

**TRIALS FOR WAR CRIMES AND ETHNICALLY MOTIVATED CRIMES**

**IN SERBIA IN 2010**

**– Report**

**ANALYSIS OF PROCEDURES AND COURT DECISIONS IN THE CASE OF SUVA REKA**

**IRREGULARITIES AND ABUSE OF POWER IN WAR CRIMES PROCEEDINGS**

**IN THE REPUBLIC OF SERBIA**

**– Report**



**Humanitarian Law Center**

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# Trials for War Crimes and Ethnically Motivated Crimes in Serbia in 2010

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### Introduction

During the year 2010, the Higher Court in Belgrade War Crimes Department (hereinafter referred to as the War Crimes Department) rendered nine first-instance judgments, convicting 13 and acquitting one person accused of criminal responsibility. Belgrade Court of Appeals War Crimes Department rendered seven judgments, finally convicting 21 accused persons<sup>1</sup> and finding three persons not guilty<sup>2</sup>, while first-instance judgments were dismissed in the cases of five accused<sup>3</sup> and those cases returned for retrial. In the *Tuzla Convoy* Case, the Belgrade Court of Appeals started the main hearing and after hearing defence witnesses, the court returned the case to the court of first instance and ordered a new trial before a different trial chamber. In the *Suva Reka* Case, the Court of Appeals confirmed the guilty judgment and the sentence in case of the accused Repanović.

During the year of 2010, the Humanitarian Law Center (HLC) represented injured parties in five cases of war crimes before the War Crimes Departments<sup>4</sup> and in the *Emini* Case before the Higher Court in Niš. HLC's monitors followed main hearing sessions in 12 cases of war crimes before the War Crimes Department<sup>5</sup>, the main hearing in Case *Kušnin*, before the Higher Court in Niš, and three sessions held before the Belgrade Court of Appeals<sup>6</sup>.

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1 *Stari Majdan, Podujevo, Suva Reka, Ovčara-Damir Sireta and Ovčara-Mirosljub Vujović et al* Cases.

2 Case *Suva Reka*.

3 *Bytyqi, Tuzla Convoy, Podujevo and Suva Reka* Cases

4 *Podujevo, Zvornik II, Lovas, Skočići* and *Čuska* cases.

5 *Banski Kovačevac, Medak, Stara Gradiška, Prijedor, Suva Reka/Suharekë – Radojko Repanović, Vukovar, Tenja, Gnjlanska Group, Zvornik III, Beli Manastir, Rastovac* and *Lički Osik*.

6 *Stari Majdan, Ovčara* and *Tuzla Convoy*.

## 1. Main description

On the basis of its direct involvement in trials in the capacity of legal representative to injured parties, and of its trial monitoring in other cases, HLC would single out several characteristic features of war crimes prosecution in Serbia:

### 1.1. The greatest number of transferred cases

Most cases pending before the War Crimes Department relate to war crimes committed against Croat civilians during the armed conflict in Croatia, cases which the Republic of Croatia Ministry of Justice has transferred to the Republic of Serbia Office of the War Crimes Prosecutor (hereinafter referred to as the Office of the War Crimes Prosecutor), because suspects are not accessible to police and judicial authorities of the Republic of Croatia [they have residence in Serbia], and which have been transferred on the basis of the Agreement on Cooperation in Prosecution of Perpetrators of War Crimes, signed between the Republic of Serbia and the Republic of Croatia in 2006. The BiH Ministry of Justice has transferred one case to the Office of the War Crimes Prosecutor, and another trial, also a case of war crimes committed in BiH, was initiated on the basis of the agreement between the Office of the War Crimes Prosecutor and the Supreme Court of the Republic of Srpska, which had convicted the accused, who has residence in Serbia, in absentia. Six cases, transferred from the Republic of Croatia, were completed during the year of 2010, as well as two cases from BiH. These are the cases with a fewer number of victims. Except in Case *Banski Kovačevac*, in which the main hearing consisted of 29 trial sessions; in other transferred cases, main hearings consisted of four to nine trial sessions.

### 1.2. Selective indictments

Among the cases in which investigations were initiated by the Office of the War Crimes Prosecutor, *Lovas* is the strongest prosecution and court case. *Lovas* was the first case in which the Office of the War Crimes Prosecutor filed an indictment against officers of the former Yugoslav Peoples Army (JNA) Case; it was, however, still not against generals, for their personal and command responsibility. The Trial Chamber presided by Judge Olivera Anđelković conducts probative procedure flawlessly. The presiding judge often uses opportunity to examine witnesses of the Office of the War Crimes Prosecutor in detail instead of prosecutors, who are still not very comfortable in their new role [detailed examination of witnesses that they proposed].

### 1.3. Defective investigations

Investigations initiated by the Office of the War Crimes Prosecutor last a very long time. In cases of war crimes committed in Kosovo, it is apparent that the Office of the War Crimes Prosecutor files indictments on the basis of incomplete investigations<sup>7</sup>, it fails to connect events, locations and perpetrators, and the Office of the War Crimes Prosecutor still protects highly-ranking police and military officers from criminal prosecution.

### 1.4. Prosecutors not handling new roles very well

Under new amendments to the Criminal Procedure Code, prosecutors have a primary role in proving indictments. But they are still not active enough when it comes to examining defendants and key witnesses, clarifying inconsistencies in their earlier statements, inconsistencies with statements of other witnesses and defendants, clarifying the context in which a war crime was committed, and presenting the personalities of the accused during, before and after the commission of a criminal act. For this reason, there are a lot of modifications to indictments, sometimes even several days prior to the completion of criminal proceedings. Usually, modified indictments are more lenient towards the accused and result in mild convictions or acquittals.

### 1.5. Political trials

Independent monitors believe that the Office of the War Crimes Prosecutor filed the indictment against Ilija Jurišić for political reasons in order to show the nationalist audience in Serbia that it would not solely prosecute Serbs who committed war crimes, but also perpetrators of war crimes committed against Serbs. During the trial, the trial chamber presided over by Vinka Beraha-Nikićević acted as if it were executing a political assignment. It did not ask the Office of the War Crimes Prosecutor to prove the indictment, but accepted it in its entirety.

### 1.6. Long trials in original cases

In cases which the Office of the War Crimes Prosecutor initiated itself, such as *Zvornik*, *Suva Reka* and *Lovas*, trials last a long time, mainly because they include a great number of victims, requiring examination of a greater number of witnesses and injured parties; and also because organized crime trials are conducted in the same courtrooms as war crimes trials. In violation of legal provisions on the interruption and aborting of a main hearing, trials are often held once a month, and on occasion

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<sup>7</sup> *Suva Reka*, *Bytyqi* and *Ćuška* Cases.

that main hearing is adjourned for a longer period of time. In cases with a larger number of accused, three years may even pass from the opening of the main hearing until the rendering of a judgment.

### **1.7. Inadequate support for witnesses / injured parties and witness protection**

Witness Protection Service in the Higher Court in Belgrade and the Serbian Ministry of Interior Witness Protection Unit<sup>8</sup> [hereinafter referred to as the Unit], which cooperates with witness protection units in Croatia and BiH, and EULEX War Crimes Investigation Unit provide support for witnesses/injured parties. The task of the Court's Witness Protection Service is to wait for witnesses and injured parties/witnesses at the entrance to the building, take them to the room for witnesses, follow them to the courtroom and after the completion of their testimony, follow them out of the building, or, if injured parties/witnesses are from the countries in the region, transfer them to the EULEX Service or Witness Protection Unit. The EULEX Service, on the basis of information about witnesses/injured parties, which it receives from HLC and the Office of the War Crimes Prosecutor, locates and communicates with injured parties in Kosovo, makes travel arrangements for them and follows them during their stay in Belgrade.

Witnesses of Serbian nationality have to make their own travel arrangements, and from the entrance to the building, they receive the same treatment as injured parties/witnesses.

Protected witnesses also participate in war crimes trials, besides witnesses and injured parties/witnesses, and they are being protected by Witness Protection Unit [of the Republic of Serbia Ministry of Interior], pursuant to the decision made by the Witness Protection Commission; however, there have been some disturbing reports regarding the behaviour of this Unit<sup>9</sup>. Information obtained by HLC show that a protected witness in *Case Podujevo II* left the protection programme during the year of 2010 due to the mistreatment and disorientation measures used by the Unit against them. The Unit expelled one protected witness in the case of *Special Police Unit 37<sup>th</sup> Detachment* in July 2010 without any explanation, while another protected witness addressed a number of complaints regarding the behaviour of members of

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<sup>8</sup> law on Protection Programme for Participants in Criminal Proceedings, January 1<sup>st</sup>, 2006

<sup>9</sup> HLC report on irregularities in proecution of war crimes, a confidential document from March 2011.

the Unit and the Office of the War Crimes Prosecutor to the highest institutions of the Republic of Serbia and HLC, but they remained unresolved.

### **1.8. Practice of giving false testimony**

Most witnesses who have been examined do not wish to deliver information they possess about the war crime committed and the perpetrators. The reasons for this are in most cases the involvement of witnesses in the commission of crimes, solidarity with the accused, pressure from family members, Defence Counsel, and persons whose involvement could be revealed; while some witnesses are afraid that their local communities will judge them. The court has no means to force witnesses tell the truth. On the other hand, the fact that no witness has been convicted of giving false statements creates an impression, mainly among witnesses, that the court tolerates the expression of solidarity with the accused.

### **1.9. Rendering lenient convictions**

Unlike the first-instance judgments [*Ovčara Case*] that were rendered, trial chambers in first-instance and second instance trials, render rather lenient jail sentences for extremely serious criminal acts, which has had serious consequences. In determining the duration of jail sentences, trial chambers apply mitigating circumstances like family affairs, financial situation, and the age of the defendant, which are in no way connected with defendant culpability for a war crime. The institution of mitigating circumstances is applied by all courts in the region except for the Court of BiH, where there are no examples of convicted persons being punished more leniently because they pleaded guilty, showed remorse or compassion with victims, or revealed other perpetrators.

### **1.10. Weak defence**

As a rule, war crimes indictees from the ranks of the immediate perpetrators and commanders of the lowest rank are defended by ex officio Defence Counsel. The court pays defence attorneys with a delay of one year, which definitely has an impact on their professional engagement. Apart from a few defence attorneys who prepare themselves seriously for the examination of prosecution witnesses, most attorneys do not prepare themselves even for the examination of their own witnesses. They frequently fail to appear in trial sessions and they substitute for one another, which leads to inconsistent defence. Some of them openly accuse injured parties/witnesses of lying or of being used by legal representatives of victims' family members. In cases in which Attorney Goran Petronijević is Defence Counsel – and he generally defends the highest-ranking police and army officers – he demands that the court expels

Nataša Kandić from the proceedings, even though the law stipulates the right of the injured party to choose their own representative.

