OWCP announced that Deputy War Crimes Prosecutor Dragoljub Stankovic would privately file charges against HLC Director for defamation [under Article 171 of the Criminal Code of the Republic of Serbia]. The statement said that any financial compensation he received on winning the case, would be given to the Association of the Murdered, Disappeared and Kidnapped Persons from Kosovo and Metohija.

In the same statement, the OWCP spoke of the HLC’s confidential report, and the fact that it explicitly mentioned Prosecutor Stankovic: “Deputy Prosecutor Dragoljub Stankovic was not named in the TV program, but is explicitly mentioned in the HLC report entitled *Cooperation of State Institutions of the Republic of Serbia and the*

⁹ TV B92 ‘Kaziprst’, 03/10/2011 (transcript).

¹⁰ OWCP, “Prosecution denies Natasa Kandic’s allegations,” press release, 03/10/2011.

- Humanitarian Law Center*, submitted to the War Crimes Prosecutor of the Republic of Serbia on November 19, 2011. This is why he decided to act in this way.”
8. Following the OWCP’s disclosure of the contents of the confidential report, Natasa Kandic said the following in an interview with daily newspaper *Politika* on March 11, 2011: "We have information that Mitrovic [former commander of the 37th PJP Detachment], who was arrested following criminal complaints of war crimes in Kosovo raised by the HLC, was released after someone in the Prosecutor’s Office received money.” She stated that the HLC had requested prompt resolution of the problems concerning witness protection, an independent investigation into allegations of wrongdoing in the prosecution of war crimes, and that she had unofficially learned that the OWCP had conducted an internal investigation and concluded that none of the HLC allegations were true. "So we think we have a right to share with the public the information we have obtained," she concluded.
 9. In an interview with daily newspaper *Dnevnik* on March 14, 2011, Prosecutor Vukcevic confirmed that in the view of the OWCP, the HLC allegations were untrue: "As soon as I received the letter she had sent to the Serbian government and foreign embassies, I tasked the committee, composed of deputy prosecutors, with investigating all of her charges. The investigation revealed the extent to which her report was personal – she charged my deputy with the things he had no say in." He further stated that of all non-governmental organizations, he only had problems with the HLC, because "a sociologist from the NGO sector cannot design the policy of criminal prosecution in Serbia."
 10. In an interview with the portal *S Media* from March 28, 2011 prosecutor Vladimir Vukcevic, referring to his cooperation with the HLC, among other things said: "When the OWCP was formed, she [Natasa Kandic] was instrumental in the process of gathering evidence, because communication in the region was very poor. We established contact with some witnesses through her. As time went by, there was less need for this kind of cooperation, because communication had improved in the region. Of course, we continued to cooperate with her, as we did with other humanitarian organizations, but that now, cooperation has limits [...] Natasa Kandic simply cannot be a parallel prosecuting authority in Serbia, alongside the Office of the War Crimes Prosecutor! According to the law, only the OWCP is responsible for criminal prosecution policies. And this is not about whom we have or have not chosen to charge; what is important is the moment when a case is being prosecuted, and this is where some misunderstandings arose with

Natasa Kandic. She felt threatened and issued the defamatory statements that she will have to prove in court. This is a blow to the honor of a state institution! [...] Most criticism of my work comes from people who do not understand legal terms. Some totally unfounded complaints (about the indictments I have raised) are being made; and some professors I do not wish to name, think erroneously. These are not even charges – instead, what we are talking about here is only one stage of the investigation. And that involves a procedure that must be respected."

11. On March 17, 2011, the Deputy War Crimes Prosecutor, Dragoljub Stankovic filed private criminal charges against Kandic for defamantion [Art. 171 of the Criminal Code of the Republic of Serbia]. The investigating judge heard Kandic on September 22, 2011. The main hearing is yet to be scheduled.

12. The cases described by the HLC in the November 15, 2010 report were publicly discussed at a regional conference on war crimes organized by the HLC and held in Belgrade on September 16, 2011.

