

REPUBLIC OF SERBIA
FIRST BASIC COURT IN BELGRADE

Nikola Tesla Blvd. 42a

2 P.No.14100/13

3 March 2016

IN THE NAME OF THE PEOPLE

The FIRST BASIC COURT IN BELGRADE, Judge Gordana Arandjelovic as sole Judge in the lawsuit of the plaintiff Ljubisa Dikovic from Belgrade, [REDACTED], with the attorney Djuro Cepic, a lawyer from Belgrade, Mihailo Pupin Blvd. 10 I/424, v. the defendants Natasa Kandic from Belgrade, [REDACTED], and the Humanitarian Law Center, seated in Belgrade, Decanska St. 12, with the joint attorney Vladimir Gajic, a lawyer from Belgrade, Kralja Milutina St. 47, for the compensation of non-pecuniary damages, following the main and public hearing concluded on 3 March 2016, hereby issues the following

JUDGMENT

ALLOWING the amendment of complaint as done at the first main hearing on 5 June 2013,

REJECTING the motion for the cancellation of the proceedings,

PARTLY ADOPTING the claim on the part of the plaintiff Ljubisa Dikovic from Belgrade, [REDACTED], therefore the defendant Humanitarian Law Center, seated in Belgrade, is obliged to execute a payment in favour of the plaintiff to the amount of RSD 550,000.00, along with the statutory default interest starting from 3 March 2016 until the final execution of payment, and all within 15 days from the receipt of the transcript of judgment, as a compensation of non-pecuniary damages due to the psychological pain caused by the violation of honour and reputation,

REJECTING the claim on the part of the plaintiff Ljubisa Dikovic, in the part requesting the payment as the compensation of non-pecuniary damages from the defendant Humanitarian Law Center, seated in Belgrade, due to psychological pain caused by the violation of honour and reputation, to the amount of RSD 1,000,000.00, thereby exceeding the amount ruled in the paragraph 3 of this judgment of RSD 550,000.00, by RSD 450,000.00, along with the statutory default interest starting from 3 March 2016 until the final execution of payment, as **UNGROUND**ED,

REJECTING the claim on the part of the plaintiff Ljubisa Dikovic, in the part requesting the payment as the compensation of non-pecuniary damages from the defendant Natasa Kandic, jointly with the Humanitarian Law Center, seated in Belgrade, due to psychological pain caused by the violation of honour and reputation, to the amount of RSD 1,000,000.00, along with the statutory default interest starting from 3 March 2016 until the final execution of payment, as **UNGROUND**ED,

OBLIGING the defendant Humanitarian Law Center, seated in Belgrade, to reimburse the costs of the lawsuit in favour of the plaintiff Ljubisa Dikovic to the amount of RSD 149,200.00, along with the statutory default interest starting from the day when the conditions for enforcement were fulfilled until the final execution of payment, all within 15 days from the receipt of the transcript of judgment, while with respect to the remaining part for the period starting from 3 March 2016 until the day when the conditions for enforcement were fulfilled, the request for payment of statutory default interest for the costs of the proceeding is **REJECTED** as ungrounded,

OBLIGING the plaintiff Ljubisa Dikovic, to reimburse the costs of the lawsuit in favour of the defendant Natasa Kandic in the amount of RSD 96,650.00, within 15 days from the receipt of the transcript of judgment.

Explanation

In the claim and during the proceedings, the plaintiff stated that the defendant Natasa Kandic, as the founder and director of the defendant Humanitarian Law Center, on 23 January 2012 published the document "Dossier Ljubisa Dikovic" on the web site of the second defendant <http://www.hlc-rdc.org>. Page 1, point 1 of the above document reads, inter alia: "*In 1994 and 1995, Dikovic was the Commander of the 16th Border Battalion and in this capacity (...) took part in the arrests of Muslims who, fleeing the Army of Republika Srpska, sought refuge in Serbia (...)The mortal remains of four of the five returned Muslim men (...) were found and identified beyond doubt*", stating in the footnote that such an incident took place on 24 July 1995. Such an allegation is incorrect, since back in 1995, the plaintiff was not the Commander of the VJ 16th Border Battalion, nor was he stationed in Bajina Basta, and therefore could not have taken part in the arrests of Muslim men. On 28 July 1994, the plaintiff, upon the order of the then head of the Personnel Administration, was relieved of the duty of Commander of the 16th Border Battalion, and on 30 August 1994, he officially handed over the duty. Likewise, page 2, point 3 of this document reads: "*Starting in May 1998, under Dikovic's command, a number of military security officers (...) trained several groups of convicted criminals and even several dozens of convicted murderers from the prison in Sremska Mitrovica, within the 37th Motorized Brigade (37th MtBr). In July, 1998, the trainees were taken to Kosovo, as volunteers and members of the VJ. This allegation is also entirely incorrect, as the plaintiff assumed the duty of Commander of the 37th MtBr only on 3 November 1998. Page 2 point 4 of the document reads: "On April 20, 1999, Commander Dikovic ordered Captain Dragan Mitrovic and Captain Bora Adzemovic to leave their combat positions together, in one vehicle, instead of individually and using*

utmost caution, as the usual military practice in wartime stipulates. In the vehicle were Mitrovic, Adzemovic and three soldiers. (...) Near a place called Istok mahala in Srbica, the vehicle was ambushed by the KLA. All five soldiers of the VJ were killed.” Page 2, point 5 inter alia reads: “On March 7, 1999 (...) Colonel Dikovic, then the Commander of the 37th MtBr, led a combat team (BG 37) of about 400 members from the barracks in Raska, to Kosovo (...) while the remaining 150 were well-equipped and trained volunteers, including dozens of convicted murderers, criminals, and war criminals, under the command of Lieutenant Colonel Slobodan Stosic and Miodrag Djordjevic.” Page 3, point 7 of the document reads: “Dikovic took part in appropriating the property of Albanians, not only from the Drenica area, but throughout Kosovo. In 1998, on Dikovic’s orders, a backhoe digger was brought from Raska from the mine in Belacevac, and later sold to a private individual. (...) During the NATO bombing campaign, with his knowledge, thousands of expensive cars, buses, trucks and tractors were transported and sold in Novi Pazar and Raska. Dikovic kept for himself an expensive Land Rover and a Mercedes 300.(...) It was widely rumoured among officers and soldiers that during the NATO campaign, Dikovic seized a herd of about one thousand cattle from Kosovo Albanians.” On 24 January 2013, in the story aired in the news programme of B92 TV station, at 16.00, 18.30, and 23.00 hours, the defendant Natasa Kandic gave a statement referring to the plaintiff: “People who have a dirty past cannot have functions and positions (...) We need new people, who do not have any stains in their professional and personal past regarding the wars and crimes that happened.” On 25 January 2012, in an interview to “Politika” daily paper which appeared on the cover page, entitled: “Kandic accuses Dikovic of war crimes”, the defendant stated: “Although he was bound to prevent the occurrence of crimes, Dikovic failed to do so, and there is evidence supporting the ruthless looting of Albanian property, which he also took part in.” These allegations are entirely erroneous, insulting and utterly improvised. The plaintiff has never been subject to any criminal proceeding, nor reported for the criminal offence of war crime, nor is there any relevant information to prove that he took part in the events relating to war crimes, as also confirmed by the Office of the War Crimes Prosecutor of the Republic of Serbia, in the capacity of the sole competent authority for the criminal prosecution of perpetrators of war crimes. All the allegations presented above are entirely erroneous, and of such a nature which is largely adverse to the honour and reputation of the plaintiff. In most cases, the plaintiff had not even assumed such a duty, nor had he been present at the locations and at the time claimed by the defendants. The plaintiff is the Chief of Staff of the Serbian Armed Forces, with the rank of general. Such a duty stands for the most important military position and one of the most respectable institutions in our country. General Dikovic has managed, in troubled times, to build a remarkable career, without a single stain. The untruthful allegations on the part of the defendants were published in nearly all the Serbian media. The most eminent daily newspaper, “Politika”, reported on this matter on its cover page and the TV station B92 broadcast in prime time the story entitled “Dossier Dikovic”. The inaccuracies about the plaintiff also produced a strong effect on the public, among colleagues, and in the state leadership. The accusations were also read by his children, relatives, neighbours and friends, and the allegations could also have affected the international reputation of the country, all of which deeply affected the plaintiff, causing

severe psychological pain due to the violation of reputation and honour, thus incurring the substantial non-pecuniary damage. With respect to all of the above, the plaintiff proposed that the court should adopt the claim from the hearing of 5 June 2013. Costs of the proceedings were requested and determined.