### **1.11. Regional cooperation**

Regional cooperation with judicial authorities of Croatia, Montenegro, and Bosnia and Herzegovina, has significantly improved in comparison to the previous years. Thanks to that, in many cases before the War Crimes Department, a number of witnesses have testified directly or via video link from county courts in Croatia or the Court of BiH in Sarajevo. The Agreement on Extradition between Serbia and Montenegro was signed on October 29<sup>th</sup>, 2010, which, among others, provides for extradition in cases of crimes against humanity and other rights protected by international law, including war crimes. Serbia signed a similar agreement with Croatia in June 2010, but this agreement includes only criminal offences from the arena of organized crime and corruption. Still, the problem of trials in absentia in the Republic of Croatia has been resolved by the Croatian Judiciary transferring a number of cases, in which indictees were being tried in absentia, to the Republic of Serbia Judiciary on the basis of the Agreement on Cooperation in the Prosecution of Perpetrators of War Crimes. An agreement on exchanging evidence with the BiH Prosecutor's Office in war crimes cases has not yet been signed.

## **2. Cases in which HLC represented injured parties**

### **2.1. Case *Podujevo*<sup>10</sup>**

On June 15<sup>th</sup>, 2010, the Court of Appeals in Belgrade rendered a judgment by which it established that the Belgrade District Court War Crimes Department made a serious violation of criminal proceedings by the judgment rendered on June 18<sup>th</sup>, 2009 in Case *Željko Đukić et al* because it convicted the accused Željko Đukić only on the basis of testimony given by a protected witness, which is in violation of Article 109d of the Criminal Procedure Code, and it dismissed the first-instance judgment in this part and confirmed the convicting part of the judgment relating to accused Dragan Medić, Dragan Borojević, and Miodrag Šolaja. The repeated trial of the accused Đukić began on July 8<sup>th</sup>, 2010 before the same trial chamber of the Higher Court in Belgrade War Crimes Department. The main hearing lasted for two trial

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<sup>10</sup> Numerous relevant facts were established in a final judgment of Saša Cvjetan, a member of the *Scorpions* police unit, rendered on June 17<sup>th</sup>, 2005 by the Supreme Court of the Republic of Serbia, confirming the first instance judgment rendered by Judge Biljana Sinanović.

sessions, during which the accused Željko Đukić and one witness were re-examined, after which the trial chamber presided by Judge Snežana Garotić-Nikolić<sup>11</sup>, rendered a judgment on September 23<sup>rd</sup>, 2010 finding the accused Željko Đukić guilty and sentencing him to 20 years of imprisonment.

On April 14<sup>th</sup>, 2008, the Office of the War Crimes Prosecutor filed an indictment against Željko Đukić, Dragan Medić, Dragan Borojević, and Miodrag Šolaja because they, as members of the *Scorpions* unit, a reserve unit in the Republic of Serbia Ministry of Interior, killed 14 women and children and seriously wounding five children in Podujevo /Podujevë on March 28<sup>th</sup>, 1999, thus committing a war crime against the civilian population from Article 142 Paragraph 1 of the Criminal Code of the Federal Republic of Yugoslavia.

The first instance trial began on September 8<sup>th</sup>, 2008 before the Belgrade District Court War Crimes Department. 31 days of trial were conducted, during which 34 witnesses were examined, seven of whom were injured parties / witnesses, whose participation was provided by HLC, and two court experts. One witness had the status of a protected witness and he testified under the pseudonym *PI*<sup>12</sup>. The accused Željko Đukić, Dragan Medić and Dragan Borojević were sentenced to 20 years of imprisonment and the accused Miodrag Šolaja to 15 years of imprisonment.

The judgment was based on the testimony of an insider witness Goran Stoparić and the protected witness *PI*<sup>13</sup>, who claimed that the accused were the ones who shot at the women and children, but witness Goran Stoparić did not exclude the possibility that the protected witness fired as well. The trial chamber, however, had confidence that the protected witness did not shoot. The accused and the Defence Counsel tried throughout the trial to compromise the statements given by these witnesses. All other witnesses examined, who are Serbs, claimed that they did not see the alleged incident and that they heard about it from the media when the trial began. The testimony of four surviving children, the injured parties Saranda, Jehona, Lirie, and Fatos Bogujevci, had a great impact on the rendering of the guilty verdict. Their testimony and recognition of defendants Dragan Medić and Miodrag Šolaja was conclusive evidence for the conviction of the two defendants.

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11 Other members of the trial chamber were as follows Judge Vinka Beraha-Nikićević and Judge Rastko Popović, who replaced Judge VEsko Krstajić in January 2010.

12 This protected witness left the protection programme implemented by a Serbian Ministry of Interior unit because he was treated as an “enemy” witness.

13 HLC does not possess information on the fate of witness *PI* after he left the protection programme.

## 2.2. Case *Zvornik II*

A trial chamber presided over by Tatjana Vuković at the Belgrade Higher Court of the War Crimes Department rendered a judgment on November 22<sup>nd</sup>, 2010 finding the accused Branko Grujić and Branko Popović guilty of hostage-taking and inhumane treatment committed on May 27<sup>th</sup>, 1992; of taking hostage 174 Muslims from the village of Divič; of taking hostage approximately 700 Muslims from the villages of Đulići and Klisa and from other villages in the Zvornik municipality on June 1<sup>st</sup>, 1992; and of forcible relocation of 1,649 Muslims from the village of Kozluk. The trial chamber found the accused Popović, the then commander of the Territorial Defence unit in the municipality of Zvornik, guilty of inhumane treatment of civilians detained in the prison located in the building of the misdemeanour court and the *Novi izvor* factory, for assisting the killing of Abdulah Buljubašić aka Bubica in the prison inside the misdemeanour court building, for assisting the killing of at least 27 civilians and infliction of physical injuries on several dozen detainees in the Cultural Centre in the village of Čelopek, and for assisting the killing of at least 100 civilians and physical torture of detainees in the Technical High School in Karakaj [Zvornik], in the period June 1<sup>st</sup>-5<sup>th</sup>, 1992. He was acquitted of the murder of over 200 civilians in *Gero's Butcher Shop* committed on June 8<sup>th</sup>, 1992. The court found them guilty of charges and sentenced the accused Branko Grujić, former Mayor of Zvornik, to six years imprisonment and the accused Branko Popović to 15 years imprisonment.

At the end of the probative procedure on November 8<sup>th</sup>, 2010, the Prosecutor specified the indictment with regard to the liability of the accused Branko Grujić, reducing it to the imprisonment of 174 Muslims from Divič, forcible relocation of Muslims from Kozluk, and imprisonment of approximately 700 Muslims from Đulići and other villages who took refuge in Klisa. That same day, the trial chamber made a decision to release the accused Grujić from detention. The prosecutor founded this significant reduction in the liability of the accused Grujić on the conclusion by a military expert that “the accused Grujić was not in a position to order the use of Territorial Defence or police units”.

In deciding on the duration of the sentence, the court cited the health of the accused, his family affairs, and his age of the accused. This was inappropriate, considering the hundreds of children who were left without their fathers. Despite the great number of victims and the decisive position that the accused had held in the civilian and military authorities in Zvornik, the Presiding Judge failed to substantiate the sentence rendered by the trial chamber, according to which the accused Grujić was

sentenced to the minimum jail term, and the accused Popović was sentenced to imprisonment for a duration much shorter than the maximum sentence. The ruling on the duration of sentences remains unclear and inappropriate also because the trial chamber found the accused guilty of taking hostages and inhumane treatment of them, and it established that the accused consciously failed to take the necessary measures to ensure humane treatment of the detainees, and that they consented to the criminal consequences of this.

Victims' family members who followed the trial on regular basis and testified in the capacity of injured parties were disappointed by the inappropriately lenient punishments handed down to the accused for committing one of the most serious war crimes committed during the armed conflicts in the former Yugoslavia.

The trial of the accused Branko Grujić, Branko Popović, Dragan Slavković, Ivan Korać, Siniša Filipović, and Dragutin Dragičević for the war crime against the civilian population committed in Zvornik began on November 28<sup>th</sup>, 2005. On May 26<sup>th</sup>, 2008, the Prosecutor filed a modified indictment and filed a motion for separation of the trial of the accused Grujić and Popović. The judgment in the case of the accused Slavković, Korać, Filipović and Dragičević was rendered on June 12<sup>th</sup>, 2008, while the separate trial of Grujić and Popović began on September 24<sup>th</sup>, 2008. A total of 53 trial days were held before the judgment was rendered, during which 164 witnesses were examined. Legal representatives of injured parties provided the participation of 14 injured parties/witnesses. Five witnesses had the status of protected witnesses and they testified under pseudonyms and three trial sessions were held in a private session. A medical expert and a court certified forensic expert, who was hired to identify and establish the manner of execution of detained Muslims in Bijeli Potok, as well as a military court expert, were examined.

During the year 2010, a total of 20 trial days were held, during which 21 witnesses were examined, among them eight injured parties/witnesses suggested and provided by HLC, as well as one certified military court expert. Eight victims' family members followed the trial, while 28 victims' family members, and three journalists from the municipality of Zvornik and several journalists from Belgrade, attended the trial session in which the judgment was rendered.

This trial was characterized by the refusal of Serb witnesses to reveal even the slightest part of what they knew about the event. The reason for this was that many persons responsible for this event were still at large and able to influence witnesses. During

the trial, it was noted that many witnesses were involved in the event relevant to the indictment. Statements by these witnesses very often resembled a well-prepared defence case rather than witness testimony. Many witnesses, including those who held high political, military, police and business positions at the time relevant to the indictment, claimed that they heard only years later about the relocation of several thousands of Muslims, their detention, and the killing of several hundred Muslim residents of Zvornik and neighbouring villages. The falsehood of these claims is obvious; in a small environment like Zvornik, in which Serbs and Muslims lived together, it would not be possible not to notice that so many people were missing. Apart from this, the imprisonment and the killing of Muslims were executed in inhabited areas. Witnesses who had been members of the Karakaj and Pilica Territorial Defence units, and who were engaged in guarding Muslims detained in the Karakaj Technical High School Centre and Pilica Cultural Centre, claimed that their only task was not to let the Muslims leave the buildings in which they were detained, and not to prevent members of the Serb paramilitary formations from torturing, humiliating, beating and killing detainees. Since members of these Territorial Defence units were subordinate to the accused, their claims only confirm the indictment in part in which it claims that the accused knew that members of the volunteer units beat and killed prisoners and that they failed to take any measures to prevent this happening. It was proven during the trial that persons holding responsible business positions at the time were involved in this event, alongside members of the Territorial Defence and police, since trucks and buses owned by local businesses were used for the transportation of detained Muslim men, and women and children.