12.1. Natasa Kandic reiterated the main findings about the conduct of the OWCP and WPU that the HLC had put forth in the report of March 15, 2011:

"After four months, one of them [the protected witness] was made to leave the witness protection program [...] and his participation in the program was cancelled. Another left the witness protection program on his own after two years, because he could no longer withstand being treated as a traitor, as someone working against the state. And of course, you must understand that in this case – and whenever someone is said to be working against the state – he was also considered to be working against those who were to be prosecuted, and who hid behind the state. If we throw it all on the WPU, we are making excuses. The WPU does not create the protection program, nor does it deal with war crimes prosecution. But the problem is, obviously, that in these services [...] there are still those who happened to be in the units whose members – or some of their members – had committed war crimes."

12.2. In a session entitled "The protection of witnesses/victims, prosecution witnesses and insiders in war crimes trials," former protected witnesses described in detail the harassment they had been exposed to by the OWCP and by members of the WPU because they wanted to testify in war crimes trials.

Deputy War Crimes Prosecutors, Bruno Vekaric and Mioljub Vitorovic, also spoke in this session.

Bruno Vekaric, Deputy War Crimes Prosecutor, said among other things: "We in the Prosecutor's Office also have a problem about that [...] In the criminal process, the witness, therefore, is a diamond, if I may use this figure of speech; for a war crimes prosecutor the witness is something really special, and for a war crimes case he is something very important [...] As regards the protection of the witnesses, I want to point out that the Law on the Protection of Witnesses stipulates certain rights and obligations of the witnesses participating in the protection program, and that many things that have been recently brought to public attention are mostly accurate, but we must and we can find solutions to the problems we have in the area of witness protection. And above all [...] the Office for the Protection of Witnesses, which is subordinate to the Ministry of the Interior should, as with the U.S. Marshal's Office, be a department of the Ministry of Justice, and should be reorganized, organized in a completely different way than it is currently. As well as that, many provisions of the Law on the Protection of Witnesses also need to be changed. And finally, I think it would be a good idea to establish a service for witnesses within the Prosecutor's Office itself. Most problems arise precisely from this relationship between the unit that protects the witnesses and the witnesses, who are themselves in the protection program or should be in it. We cannot and do not have the capacity to know whether an apartment assigned to the witness is small, whether or not it has power, whether the gym is appropriate or not, or whether the witness has received their money on time. This is not a job for the seven deputy prosecutors employed in our Office. But surely these problems should be solved, because we cannot be an arbitrator between the witness and members of the police service whose job it is."

12.3. Miroljub Vitorovic, Deputy War Crimes Prosecutor, added:¹¹ "I've met two of the three speakers today [protected witnesses who spoke at the conference]. I believe I am on very good terms with them. I haven't had the honor to be scolded personally as much as the organisation [the OWCP] I work for has been scolded here. And this organisation was presented as a sister-institution to the Witness Protection Unit, but it is the one which has made most complaints about the WPU. [...] We should instead see what we can do with people who have mustered the courage to put their lives on the line – their own, and also the lives of their families, their children, wives, brothers and sisters – who risked everything and offered to us the lives of their loved ones on a plate, we have to see how we will treat them. [...] And we have heard whose cousin was the head of the Witness

¹¹ Transcript of the audio recording from the regional conference on war crimes prosecution, 09/16/2011.

Protection Unit and it seems politically inconvenient to change that. [...] But let me go back to the essential issue – that in this country you cannot make that witness safe. It is easier to hide a criminal who took part in organized crime, than someone who was involved in a war crime. And this is the key issue. [...] Now, do you really think that someone in the Office would try to persuade someone not to testify? [...] The Witness Protection Unit is not a good institution. Whether because it is part of the Ministry of the Interior, or because it should be under the Ministry of Justice, either way it is about someone's personal commitment [...] There may come a time, and the purpose of this meeting is to create a different moment, when these people will be seen in the way they deserve to be seen, as those who, in the interest of their country, have pledged their life and the life of their family to allow us all to live better."

13. On September 17, 2011, daily newspaper *Politika*¹² published on the front page, the statements of protected witnesses, who, at the regional conference on war crimes, had talked about the pressure exerted on them by the local community, by the WPU and by the prosecutor Dragoljub Stankovic because they were about to testify in court about war crimes that members of the 37th detachment of the PJP had committed in Kosovo.