As a reply and in the course of the proceedings, the defendants, through their attorney, disputed the claim, stating that the assessments provided in the document "Dossier Ljubisa Dikovic" lacked any allegation whatsoever that the plaintiff Ljubisa Dikovic was a war criminal, or claimed that he had committed war crimes, but rather, the document highlighted the actions which had occurred, that is, had been occurring within the zone of responsibility of the units under his command, and on the basis of such events, the document provided a public criticism, public value judgment, public assessment of the justifiability of appointing the plaintiff to such a high state function. The same meaning underlies the statements of the defendant Natasa Kandic given for the B92 news and "Politika" daily paper. On the basis of the content of the published document "Dossier Ljubisa Dikovic" one may not conclude that it contains the basis for the compensation of non-pecuniary damages due to psychological pain caused by violation of honour and reputation, as its content, from the objective standpoint, may not be considered as insulting. Therefore it is necessary to evaluate who expressed such views and whether these were expressed in accordance with the registered social activity, whether these views refer to the plaintiff as a person, or to Ljubisa Dikovic, the candidate and subsequently, the VS Chief of Staff, whether these were expressed for the purpose of public criticism or deprecation and what the data sources were for the document. They stated that the views had been expressed by the registered non-governmental organisation – the Humanitarian Law Center (HLC), in accordance with the registered social activity. The HLC's activity is a recognised social activity, and the views had been expressed while performing the registered social activity in the non-governmental sector. Not a single view expressed relates to Ljubisa Dikovic as a person, but solely to the General Ljubisa Dikovic, the candidate and subsequently, the VS Chief of Staff. The views expressed had related to the issue of the justifiability of appointing the plaintiff to the position of the VS Chief of Staff, that is, the issue of the justifiability of his appointment to a public function of great importance, by asking whether his previous military career, observed through the situation in the zone of responsibility of the units under his command, had justified the appointment. The views had not been expressed for the purpose of deprecation and the fact is that not a single view had referred to Ljubisa Dikovic as a person, but rather, the views had been expressed for the purpose of societal criticism and social judgment of the selection of one of the candidate to the position of the VS Chief of Staff. Negative criticism, when expressed with no intention of deprecation and in accordance with the registered social activity and despite containing an unfavourable value judgment regarding the appointment of a person to a public, state or social function, may not constitute the basis for the compensation of non-pecuniary damages due to the psychological pain caused by violation of honour and reputation. The criticism of this kind, which contains the value judgment of a candidate for the position, expressed without prejudice to the private personality of the candidate, as in the present case, may not constitute the violation of honour and reputation, or the basis for

the compensation of non-pecuniary damages. Interpreting this matter otherwise would constitute prohibition, and therefore lack of public criticism. The sources for the views expressed on the appointment of the plaintiff to the position of the VS Chief of Staff were the database of the Humanitarian Law Center, that is, the data obtained in accordance with the recognised social activity, in line with the Statute of the Center in the capacity of a non-governmental organisation, and the databases of the ICTY, as all referenced in the footnotes. The views expressed state that the plaintiff was Commander of the 16th Border Battalion in the course of 1994 and 1995, which is disputed by the plaintiff, claiming to have been relieved of the duty on 30 August 1994, implying therefore that he was serving the duty in the course of 1994, including on 28 July 1994, the date relating to the arrest of the Muslim people. The views also state that the plaintiff was the Commander of the 37th MtBr since May 1998, a fact also disputed by the plaintiff, claiming to have been appointed to this duty on 3 November 1998, which means that he was the Commander of this unit during the year 1998 and later on as well, exactly at the time when the events referred to by the defendants had occurred, and relating to the zone of responsibility of the units under the command of the plaintiff. The views also state the date 20 April 1999, and the activity in which Captain Dragan Mitrovic and Captain Bora Adzemovic died, and this event has not been disputed by the opposing party. The views also state the date 7 March 1999, when the 37th MtBr from Raska headed towards Kosovo under the command of the plaintiff, and this has not been contested by the opposing party, nor have they offered evidence to dispute the truthfulness of any of the views expressed. The defendants also pointed out that the unit under the command of the plaintiff had appropriated Albanian property in Kosovo and relocated such property, vehicles, buses, trucks, tractors and cattle to Serbia, where it was not stated that the plaintiff had committed such actions or appropriated the property for himself. It was stated that the plaintiff had been driven in one of these cars, which was also not disputed by the opposing party, and the evidence were not submitted to dispute the truthfulness of the allegations. The views expressed, therefore, relate to the events in the zone of responsibility of the units under the command of the plaintiff and these events provide a basis for the assessment of the justifiability of appointing the plaintiff to a high public function, and the footnotes to the document "Dossier Ljubisa Dikovic" provide a reference to the sources. On the other hand, the plaintiff failed to prove in the complaint, that is, failed to present the evidence in the complaint which would prove that the views were incorrect, that is, that the circumstances expressed were incorrect which relate to the events in the zone of responsibility of the units under his command. For all the reasons above, the defendants requested that the claim should be rejected as ungrounded. Costs of the proceedings were requested and determined.

As the plaintiff amended the complaint by increasing the claim, as disputed by the defendants, the court ruled, in terms of the Article 199 paragraph 2 of the Law on Civil Procedure, in the manner referred to in paragraph 2 of the judgment, reasoning that the proceedings following the amended complaint may not result in the prolonged duration of the lawsuit.

During the evidentiary proceeding, the court presented all the evidence relevant for ruling, and by their evaluation, in terms of the provisions of the Article 8 of the Law on Civil Procedure, identified the following facts:

By reading the order from the Head of the Personnel Administration of the VJ General Staff, No. 5-255 of 28 July 1994, Ljubisa Dikovic, born [REDACTED], Infantry Major, was found to have been discharged of duty and sent to attend the course in the 44th class of the General Staff Academy in the Military School Centre. The order identified that he was the Commander of the 16th Border Battalion of the Uzice corps, Second Army, with the rank of major, PG 13 of 18 August 1992, garrison of Bajina Basta. The course commenced on 1 September 1994 and lasted for two years. The order also identified that he should report to the VJ Military School Centre on 31 August 1994.

By reading the report on the handover of duty of Ljubisa Dikovic, Infantry Major, of 30 August 1994, it was identified that he, following the order of PA of VJ GS No. 5-255 of 28 July 1994, handed over the duty of the Commander of the 16th Border Battalion "A", Uzice Corps, Second Army.

The report on the assignment of duty of 3 November 1998 identified that Ljubisa Dikovic was assigned the duty of Commander of the 37th MtBr "A", Uzice Corps, Second Army, upon the orders of the VJ Chief of Staff, No. 4-186 of 3 November 1998.

By reading the newspaper article published in "Politika" daily paper, No. 35278 of 25 January 2012, entitled: "Kandic accuses general Dikovic of war crimes", it was identified that the article read: *"The non-governmental organisation the Humanitarian Law Center (HLC), and its director Natasa Kandic, has accused the VS Chief of Staff, Lieutenant-General Ljubisa Dikovic, of being responsible for war crimes in Kosovo during 1998 and 1999, at the time when he was the Commander of the 37th Motorized Brigade of the former Yugoslav Army, the unit which was engaged in actions in the area of Drenica. This organisation, which disseminated to other media and published on its website the "Dossier Ljubisa Dikovic", claims that the head of the Serbian Armed Forces "has a murky wartime past". Although he was bound to prevent the occurrence of crimes, Dikovic failed to do so, and there is evidence supporting the ruthless looting of Albanian property, which he also took part in – says Natasa Kandic. She believes that Lieutenant-General Dikovic is unworthy of being the Chief of Staff and calls on the competent authorities to inform President Boris Tadic of the facts of his actions during the Kosovo war and the evidence of the ICTY of the war crimes in the zone of responsibility of Commander Dikovic. "Horrible crimes occurred where the 37th Motorized Brigade was stationed. First of all, we have Izbica and the testimony of Dikovic himself, in the capacity of the defence witness in the ICTY, and the testimony is relatively unambiguous. He never attempted to dispute that his units had been present in Izbica and that they had been in contact with the civilians. During the lengthy hearings, when asked by the prosecution, on one occasion he says that his units entered the village of Izbica, and afterwards, he says that they were only interrupting the actions and helping the civilians out" – said Kandic for the radio Free Europe."*

On the basis of the letter of Veran Matic, the B92 editor-in-chief, sent to the attorney-at-law office Cepic on 26 January 2012, it was identified that the attachment to the letter contained the copy of the story aired in the B92 news programme at 16.00 hours on

24 January 2012, in which "Dossier Dikovic" was mentioned, and it was identified that the story was also aired on the same day in the news at 18.30 and 23.00 hours.

By examining the DVD copy containing the B92 news programme aired on 24 January 2012, it was identified that the defendant Natasa Kandic had stated: *"People who have a murky past cannot have functions and positions in the holding of which they should restore the lost trust in the institutions of the Republic of Serbia. We need new people, who do not have any stains in their professional and personal past regarding the wars and crimes that happened."*

The certificate received from the Office of the War Crimes Prosecutor A.No.51/2012 of 30 January 2012 identified that in the registries of this Office KTPZ, KTPP and KTRP, and in the cases of this Office, Lieutenant-General Ljubisa Dikovic had not been recorded as a person reported for any war crimes or as a participant in the events relating to war crimes.

The certificate of the Business Registers Agency on the data listed in the register of endowments and foundations identified that the foundation Humanitarian Law Center, seated in Belgrade, Decanska St. 12, had been founded on 12 January 1993, for an unlimited time, to support post-Yugoslav societies in the promotion of the rule of law and acceptance of the legacy of mass human rights violations, and therefore in establishing the criminal responsibility of the perpetrators, serving justice, and preventing recurrence. The founder is Natasa Kandic, and the person authorised for representation is Sandra Orlovic.