Testimonies of 14 injured parties/witnesses, whose presence in Belgrade was organized by HLC, made a huge impression. Four sons of Đulafera Džinić and two sons, the husband, and the father in law of Šeća Delić from Bijeli Potok were taken away and the husbands of Munavera Jašić, Hanifa Hasanović, Džamila Alić, and Fatima Jašarević were killed. Mevludin Lupić's father and 13 close relatives were detained in Bijeli Potok and killed subsequently; Suvada Selimović's husband and 20 close relatives were detained and killed; Fatimka Mustajbašić's two sons were killed; Amira Omerović's father and brother were killed; Ismeta Okanović's seventeen-year-old son, husband, father-in-law, father, brother and 15 other close relatives were detained in Bijeli Potok and killed; Ismeta Dardagan's son and husband were killed; Ermina Suljić was eight months pregnant in June 1992 when her husband and 14 other relatives were detained and killed in Bijeli Potok. They all said that they had recognized some of their Serb neighbours in Bijeli Potok and identified the accused Grujić and Popović as responsible for the murder of Muslims. They confirmed the

fact that a dozen of old and sick residents of Klisa did not leave the village and that members of the Serb army killed them the same day in their homes, an event not covered by the indictments. Injured party/witness Began Bošnjaković spent two months detained in the Misdemeanour Court building and in the *Novi Izvor* factory and he testified about the responsibility of the accused Popović for the imprisonment, torture, and killings of Muslims in these two facilities.

### 2.3. Case *Lovas*

The highest-ranking officials of the Serb authorities in the village of Lovas in the period October-November, 1991 – Ljuban Devetak, Milan Devčić, Milan Radojčić and Željko Krnjajić, former JNA officers Miodrag Dimitrijević, Darko Perić, Radovan Vlajković and Radosav Josipović, as well as members of the *Dušan Silni* (Dušan the Mighty) volunteer unit, Saša Stojanović, Dragan Bačić, Jovan Dimitrijević, Zoran Kosijer, Petronije Stevanović and Aleksandar Nikolaidis – are standing trial before the Higher Court in Belgrade War Crimes Department for the war crime committed in the village of Lovas in the period from October 10<sup>th</sup> until late November 1991, in which 69 Croat residents of this village were killed.

The Office of the War Crimes Prosecutor filed the indictment on November 28<sup>th</sup>, 2007. The trial began on April 17<sup>th</sup>, 2008 before a trial chamber presided by Judge Olivera Anđelković<sup>14</sup>. In 2010, the main hearing had 46 trial days. 62 witnesses were examined, 44 of whom were injured parties/witnesses, including examination via video link from county courts in Vukovar, Rijeka, and Osijek. Seven of the witnesses examined were commanders in the former JNA and ex officio they were aware of the happenings on the territory of Lovas. The examination of these witnesses did not contribute to establishing the factual background, since they also bear responsibility because of the positions they held at the time, and they were thus careful in trying to protect themselves from criminal prosecution. Eight witnesses from the Valjevo Territorial Defence and three witnesses from the *Dušan Silni* volunteer unit acted in the same manner during examination.

There were a total of 121 trial days; 102 witnesses were examined, 69 of whom were injured parties/witnesses [43 injured parties/witnesses testified via video link]. Since the Defence Counsel of the accused Ljuban Devetak and Dragan Bačić was expelled from the attorneys' register during the trial, and therefore procedural conditions were not met for examining witnesses, six witnesses were re-examined after the new

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<sup>14</sup> Members of the trial chamber were judges Tatjana Vuković and Dragan Mirković.

Defence Counsel was appointed. One characteristic of this case is the fact that one accused [Aleksandar Nikolaidis] presented a number of claims incriminating other accused in his defence case. Injured parties pointed in their testimonies to the special responsibility of the accused local Serbs Ljuban Devetak, Milan Devčić, Milan Radojčić, and Željko Krnjajić, upon whose orders members of the volunteer unit had acted. Injured parties testified that Serb soldiers beat, tortured and killed Croats because they attended the founding celebration of HDZ in Lovas, or because they suspected that their sons were members of Croat armed forces, but also because of personal animosity towards Croats. Most injured parties stated that they left Lovas because they were ordered to, and some left because they feared for their lives and the lives of their families. All injured parties/witnesses recognized the accused Ljuban Devetak as the organizer and the individual responsible for the imprisonment, beating, and killing of Croats in Lovas.

Five victims' family members, sometimes more of them, followed the trial at the HLC organisation.

#### **2.4. Case *Skočiči***

The accused Simo Bogdanović, Damir Bogdanović, Zoran Stojanović, Tomislav Gavrić, and Đorđe Šević<sup>15</sup>, members of the *Simini četnici* [Simo's Chetniks] volunteer unit, are on trial before the War Crimes Department for the war crimes committed on July 12<sup>th</sup>, 1992 in the village of Skočiči [BiH] – torture and killing of 22 Roma from the village of Skočiči, Zvornik, BiH, and the sexual abuse and enslavement of three Roma women, who have the status of protected witnesses in the trial.

The investigation in this case was initiated upon the criminal complaint filed by HLC in 2008. The Office of the War Crimes Prosecutor filed the indictment on April 30<sup>th</sup>, 2010. The trial began on September 14<sup>th</sup>, 2010 before a trial chamber presided by Judge Rastko Popović<sup>16</sup>. By the end of the year of 2010, there were eight main hearing sessions, during which five accused and 20 witnesses were examined, three of whom were injured parties/witnesses. The accused Simo Bogdanović and Đorđe Šević refused to deliver their defence cases or answer questions, while other three accused denied their participation in the commission of the crime.

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<sup>15</sup> At present he serves his jail sentence because of his involvement in the kidnapping and killing of 17 civilians from Sjeverin.

<sup>16</sup> Members of the trial chamber were Vinka Beraha-Nikičević and Snežana Nikolić-Garotić.

Injured party Zijo Ribić, who was seven years old at the time of the incident in which his parents, brother and sister were killed, survived the execution. Injured party witness Agan Šerifović, whose wife and mother were killed, survived because he was at some other place at the time when Simo's Chetniks entered the house in which these Roma people were gathered. Injured party/witness Alija Bajrić's mother, aunt and mother-in-law were killed. Thirteen witnesses who were examined are Serb residents of Skočići, Malešići or the villages in the vicinity of Skočići. They all claimed that they had no direct knowledge of the event and that they heard about the execution of Roma subsequently and indirectly. However, all of them marked members of the Simo's Chetniks volunteer unit, which was under the command of the accused Simo Bogdanović, as perpetrators of this war crime. Four witnesses were examined upon the proposal of Damir Bogdanović's Defence Counsel and they claimed that the accused Damir Bogdanović spend the spring and summer of 1992 in Ruma, that after returning from military service he worked in the *Vegas* casino and that he went to the front line in BiH only in mid August 1992 to visit his wounded father. Testimonies delivered by these witnesses seemed unconvincing and pre-prepared because it turned out that these witnesses could not recall the names of other employees, the time of their employment and absence from work – all facts to which they were testifying in the case of Damir Bogdanović.

## 2.5. Case *Ćuška*

Members of the 177<sup>th</sup> Military Territorial Detachment, Toplica Miladinović, Srećko Popović, Slaviša Kastratović, Boban Bogićević, Zvonimir Cvetković, and Abdulah Sokić, and members of the police Radoslav Brnović and Vidoje Korićanin, and member of the Peć/Pejë Territorial Defence Veljko Korićanin are standing trial before the War Crimes Department for the commission of the war crimes on May 14<sup>th</sup>, 1999 in the village of Ćuška/Qushkë in Kosovo – the killing of 42 civilians, arson, and looting, and relocation of the surviving civilian population. Investigation against another 20 suspects and a number of unidentified perpetrators of this crime is still pending.

The Office of the War Crimes Prosecutor filed an indictment on September 10<sup>th</sup>, 2010. The trial began on December 20<sup>th</sup>, 2010 before a trial chamber presided by Judge Snežana Garotić-Nikolić<sup>17</sup>. Five main hearing sessions were held in December 2010, during which the defendants delivered their defence cases. All defendants denied their involvement in the commission of the crime. The accused Toplica Miladinović,

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17 Members of the trial chamber were Vinka Beraha-Nikičević and Rastko Popović.

Slaviša Kastratović, Zvonimir Cvetković, Vidoje Korićanin and Veljko Korićanin, claimed that they were not in the village of Čuška/Qushkë on May 14<sup>th</sup>, 1999, while other four defendants, Srećko Popović, Boban Bogićević, Radoslav Brnović and Abdulah Sokić, denied this, but they claimed that they did not participate in the killing, arson, looting of houses and relocation of the Albanian population from the village of Čuška/Qushkë.

During the trial, Defence Counsel openly showed intolerance towards legal representatives of injured parties, addressed personal and professional insults to them, and demanded that legal representatives be denied the right to represent injured parties, that the right of the legal representatives to ask questions be limited, that Nataša Kandić, a legal representative of the injured parties, be examined in the capacity of witness, and so forth. Such behaviour by Defence Counsel created an unpleasant atmosphere in which a legal representative of the injured parties, Mustafa Radoniqi, stated that as an attorney from Kosovo, he felt unsafe in the courtroom. The accused Srećko Popović openly displayed animosity towards representatives of the injured parties during his defence case, and representatives Mustafa Radoniqi and Nataša Kandić were prevented from examining him.

After May 14<sup>th</sup>, 1999 when the crime in the village of Čuška/Qushkë was committed, more than 30 Albanian civilians were killed in the villages of Pavljane/Pavlan and Zahać/Zahaq, and there are serious indications that the crimes in these villages were committed by the accused in the *Čuška/Qushkë* Case. In July 2010 HLC filed a criminal complaint with the Office of the War Crimes Prosecutor against identified and unidentified perpetrators of war crimes in these villages, and it also filed a motion for the broadening of investigation; however, the Office of the Prosecutor did not respond to this motion in any way by the end of the year.