14. On October 29, 2011, *Politika*¹³ informed the public that “the Special Rapporteur of the Council of Europe for the Protection of Witnesses, Jean-Charles Gardetto said that the protection of witnesses in the Western Balkans is still problematic” and that “the state has to do more to improve the issue.” At the meeting of the Council of Europe Subcommittee Against Crime and Terrorism, held on October 28, 2011 in Belgrade, it was agreed that the protection of witnesses in Serbia should be improved. The measures recommended to achieve this were: 1) that the WPU be moved to the Ministry of Justice, 2) that the identity protection of protected witnesses be improved, and 3) that a political climate in which witnesses-insiders would be encouraged to testify should be created. At the invitation of Special Rapporteur Gardetto, War Crimes Prosecutor, Vladimir Vukcevic and Natasa Kandic, director of the HLC, attended the meeting and spoke about witness protection in Serbia.

II Criticism of HLC Reports

¹² *Politika*, 09/17/2011, *Zaštićeni policajci tvrde da su učtkani da ne bi svedočili (Protected police officers claim to have been pressured into not testifying).*

¹³ *Politika*, 10/29/2011, *Izvestioci SE: bolje čuvajte svedoke (CE Rapporteur: Keep your witnesses safe).*

In September 2011 the HLC published a booklet that contained the *Report on Trials for War Crimes and Ethnically Motivated Crimes in Serbia 2010*, the *Analysis of Procedures and Court Decisions in the Suva Reka/Suharekë case* and the *Extended Report on Irregularities in War Crimes Proceedings in the Republic of Serbia*.¹⁴ On November 14, 2011, the OWCP published on its website the document, *Objections to Reports Submitted by the Humanitarian Law Center*(hereinafter referred to as “the OWCP Document”).

1. According to the OWCP Document, Natasa Kandic “in her statements, reports and public appearances over a long period of time [...] has leveled various accusations at the War Crimes Prosecutor’s Office“ and has been “invariably committed to her own interest in obtaining proof that our state is responsible for all of the crimes committed in Croatia, Bosnia-Herzegovina and in Kosovo, rather than individual perpetrators against whom proceedings are conducted.”

The HLC starts from the generally accepted premise that guilt for war crimes is *individual*, but takes into account the fact that the ICTY has convicted almost the entire leadership of Serbia for its participation in a *joint criminal enterprise* designed to alter the ethnic composition of Kosovo and to ensure the continuation of Serbia's control over the province. Therefore, in her capacity as the representative of the victims, Natasa Kandic attempted to help the court clarify the context in which the war crimes occurred, among other things, by asking that links between the accused and the institutions of the Republic of Serbia be disclosed. Some prosecutors have strongly opposed this approach. In the *Scorpions* case, in which Natasa Kandic represented the families of six executed Muslims from Srebrenica, at a trial held on September 4, 2006, Prosecutor Bogdan Stankovic asked the court not to allow the plaintiff’s proxy to ask questions concerning institutional responsibility. He said, that “such a position [that of the victims' representatives] has been subject to numerous abuses” and that it “goes beyond the context of the charges in this as well as in other cases.” Specifically in this case, the victims' representatives, Natasa Kandic and lawyer Dragoljub Todorovic, sought to completely clarify the fact that at the time of the genocide in Srebrenica, members of the *Scorpions* police unit in Trnovo in Bosnia belonged to the State Security branch of the Serbian MUP.

¹⁴ The HLC sent its confidential *Report on Irregularities in War Crimes Proceedings in the Republic of Serbia* to the WCP on November 15, 2010. The report became public on March 10, 2011. *The Extended Report* was published on September 16, 2011.

2. The OWCP assessed that Natasa Kandic was unprofessional, incompetent, represented victims unprofessionally, and asked unnecessary questions and questions outside the context of the case during the trial, that she was not sufficiently expert to assess the work of prosecutors, and that she drew false and tendentious conclusions, sometimes in bad faith.

The OWCP ignored the fact that Natasa Kandic has been representing the families of war crimes victims since the very establishment of the OWCP in Serbia (2003), in keeping with the Code of Criminal Procedure, and on the basis of the trust and authority given to her by the victims' families and the victims themselves, who have a legal right to freely choose who represents them in court, regardless of their status and education.