On the basis of the statute of the Humanitarian Law Center Foundation, the following was identified: the HLC has the status of a legal entity, the work of the HLC is public, and the publicity for its work is ensured by publishing the annual work reports on the web site of the HLC, organising press conferences and other appropriate means. Article 3 of the statute states that the HLC is a humanitarian, non-government and non-profit organisation which supports post-Yugoslav societies in the promotion of the rule of law and acceptance of the legacy of mass human rights violations, and therefore in establishing the criminal responsibility of the perpetrators, serving justice, and preventing recurrence. In order to achieve its objectives, the HLC performs the following activities: establishing the archives of war crimes and databases which provide the link between the perpetrators, victims, crime location and category of violation of international humanitarian law; providing support to war crime trials before domestic courts, legal assistance and protection to the victims of armed conflicts, providing support to war crime witnesses, developing the library of transcripts for trials before the ICTY, in the Bosnian, Croatian and Serbian languages; preserving the historical memory of the events in the armed conflicts in former Yugoslavia, based upon the written and oral statements and testimonies of witnesses and victims, primary documents, court documents of the ICTY, documentation from war crimes trials before the domestic courts and upon other relevant and reliable war crime matters; organising conferences and public gatherings on committed war crimes; informing and educating the public on transitional justice and instruments for protection from the violations of human rights and other activities relevant for achieving the HLC objectives. Article 16 of the Statute confirms that a business secret shall be considered to include the documents and data whose disclosure to an unauthorised person would affect the reputation and interests of the HLC. The executive director decides which acts and data are

to be considered a business secret. The executive director, Board members, employees with special authorities and responsibilities and employees performing the expert and administrative tasks have the obligation of keeping the business secret. The Statute was passed on 25 March 2011 and after its entering into force, the HLC rules as of 14 May 2010 ceased to be effective.

On the basis of the Decision of the HLC Board passed at the 10th session held on 8 December 2012, it was identified that Article 3 of the Decision amended Article 10 of the HLC Statute and read: The Executive Director manages the HLC daily tasks, represents the HLC without limitation, is held to account for the legality of the HLC operations, implements the decisions of the Board, prepares and proposes the annual work report of the HLC to the Board, etc. Article 5 of the Decision amended Article 16 of the HLC Statute and read: a business secret shall be considered to include the data contained in the databases of war crimes, data on salaries and wages, ideas and projects under development, official communications, embargoed reports, documents marked as classified and other documents and data whose disclosure to an unauthorised person would affect the reputation and interests of the HLC.

On the basis of the criminal complaint filed by the Humanitarian Law Center to the Office of the War Crimes Prosecutor of 22 May 2015, without the seal of the receipt of the Office, it was identified that the complaint had been filed against Ljubisa Dikovic, General in the Serbian Armed Forces, and the Commander of the VJ 37th MtBr during the armed conflict in Kosovo, the current VS Chief of Staff, Dejan Randjelovic, Commander of the 2nd Motorized Battalion within the VJ 37th MtBr, unidentified members of the 2nd Motorized Battalion within the VJ 37th MtBr and unidentified members of the RS MoI, for the grounded suspicion that they:

I In the early hours of 5 April 1999 in the village of Rezala, municipality of Srbica, former AP KiM, by violating the rules of international law, during the armed conflict, as members of the VJ, one of the sides in the conflict, and by following the orders and commands of the first suspect Ljubisa Dikovic, Commander of the 37th MtBr, ordered and/or executed in terms of Article 22 of the Criminal Law of FRY, murders and displacement of civilians in the following manner: On 5 April 1999, at around 9 a.m., members of the VJ and RS MoI accompanied by tanks and armoured vehicles entered Rezala coming from the direction of the villages of Morina and Likovac. Shortly afterwards, members of the 37th MtBr and unidentified MoI units, dressed in green and blue camouflage uniforms, some wearing helmets and some wearing hats, and with white armbands, began entering Albanian houses and ordering the villagers and the refugees in the village to gather at the village primary school in the village center. When a few hundred villagers had gathered at the school, unidentified members of the army and police ordered them to enter the backyard of a nearby house which belonged to Hashim Dergut, and to sit on the ground, where they searched them and confiscated their money, jewellery and other valuables. Occasionally, while looting the valuables, they beat the men with rifle butts, with their wives, children and other family members standing by. At around 5 p.m., the unidentified members of the MoI who were keeping the civilians in Hashim Derguti's backyard left the backyard and went to the village of Likovac; the backyard was then entered by a larger

group of VJ members, who had arrived at the site in a few trucks. They ordered the women and children to leave the backyard and head for the neighbouring village of Makrmalj. When the women and children had left, VJ members ordered the men to stand in a column two by two, and then took them 50m away from the house, near to the village cemetery. In that place, they were lined up along the fence, so that they were facing the VJ members. VJ members drove tractors which were making a lot of noise around the detained men. After a few minutes, the men were shot at, first with a machine-gun which had been set up on the first floor of Hashim Derguti's house, and then with the automatic rifles of the VJ members facing the men. After about ten minutes, they approached the executed men to check whether they were all dead. Those who were still alive were then killed with further bursts from rifles.

II The VJ members killed 39 civilians on the spot, while two survived the shooting because they were covered by the bodies of men that had fallen on top of them. At least two more civilians were killed in the nearby forest. Among the killed civilians there were three boys, whilst the oldest victim was 97 years old. Count II of the criminal complaint has listed all the names of the persons murdered. With respect to the above, the suspects committed the criminal act of a war crime against civilians, referred to in Article 142 paragraph 1 of the FRY CC, in relation to Article 22 of the FRY CC.

III The bodies of the executed civilians remained at the scene of the crime. The following day, on 6 April 1999, the soldiers came back to the village and covered the bodies with earth. Approximately one week later, the soldiers came back to the village, dug up the bodies, loaded them onto a truck and then drove with them in the direction of Mitrovica. On 13 April 1999, the Commander of the Clearing-up Squad of the 37th MtBr, Rade Krsmanovic, and his Deputy, Hasan Corbic, notified the Secretariat for Internal Affairs (SUP) in Kosovska Mitrovica that there were 30-40 bodies in the village of Rezala near the village cemetery that had been covered with earth by the VJ members. Upon arrival at the scene of the crime on 13 April 1999, the investigative judge of the District Court in Kosovska Mitrovica, Bogoljub Paunovic, with the participation of officials from the SUP Kosovska Mitrovica, established that near the village cemetery in Rezala there was a layer of soil, and that by removing the first layer of the soil there was evidence of the presence of human bodies. The investigative judge refused to issue an order for exhumation, but did, however, issue an order to add another layer of soil, about 80cm thick, to the existing layer of soil, since this was a gully, insisting to the VJ officers present that investigations be undertaken by the military investigative authorities. On 18 April 1999, the investigative judge of the District Court in Kosovska Mitrovica, Blagoje Miletic, arrived at the scene of the crime, for the purpose of identifying the location where the persons murdered in Rezala had been buried. During these two crime scene investigations, the photographic and forensic and technical documentation were prepared. The District Office of the Public Prosecutor transferred the case to the jurisdiction of the Military Prosecution on 26 April 1999, as it was identified that the civilians in Rezala had been murdered by the VJ members. On an unidentified date in April 1999, the soldiers returned to Rezala, dug out the corpses, loaded them onto the truck and drove them away in the direction of Mitrovica.

IV Afterwards, unidentified Ml and VJ members, in actions within the widespread and systemic attack against the Albanian civil population in Kosovo, and being aware and intending to conceal the traces of the war crime, concealed the civilian corpses from Rezala in the mass grave in Rudnica, municipality of Raska, RS, and in another, to date unidentified location, thus inflicting psychological pain to the families of the victims, who had been living unaware of the fate of their family members, and in despair, hoping that they might still have been alive.

V The mass grave in Rudnica revealed the mortal remains of 27 civilians shot in Rezala, and count V of the criminal complaint has listed all the names of the persons murdered.

VI To date, 10 corpses have not been found, and their missing status has been registered in the ICRC list.

VII The mortal remains of Isuf Rukoli and Isa Zabeli were found after the war in the Derguti family cemetery in Rezala. With respect to the above, the suspects committed the criminal act of a crime against humanity foreseen by international customary law at the time of its commission, in terms of Article 16 of the FRY Constitution, Article 15 of the International Covenant on Civil and Political Rights, and Article 7 of the European Convention on Human Rights.

On the basis of the letter of the Office of the War Crimes Prosecutor KTP, No. 77/15 of 12 October 2015 sent to the lawyer Vladimir Gajic, in the capacity of the attorney of the Humanitarian Law Center, it was identified that the Prosecution was acting upon the criminal complaint filed against Ljubisa Dikovic, Dejan Randjelovic and two unidentified persons, and examining the claimed allegations within the pre-investigation proceeding, by collecting the required data and information.

By checking through the AVP system of this court, it was identified that the plaintiff Ljubisa Dikovic, on 9 February 2012, had filed a private criminal complaint against the defendant Natasa Kandic to the First Basic Court in Belgrade, registered under K.No. 747/12, for the criminal offence of a libel, referred to in Article 121, paragraph 3 of CC, but the above was rejected, as following the filing of the complaint, amendments to the Criminal Law decriminalised such criminal act.