## **2.6. Case *Emini***

The Higher Court in Niš, in a trial chamber presided by Judge Mirko Drašković<sup>18</sup>, rendered a judgment on July 7<sup>th</sup>, 2010 finding the accused Miloš Simonović and Dragiša Marković, both members of the Serbian Ministry of Interior, not guilty due to lack of evidence.

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<sup>18</sup> Judge Drašković replaced Judge Radomir Mladenović after the reform of the Judiciary in 2010. Members of the trial chamber were Judge Aleksandar Teodosić and jury judges Ljiljana Parmić, Jasminka Petković and Dragana Lalović.

The accused Miloš Simonović and Dragiša Marković were charged by the indictment filed on June 1<sup>st</sup>, 2006, with the murder of a Kosovo Albanian, Isa Emini, on May 5<sup>th</sup>, 1999 in Priština/Prihtinë. The Prosecution qualified this criminal act as a murder. The trial began on October 8<sup>th</sup>, 2006 and lasted until June 15<sup>th</sup>, 2007 when the District Court in Niš rendered an acquittal. On June 30<sup>th</sup>, 2008, the Supreme Court of Serbia dismissed the acquitting judgment and ordered a retrial, ordering main hearing before a different trial chamber. The accused Marković is serving jail sentence for another criminal offence, while the accused Simonović is on provisional release. 34 trial days have been held so far and 27 witnesses have been examined, including injured party/witness Ramiza Emini and a doctor who is a certified court expert.

The retrial began on January 29<sup>th</sup>, 2010 and by the time the judgment was rendered, July 7<sup>th</sup>, 2010, there were five main hearing sessions, during which four witnesses and the injured party Ramiza Emini were re-examined. All examined witnesses, except for the injured party, are Serbs and they protected the accused. The Court failed to show sufficient will to accept the statement given by the injured party as true, consistent, and logical, and hence found the accused guilty. Instead, it focused on minor inconsistencies in statements given by the injured party and acquitted the accused of criminal liability.

### **3. Cases in which HLC monitored trial**

#### **3.1. Case *Stari Majdan***

On March 26<sup>th</sup>, 2010, the War Crimes Department of the Court of Appeals in Belgrade confirmed the first instance judgment rendered by the Belgrade District Court on December 7<sup>th</sup>, 2009, by which the accused Nenad Malić was found guilty and sentenced to 13 years imprisonment for committing a war crime against the civilian population, pursuant to Article 142 Paragraph 1 of the Criminal Code of the Federal Republic of Yugoslavia.

The main hearing began on September 18<sup>th</sup>, 2009 before a trial chamber presided by Judge Vesko Krstajić. The main hearing lasted for nine days, during which three court experts and nine witnesses were examined, two of whom were injured parties/witnesses. Five witnesses from BiH testified directly. One injured party testified via video link from the courthouse in the town of Narrköping, Sweden.

The Court established that the accused Malić, as a member of the Sixth Krajina Brigade of the Army of the Serb Republic of BiH, killed two Muslims, Husein Grbić and Refik Velić in the evening of December 12<sup>th</sup>, 1992 in Stari Majdan, and attempted the murder of Džemal Hadžalić, in a state of substantially diminished mental competence. After a verbal conflict with Grbić and Velić, initiated when they asked the accused Malić to drive them to the Republic of Croatia, the accused Malić took Husein Grbić in front of the *Fontana* Bar and killed him by stabbing him with a sharp object in the right side of the neck and by firing one bullet into his chest. The accused Malić told him on this occasion that he would kill him to avenge his uncle who had been killed by the Croats. After this, the accused Malić returned to the bar, took Refik Velić outside, and fired a bullet into his head, killing him. The accused Malić took Džemal Hadžalić into the back yard of the bar, where Grbić's and Velić's bodies lay in the shape of the Latin letter L and ordered him to lie down so that he would form the Latin letter U [signifying "Ustasha"]. When Hadžalić refused to do so, the accused punched him in the head, grabbed his head and slammed it into the wall of the Bar. Hadžalić managed to escape while the accused was unbuttoning his clothes to take out his gun.

Nenad Malić was indicted in absentia before the Bihać Cantonal Court (BiH) for the same incident in 2002. At the request of this court, the BiH Ministry of Justice transferred the case to the judicial authorities of the Republic of Serbia, requesting them to take over criminal prosecution of this case.

### **3.2. Case *Ovčara-Sireta***

The War Crimes Department of the Court of Appeals in Belgrade rendered a judgment on September 20<sup>th</sup>, 2010, modifying the first-instance judgment rendered by the Belgrade District Court rendered on June 23<sup>rd</sup>, 2009, thus reducing the jail sentence the accused Damir Sireta had received for the commission of the war crime against Croat prisoners of war at the Ovčara farm, near Vukovar, from 20 to 15 years in jail because of mitigating circumstances,. According to the opinion of the Court of Appeals, the first-instance court did not give adequate importance to mitigating circumstances and it improperly interpreted the aggravating circumstances.

The Court confirmed that the accused Sireta, as a member of the Vukovar Territorial Defence, in concert with other members of the unit, killed prisoners of war brought from the hospital in Vukovar at the Ovčara farm near Vukovar in the period from the afternoon of November 20<sup>th</sup>, 1991 until the early morning of the November 21<sup>st</sup>, 1991. He committed this act by firing his gun from an execution squad in the

place called Grabovo, approximately 1 km away from Ovčara, at prisoners who were brought there on tractors in several groups, thus killing 200 persons, 193 of whom have been identified.

The first-instance trial before the Belgrade District Court War Crimes Department lasted from December 23<sup>rd</sup>, 2008 until June 23<sup>rd</sup>, 2009. Even though during the trial, the accused denied that he was present at Ovčara or in Vukovar, the court ruled that other evidence refuted the defence made by the accused. Two collaborators of justice said in their statements that they saw the accused Sireta at the Ovčara farm on November 20<sup>th</sup>, 1992. Collaborator of justice *One* claimed that he saw him leaving in the direction of Grabovo escorting the first group of prisoners and then saw him return in the company of the convicted Stanko Vujanović, who said at this point “we killed the Ustasha pussies”. Collaborator of justice *One* also said that the accused Sireta was with him in the execution squad and that they fired together at prisoners. Collaborator of justice *Two* saw the accused leaving as escort with the third group of prisoners. On the other hand, defence witnesses were uncertain about the date when they left Vukovar together and went to Novi Sad, but it was possible to conclude from their testimony that it was after November 20<sup>th</sup>, 1991, i.e, after the event in Ovčara, which additionally contributed to the Trial Chamber’s evaluation that defendant Sireta was guilty.

Defendant Damir Sireta was sentenced to 12 years in prison in Croatia in absentia for the same criminal offence. Defendant Sireta was apprehended in December 2006 in Norway on the international arrest warrant and he was extradited to the Republic of Serbia on 08 May 2008<sup>19</sup>.

Motivated by the judgment of the Court of Appeals in Belgrade, HLC issued a press statement saying that the court’s reference to mitigating circumstances as the reason for reducing the prison sentence given to defendant Sireta was inappropriate because he is a criminal who had shown persistence in killing a great number of people, including underage persons.

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<sup>19</sup> The case was separated because the accused Sireta was in detention in Norway at the time when the retrial of other accused began. In this trial, Miroslav Vujović, Stanko Vujanović, Predrag Milojević, Đorđe Šošić, Miroslav Đanković and Saša Radak were finally convicted and sentenced to 20 years of imprisonment, Milan Vojnović and Ivan Atanasijević were sentenced to 15 years of imprisonment, Jovica Perić to 13 years of imprisonment, Nada Kalaba to 11 years of imprisonment, Milan Lančuzanin to years, and Predrag Dragović and Goran Mugoša to 5 years of imprisonment.

### 3.3. Case *Tuzla Convoy*

The War Crimes Department of the Court of Appeals in Belgrade rendered judgment on October 11<sup>th</sup>, 2010, overruling the first-instance verdict from the District Court in Belgrade dated September 28<sup>th</sup>, 2009 and sent the case back for retrial before a changed trial chamber, and released defendant Ilija Jurišić from detention.

The charges against Ilija Jurišić presented in the indictment filed on November 9<sup>th</sup>, 2007, stated that Ilija Jurišić, on 15 May 1992 in Tuzla, as a member of the Muslim-Croat side in the conflict, in the capacity of a duty officer in the Operational HQ of the Public Security Centre (CJB) in Tuzla, with the authority to issue orders to all armed forces of the Muslim – Croat forces on the territory of the Tuzla region, after receiving the order for attack from his superior officer, relayed the order for the attack over the radio, at the moment when the second part of the Yugoslav People's Army was peacefully passing through the Skojevska Street and the *Brčanska Malta* intersection; at least 51 members of the Yugoslav People's Army were killed while at least 50 members of the Army were wounded.

The Jurišić trial started on February 22<sup>nd</sup>, 2008. Since the beginning of the main hearing, there were 32 trial days during which 78 witnesses were examined, including 46 injured parties/witnesses and seven court experts. Among injured parties/witnesses, one protected witness *A* testified, but no injured parties/witnesses living and working in Tuzla testified. On September 28<sup>th</sup>, 2009, the War Crimes Chamber of the District Court in Belgrade, presided over by Judge Vinka Beraha-Nikičević, reached a verdict, finding Ilija Jurišić guilty of charges and sentencing him to 12 years of prison for the criminal offence of using impermissible means of combat, under Article 148, Paragraph 2, Item 1 of the Criminal Code of the Socialist Federal Republic of Yugoslavia. The Court accepted all the allegations of the indictment without verifying some of the important charges, such as whether defendant Jurišić really had the authority to issue orders to all armed Muslim-Croat forces. The Court dismissed the defendant's defence case because it was contrary to the statement of his superior [Meho Bajrić], but did not question witness Budimir Nikolić, who was in the same office as the defendant and Bajrić on the critical day and who could testify as to what really happened and about the role and the authority the defendant had. The Trial Chamber refused to listen to police commanders who were in the field during the critical day, although their statements are of decisive importance to fully determining whether the attack was already in progress at the moment when the defendant relayed the order, as the order stated, and whether it was of defensive nature.