3. With regard to the criminal complaints filed by the HLC against direct perpetrators of war crimes and their superiors, the OWCP accuses Natasa Kandic of “uncritically submitting applications about individuals, exerting pressure to launch an investigation, and publishing statements and press releases on the HLC's website about criminal charges”, in which she (Natasa Kandic) allegedly influences those persons charged to put pressure on the witnesses or to destroy evidence.

3.1. From 2008 until March 2012, the HLC filed eight criminal complaints, all against persons about whom there were serious suspicions of involvement in war crimes. Along with the complaints, the HLC submitted statements from victims and witnesses of the crimes, as well as extensive documentation from military and police sources, available from the public database of the ICTY. The OWCP raised charges in only one of the eight complaints (the *Skocic* case).

3.2. It is the HLC's practice to issue a press release about every criminal complaint it files. One exception has been made, in the case of the criminal complaints filed in April 2010 against the commander of the 10th Sabotage Detachment of the Army of Republika Srpska, for the crime of genocide committed in Srebrenica. The OWCP asked the HLC to withhold issuing a press release until pre-trial proceedings had been launched and the HLC agreed to do so. However, when, some four months after the complaint had been filed the OWCP had not taken any action, the HLC issued a press release in early August 2010, disclosing the names of the members of the execution squad of the 10th Sabotage Detachment, which were also available to the public through media reports about the trial before the State Court of Bosnia and Herzegovina, as well as through the

transcripts and audio recordings of the ICTY trial of persons accused of the Srebrenica genocide. Immediately afterwards, for the first time, the OWCP issued a warning that HLC's statements were hindering pre-trial proceedings.¹⁵ However, by the date that this report was written (March 2012), the OWCP had yet to open an investigation into those commander and members of the 10th Sabotage Detachment who live in Serbia.

3.3. In September 2011, the HLC published *Dossier No. 1: The 10th Sabotage Detachment of the Army of Republika Srpska*, which contained data on the participation of members of the unit in the genocide in Srebrenica. The dossier cites documents publicly available through the database of the ICTY. The OWCP has not commenced the proceedings against any persons who actively participated in the commission of this crime and who currently live in Serbia.

3.4. The OWCP blames Kandic, stating that “before filing her complaint, the authoress of the publication had arranged the appearance of four witnesses – who could potentially have received protected witness status in criminal proceedings – on TV B92” saying that this “represented pressure for the commencement of criminal proceedings and the arrest of certain individuals.”

The OWCP believes that by issuing a statement on the criminal complaint filed against the commander and 16 other members of the 37th Detachment of the PJP, the HLC contributed to identifying the police officers on whose statements it had founded its complaint.

It is true that the policemen who later became protected witnesses, appeared on TV B92. Natasa Kandic suggested that TV B92 commission a television show in which the police witnesses, with blurred faces and hidden identities, would speak about what had happened in Kosovo in 1998 and during the NATO bombing. TV B92 made two programs with the witnesses, in the full knowledge that in doing so, it was exerting pressure on the authorities, the OWCP and the police to do their job, which is arresting and indicting the perpetrators of war crimes.

The HLC firmly believes that former members of the PJP identified the witnesses based on their knowledge of the details of the criminal complaint, that someone had showed

¹⁵ WCP RS, KTRR.br.56/10, note: “On April 30, 2010, you filed criminal charges against Salapura Petar *et al.* For the criminal act of genocide, on the basis of which the Prosecution launched an investigation. On August 11, 2010 you issued a press release in which names of the persons charged have been disclosed [...] According to Article 504b of the Code of Criminal Procedure, pre-trial data are confidential and may be publicly revealed only with the written approval of the authorized prosecutor.”

them. Some police officers from Leskovac, who were part of the PJP in Kosovo, called the witnesses by telephone, read them parts of the criminal complaint, and threatened them, saying they were "dead." In addition, documents confirming meetings between policemen who had become protected witnesses and the OWCP, were circulated among the participants in a street protest by police officers in Leskovac on March 17 and 18, 2009, following the arrest of former members of the 37th Detachment of the PJP,¹⁶

With regard to the disclosure of the identity of witnesses, Deputy War Crimes Prosecutor Dragoljub Stankovic in a face-to-face conversation with Natasa Kandic did not exclude the possibility that information had leaked from the MUP.