On the basis of the statement of the plaintiff heard in the capacity of the party in a lawsuit, the following was identified: he appeared before the court for severe insult and violation of his personal dignity, honour and reputation, primarily as a man and citizen, and also as a family-oriented person, because he has children, a wife, relatives, godfathers et al. who have had the opportunity to hear and read about and experience everything which was said about the plaintiff. He stated that he was unable to separate the function he was performing from his personal being, as it affected the function he was performing and the institution he represented. It was simply inseparable. The reason why he decided to file the lawsuit was exactly the severe violations and lies stated in the so-called document "Dossier Ljubisa Dikovic". The document fails to state that the actions were executed by some other people, but solely by the plaintiff, and that the actions executed were gross and punishable, that is, illegal. The defendants publicly accused him of something which constituted the most severe accusation against a human being – war crimes. People who know him might say: "Look, he is a war criminal, he did some things..., he did not prevent...etc.". The first

accusation relating to his work as a Commander of the 16th Border Battalion during 1994-1995 and participation in the arrest of the Muslim men is entirely incorrect, as he handed over his duty in the 16th Border Battalion in late August 1994, and was sent to a course in Belgrade which he attended during 1995, also supported by written evidence in the documents. He did not commit arrests, nor was he present there, and he is unclear what the purpose of such a claim was, if not simply to hurt him as a human being and inflict harm. The accusation relating to him ordering Captains Dragan Mitrovic and Bora Adzemovic on 20 April 1999 to come together to his position in a single vehicle, and not in separate vehicles and with due caution, as required by the rules, remains entirely unclear to him, since such rules do not exist, and such a claim is also incorrect. Reading the above, the families of the late Mitrovic and Adzemovic might think he was to blame for their death, and not the ones who had set the ambush. These allegations were also made to harm him and his family. Furthermore, the late Mitrovic and Adzemovic did not die together, because Adzemovic died before 20 April 1999. The allegations that during his command of the 37th MtBr from May 1998, a number of officers of Military Security trained groups of murderers and criminals and took them to Kosovo from July 1998 as volunteers and VJ members are incorrect, as he had assumed the duty of the Commander of the 37th MtBr on 3 November 1998, and the actions alleged above had not been executed, nor could they have been done under his command, as in May 1998 there had been no organised training of the volunteers in the brigade, only of the military conscripts who had been called up on training, following the wartime posting. Slobodan Stosic was present in the 37th MtBr, but he could not confirm the same for Miodrag Djordjevic. Each officer conducted the training, but Stosic did not conduct any form of training of volunteers whatsoever, as stated in the Dossier. The allegations referred to in point 7 of the Dossier that he had taken part in appropriating Albanian property in the area of Drenica and throughout Kosovo are incorrect, as in 1998, the 37th MtBr had not been stationed in the area of Kosovo, but Raska. He could not have remained disinterested when he read the statements above. This is his first appearance before the court precisely because he was accused in the media. The allegations that he failed to prevent the crimes he was bound to prevent are also incorrect, as he had imposed sanctions for all the crimes he had been aware of having been committed by members of the 37th MtBr and had submitted the evidence for 15 persons against whom court procedures had been initiated, in accordance with the rules. The allegations that he kept for himself the costly American Land Rover and Mercedes 300, and appropriated 1000 head of cattle seized from Kosovo Albanians, inflicted serious harm to his names, his family and him in his capacity of Chief of Staff. He had never used these vehicles for personal use, nor kept them for himself, as was stated in the Dossier, but during 1999, he had used the vehicle Land Rover for official purposes. All this could have been checked before publishing, as it was not a needle in a haystack. He had not kept the vehicles, nor taken the cattle. The allegations claimed that he had taken part in ruthless looting of Albanian property, and he was eager to find out where he had done such things and whether he been alone in that. He pointed out that all the achievements in his life had been the result of his own effort and hard work. He comes from an impoverished and decent family and is proud of what he has achieved as a man, citizen and officer during his years of service. During his life, all his work

has been decent and honourable. He believes all the allegations of the defendants were published only to inflict damage on him, to hurt and denigrate him. He does not need the amount from the lawsuit and he intends to give it away to charity, and the court is to decide whether the amount should belong to him or not. He is a rich man, but not in a material sense. He has an admirable and decent family, loyal friends and the institution he represents. He believes he has not done anything bad in his life, and especially not what was written in the so-called Dossier.

On the basis of the statement of the defendant Natasa Kandic heard in the capacity of a party in the lawsuit, the following was identified: Natasa Kandic is the founder of the Humanitarian Law Center (HLC) and at the time of publishing the document "Dossier Ljubisa Dikovic", she was the Executive Director and the Chair of the HLC Kosovo Board. She pointed out that the HLC is a research organisation engaged in analysing violations of human rights and international humanitarian law. The results of the research are presented in public and sent to the state institutions, highlighting the existence of serious indications of violations of human rights and international humanitarian law. From the day of the foundation of the HLC until January 2013, while she acted as the Executive Director, and after the change in management structure, more than 50 reports were published, including the Dossiers, studies which were reviewed by the experts in the area: not a single government raised objections to the data presented. The HLC has collected a substantial amount of data relating to violations of human rights and the data have been entered into the database. A relevant source which provides the basis for the "Dossier Ljubisa Dikovic" is the HLC database and the Kosovo HLC database. This database was proclaimed as the most reliable and complete database of victims from the war in Kosovo. The report is based on other sources from the period of the NATO Bombing, and these sources refer to events in some areas of Kosovo – Drenica, Srbica and Glogovac. These sources also include the ICTY database, which is public and available, a number of interviews with officers and non-commissioned officers from the 37th MtBr, testimonies of survivors whose family members were murdered during the NATO Bombing, when the territory of Glogovac and Srbica was entirely under the control of the 37th MtBr. The report is also based on the reports and data published in the media and on the website of the Ministry of Defence. All the military documents referred to in "Dossier Ljubisa Dikovic" are available on the ICTY website. For instance, the plan "Thunder" from July 1998 is entitled "Third Army Order", and this is a military document submitted to the ICTY by the VJ. This document is available to the public. All other documents can be found on the ICTY website. These documents were used as evidence and these were the basis for the judgment in the Case of Sainovic, Lazarevic, Pavkovic et al. The database contained the indications of severe violations of human rights in the municipalities of Glogovac and Srbica, and in 2011 they focused on collecting the evidence by a specific method – taking statements from the survivors and members of the victims' families. At the same time, they applied another method for collecting the data - by downloading the documents from the ICTY website, and by carefully reading and analysing the documents, they entered the data into the database and analysed the collected data very closely. When General Ljubisa Dikovic was appointed as the Chief of Staff, they believed that it was their duty to warn the public and state institutions of the events that

had occurred during the armed conflict in Kosovo, and in the municipalities of Glogovac and Srbica, which had been entirely under control of the 37th MtBr, commanded by the plaintiff. In a professional manner, by applying the most rigorous methods of documentation, they published "Dossier Ljubisa Dikovic" and issued a statement inviting the state institutions to direct their attention to the Dossier, as they believed the plaintiff was unworthy of performing any public function or representing any state institution, not only in the function of Chief of Staff. The report pointed to serious indications that during the armed conflict in these municipalities, grave violations of international humanitarian law had been committed, and that certain consequences had not been resolved yet. The fate of a large number of the missing persons was unknown, and there were no trials for the crimes committed in this part of Kosovo. The Dossier did not address the private personality of the plaintiff, nor his children or family, but addressed the plaintiff as the person who represents one of the largest institutions. On the basis of their conclusions on the existence of indications of violations of human rights, the competent Prosecutor's Office conducted the pre-criminal proceedings very frequently, initiated the investigations and filed indictments. Immediately following the publication of the report "Dossier Ljubisa Dikovic", the OWCP, upon the request of the plaintiff's attorney, issued a certificate that the institution had no data on the matter and that the plaintiff had not been recorded as a person reported for war crimes. The certificate was issued on 30 January 2012, immediately following the publication of the Dossier. On 25 January 2012, the OWCP issued a release stating that they had gained insight into all war crimes cases and identified that there was no ground for suspicion as to the criminal responsibility of the plaintiff. They pointed out that they had questioned 120 witnesses. On 14 February 2012, the Republic Prosecutor's Office sent a letter to the OWCP and enclosed the "Dossier Ljubisa Dikovic" for acting upon. On 4 June 2012, the OWCP decided that there was no room for the criminal prosecution of the plaintiff. The Dossier states that during 1994 and 1995, the plaintiff was the Commander of the 16th Border Battalion, which is true, as they trust the evidence and the testimonies of the witnesses collected by the HLC. Jevtic Milorad, the Commander of the 15th Border Battalion, had close cooperation with the Commander of the 16th Border Battalion, that is, the plaintiff. Cedomir Milijasevic, the Deputy Commander of Company 1 of the 16th Border Battalion, claimed that the plaintiff had been the Commander of the 16th Border Battalion in 1994-1995. The plaintiff claims he could not have participated in the arrests as he was not the Commander of the 16th Border Battalion at the time, which is contrary to the information available at the RS MoD website until March 2012, and contrary to the information published by "Politika" daily newspaper of 12 December 2011, stating that the plaintiff during 1994-1995, even until 1996, served as the Commander of the 16th Border Battalion, at the time when a large number of Muslim people, seeking refuge from BiH in the territory of Serbia, were arrested on the border and handed over to the police of the Republic of Srpska, along with prisoner transfer forms. Their bodies were found several years afterwards in the mass grave at Glogovac, BiH. These data are credible and there are no reasons to suspect that "Politika" would provide incorrect data on the occasion of the appointment of the plaintiff, or that the MoD would provide incorrect data. Jevtic Milorad and Cedomir Milijasevic, among many others, confirmed that the plaintiff had been the