The indictment is based on non-existent evidence: the Agreement on peaceful withdrawal of Yugoslav People's Army units from the territory of Bosnia and Herzegovina to the territory of Federal Republic of Yugoslavia, which was, according to the Prosecution, concluded in Skopje on April 27<sup>th</sup>, 1992 between Bosnia and Herzegovina and the Federal Republic of Yugoslavia. The Extradition Court in London determined that such an agreement does not exist. Prosecutor Milan Petrović, the acting Prosecutor in the Jurišić case, admitted before the court in London that such an agreement had not been signed, but that there was a consensual agreement between the parties to the armed conflict. The report by United Nations Secretary General Boutros Boutros Ghali of May 30<sup>th</sup>, 1992 also refers to the non-existence of the Agreement; it states that the Skopje meeting between representatives of Bosnia and Herzegovina and the Federal Republic of Yugoslavia did not result in an agreement. The Republic of Serbia was additionally compromised as a state respecting the rule of law by the Ministry of Defence, which informed the Court of Appeals in Belgrade that the agreement existed, but that it was not found in the Archive of the Yugoslav Army Headquarters because it was destroyed during the NATO bombing.

The indictment against Ilija Jurišić is vague, uncorroborated, and erroneous. In the indictment it is stated that the defendant was a member of the Muslim-Croat side in the confrontation, in the capacity of duty officer in the Operational HQ of the Public Security Centre of Tuzla, even though there were also Serb members of the Public Security Centre of Tuzla, as was witness Budimir Nikolić, who was together with defendant Jurišić during the critical day. The indictment states that defendant Ilija Jurišić gave the order to attack, but it does not say what the order stated. The defendant told the Court of the order given to "respond to fire with fire", and this was confirmed by witnesses who received the order on the critical day. Although the Prosecutor claims that this was an order for a deceitful plan that had been planned previously, the very nature of the order is defensive.

The Prosecution filed the indictment without previously determining the exact number of the killed and wounded, and reduced the number thereof during the trial without incorporating in it the number of policemen from Tuzla who were killed.

The first-instance court, which sentenced Ilija Jurišić to 12 years of prison, made a number of errors. Among others, it refused the proposal of the Defence to examine witnesses who had knowledge about the activities and authority of defendant Jurišić. Although a great number of witnesses from the injured party were examined, their

testimonies did not help determine the responsibility of defendant Jurišić. The Trial Chamber refused to examine the police commanders who were located in the field on the critical day, even though their testimonies were essential to fully determining whether the attack was already in progress when the defendant issued the order, what exactly the order said, and whether it was a defensive order. The Trial Chamber accepted all the allegations of the Prosecution without verifying some important allegations, such as whether defendant Jurišić really had the authority to give orders to all the armed forces of the Muslim – Croat forces.

On April 21<sup>st</sup>, 2010, the Court of Appeals in Belgrade opened the case and examined new witnesses who testified via video link from the premises of the Court of Bosnia and Herzegovina in Sarajevo. It again examined Meho Bajrić, the former Chief of the Public Security Centre in Tuzla and Mile Dubajić, the former Commander of the *Husinska Buna* barracks in Tuzla. The Court of Appeals decided that claims by these witnesses did not match the evidence exhibited by the first instance court, and ordered that a new trial chamber of the first instance clarify issues of major significance for a legal judgment.

Motivated by the judgment of the Court of Appeals in Belgrade, HLC takes the view that the ordering of a retrial confirms that the first-instance trial against Ilija Jurišić was unjust, but that it also gives an opportunity for the new trial chamber to render a fair judgment<sup>20</sup>.

### **3.4. Case *Banski Kovačevac***

On March 15<sup>th</sup>, 2010, the Higher Court in Belgrade, Department for War Crimes, in the Trial Chamber presided over by Judge Olivera Anđelković, rendered a guilty verdict in respect of the indicted Pan Bulat and Rade Vranešević, sentencing them to prison terms of 15 and 12 year, respectively, for crimes against the civilian population.

The Office of the War Crimes Prosecutor filed the indictment against Pan Bulat and Rade Vranešević on April 16<sup>th</sup>, 2008. They were accused of the killing of six Croat civilians, which they committed as members of the Republic of Srpska Krajina Army during the night of March 22<sup>nd</sup> and 23<sup>rd</sup>, 1992 in Banski Kovačevac, by falsely introducing themselves as soldiers of the III Battalion of the Republic of Srpska Krajina Army who were under orders to transport remaining Croats who had not

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<sup>20</sup> Respective authorities of the Republic of Serbia do not have legal capacities to secure the presence of the accused Jurišić, a citizen of BiH.

fled to safer territory. When Grga Mihalić, Bara Mihalić, Kata Mihalić, Veronika Krupić, Mara Lesar and Mara Đerek gathered in front of the house number 8, the defendant Pan Bulat took a machine gun from one of the soldiers present from the Republic of Srpska Krajina Army and started shooting in the direction of the Croats from a distance of several meters. Rade Vranešević also started shooting and then defendant Bulat shot Grga Mihalić in the head from a pistol because he was still showing signs of life. After this, the bodies of the dead Croats were thrown into a nearby well.

During the main hearing, which started on September 2<sup>nd</sup>, 2008, 29 days of trial were held during which one court expert and 48 witnesses were examined; one of the witnesses was a protected witness and during this testimony the hearing was closed to the public. Witnesses/injured parties Albert Mihalić, Jandre Lesar and Zlatko Mance were directly examined before the Trial Chamber in Belgrade, while the statements by witnesses/injured parties Anka Mance and Andrija Đelek, given before the County Court in Karlovac, were read out in the trial session. The defendants denied their guilt and blamed each other. During the trial, it was noticed that the witnesses – former comrades of the defendants – did not testify honestly and did not state all they knew about the event, in so doing trying to protect the defendant Bulat. Defendant Bulat was in detention while defendant Vranešević was provisionally released during the trial. After the guilty sentence was rendered, the defendants were sent to detention until a final verdict.

In its reasoning for the verdict, the court considered as an aggravating circumstance the fact that the criminal act was committed against elderly persons who did not flee, after which their bodies were thrown into a mined well, and after their removal from the well – an operation in which the entire unit stationed there participated – the bodies were incinerated, which has prevented families from burying their family members until now. The motive for their murder was robbery, because the soldiers hoped to profit from it since the children of the victims lived abroad.

This case was transferred to the Office of the War Crimes Prosecutor by the Republic of Croatia Attorney General's Office on the basis of the Agreement on Cooperation in Prosecuting Perpetrators of War Crimes.

### 3.5. Case *Medak*

The Trial Chamber of the Department for War Crimes on June 23<sup>rd</sup>, 2010 rendered a verdict sentencing Milorad Lazić and Nikola Konjević to three years in prison and defendant Mirko Marunić to two years of prison for war crimes committed against Croat prisoners of war in Medak. Defendant Perica Đaković was acquitted of criminal responsibility.

The main hearing started on November 24<sup>th</sup>, 2009 before the Trial Chamber presided over by Judge Vinka Beraha-Nikićević<sup>21</sup>. Eight days of trial were held in which 12 witnesses and 3 court experts were examined. One injured party and one witness testified via video link from the County Court in Rijeka. The defendants denied committing the criminal offence even after facing the injured party Mirko Medunić, who identified them during the main hearing.

The Court established that on September 3<sup>rd</sup>, 1991 Mirko Medunić was apprehended on the way to Bilaj [Croatia], and that after surrendering his weapons he was taken to the police station in the renovated *Kod Bose* restaurant in Medak, where – during the period from September 3<sup>rd</sup>, 1991 to September 8<sup>th</sup>, 1991 – defendants Lazić, Marunić and Konjević, in concert with other unidentified persons, during and after interrogation beat him day and night with their hands, legs, batons, wooden sticks, cut and stab him with knife, causing him unbearable pain and fell unconscious several times.

The Office of the War Crimes Prosecutor dropped the criminal prosecution of Nikola Vujnović, explaining that the contribution of defendant Vujnović to the commission of the criminal offence was negligible because he did not beat the injured party, but was instead present at the scene for a short period of time during the abuse of Mirko Medunić. The injured party Medunić could not state which of the two defendants Vujnović or Đaković beat him up and which one was sitting on his knees. After testimony from two witnesses from Germany, who stated decisively that during the critical period, Vujnović was in Germany where he practiced wrestling at the athletic club Nürnberg 04, the Prosecutor dropped criminal prosecution of Nikola Vujnović.

In the reasoning related to the prison sentence, Judge Vinka Beraha-Nikočević stated that mitigating circumstances for defendant Lazić included the fact that he had not been convicted in a criminal case before; that mitigating circumstances for Marunić

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21 Members of the trial chamber are Judge Snežana Nikolić-Garotić and Judge Rastko Popović.

were his family and financial situation; and in the case of defendant Konjević, that he was a family man who had not been convicted in a criminal case before.

In the Lazić case, the Judge stated that aggravating circumstances were his exceptional cruelty during the execution of the criminal offence, and for Marunić, an earlier conviction for stealing lumber materials and inflicting minor physical injury. Even though the law stipulates that the Court can decide on a prison sentence lower than the minimum prescribed by the law [five years for a war crime] when it is determined that highly mitigating circumstances suggest even a reduced sentence may achieve the purpose of punishment; in the case of these defendants, this provision could not be applied. Namely, that the lack of previous convictions, family and financial affairs did not constitute highly mitigating circumstances, while on the other hand, the aggravating circumstances, especially the earlier convictions, excluded the possibility of reducing the sentence below the minimum prescribed by the law.

The criminal trial of the same accused was held before the County Court in Gospić [Croatia] in absentia, in which the final verdict was rendered in 1996. Defendants Lazić, Đaković and Konjević were each sentenced to eight years of prison, while defendants Vujnović and Marunić were sentenced to six years of prison.

This case was transferred to the Office of the War Crimes Prosecutor by the Republic of Croatia Attorney General's Office on the basis of the Agreement on Cooperation in Prosecuting Perpetrators of War Crimes.

### **3.6. Case *Stara Gradiška***

The Trial Chamber of the Department for War Crimes, presided over by Judge Vinka Beraha-Nikićević, rendered the verdict on June 25<sup>th</sup>, 2010 sentencing defendant Milan Španović to five years of prison for criminal offence of war crime against civilian population according to Article 142. of the Criminal Code of the Federal Republic of Yugoslavia.

The Office of the War Crimes Prosecutor filed an indictment against Španović on September 15<sup>th</sup>, 2009. The main hearing started on September 17<sup>th</sup>, 2009. Six days of trial were held, during which eight witnesses and two court experts were examined. Two witnesses testified via video link from the County Court in Zagreb.