4. The OWCP attests that the HLC director is not sufficiently professional to evaluate the work of the prosecutor, and that therefore she failed to notice that the presiding judge in the *Lovas* case did not have pre-prepared questions, and that she had repeated questions previously asked by the prosecutor. This comment is a response to the HLC's remark that the judge presiding in the *Lovas* case examined the prosecution witnesses on behalf of the prosecutors, primarily because the prosecutors found it difficult to cope with the new role they had been assigned (i.e. detailed examination of witnesses).
5. The HLC has stated that war crimes investigations take too long. The OWCP claims that this is because of the complexity of cases and the fact that certain witnesses and evidence are located in the territory of other countries or in Kosovo, which makes it difficult to obtain evidence.

In some cases, this explanation is true, but the OWCP also uses it as a cover for its inefficiency, both in the pre-trial phase and during investigations. This is obvious in the OWCP's denial that an investigation in the *Skocic* case was launched based on HLC's criminal complaint. The OWCP claimed the initiative to open the case had come from Deputy War Crimes Prosecutor Milan Petrovic, following the testimony of Fadil Banjanovic in the *Zvornik I* case on January 30, 2006. As the HLC had filed a criminal complaint on August 11, 2008, and the OWCP filed a request for an investigation on October 30, 2009, some 3 years and 9 months since the date he had found out about the crime against the Roma in the village of Skocic, the precise point of deputy War Crimes Prosecutor Milan Petrovic's 'initiative' remains unclear.

¹⁶ *Extended Report on Irregularities in War Crimes Proceedings in the Republic of Serbia.*

5.1. In an attempt to conceal its unprofessionalism and the damage it has caused to the reputation of the judiciary of the Republic of Serbia at an international level, the OWCP incorrectly claims that the HLC's report *The Tuzla Column*¹⁷ promulgates a number of lies, superficial conclusions and malicious insinuations.

The HLC's conclusion that the indictment was based on a non-existent agreement on the peaceful withdrawal of the JNA from the territory of Bosnia and Herzegovina, the War Crimes Prosecutor claims is unfounded, adding that the HLC "tendentiously glosses over" evidence that proves its existence. However, the WarCrimes Prosecutor seems to have forgotten that the acting deputy in this case, Milan Petrovic, had admitted before the Courts in London that there was no such agreement.¹⁸

5.2. The OWCP claims that the HLC report on the progress of the *Medak* trial was based on incorrect information and ignorance. The OWCP explains why it dropped the criminal prosecution of the defendant Nikola Vujinovic, and why the Trial Chamber acquitted the defendant, Perica Djakovic, of criminal responsibility for war crimes against prisoners of war under article 144 of the Criminal Code of the former republic of Yugoslavia. The overall impression is that the OWCP demonstrates the success of its work by indictments waivers and acquittals.

6. The OWCP warned that the HLC had published information and that this amounted to revealing official secrets, legally defined as a criminal offense.

6.1. The OWCP states that the pre-trial proceedings against members of the 37th Detachment of the PJP, Dragan Milenkovic and others, for the murder of wounded members of the KLA, began in 2007, and Natasa Kandic knew that pre-trial proceedings were confidential, that "the data from this procedure must not be publicized without the approval of the War Crimes Prosecutor, but that she never sought that approval."

It is true that in its report on war crimes, as well as in the updated report,¹⁹ the HLC noted that Dragan Milenkovic, nicknamed Sisarka, testified at the ICTY in February 2008 as a defense witness for the defendant Vlastimir Djordjevic, and that his testimony

¹⁷ Having heard new witnesses that the trial court had refused to hear, the Court of Appeal in Belgrade, on October 11, 2011 revoked the first instance verdict on Ilija Jurisic, returned the case for retrial before a new chamber, and ordered that the defendant Ilija Jurisic be released.

¹⁸ The UN Secretary General's report of May 30, 1992 states that at a meeting in Skopje, between representatives of the former republic of Yugoslavia and Bosnia, there was no agreement on the withdrawal of the JNA from Bosnia and Herzegovina.