Commander of the 16th Border Battalion in 1994-1995, although this was disputed by the plaintiff. The complaint does not dispute that the criminals and convicted murderers participated in and were located in the area of Kosovo, particularly in the area of Glogovac and Srbica, but only disputes the year of 1998. The evidence submitted claims that the plaintiff assumed command over the 37th MtBr on 3 November 1998. The Dossier, however, presents the evidence of "Thunder", a Third Army Order stating that the 37th MtBr was present in 1998 and had specific assignments. According to the witness Lakic Djordjevic in the Case of Sainovic, Pavkovic...et al., the VJ practice of conduct was to engage the convicts for the execution of specific assignments in the war territory, and these were trained by the military security officers Slobodan Stosic and Miodrag Djordjevic. All this occurred under Dikovic's command. The plaintiff, however, failed to address this point in the complaint, but only disputed the date. Regarding point 4 of the Dossier, they obtained the information from several officers, not interrelated, that the plaintiff had followed the procedure of receiving the daily reports from the commanders of combat groups. They arrived at the meeting and were scheduled to sleep over there and to return the next day, accompanied by the food deliverers. This, however, did not happen, and the commanders made their way back to their destinations during the night, following the order of Dikovic. She did not want to reveal the names of the people she had talked to, concerned that something might happen to them, but she heard that after the deaths of the soldiers, that procedure of submitting the reports by the commanders was cancelled, and this work was done by the couriers. Everyone was afraid of this task and drew straws to decide on the person who would take the military group reports. The Army blamed the plaintiff for the death of the persons referred to in point 4 of the Dossier, as the plaintiff had insisted that the commanders of combat groups should come and submit the reports themselves. Having talked to the interlocutors, she concluded that it was not a rule to send, in one vehicle, the commanders of combat groups on a daily submission of reports, and this is what the plaintiff has objected about. She did not talk to the family members of those killed, but she heard they also thought the killings were a consequence of Dikovic's great negligence. She also pointed out that she did not understand what precisely was being disputed in point 5 of the Dossier, since the plaintiff himself in his testimony did not dispute that Lieutenant-Colonel Slobodan Stosic had been an officer of the 37th MtBr, which she talked about in great detail while explaining point 3 of the "Dossier". Regarding point 7 of the mentioned document, she said that, on the basis of the testimony of Bojan Drobniak, a witness of the second defendant, it had been established that there was the plaintiff's order to transport the cattle from Kosovo to Raska. Trucks and lorries were taken away in order to transport the cattle. However, only a part of the cattle reached Raska. There are no findings on what happened with the rest of the cattle, but in her opinion, they ended in the possession of private individuals. Bogoljub Drobniak, head of the intendant group, knows more on this issue. She did not talk to him personally, but some other officers did, who gave her the data, but whose names she did not reveal out of fear. Having talked to them, she found out that at least 500 tractors were taken to Raska, and at least 200 cars were taken away in Kosovo and later taken to Raska too. When asked by the court whether she had checked the data given by the witnesses, she replied that there are material lists of vehicles which were

delivered to Raska. She did not see the subject list, but some other people did. The list is now in the seat of the 37th MtBr in Raska. She also found out that around 300 cars were run over by tanks and that tugs and trucks were hired to transfer vehicles, cattle and dead Albanians, all following the plaintiff's orders. An army has the right to take away vehicles during war; however, this was abused. One of the vehicles taken was a white Land Rover SUV which the plaintiff used to drive in Kosovo. She pointed out that the plaintiff did not dispute it was a military vehicle. Witness Bojan Drobnjak, an officer of the VJ, informed them that the plaintiff had ordered the formation of a Clearing-up Squad, which was a unit whose task was to collect bodies, and cooperate with the civil authorities and military-investigation authorities; however, the rules were obviously not obeyed in the 37th MtBr. The evidence of this is the mass grave in Rudnica. She heard from a number of different sources that the plaintiff determined that Sveto Stosic, Hasan Corbic and Rade Krsmanovic would be in charge of cleaning the terrain, which involved hiding the traces of crimes. She found it unclear as to what had hurt the plaintiff and caused a sense of insult in the statement given to B92 TV of 24 January 2012, since it was absolutely clear she was not talking about the plaintiff as a private individual, father, husband or godfather, but as a general, the VS Chief of Staff. She still thinks that any person who was a commander on the VJ territory where certain things happened as described in the Dossier, must not perform any public function whatsoever, and especially a function such as the Chief of Staff. The Dossier contains extremely well-documented cases of war crimes on the basis of data from very strong, qualified and reliable sources, and therefore, the Dossier had to be considered in relation to the evidence it presented. Since this has not happened, one can hardly say that there is a professional OWCP. A good thing is the fact that the Republic Public Prosecutor's Office reacted correctly by sending the Dossier for acting on to the OWCP. However, there was no reaction. When asked by the Court regarding the statement she gave to the B92 TV on 24 January 2011, when she said that "we need new people who do not have any stains in their professional and personal past", the defendant answered that all the things stated in the Dossier were true, adding that all the things written were in the context of the plaintiff's professional function, explaining that nothing referred to him as a private, physical person. Somebody who was in charge of a brigade in whose zone of responsibility people were killed and their bodies then hidden for 15 years, cannot exercise the function of a Chief of Staff. Regarding her statement of 25 January 2012 for "Politika" daily paper, she pointed out that, at the time of giving the statement, she had in mind numerous data which they had obtained in the villages of Cikatovo, Cires and some other ones, and especially the data that Drazen Miric, who was in charge of the 37th Motorized Brigade in Cires on 1 May 1999, set up a part of a tent in which the detained Albanian men put their money, gold and other valuables they had with them. After having talked to the plaintiff, carrying the gathered money and valuables he went to the plaintiff, who might have been in the village of Rudnik, but he does not know that for sure. These are the data presented by the VJ soldiers. Apart from being a member of the military security, Drazen Miric was appointed Commander of a battalion of the 37th MtBr in April 1999. However, there are no data as to what has been done with the money and valuables; the only known thing is that they were taken away from the detainees. Ms. Kandic stated that she was not

at all interested in the plaintiff as a private person, but she was professionally interested in him as an officer of the VS - as a person who was the Commander of the 16th Border Battalion and 37th Motorized Brigade; and the latter should be a subject of interest to state institutions, the public, and court and prosecutor's offices, as well. The data which show that the plaintiff held the position of the 16th Border Battalion in 1994 and 1995 are on the basis of the allegations of several witnesses, all of whom are mutually unrelated, information presented in "Politika" daily paper and information from the RS MoD official webpage. It is not clear why the report the plaintiff refers to would be stronger evidence than the data published on the webpage of the MoD. When asked by the attorney for the plaintiff if she had addressed the state authorities - precisely, the competent OWCP -, the defendant answered that the HLC was a non-government organisation which dealt with documentation of human rights violations, adding the HLC was neither a department nor a service of the OWCP. She pointed out that, since 1991 when the wars began, practice has shown that non-government organisations are those which are in the first place in dealing with documentation and informing the public on this issue. It was not until 2002 that the prosecutor's offices started dealing with this issue in Serbia. The task of the HLC is to disturb both the public and state institutions in order to make them obey the law and contribute to the rule of law.

From the statement of Sandra Orlovic, a legal representative of the defendant party HLC, it has been determined that the HLC was founded in 1992 and that Ms. Orlovic has been working there since March 2005. From the very beginning, the HLC has had the mission to document human rights violations. Writing the document "Dossier Ljubisa Dikovic", as well as the analysis of the data stated there, started approximately six months before its publication, but the data used there had already existed in the HLC database for many years. The documents used were the ones that the ICTY put on its website. She added she cannot remember the exact year when this happened, but said this information can be checked. The sources were also numerous military documents which were personally signed by the plaintiff. The announcement of the appointment of Mr. Dikovic as the VS Chief of Staff was the reason why this report, that is, the "Dossier Ljubisa Dikovic" was made. However, this is not the only report and Dossier which the HLC has published regarding certain individuals who hold important state functions today. What the HLC wants to say is that a person who has such a war past cannot perform the function he is appointed to, since he is not worthy of it. A call to the government was made and a question of public interest was asked: Who is responsible for the killing of hundreds of civilians in Kosovo? Some of those crimes have already been considered before the ICTY. The documents and data that the HLC obtained strongly indicate that the 37th MtBr, under the command of Ljubisa Dikovic, took part in the crimes. The scope of the criminality was such that it was not isolated incidents, but rather a systematic committing of crimes, which the brigade commander must have known about and for which he should have punished the perpetrators. This was the main message and aim of publishing the Dossier. Nobody can put any content whatsoever on the HLC website without prior approval of the Executive Director; at the time of publishing, it was Ms. Natasa Kandic. Before the Dossier was published on the website of the second defendant, each allegation stated in it had been

checked and supported by sources. The sources are such that they are unquestionable. These are the statements of members of family victims who watched with their own eyes how soldiers took away their family members or how military tanks bombed their houses; these are also records on exhumation made by domestic and international institutions, and statements of former members of the 37th MtBr. These are sources of the highest value that a criminal court could possibly obtain, let alone a non-government organisation. The sources of the data which were used for analyses, reports and the Dossiers, have been considered trustworthy for two decades both by international and domestic organisations and institutions, including the UN, the Economic and Social Council of the UN, which awarded a consultative status to the HLC, Dick Martin's report on human rights violations, domestic courts and the OWCP. The public reaction, above all the institutions' reactions, did not meet the expected standards of democratic society and responsible institutions, but that was to be expected, since the institutions' representatives in this country have defended those suspected of war crimes in numerous situations, and publicly supported them. Such practice exists even today, and it includes the threats of Serbia's President to Vladimir Vukcevic, the War Crimes Prosecutor, which were made regarding General Dikovic. In such a social atmosphere, it is hard to expect the institutions in charge of the prosecution of war crimes perpetrators to do their job. The investigation continued after the document "Dossier Ljubisa Dikovic" was published, and it continues today. What is more, in January 2015, another Dossier was published, and it deals with General Dikovic's war past - but not only his past. The cause for the publication of the new Dossier was the discovery of the mass grave in Rudnica near Raska in 2014, where 53 bodies of Kosovo Albanians were found. They had been murdered in the zone of responsibility of the 37th Motorized Brigade. Again, documents indicating the involvement of the 37th Motorized Brigade in hiding the bodies have been found.