The Court established that on an unknown day in the period from early October 1991 until late January 1992, defendant Španović, as a member of the Territorial

Defence of the Serb Autonomous Region of Krajina, in the premises of the prison in Stara Gradiška [Croatia], first ordered the injured party Đuro Bogunović to take off his shoes and to turn towards the wall, and then started rubbing his head against the wall with up-and-down movements and then put his hand in his mouth, pulling out his teeth and gums; in concert with another unidentified person, he ordered the injured party Luka Filipović to put his hands behind his back, spread his legs and face the wall. After that he started hitting him with a chain, an unidentified person beat him with a baton, and then both of them grabbed Filipović's hair and hit his head against the wall several times. In concert with an unidentified person, he ordered the injured party Josip Kvočić to put his hands behind his back, spread his legs and lean his head against the wall. After that they started kicking him on both sides of his body until he fell to the floor, and then they started stamping on him. When he got up after they ordered him to do so, they continued beating him. The injured party fell down and got up again twice in the mean time.

In its reasoning for the judgment, the Court stated that it did not believe the defendant, who had during the investigation denied all the acts he was charged with. Then, at the main hearing, he stated that he hit injured parties Bogunović, Filipović and Kvočić several times at the prison in Stara Gradiška; he then changed his statement and said he only pushed the injured parties and did not hit them. While briefly reasoning the judgement, Trial Chamber Presiding Judge of Vinka Beraha-Nikičević stated that the Trial Chamber trusted the injured parties, whose statements she described as consistent and precise. The Court did not accept the defendant's defence that during the time of the assaults he was not a member of the Territorial Defence.

On November 17<sup>th</sup>, 1993, the County Court in Sisak sentenced Milan Španović to 20 years of prison for war crime, harassment, torture, expulsion of civilians and burning of their property in the villages of Maja and Svrčica in Glinsko Polje. Španović was in Great Britain from 1998 until he was traced in 2006, when he received a court warning for shoplifting at a shop in the town of Sutton.

This case was transferred to the Office of the War Crimes Prosecutor of the Republic of Croatia Attorney General's Office, on the basis of the Agreement on Cooperation in Prosecuting Perpetrators of War Crimes.

### 3.7. Case *Prijedor*

The Trial Chamber of the Department for War Crimes of the Higher Court in Belgrade rendered a verdict on October 1<sup>st</sup>, 2010 sentencing Duško Kesar to 15 years imprisonment for war crimes against the civilian population in Prijedor [Bosnia and Herzegovina].

The Prosecution filed the indictment on December 11<sup>th</sup>, 2009. The trial started on March 5<sup>th</sup>, 2010 before the Trial Chamber presided over by Judge Vinka Berahaničević<sup>22</sup>.

During the eight trial days, eight witnesses and one court expert were examined. Three witnesses testified via video link from the Court of Bosnia and Herzegovina in Sarajevo. The Trial Chamber determined that during the night between March 30<sup>th</sup> and 31<sup>st</sup>, 1994, the defendant, as a member of the Republic of Srpska reserve police unit, in concert with Drago Radaković, Draško Krndija and Radoslav Knežević, also members of the same armed formation – acting by a prior agreement to go and kill Muslims – went to the house in Petar Preradović Street Number No. 29 in Prijedor where Faruk Rizvić lived with his family. Draško Krndija, and the defendant threw a grenade at the facade of the house, under a window. Unsatisfied with the effects of the blast, Draško Krndija planted plastic explosive on the same window and blew it up. Shortly afterwards, policemen Radoslav Knežević and Dragan Gvozden arrived on the scene and met the extremely frightened inhabitants of the house. On exiting the house, they met defendants Kesar, Krndija and Radaković. Knežević told them not to bother the inhabitants before the two of them left the scene. After that, defendants Kesar, Krndija and Radaković entered the house where they found Faruk and Refika Rizvić and Faruk's sister Fadila Mahmulji. They killed them by hitting them with blunt objects and a sharp knife.

In this case, too, the Presiding Judge of the Trial Chamber referred to mitigating circumstances: lack of previous convictions, family affairs and the unemployment of the defendant.

The Supreme Court of the Republic of Serbia in 2006 rendered final judgment on Drago Radaković, Draško Krndija and Radoslav Knežević by sentencing them to a total of 50 years in prison. As Duško Kesar, a resident of Novi Sad, had obtained citizenship of the Republic of Serbia, he was unavailable to the organs of the Republic

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<sup>22</sup> Members of the trial chamber are Judge Snežana Nikolić-Garotić and Judge Rastko Popović.

of Srpska. The Office of the War Crimes Prosecutor of the Republic of Serbia filed an indictment against Duško Kesar on the basis of the same evidence which the Supreme Court of the Republic of Serbia used as the basis for its judgment.

### **3.8. Case Vukovar**

The Trial Chamber of the Department for War Crimes, presided by Judge Snežana Nikolić-Garotić, sentenced Stanko Vujanović to ten years of imprisonment on November 1<sup>st</sup> 2010 for committing war crimes against the civilian population of Vukovar. As the defendant had been sentenced to 20 years imprisonment in the first-instance judgment in the case *Ovčara*, the Trial Chamber sentenced him to a common term of 20 years imprisonment.

The Office of the War Crimes Prosecutor filed the indictment on March 31<sup>st</sup>, 2010. The main hearing started on May 20<sup>th</sup>, 2010<sup>23</sup>. Four days of trial were held, in the course of which four witnesses and one court expert were examined. Two witnesses testified via video link from the County Court in Vukovar. The Court determined that, on the afternoon of September 14<sup>th</sup>, 1991, defendant Vujanović – as a member of Territorial Defence Petrova Gora under the command of Srem-Mitrovica Brigade of the Yugoslav People's Army, and as part of the operation for unblocking the Yugoslav People's Army barracks in Vukovar – wearing uniform and bearing arms, together with an unidentified armed man in uniform, entered the basement of a house owned by a Croatian family called Sever in *Drugog Kongresa KPJ 32 Street*, brought Ivan Sever and Adam Luketić out using a firearm as a threat, and ordered the unidentified man to stay in front of the basement and to prevent Blaženka Sever, who remained locked up with Rožo Luketić and Mario Kotreb, from coming out. The defendant then took Ivan Sever and Adam Luketić and executed them with several bullets in the basement garage. When Blaženka Sever heard the shots, she tried to exit the basement but the unidentified person threw a hand grenade, which killed Roža Luketić and Mario Kotreb and seriously wounded Blaženka Sever.

The Court believed the witness/injured party Blaženka Sever, who stated clearly and convincingly that she recognized the defendant, and that he had a green uniform, slightly longer hair and a black beard, and a gun in his hands, as well recognizing his voice when he ordered the unidentified man not to let her go out. She said she had known defendant Vujanović since early childhood, as they lived as neighbours and she worked together with his parents, and she had no reason to falsely accuse him. The

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23 Members of the trial chamber were Judge Vinka Beraha Nikićević and Judge Rastko Popović.

injured party stated that at that time, her husband Ivan Sever carried weapons and was going to frontline positions and that he was a member of Croatian armed forces. However, she said that in this specific situation, Sever was hiding in the basement in civilian clothes and without weapons, and as such was not military personnel.

This case was transferred to the Office of the War Crimes Prosecutor by the Republic of Croatia Attorney General's Office on the basis of the Agreement on Cooperation in Prosecuting Perpetrators of War Crimes.

### **3.9. Case *Tenja***

The Trial Chamber of the Department for War Crimes of the Higher Court in Belgrade sentenced Darko Radivoj on November 17<sup>th</sup>, 2011 to 10 years of imprisonment for war crimes against prisoners of war in Tenja [Croatia]. The Military Court in Osijek sentenced defendant Radivoj to 12 years in jail for committing the criminal offence of terrorism on the basis of Article 236 of the Criminal Code of the Republic of Croatia. According to the judgment of the County Court in Osijek in 1998, and on the basis of the Law on General Amnesty, the procedure for implementing the sentence was aborted.

The Office of the War Crimes Prosecutor filed the indictment against Darko Radivoj on March 11<sup>th</sup>, 2010. The trial started on May 6<sup>th</sup>, 2010 before the Trial Chamber presided by the Judge Rastko Popović<sup>24</sup>. Seven witnesses were examined during the five days of trial. Four witnesses testified via video link from the County Court in Osijek. The Court established that on November 20<sup>th</sup>, 1991, the defendant, as a member of the Serb police in the Territorial Defence of Tinja, killed Marjan Pleteš, a member of the 130<sup>th</sup> Brigade of the Croatian Army, who was first wounded and then detained. Defendant Radivoj, in concert with Branko Stjepanović, also a member of the police, took Marjan Pleteš out of the outpatient clinic in Tenja in order to transport him to the command post in Bobota. During transportation, defendant Radivoj took Pleteš out of the vehicle near the cemetery in the town of Čelije and fired a burst from a machine gun, inflicting injuries to the head and body which caused his death.

In the reasoning of the judgment, the Court stated that they did not believe that he never saw Pleteš. The Trial Chamber placed trust in witness Branko Stjepanović, even though his testimonies in the investigation conducted in 2003 and 2009 and during

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<sup>24</sup> Members of the trial chamber are Judge Vinka Beraha Nikićević and Judge Snežana Nikolić-Garotić.

the main hearing in 2010 were not consistent in many parts, but are consistent in those parts containing conclusive facts about who killed the injured party Pleteš, when and where.

This case was transferred to the Office of the War Crimes Prosecutor by the Republic of Croatia Attorney General's Office on the basis of the Agreement on Cooperation in Prosecuting Perpetrators of War Crimes.

### **3.10. Case *Gnjilane Group***

The case against 17 indicted Albanians from Serbia started on September 23<sup>rd</sup>, 2009 before the Trial Chamber of the District Court in Belgrade presided by the Judge Snežana Nikolić Garotić<sup>25</sup>. The indictment of August 11<sup>th</sup>, 2009 filed by the Office of the War Crimes Prosecutor charged the accused with the following: during the period from June to December 1999, as members of the KLA, after one of their units was stationed on the territory of the operational zone so called *Karakak* [territory of the municipalities Gnjilane/Gjilan, Vitina/Viti, Kosovska Kamenica/Kamenicë and Novo Brdo/Novobërdë, Kosovo] in early June 1999, with the unit's command post located at the building of the Yugoslav People's Army Centre in Gnjilane/Gnjilan and the rest of the unit's members, about 100 soldiers, stationed in the building of the high school dormitory, they consciously and willingly ordered and committed acts of unlawful detentions, inhumane treatment, torture, rape, killings against Serb and other non-Albanian civilians and some Albanian civilians, and caused physical injuries, inflicted great suffering, and looted property. At least 34 persons are still regarded as missing while at least 153 were unlawfully detained, tortured and then released. In doing this, the accused committed the criminal offence of a war crime against a civilian population from Article 142, Paragraph 1, of the Criminal Code of the Federal Republic of Yugoslavia in relation to Article 22, acting in complicity.