¹⁹ The HLC sent its confidential *Report on Irregularities in War Crimes Proceedings in the Republic of Serbia* to the WCP on November 15, 2010. *The Extended Report* was published on September 16, 2011.

contained enough elements based on which Prosecutor Stankovic could have initiated criminal proceedings against him, even before the criminal complaint filed by the HLC on March 3, 2009. The HLC disclosed only publicly available information in this case, but the impression is, that the OWCP holds as irregular, the publication of any information from the publicly available ICTY database, as it might endanger the operation of the OWCP.²⁰

- 6.2. The OWCP states that after the filing of the criminal complaint against the commander and members of the 37th PJP Detachment, the OWCP had warned Natasa Kandic, in the presence of four policemen who later became protected witnesses, "that all the information regarding the criminal complaint is classified as confidential and that nothing can be published without the approval of the War Crimes Prosecutor."

It is true that regarding the criminal complaint against the former commander of the 37th Detachment of the PJP, the HLC had issued a statement in the same manner in which it handled other criminal complaints. This was the first time that the OWCP had responded with arrests to the filing of a criminal complaint. The OWCP spoke in public of its good cooperation with the HLC. In August 2010, the OWCP sent its first warning about HLC's press release concerning the criminal complaint against the commander of the 10th Sabotage Detachment of the Army of Republika Srpska. In 2011, the OWCP complained to the legal counsel of the American Embassy, in charge of the program of the reform of criminal justice system in Serbia, Mr. David Raymond Lewis, that "with its uncritical criminal complaints and press releases on these complaints," the HLC was jeopardizing the operation of the OWCP, saying that this was why USAID had asked the HLC to remove the "filing of criminal charges," from activities funded by the agency. The HLC complied with this request.

- 6.3. It is surprising that the OWCP should hold as classified "someone's release from custody during the investigation process," while at the same time ignoring the fact that in criminal cases the decision on whether a defendant is to be released from detention is usually publicized in the media, especially in cases of organized crime and war crimes, and such data is generally publicized precisely by the prosecutors and investigating judges.

²⁰ By the end of March 2012, the WCP had not issued an indictment for the murder of POWs and other crimes listed in the HLC's criminal complaint. According to WCP information, stated in the Document, a pre-trial process was launched in 2007, while an investigation was started in March 2009.

6.4. The OWCP warned the HLC and Natasa Kandic that "unauthorized disclosure of data about a protected witness [...] Regardless of the witness's decision to leave the protection program, the status of participants in the program is valid until a decision by the Commission for the Implementation of Protection Programs has been made²¹ [...] Accordingly, any publication of such data is a breach of confidentiality and legally defined as a criminal offense."

The three former participants in the witness protection program spoke of the treatment of protected witnesses at the regional conference on domestic war crimes, organized by the HLC on September 16, 2011. The HLC described the issue in detail in its *Report on the Irregularities in War Crimes Proceedings in the Republic of Serbia*. At the conference, the formerly protected witnesses spoke under their own name before a large number of judges, prosecutors, lawyers, NGO representatives, journalists and other experts from the country and the region.

The OWCP formulates its objections to HLC's reports on protected witnesses in rather inappropriate language. Concerning one witness who had learned that his status as a protected witness had been revoked when members of the WPU came to his apartment on October 29, 2009 and ordered him to pack his bags because he was to be returned home,²² the OWCP stated that this move put pressure on the prosecutor Dragoljub Stankovic to employ the former witness in the Prosecutor's Office and pay him. When the prosecutor refused to do so, the witness "began to express his discontent by launching false accusations." The OWCP says of the second witness that "he blackmailed the acting prosecutor [Stankovic] all the time, and refused to testify unless the prosecutor ensured his re-employment in the police [...] This is why the witness failed to respond during the investigation to a number of summons by the investigating judge to testify, and in the end refused to testify about anything."²³

7. With regard to the *Analysis of Procedures and Court Decisions in the Suva Reka/Suharekë case*, the OWCP concludes that the HLC's director is "either not familiar with the results of a lengthy and extensive investigation, or she maliciously misrepresents

²¹ On November 15, 2010, the HLC addressed the Court of Appeal in Belgrade with a request for information on the Commission for the Implementation of the Witness Protection Program, and received an answer that no such commission existed.

²² *Extended Report on the Irregularities in War Crimes Proceedings in the Republic of Serbia*, September 2011.