All the above-mentioned and presented evidence was evaluated by the Court on the basis of conscientious and careful estimations of each separate piece of evidence and all of them in total, as well as on the basis of the results of the whole proceedings, pursuant to the provisions of Article 8 of the Law on Civil Procedure.

The Court accepted the written evidence issued by the competent bodies and institutions as valid and eligible, and the facts stated there considered determined, pursuant to Article 238 of the Code on Civil Procedure.

The Court believed in the statement of Ljubisa Dikovic, who was heard as a party in proceedings, regardless of the fact that he was the person interested in the outcome of the trial, evaluating his statement as clear, honest and persuasive regarding the non-pecuniary damages he suffered.

The Court believed in the statements of the defendant Natasa Kandic and the HLC legal representative Sandra Orlovic regarding the relevant facts for solving the dispute, which deal with the motive and aim of publishing the documents "Dossier Ljubisa Dikovic" and the sources used to make it.

The Court refused the proposal for evidence of the defendants to hear the witnesses stated in response to the lawsuit, regarding the circumstances in the zone of responsibility of the units commanded by the plaintiff, as unnecessary in a civil proceeding, explaining that

such circumstances were not important in solving a dispute which deals with damage to the reputation and honour of the plaintiff, adding that the act of proving the factual charges can be performed in criminal proceeding before the competent courts.

The Court did not evaluate the "Rudnica" document, filed by the defendant as evidence, bearing in mind the fact that the Court only decides within the limits of requests which are set in the proceedings (Article 3 of the Code of Civil Procedure), and the mentioned document is not related to the subject claim.

Having evaluated the above-mentioned evidence, the Court has determined the following factual conditions:

- Ljubisa Dikovic is a state official who has the function of the VS Chief of Staff;
- The Humanitarian Law Center is a foundation founded with the aim to provide assistance to post-Yugoslav societies and others too, so that they can establish the rule of law and accept the legacy of massive human rights violations in order to determine the criminal responsibility of the perpetrators, serve justice and prevent crimes from happening again; the founder of the above-mentioned organisation is Natasa Kandic;
- The defendant party HLC published the following document on its website (<http://www.hlc-rdc.org>) on 23 January 2012 "Dossier Ljubisa Dikovic", which stated the following: *"In 1994 and 1995 Dikovic was the Commander of the 16th Border Battalion and in this capacity (...) he took part in the arrests of Muslims fleeing the Army of Republika Srpska, who sought refuge in Serbia (...).The mortal remains of four of the five returned Muslim men (...) were found and identified beyond doubt"; "Starting in May 1998, under Dikovic's command, a number of military security officers, (...) trained several groups of convicted criminals and even several dozens of convicted murderers from the prison in Sremska Mitrovica, within the 37th MtBr. In July, 1998, the trainees were taken to Kosovo, as volunteers and members of the VJ."; "On April 20, 1999, Commander Dikovic ordered Captain Dragan Mitrovic and Captain Bora Adzemovic to leave their combat positions together, in one vehicle, instead of individually and using utmost caution, as the usual military practice in wartime stipulates. In the vehicle were Mitrovic, Adzemovic and three soldiers, Near a place called Istok mahala (Srbica...), the vehicle was ambushed by the KLA. All five soldiers of the VJ were killed."; "On March 7, 1999... Colonel Dikovic, then the Commander of the 37th MtBr, led a combat team (BG 37) of about 400 members, from the barracks in Raska. ... the remaining 150 were well-equipped and trained volunteers, including dozens of convicted murderers, criminals, and war criminals, under the command of Lieutenant-Colonel Slobodan Stosic and Miodrag Djordjevic."; "Dikovic took part in appropriating the property of Albanians, not only from the Drenica area, but throughout Kosovo. In 1998, on Dikovic's orders, a backhoe digger was brought from Raska from the mine in Belacevac, and later sold to a private individual (...).During the NATO bombing campaign, with his knowledge, thousands of expensive cars, buses, trucks and tractors were transported and sold in Novi Pazar and Raska. Dikovic kept for himself an expensive Land Rover and a Mercedes 300 (...).military*

warehouses and depots in Novopazarska Banja, in the municipality of Novi Pazar. It was widely rumoured among officers and soldiers that during the NATO campaign, Dikovic seized a herd of about one thousand cattle from Kosovo Albanians.”;

- The defendant Natasa Kandic was the Executive Director of the defendant party Humanitarian Law Center at the time of the publishing of the document;
- The sources of the published document “Dossier Ljubisa Dikovic” were the HLC database, the proven material used in cases before the ICTY and military documents of the VJ;
- The aim of publishing the documents was the dismissal of the plaintiff from his appointed function as the Chief of Staff;
- There are no criminal proceedings against Ljubisa Dikovic;
- During this proceeding, a criminal complaint was filed against Ljubisa Dikovic et al. by the HLC on charges of a criminal act of a war crime against civilians as referred to in Article 142, paragraph 1 of the CC FRY, regarding Article 22 of the CC FRY, and a criminal act of a crime against humanity as stipulated by international customary law at the time of committing the crime as referred to in Article 16 of the FRY Constitution, Article 152 of the International Covenant on Civil and Political Rights and Article 7 of the European Convention on Human Rights, committed on 5 April 1999 in the village of Rezala in Kosovo, which the OWCP is acting on within the preliminary proceeding;
- The news about the publication of the document “Dossier Ljubisa Dikovic” was published in the daily paper “Politika” No. 35278 of 25 January 2012, titled “Kandic charges Dikovic with war crimes” by the HLC, and a statement, given by Natasa Kandic, was written, which by its character is a factual charge: *“Although he was bound to prevent the occurrence of crimes, Dikovic failed to do so, and there is evidence supporting the ruthless looting of Albanian property, which he also took part in”;*
- The factual charges published in the document “Dossier Ljubisa Dikovic” and the “Politika” daily newspaper No. 35278 of 25 January 2012 are not proven;
- The defendant Natasa Kandic made a statement to B92 TV, which was broadcast in an informational show of B92 TV news on 24 January 2012, stating the following: *“People who have a dirty past cannot have functions and positions in the holding of which they should restore the lost trust in the institutions of the Republic of Serbia. We need new people, who do not have any stains in their professional and personal past regarding the wars and crimes that happened.”;*
- The defendant Natasa Kandic was prosecuted for the criminal act of libel referred to in Article 171 paragraph 3 of the CC RS following private criminal charges by the plaintiff dated 9 February 2012 before the First Basic Court in Belgrade in case No. K. 747/12; however, the charges were refused since, after they had been made, the above-mentioned criminal act was decriminalised by amendments to the CC RS.

Article 46 of the RS Constitution guarantees freedom of thought and expression, as well as freedom to ask, accept and spread ideas and notices through speech, writing, images or any other way. The freedom to express can be limited by law if it is necessary for the

protection of the rights and reputation of others, for preserving the authority and impartiality of courts and the protection of the public health or morality of democratic society and the national security of the Republic of Serbia.

Article 10 paragraph 1 of the European Convention on Human Rights stipulates that each person is entitled to freedom of speech. This right includes the freedom of having one's own opinion and accepting and giving information and ideas, without the interference of public authorities and regardless of boundaries. This article does not prevent states from requesting work permits for TV, radio and cinema companies. Since the usage of these freedoms involves responsibilities and duties, paragraph 2 of the above-mentioned article stipulates that this right can be subjected to formalities, requirements, restrictions and penalties prescribed by law, which are necessary in a democratic society for the interest of national security, territorial integrity or public security in order to prevent disorder, protect health or morality, protect the reputations or the rights of others, or prevent the exposure of reports given confidentially or for the protection of the authority and impartiality of courts.

Freedom of speech is confirmed by the most important documents of the United Nations and the Council of Europe. With this in mind, Article 19 of the Universal Declaration of Human Rights of the UN (1948) determines freedom of thought and expression by giving every man the freedom of thinking and expression, which includes the right not to be disturbed because of his opinion, as well as the right to ask, accept and spread information and ideas by any means whatsoever, regardless of the boundaries. A similar definition is written into Article 19 of the International Covenant on Civil and Political Rights of the UN.

Therefore, the right to freedom of speech is a right any person can demand, whether an individual or a legal entity. These are not just persons who express their opinions, but those who publish or broadcast opinions. The right to freedom of political expression, which is a part of the right to the freedom of expression, includes the right to criticize state officials, which the VS Chief of Staff definitely is, as the person who commands and manages the army of Serbia. Namely, political expression includes not only matters related to politics, but to all issues of public importance, as the defendants wanted to point out to through their statements published in the document "Dossier Ljubisa Dikovic", to the effect that there are serious indications that human right violations took place during the war in Kosovo, a part of Serbia.

However, although protected by domestic and international regulations, such expressions can in certain circumstances be justifiably restricted, so that nobody can be exempt from the obligation to obey the criminal code or comply with the civil laws. Among other things, this right is limited for the protection of reputation, that is, of the name or rights of others, which is referred to in Article 46 paragraph 2 of the RS Constitution, as well as Article 10 paragraph 2 of the European Convention on Human Rights, which specifically notes the circumstances when the right to freedom of expression of a person can be limited.