In 2010, a total of 35 trial days were held during which 39 witnesses, including 23 injured parties/witnesses, collaborator of justice 1, and one court expert, were examined. During the total of 50 trial days that were held, a total of 39 witnesses were examined, including 21 injured parties/witnesses. During the examination of the protected witness and the collaborator of justice, the trial was held in a private session while during the examination of certain witnesses special protection measures were applied, such as placing a screen between the courtroom and the place where the audience was seated. The witnesses voices were also distorted.

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25 Members of the trial chamber are Judge Vinka Beraha Nikićević and Judge Rastko Popović.

Defendants Agush Memishi, Samet Hajdari, Faton Hajdari, Ahemt Hasani, Nazif Hasani, Ferat Hajdari, Kamber Sahiti, Selimon Sadiku and Burim Fazliu pleaded not guilty. Defendants Ferat Hajdari and Kamber Sahiti opted for a silent defence.

The defendants stated that during apprehension and immediately before interrogation by the police and in the investigative judge's office, they were beaten up and harassed and thereby forced to say things that were not true and to sign statements with content that they did not say. In light of this, a person who was interpreter for some of the accused during police interrogation was examined in the capacity of witness. He said that during the interrogation, everything he translated was written down in the interrogation minutes – every question, answer or statement. When the interrogation was finished, the records were read out to the suspects if they asked for that to be done. In the end, the suspects signed the records without being coerced. Collaborator in justice *Božur 50* described in detail the crimes that had been committed and the role of each of the accused, while injured parties/witnesses *C1* and *C2* convincingly and movingly described what had happened to them and which of the accused they connected to the events in question. In photos from a photo album shown to him, witness Milan Simonović recognized the faces of people whom he used to see in Gnjilane/Gjilan during and after the bombing in 1999. He said that he saw these faces on the street and in the bar, and added that they wore uniform or civilian clothes. Among them he recognized defendants Faton Hajdari and Agush Memishi. Protected witness *B1* recognized Nazif Hasani as the person who arrested him at the bus station in Gnjilane/Gjilan.

In November 2010, the Trial Chamber adopted a decision separating the trial of Shefqet Musliu, Sadik Aliu, Idriz Aliu, Shemsija Nuhium, Ramadan Halimi, Fazli Ajdari, Rexhep Aliu and Shaqir Shaqiri because they are at large. In the separated trial conducted against them, 10 witnesses/injured parties were examined, but their testimonies were admitted as evidence in the main hearing against the detained defendants. On November 11<sup>th</sup>, 2010, the Trial Chamber decided that the trial of those defendants who are at large should be sent back to the investigation phase and that the investigative judge should examine all the injured parties/witnesses mentioned in the indictment.

During the trial, defence counsel delivered speeches, insulted injured parties/witnesses and interrupted other participants during their testimonies. The presiding Judge warned Defence Counsel Marko Kastratović and Zdravko Krstić on several occasions, but the warnings did not have any effect on their behaviour. Protected

witness C2 was visibly upset during her testimony, she was crying, sobbing and shaking. Defence Counsel Zdravko Krstić and Marko Kastratović told her that she was a prepared witness who was reading out her testimony and that someone was helping her do so. Because of this, the presiding judge fined them the amount of 200,000 RSD for violating the dignity of the court and for failing to comply with the presiding judge's orders to maintain order in accordance with Article 299, Paragraph 1 of the Criminal Procedure Code.

After the defendants' closing arguments on December 29<sup>th</sup>, 2010, the Trial Chamber released defendants Ahmet Hasani, Nazif Hasani, Ferat Hajdari, Kamber Sahiti and Burim Fazliu from detention, explaining that there was no longer any reason to detain them further. The defendants were forbidden to leave their places of residence without the Court's consent and they were ordered to report to a police station regularly. Defendants Agush Memishi, Faton Hajdari, Sameu Hajdari and Selimon Sadiku, whom collaborator in justice Božur 50 held most to blame, were remanded in detention, where they had been since December 29<sup>th</sup>, 2010. Judgment should be rendered in early 2011.

### **3.11. Case Zvornik III**

The Trial Chamber of the Department for War Crimes of the Higher Court in Belgrade rendered a decision on May 13<sup>th</sup>, 2010 joining the procedure against the defendants Goran Savić and Saša Čilerdžić and the procedure against defendant Darko Janković aka *Pufća* for the criminal offence of a war crime against the civilian population under Article 142, Paragraph 1 of the Criminal Code of the Socialist Federal Republic of Yugoslavia in relation to Article 22 of the Criminal Code of the Socialist Federal Republic of Yugoslavia. After this decision, on September 10<sup>th</sup>, 2010, the Office of the War Crimes Prosecutor specified the indictment. All three defendants are charged with war crimes committed during the period May-July 1992 against Muslims detained at the *Ekonomija* agricultural cooperative, the *Ciglana* factory in Zvornik, and the *Cultural Centre* in Čalopek.

The trial began on October 21<sup>st</sup>, 2010. The presiding judge was Judge Tatjana Vuković<sup>26</sup>. By the end of 2010, two trial days were held, during which the accused were examined, as were three injured parties/witnesses assigned the pseudonyms *One*, *Two*, and *Three*. The Injured parties/witnesses described in detail the torture and

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26 Members of the trial chamber were Judge Dragan Mirković and Judge Olivera Anđelković.

killings of detainees in the Čelopek *Cultural Centre*, and all three of them recognized the accused Janković in the courtroom.

The trial of the accused Savić and Čilerdžić began on September 4<sup>th</sup>, 2008 before the War Crimes Chamber of the District Court in Belgrade presided over by Judge Tatjana Vuković. Eleven trial days were held before this case was joined with the case against the accused Janković, and during this time 11 witnesses were examined, two of whom had already been convicted in a separate case K.V. 5/08 [Ivan Korać and Dragan Slavković]. Five protected witnesses were among the witnesses who were examined. The examination of protected witnesses *U* and *F* was conducted in private session.

The accused Savić and Čilerdžić are on provisional release and the accused Janković is in detention. The accused Savić claims that he was never at *Ekonomija* or *Ciglana*, but that he had heard that detained Muslims were taken to *Ekonomija*. The accused Čilerdžić claimed in his defence case that he had heard of the prison in *Ciglana*, but that he had never been there. The accused Janković stated that during the time when he worked at *Ciglana*, no crimes were committed, but he was not able to explain how it was possible that a number of witnesses recognized him as the person who tortured and abused them.

In a separated trial for the crime committed in Zvornik, the Supreme Court of Serbia rendered a guilty judgment on April 8<sup>th</sup>, 2009 sentencing the accused Dragan Slavković aka *Toro* and Ivan Korać aka *Zoks* to 12 and 9 years of imprisonment respectively. The Supreme Court of Serbia modified the first-instance judgement rendered by the District Court in Belgrade in that part relating to the ruling on the duration of sentence, under which the accused Slavković had been given 15 years in prison and the accused Korać 13 years in prison. The same judgment confirmed the first-instance judgment in that part relating to the accused Siniša Filipović aka *Lopov*, who was sentenced to three years imprisonment, and in the part relating to the accused Dragutin Dragičević, who was acquitted. All those convicted were volunteers from Serbia, whose arrival in Zvornik was organized with the knowledge and support of the Serbian Ministry of Interior<sup>27</sup>.

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<sup>27</sup> Separate case was conducted against Branko Grujić and Branko Popović, who were found guilty in a judgment rendered by the trial chamber of the War Crimes Department on November 22<sup>nd</sup>, 2010. The accused Branko Grujić was sentenced to six years of imprisonment and the accused Branko Popović was sentenced to 15 years of imprisonment.

### **3.12. Case *Beli Manastir***

The trial of the accused Zoran Vukšić, Slobodan Strigić, Velimir Bertić and Branko Hrnjak for committing a criminal act of war crime against a civilian population pursuant to Article 142 Paragraph 1 of the Criminal Code of the Federal Republic of Yugoslavia in relation to Article 22 of the Criminal Code of the Federal Republic of Yugoslavia began on October 1<sup>st</sup>, 2010 before a trial chamber of the War Crimes Department presided over by Judge Dragan Mirković<sup>28</sup>.

The accused have been charged with the fact that in the period from August until the end of 1991, as members of the Special Operations Unit of the Police Armed Forces of the Serb Autonomous Region of East Slavonia, Baranja and Western Srem, committed unlawful apprehensions and detention of Croat civilians and other non-Serbs, committed murders, inflicted physical injuries, intimidation, terror, torture and inhumane treatment over a broad territory of the municipality of Beli Manastir [Croatia]. The accused Vukšić is in detention, while the other three accused are on provisional release. The accused Zoran Vukšić and Velimir Bertić deny committing a criminal act, while the accused Slobodan Strigić and Branko Hrnjak have admitted that they were present when the Čičak family was killed, accusing defendant Vukšić of carrying out this act.

By the end of 2010, seven trial days had been held, during which 14 witnesses were examined, ten of whom were injured parties/witnesses. All injured parties/witnesses are Croats who are citizens of the Republic of Croatia.

### **3.13. Case *Rastovac***

The trial of the accused Veljko Marić for committing the criminal act of a war crime against Serb civilians began on October 7<sup>th</sup>, 2010 before a trial chamber of the War Crimes Department presided over by Judge Rastko Popović<sup>29</sup>.

The Office of the War Crimes Prosecutor filed an indictment against Veljko Marić on August 12<sup>th</sup>, 2010. He has been charged with the fact that on October 31<sup>st</sup>, 1991, as a member of Croat Armed Forced Grubišno Polje 77<sup>th</sup> Independent Battalion, during the operation *Otkos 10* i.e. the cleaning of the village of Rastovac, wearing uniform and bearing arms, he entered the house of the Serb family Slijepčević, and fired a number of bullets into Petar Slijepčević, in the presence of his wife Ana. During

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28 Members of the trial chamber are Judge Tatjana Vuković and Judge Olivera Anđelković.

29 Members of the trial chamber are Judge Snežana Nikolić-Garotić and Vinka Beraha-Nikićević.

2010, the main hearing lasted for two trial days, during which three witnesses were examined, including one injured party/witness.

In the meantime, the Republic of Croatia filed an extradition request for Veljko Marić and the Office of the War Crimes Prosecutor filed a new investigation request against Marić. As a result, the main hearing was adjourned for an indefinite period of time, i.e. until completion of the investigation.