²³ Protected witness K-79, who testified in two trials before the Hague Tribunal, in case no. IT-02-54, *Prosecutor v. Slobodan Milosevic*, and case no. IT-05-87/1, *Prosecutor v. Vlastimir Djordjevic*. In the ruling on V. Djordjevic, the Chamber relies on the testimony of this witness, which it evaluates as very reliable. In a statement given to the HLC, the witness claimed that he was deterred by prosecutor Stankovic from testifying.

the facts, in order to emphasize her accusations against the OWCP, while demonstrating complete incompetence in the matter."

In this document, the OWCP claims that facts from the investigation, show that military action did occur in the town of Suva Reka/Suharekë and that VJ/MUP forces clashed with the KLA. According to the OWCP such action is a requirement for the issue of an indictment against the former commander of the 37th Detachment of the PJP, Radoslav Mitrovic.

7.1. The HLC reiterates that the KLA was not present in Suva Reka/Suharekë at the time the war crimes were committed in March 1999 in the town. This fact was confirmed by several witnesses in the investigation and at the main hearing. Among them were General Bozidar Delic, protected witness S.K., and four other commanders of the Krusevac Company of the 37th PJP Detachment, who were located continuously in Suva Reka/Suharekë for several months before the mass crimes: Zoran Siketic, the Krusevac Company Commander; Rade Jovic, commander of the Second Platoon; Goran Spasic, commander of the First Platoon; and Milorad Obradovic, commander of the Fifth Platoon. It is obvious from their statements that elements of the 37th Detachment of the PJP were located in the town of Suva Reka/Suharekë and in the surrounding villages in the municipality of Suva Reka/Suharekë continuously, not just from March 16, 1999, but even earlier – since August 1998.

"Our task then was to [...] pass through Suva Reka. Why would we do that? Because the town of Suva Reka was under the control of our security forces. A police checkpoint was located at the entrance to Suva Reka, and another at the exit of Suva Reka [...]. I mean, I just want to emphasize again, Suva Reka was under our control."²⁴ Also, Radoslav Mitrovic himself does not deny that his command post was in the administrative building of the *Metohija vino* company, at the entrance to the town of Suva Reka/Suharekë in the direction of Prizren.

7.2. In response to the OWCP's assertion that "[...] only if there was military action against the KLA, could the defendant Mitrovic be charged with planning and implementation of actions and for the orders he had issued," the HLC wants to draw attention to Article 142, Paragraph 1 of the then Criminal Code of the former republic of Yugoslavia, which states that a war crime is committed by a person "who, in violation of international law

²⁴ *Suva Reka/Suharekë*, Case Posl. No. K.V.02/2006, transcript of audio recording: testimony of the protected witness SK, 03/06/2008.

in time of war, armed conflict or occupation, orders an attack on the civilian population, residential areas, individual civilians [...] the result of which is death, serious bodily injury [...] or who commits any of the mentioned acts.”

Command and individual responsibility of any person, including Mitrovic, exists and can be determined regardless of whether the killing of the civilians or other prohibited and punishable acts have been ordered or carried out during military action, as the OWCP inferred. The majority of war crimes against civilians in Kosovo were committed at a time when, and on the territory where, there was no military action against the KLA as the other party to the war. If the killings and other crimes against civilians were committed in violation of international law in time of war or armed conflict or occupation, military action *per se* is not a legal requirement for a crime to be qualified as a war crime, nor does this constitute grounds on which perpetrators can be exempt from criminal responsibility.

All commanders, including Mitrovic, had the legal power to issue orders and to command, at all times and not just during military action.

The crimes in Suva Reka/Suharekë were committed after the armed conflict and after the complete expulsion of the KLA, from territory which the forces of VJ/MUP had long had under their full control and considered entirely liberated. Mitrovic himself stayed continually and for a long period of time as commander of the 37th Detachment of the PJP, just 80 meters from the place where 48 members of the Berisha family – women, infants, children and ninety-year-old women – had been killed.

The almost simultaneous passing of Mitrovic’s PJP units and the 5th Combat Group of the VJ’s 549th Motorized Brigade, led by Colonel SK, through Suva Reka/Suharekë toward Orahovac/Rahovec, certainly did not constitute military action. Nobody, not even the defendant Mitrovic, spoke of any kind of combat at the time.

Everyone instead speaks of “passing through Suva Reka, on the way to Orahovac.” Even if this was military action under the OWCP’s definition, it would not rule out Mitrovic’s command or personal responsibility for the killing and other crimes that he ordered and/or took part in. If this were so, crimes committed against civilians during military operations would be subject to impunity, which is to say – they would be permitted.