Therefore, the right to freedom of speech includes responsibilities and duties which apply to everyone, including non-government organisations, even when it comes to publishing serious factual charges of public interest. They are especially important when one is referring to the reputation of a certain person or to the act of jeopardizing his rights, and

that is why one insists on the basic obligation to check factual statements that libel a person. The above-mentioned factors imply that before some information is published, its origin, truthfulness and completeness regarding the data on a certain event or person must be checked, since the freedom of public information includes the right to valid, timely and objective information.

The analysis of the disputed text in the document "Dossier Ljubisa Dikovic" determined that the defendants presented serious factual charges, including the following: in 1994 and 1995 the plaintiff took part in the arrests of Muslims whose mortal remains were later found and identified without doubt; starting in May 1998 in the 37th MtBr, military security officers trained groups of criminals and convicted murderers and took them to Kosovo as of July 1998, as volunteers and members of the VJ; the plaintiff Dikovic ordered Captain Dragan Mitrovic and Captain Bora Adzemovic to leave their combat positions together, in one vehicle, instead of individually, as the usual military practice in wartime stipulates, which resulted in killing of the two above-mentioned persons, together with three other soldiers escorting them, when they were ambushed by the KLA. Also, the charges were presented that the plaintiff Dikovic, on 7 March 1999, then the Commander of the 37th MtBr, led a combat team (BG 37), which included 150 volunteers, including dozens of convicted murderers, criminals and war criminals, under the command of Lieutenant-Colonel Slobodan Stosic and Miodrag Djordjevic; that he took part in appropriating the property of Albanians throughout Kosovo; that, during the NATO bombing, with his knowledge thousands of expensive cars, buses, trucks and tractors were transported and sold in Novi Pazar and Raska; that Dikovic kept for himself an expensive Land Rover and a Mercedes 300; that during the NATO campaign, Dikovic seized a herd of about one thousand cattle from Kosovo Albanians.

In the interview published in the daily newspaper "Politika" of 25 January 2012, very serious factual charges were issued by the defendant Natasa Kandic, where she stated that "the plaintiff failed to prevent the crimes he was bound to prevent, and he took part in the ruthless looting of Albanian property."

Therefore, in all the quoted statements that are the subject of the prosecution, the plaintiff was marked as the perpetrator of a punishable deed before any decision of the court had been brought on that matter whatsoever.

In the news of B92 TV dated 24 January 2012, a statement of the defendant Natasa Kandic was released, in which she said: "People who have a dirty past cannot have functions and positions (...) We need new people, who do not have any stains on their professional and personal past regarding the wars and crimes that happened", which contains a value judgment that has to have a verified and reliable factual ground, but also implies charges of perpetrating war crimes.

With the aim of justification of the presented allegations, the court made the difference between factual statements and value judgments, bearing in mind that the facts must be proven, while the truthfulness of the value judgments is not subject to the act of proving. However, even when the statement is a value judgment, as has already been proven, there has to be a sufficient factual ground without which it would be deemed exaggerated.

The truthfulness of the above-mentioned factual charges during this proceeding has not been proven, and the burden of proving the truthfulness of the published allegations lies on the defendants, as regards the burden of proof referred to in the Article 231 of the Law on Civil Procedure.

Namely, the following has been determined on the basis of the evidence in the files, precisely from the Report on the admission of duty of 3 November 1998: the plaintiff assumed the duty of Commander of the 37th MtBr "A", Uzice Corps, Second Army, following the order of the VJ Chief of Staff No. 4-186 of 3 November 1998 on 3 November 1998, and therefore the allegations that, starting from May 1998, any actions whatsoever could have been performed under his command in the 37th MtBr, are false.

The allegations for the acts committed by the plaintiff have not been proven either, and the criminal court is the only place for the settlement and decisions on somebody's guilt or innocence following criminal charges. This is the only way to protect the judicial authority. What is more, Article 32 of the RS Constitution guarantees the right to every individual that the court, established by law, is entitled to publicly debate and discuss whether the doubt that was the cause for starting the proceeding, is grounded or not, as well as the charges against him. As referred to in Article 3 of the Code of Civil Procedure, every person is innocent until his/her guilt is determined by the final court's judgment, and therefore, the state and other bodies and institutions, the media, associations and public figures and organisations are obliged to comply with the rule in such a way that they must not harm the right of the accused by their statements on the accused, on the criminal act and on the proceedings. Also, pursuant to Article 6, paragraph 2 of the European Convention on Human Rights, individuals are entitled to be presumed innocent for any criminal act until they are proved guilty. The act of determining the truthfulness of specific controversial factual charges in a civil proceeding would lead to the unlawful interference by a civil court in the work and jurisdiction of a criminal court. It was because of the fact that it was not possible to prove the truthfulness of the factual charges in a civil proceeding, that the court refused the presentation of the proposed evidence by the defendants by hearing the witnesses regarding the circumstances in the zone of responsibility of the units in the charge of the plaintiff. The complexity of the subject case lies in the fact that it is not possible to prove the truthfulness of the arguable factual charges presented in the document "Dossier Ljubisa Dikovic" in a civil proceeding, which have to be proven, and this is something on which the court must insist on the one hand. On the other hand, the court had to reject the offered proposal for evidence by the defendants, since, if the court had accepted them, it would have exceeded its jurisdiction and thus have ignored the presumption of innocence.

Therefore, the only competent institution for the prosecution of war crimes perpetrators is the Office of the War Crimes Prosecutor. However, this institution had not prosecuted the plaintiff by the conclusion of the main hearing.

Namely, short after the document "Dossier Ljubisa Dikovic" was published on 23 January 2012, the OWCP issued the following statement on 30 January 2012: Lieutenant-General Ljubisa Dikovic has not been registered for any war crime whatsoever nor has he been a participant in events connected to war crimes. After a criminal complaint had been filed against him during this proceeding by the HLC in May 2015, the above-mentioned

Prosecutor's Office stated that it had acted following the criminal complaint, adding that it was checking its allegations in preliminary investigation by gathering the necessary data and information. Since a criminal proceeding against the plaintiff had not started before the end of the main hearing in this proceeding, the proposal by Natasa Kandic for cancellation of the civil proceeding until the final verdict of the criminal proceeding has been made, dated 25 December 2015, was evaluated in the following manner. The court estimated that there was no place for cancellation pursuant to Article 223 of the Code of Civil Procedure, since the criminal proceeding against the plaintiff has not started and it is questionable whether it will start or not; therefore, it is unclear to which proceeding the cancellation would be determined, because of which it has been decided as in paragraph two of the judgment.

In the hearing of evidence it was determined that the aim of publishing the document was to accuse and disqualify the plaintiff as the person who was appointed to the function of the VS Chief of Staff shortly before the publication of the document "Dossier Ljubisa Dikovic", and not only to inform the public of human rights violations in Kosovo during the war activities in Kosovo. The defendant Natasa Kandic, in her statement, confirmed that this was the aim, saying: "...they published the "Dossier Ljubisa Dikovic"...since they thought the plaintiff unworthy to perform any public function and represent any state institution, and not only that of Chief of Staff..." as well as the legal representative of the defendant HLC, Sandra Orlovic, who said: "The announcement of the appointment of the plaintiff as the VS Chief of Staff was the cause of making the report, that is, "Dossier Ljubisa Dikovic"; they also "wanted to point out that a person who has such a war past cannot perform the function he is chosen for, since he is unworthy of it."

Therefore, the document "Dossier Ljubisa Dikovic" was published on the internet, in the public and mass media, with the above-mentioned aim, which exercised and still does exercise a great influence to the public. The above-mentioned document, by its content, is not a neutral analysis of the events in Kosovo during the NATO intervention, but in it, the plaintiff's full name and surname were mentioned, and he was presented as the person responsible for war crimes, and numerous other unlawful activities and punishable deeds. Although the document's footnotes contain the sources which the document is based on, the disputed allegations of the document are not somebody's quotation or the quoted statements of witnesses or other interrogated persons, but they are presented in the form of an accusation, thus violating the presumption of innocence.

The factual charges presented in the above-mentioned document and in the interview given by Natasa Kandic to the daily newspaper "Politika" on 25 January 2012, and the value judgments made in the news of B92 TV on 24 January 2012, certainly harmed the plaintiff's reputation, and his dignity as well, and therefore the court was obliged to provide protection to the plaintiff's reputation.

Since the disputed factual charges whose truthfulness has not been proven by the defendants, although it should have been, imply the commission of certain criminal acts and disobeying the VS rules, and since the value judgment that this person has "a dirty past as regards the wars and the crimes that occurred" has an insulting connotation and harms the human dignity which is inviolable and guaranteed by the RS Constitution, noting that the plaintiff is not being criminally prosecuted, and taking into consideration the presumption of

innocence, the court adopted the plaintiff's request for the compensation for damages, and issued a decision as in paragraph 3 of the judgment, as referred to in Article 154, paragraph 1, Articles 155, 172 and 200 of the Law of Obligations, Article 232 of the Code of Civil Procedure, Article 10 of the European Convention on Human Rights and Article 46 of the Constitution of the Republic of Serbia.

The grounds for the defendant HLC's responsibility to compensate damage to the plaintiff is on the basis of the above-mentioned regulatory provisions, since the damage caused is connected to the actions taken by the defendant, which involved publishing the document "Dossier Ljubisa Dikovic" on its website and delivering it to the media with the aim to spread unverified and unproven allegations.