8. Concerning allegations that the HLC received from multiple sources that prosecutor Stankovic "settled it" for the defendants in the 37th PJP Detachment case to be released

from custody and that he received large sums of money from Mitrovic in return for this favor,²⁵ the WCP claims that prosecutor Dragoljub Stankovic “had no part whatsoever in giving consent for the release from custody; instead, the decision was made by acting prosecutor Nebojsa Markovic, with the knowledge and consent of War Crimes Prosecutor, Vladimir Vukcevic. Hence, the decision regarding the termination of detention was not made on the basis of some outside influence, but instead for professional reasons, and no one could have received money for this, especially not Dragoljub Stankovic.”

Prosecutor Nebojsa Markovic became acting Prosecutor in the 37th PJP Detachment case after the release from detention of the suspected PJP members, in June 2010. Prosecutor Dragoljub Stankovic took part in the examination of witnesses and suspects, including the examination held on June 5, 2009.²⁶ In July 2011, during the hearing of witnesses in Pec/Pejë in Kosovo, Stankovic told the legal representative of the plaintiff in the *Cuska/Qushk* case, Mustafa Radoniqi, that he had released the defendants in the 37th PJP Detachment from detention on the orders of the War Crimes Prosecutor Vladimir Vukcevic, and that Vukcevic had been ordered to do so by someone from the government.²⁷

9. In addition to the OWCP, which has attempted to prevent any criticism of the judiciary, repressive amendments to the Criminal Code²⁸ and the Code of Civil Procedure of the Republic of Serbia²⁹ also threaten freedom of expression and critical thinking about war crimes prosecutions.

²⁵ The HLC sent its confidential *Report on Irregularities in War Crimes Proceedings in the Republic of Serbia* to the WCP on November 15, 2010. *The Extended Report* was published on September 16, 2011.

²⁶ On June 5, 2009, Natasa Kandic was present at the examination of the protected witness, as the representative of the plaintiff. The acting Prosecutor was Dragoljub Stankovic.

²⁷ Mustafa Radoniqi, the attorney representing the damaged party in the *Cuska/Qushk* case, before the Court Chamber of the War Crimes Department of the Higher Court in Belgrade.

²⁸ The Criminal Code of the Republic of Serbia, Article 336a: *Unauthorized public comments on court proceedings*: «Whoever, during the proceedings before the court and before a final court decision, with the intent to damage the presumption of innocence and independence of the court, provides public statements to the media, shall be sentenced to six months in prison and a fine.”

²⁹ The Coalition for Access to Justice Press Release, December 23, 2011:

“The new law obviously limits the previously attained level of human rights and freedoms. This is intolerable when it comes to the right of access to justice. By adopting the Code of Civil Procedure, the Code of Criminal Procedure and the Criminal Code, the state – and especially the Serbian Parliament – has limited the access to justice for individuals, organizations, independent bodies, associations and media. These laws threaten to repress free and critical thinking, as well as free action.

Therefore we demand that:

Articles 499 and 500 of the Code of Civil Procedure be removed, because they require those who express critical views on public matters to remain silent or pay a high fine.

10. Some 24 hours after the HLC published, on January 24, 2011, the *Ljubisa Dikovic Dossier*,³⁰ the OWCP issued its response in which it claimed to have checked all of the HLC's allegations: "There is no basis whatsoever for the suspicion of criminal responsibility for war crimes of the Chief of Staff the Army of the Republic of Serbia." The OWCP qualified the *Dossier* as the HLC's attempt to discredit the institution of the Chief of the Army of Serbia.

Article 50 paragraph 1 item 3 of the Code of Criminal Procedure be removed, because it establishes a monopoly of lawyers in representing the interests of crime victims and revokes their right to self-elect a representative who is not a lawyer.

Article 336a be removed and Article 336b of the Law on Amendments to the Criminal Code be revised, so that the right to free critical thinking and expression of opinions can under no circumstances be considered a criminal offense."

³⁰ General Dikovic filed a private criminal complaint against Natasa Kandic on March 17, 2012. The Minister of Defense of the Republic of Serbia accused the HLC of an assault on state institutions.