Since the defendant Natasa Kandic gave a statement to B92 TV and "Politika" daily paper, acting in the capacity of the second defendant, that is, as its executive director, and since the above-mentioned Article 172 of the Law on Obligations stipulates that a legal entity is responsible for the damage its body causes to a third person in performing the third person's functions or regarding them, the court decided as in paragraph 5 of the judgment, establishing that the claim of the defendant is unfounded.

In determining the amount of the adjudicated damages, the court took into consideration the principle of the individualisation of non-pecuniary damages, the value of the violated good, the plaintiff's status in the society, his function, the seriousness of the presented charges, the nature of the expressed words, the general social and political background, the way the defendant HLC performed the violation and the size of the population to which the published material was available. Namely, the plaintiff is a state official, the VS Chief of Staff, the person who is in charge and who manages the Army of Serbia in accordance with the Law and the commands of his superiors. The statements directed at the highest representative of the RS military forces could not be treated by the court in a way such statements would be treated if they were referring to politicians, since what we are dealing here is an institution which has a special role in society and which the plaintiff represents, with regard to obeying the law and preserving order. Therefore, the court dealt with the context of the presented charges and especially with the aim of their presentation. The above is stated because the plaintiff, being the first man of the VS, the warrant of country's security, has to have the trust of the public. It is because of this fact that this trust has to be protected against destructive attacks.

In accordance with the above-stated, the adjudicated amount of compensation is proportional with the aim of the protection of the plaintiff Ljubisa Dikovic's reputation as an ordinary citizen and a state official – the Chief of Staff of the VS, the two being inseparable.

In reaching the decision in the adopting part, the court took into consideration the following – that the essence of the published document "Dossier Ljubisa Dikovic" is a matter of public interest, and that, within the activity performed by the second defendant, is a contribution to determining whether there was really any human rights violations in Kosovo or not, which is something the public is entitled to know. There is also a legitimate right of the public to be informed on facts of public importance, and Article 51 of the RS Constitution guarantees each person to be truthfully, completely and timely informed on such issues. However, as has already been noted, the very right to freedom of speech in the

public interest is not an absolute right. The defendants had the right to report on the plaintiff's professional activities in Kosovo, and that would have an informative value for the public; however, there was not a legitimate interest to present the disputed allegations in the form of an accusation in a situation when the plaintiff was not subjected to criminal prosecution, and the truthfulness of the presented factual charges not proven. The publication of the document "Dossier Ljubisa Dikovic" was precisely aimed at accusing, and not at informing the public. Regardless of the sources of the documents stated in footnotes, the disputed text is not given in the form of quotations of the investigated witnesses and other persons, but rather in the form of accusation. Moreover, the following is disputable: the extent to which the defendants could reasonably consider their sources reliable regarding the presented charges, bearing in mind that all the evidence, including the witnesses' statements, have to be evaluated precisely in relation to any individual criminal act and perpetrator in a legal proceedings.

In deciding on the defendant's claim, the court took into consideration the essentially important role of non-governmental organizations in a democratic society and the activity of the HLC, which is of public interest, since the HLC's task is to provide the public with information on human rights violations in accordance with its duties and responsibilities. However, pursuant to provisions referred to in Article 46 of the RS Constitution and Article 10, paragraph 2 of the European Convention on Human Rights, already mentioned in this judgment, freedom of expression includes not only information and ideas that are favorable, do not insult or which are considered neutral, but those which insult, shock or disturb the country or part of its population. Surely, one must not cross certain set limits, especially regarding the reputation and rights of others, which is why the plaintiff's claim for compensation for damages was adopted because of the emotional distress suffered due to the violation of honour and reputation. The court paid attention to the potential influence of the media in question, and it is generally accepted that the audio-visual media have a more direct and stronger influence than the printed ones.

Apart from the amount of the non-pecuniary damages, the plaintiff is entitled to statutory default interest as referred to in Article 277 of the Law on Obligation amounts, as of the date of issuing the judgment 3 March 2016 until the final payment, which is why the plaintiff's claim is adopted in that part.

The court refused the plaintiff's claim, which exceeded the adjudicated amount of compensation, as unfounded, evaluating it to be set too high. In doing so, the court paid special attention not to favour the claims which are not connected with the nature and purpose of the compensation, in accordance with Article 200 of the Law on Obligations and Article 232 of the Code of Civil Procedure.

In reaching the decision, the court took into consideration all the other allegations and presented evidence, which it did not separately explain, evaluating that they could not influence the issuing of a different decision in this legal matter.

Regarding the statements of the defendants' attorney presented in the claim for the disqualification of the judges of 30 December 2015 that the public was completely excluded from the hearing of 15 September 2015, the court says that the hearing was held that day despite the allegations of the defendants' attorney, adding it was public, as can clearly be

seen from the records of the above-mentioned date. The whole course of the proceeding was public and that can be determined from all the hearing records in the file.

Namely, the public was present at the hearing when the plaintiff was questioned as a party in the proceeding on 18 February 2015, when Ms. Anila Jelasijevic, an assistant to the Embassy of Switzerland, was also present. At the hearing of 19 May 2015, when the defendant Natasa Kandic was questioned as a party in the proceeding, many representatives of the media were also present, which was not noted because of their large number, and yet this fact is not disputed by the defendants' attorney in the claim for disqualification of the judges. The hearing scheduled for 15 September 2015 was held in the presence of Milica Kostic, a legal adviser of the HLC, and Anila Jelisijevic, an assistant to the Embassy of Switzerland. At the hearing of 25 December 2015, when Sandra Orlovic, a legal representative of the HLC, was questioned, the following persons were present as the audience: Milica Kostic, a legal adviser at the HLC, Anila Jelasijevic, an assistant to the Embassy of Switzerland, Marko Milosavljevic and Isidora Ercevic from the Youth Initiative for Human Rights.

Because of the very fact that there were over 20 journalists at the hearing of 19 May 2015 when the defendant Natasa Kandic was questioned as a party in the proceeding, and they were sitting on the courtroom floor and kept entering and leaving the courtroom during the long hearing and thus disturbed the court's work – since it was very hot and stuffy – the public was partially excluded from the hearing of 15 September 2015 pursuant to Article 322 of the Code of Civil Procedure; that is, the number of people allowed in the courtroom was equal to the number of available places in the courtroom, with the aim of having an undisturbed hearing, since the court itself is the party which must maintain order in the courtroom and the court's dignity.

In accordance with the above-mentioned, the parties were entitled to a lawful, equal and fair protection of their rights in the proceeding, as well as a fair trial, which is all in accordance with the Code of Civil Procedure and RS Constitution, despite the statements to the contrary by the defending attorney.

The court brought a decision on the costs of the civil proceeding, written in paragraph 6 of the judgment, pursuant to Article 150, Article 153 paragraph 2, Article 154 and Article 163 paragraph 1 and 2 of the Code of Civil Procedure, which applies to the costs of the plaintiff for making the lawsuit and two explained applications by the attorneys to the amount of RSD 9,000.00, representation at seven held hearings to the amount of RSD 10,500.00 each, access to two hearings which did not take place to the amount of RSD 6,000.00 and RSD 1,900.00 for the tax on lawsuit and tax for judgment to the amount of RSD 34,800.00, which is determined on the basis of the claim of the attorney for the plaintiff, its success in the proceeding, bar the tariff at the time of reaching the judgment and the prosecution tariff at the moment of tax obligation issuance, with statutory default interest as of the execution date until payment, pursuant to provisions of Article 277 and 324 of the Law on Obligations.

Since the court refused the claim of the defendant Natasa Kandic, she is entitled to reimbursement of expenses on behalf of response to the lawsuit and four explained applications by the attorneys to the amount of RSD 11,250.00, representation at seven held

hearings to the amount of RSD 12,750.00, access to one hearing which was not held to the amount of RSD 7,125.00, pursuant to Article 150, Article 153 paragraph 2, Article 154 and Article 163 paragraph 1 and 2 of the Code of Civil Procedure, which is determined according to the value of the dispute and the bar tariff at the time of reaching the judgment; however, the above-mentioned costs are adjudicated to the amount of RSD 77,000.00 according to the claim of the defendant attorney at the hearing of 3 March 2016, when the main hearing was concluded. The above-mentioned decision on the costs includes the fee for response to the lawsuit to the amount of RSD 19,650.00, which is determined according to the prosecution tariff at the moment of delivery of the fee obligation.

Legal remedy

An appeal against this judgment can be made within 15 days of its reception to the Appellate Court in Belgrade via this court.

Judge
Gordana Arandjelovic
Round Seal of First District Court, Belgrade
The accuracy of the engrossment is confirmed by the Administrative Office
Manager

REPUBLIC OF SERBIA
FIRST BASIC COURT IN BELGRADE
Ref. No. P-14100/2013
Date: 28 March 2016

Plaintiff: Ljubisa Dikovic, Belgrade [REDACTED]
Defendant: Natasa Kandic, Belgrade [REDACTED]
Defendant: Humanitarian Law Center, Belgrade, Decanska 12

WARNING ON PAYMENT OF COURT FEES

Tax payer Natasa Kandic, Belgrade, [REDACTED], and others are called to pay the tax of response to lawsuit to the total amount of RSD 19,650.00 within 8 days of the receipt of this warning.

The above-mentioned amount is to be paid to bank account No. 840-29644845-43, First Basic Court in Belgrade, model 97, reference number 82-026-0014100-13-00003, and then, **within the deadline, evidence presented of payment.**

In the payment order **you are obliged** to state the reference number of the court's case by which the payment is made in the section – 'purpose of payment'.

Applicant

Court official

Round Seal of the above-mentioned court