### **3.14. Case *Lički Osik***

The trial of the accused Čedo Budisavljević, Mirko Malinović, Milan Bogunović, and Bogdan Gruičić for committing the criminal act of war crime against a civilian population pursuant to Article 142 Paragraph 1 of the Criminal Code of the Federal Republic of Yugoslavia began on October 4<sup>th</sup>, 2010 before a trial chamber of the Department for War Crimes presided over by Judge Vinka Beraha-Nikićević<sup>30</sup>.

The Office of the War Crimes Prosecutor filed an indictment on June 28<sup>th</sup>, 2010 charging the accused with the fact that in the first half of October 1991, the accused, as members of the Serb Autonomous Region of Krajina Ministry of Interior and Teslingrad Territorial Defence unit, arrested Mane Rakić, his children Milovan, Dragan, and Radmila on suspicion of possessing a radio communication system and of cooperating with Croatian armed forces; that pursuant to an agreement with the accused Malinović and Bogunović, the accused Budisavljević, went to the house of Lucija Rakić in the night between October 10<sup>th</sup> and 11<sup>th</sup>, 1991; that the accused Budisavljević killed her with a firearm while the other two kept watch, after which all three of them incinerated Lucija's body and set her house on fire. Several days later, the four accused, by prior agreement, handcuffed four members of the Rakić family who were locked inside police premises and took them to the *Golubnjača* pit, where they shot at them from firearms, killing them, and subsequently threw their bodies into the pit.

The main hearing began on October 4<sup>th</sup>, 2010. There have been seven trial days, during which five court experts and 13 witnesses were examined, five of whom were injured parties/witnesses. One witness from Croatia was directly examined. Except for the accused Budisavljević who admitted commission of the crime, the other accused denied it. Defendant Malinović claims that he was severely wounded after the critical event and that he lost his memory as a consequence, while the accused

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30 Members of the trial chamber are Judge Snežana Nikolić-Garotić and Judge Rastko Popović.

Bogunović and Gručić allege that they were present at the scene of the crime but that they did not fire at the Rakić family members.

The Republic of Croatia Attorney General's Office transferred this case to the Office of the War Crimes Prosecutor on the basis of the Agreement on Cooperation in the Prosecution of Perpetrators of War Crimes.

### **3.15. Case *Kušnin***

The retrial of the accused Danilo Tešić and Mišel Serega for committing the criminal act of a war crime against a civilian population is taking place before a trial chamber presided over by Judge Dijana Jaković at the Higher Court in Niš. The indictment charges them with the fact that on an undetermined day in early April 1999, in the village of Kušnin/Kushnin in Kosovo, they participated in the murder of two Albanian civilians. The accused Mančić ordered the accused Tešić, together with another soldier, to kill two men who had been brought to him as Security authority chief immediately before he issued the order. The accused Tešić relayed the order to the accused Radivojević and on the basis of that order, he and the accused Seregi took brothers Miftar and Selman Tahiri from the village of Kušnin/Kushnin in the direction of Prizren. Some four kilometres away from the place where their unit was stationed, they killed these men with their automatic rifles and incinerated the bodies.

During the (first) first-instance trial, the accused Tešić and Seregi admitted committing this criminal act. The trial was completed with the rendering of a guilty verdict, but the Supreme Court of Serbia dismissed this judgment because the bodies were not identified and because the Supreme Court exhibited one piece of evidence outside the main hearing. The retrial began on June 6<sup>th</sup>, 2007, but due to a change in the trial chamber during the year of 2010, the main hearing had to start over again. Two main hearing sessions had been held as of the end of the year, during which the accused and one witness were examined. All the accused are on provisional release. During the repeated trial, all the accused denied committing the crime. The accused Tešić and Seregi are claiming that they let the Temaj brothers go off in the direction of Prizren and that they boasted of killing these men to win prestige in their unit. Miftar Temaj's body was identified in 2004 on the basis of DNA analysis, while the body of Selman Temaj is still being searched for. A documentary "When you shoot, shoot better" by Jasna Janković, made in 2004, was presented as evidence during the trial. The film speaks of the murder of two Albanian civilians in the village of

Kušnin/Kushnin during the war in Kosovo in 1999. The accused Danilo Tešić, Mišel Seregi, Rade Radojević, and Zlatan Mančić speak in the film, and defendants Danilo Tešić and Mišel Seregi admit that they committed this criminal act.



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## **Analysis of procedures and court decisions in the case<sup>1</sup> of *Suva Reka***

**1.** Radoslav Mitrović, Commander of the 37<sup>th</sup> Detachment of the Special Police Unit of the Republic of Serbia Ministry of Interior, and other members of the Special Police Unit and of the Yugoslav Army have been charged with the murder of 50 Albanian civilians, 48 of whom were members of the Berisha family from Suva Reka/Suharekë.

Among those killed were 19 juveniles aged from 9 months to 16 years; girls and women, one of them eight months pregnant; and a 100-year-old woman. Only two women and one child survived the massacre of Berisha family members, with serious life-threatening injuries (multiple gunshot wounds to the extremities, stomach and thorax), by jumping out of the truck which the killers used to transport the bodies to concealed graves.

In judgment K.V. 2/2006, rendered on April 23<sup>rd</sup>, 2009, the Higher Court of the Belgrade War Crimes Department acquitted Radoslav Mitrović, Commander of the 37<sup>th</sup> Detachment of the Special Police Unit, Nenad Jovanović, Deputy Police Commander of the Department of Interior in Suva Reka/Suharekë, and Zoran Petković, a member of the Territorial Defence in Suva Reka/Suharekë, by establishing that it “has not been proven beyond reasonable doubt and with certainty that the accused committed the actions with which they were charged in the specified and modified indictment”.<sup>2</sup>

Because the prosecutor dropped criminal prosecution proceedings against him, the first-instance court acquitted Ramiz Papić, a police officer a regular unit of the Department of Interior in Suva Reka/Suharekë.

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<sup>1</sup> HLC Executive Director Nataša Kandić and attorney Dragoljub Todorović, in the roles of victims’ representatives constantly monitored the legal proceedings held before the Belgrade District Court War Crimes Chamber in the case (K.V. 2/2006) against Radoslav Mitrović, Commander of the Special Police Unit’s 37<sup>th</sup> and 87<sup>th</sup> Detachments, other members of this Detachment and Department of Interior and members of the Yugoslav Army for the commission of a criminal act of war crime against civilian population from Article 142, Item 1 of the Criminal Code of the Federal Republic of Yugoslavia and in relation to Article 22 of the Criminal Code of Federal Republic of Yugoslavia. HLC did not represent victims’ families in the retrial because the families considered that by acquitting Radoslav Mitrović of criminal responsibility a great injustice was caused to the victims.

<sup>2</sup> The judgment of the District Court in Belgrade War Crimes Chamber in case K.V.2/2006. p. 214.

Just four individuals – Radojko Repanović, Commander of the Police Department in Suva Reka/Suharekë, Slađan Ćukarić, aka Jajce, a police officer from a regular police unit, Mirislav Petković, a police officer from a reserve police unit in Suva Reka/Suharekë, and Milorad Nišavić, a member of the State Security Agency (DB) branch department in Suva Reka/Suharekë, were found guilty of the murder of 50 civilians, children, women and elderly people, and were convicted.

During appellate proceedings, the Court of Appeals in Belgrade rendered the judgment KŽ1 Po2 4/2010 on June 30<sup>th</sup>, 2010 dismissing the appeals filed by Slađan Ćukarić, aka Jajce, Miroslav Petković and Milorad Nišavić and their defence counsel as unfounded, and confirmed the first-instance judgments in those parts relating to the three of them, and relating to other three defendants Radoslav Mitrović, Nenad Jovanović and Mirislav Petković, who had been acquitted by the first-instance court. The Court of Appeals accepted appeals lodged by the convicted Radojko Repanović, his defence counsellors (three of them) and his wife, thus dismissing the first-instance judgment in that part that relates to Radojko Repanović; it ordered a retrial.

**2.** The retrial of Radojko Repanović in criminal case K-Po2-49/2010 was held before a different trial chamber (Presiding Judge Vinka Beraha-Nikićević, members of the Chamber judges Snežana Nikolić-Garotić and Rastko Popović), on the basis of the amended and specified indictment KTRZ. No. 5/05 filed by the Office of the War Crimes Prosecutor on November 9<sup>th</sup>, 2010. On December 15<sup>th</sup>, 2010, after three days of trial (on November 9<sup>th</sup> and December 9<sup>th</sup> and 10<sup>th</sup>, 2010), the War Crimes Department again found Repanović guilty of the criminal offence of a war crime against the civilian population under Article 142, Item 1 of the Criminal Code of the Federal Republic of Yugoslavia, and sentenced him to 20 years in prison.

**3.** Considering the circumstances of the pre-trial proceedings; the content of the investigation request (dated October 3<sup>rd</sup>, 2005); the circumstances and the course of the investigation (based on the Decision of October 17<sup>th</sup>, 2005), the content of the indictment (filed on April 25<sup>th</sup>, 2006) and the amended indictment of March 3<sup>rd</sup>, 2009; the circumstances and progress of the main hearings of the trial itself during and the content of both court decisions; as well as the retrial of Radojko Repanović, HLC finds that the Judiciary of Serbia appears to have avoided convicting commanders of the Yugoslav Army and Ministry of Interior of the Republic of Serbia, that is to say the Special Police Detachment of the Serbian Ministry of Interior, at brigade, battalion and company level, who not only ordered the execution of war

crimes, but also personally participated in their execution and as such could have been prosecuted on the basis of their personal responsibility.

**4.** In the centre of the town of Suva Reka/Suharekë, not far from the police station and the Territorial Defence Headquarters, at almost the same place and under the same circumstances, those same commander/s and members of the Special Police Unit, Ministry of Interior and Yugoslav Army, killed nine Albanian civilians on March 22<sup>nd</sup>, 1999, and 34 Albanian civilians on March 25<sup>th</sup>, 1999; and on the following day, March 26<sup>th</sup>, 1999 they killed 50 Albanian civilians – children, women and elderly people.

It is indisputable that from the end of 1998 until the end of March 1999, there were no KLA units on the territory of the town of Reka/Suharekë, nor were Serb forces involved in any armed conflict with them during that period and on that territory. During the main hearing, this fact was especially emphasized by S.K., by the then Chief of the Operational Department of the 549<sup>th</sup> Motorized Brigade of the Yugoslav Army and the Commander of the Fifth Task Force of the 549<sup>th</sup> Motorized Brigade and by Božidar Delić, the Brigade Commander, who appeared before the court as witnesses.

**5.** It remains unclear how it was possible that the prosecutor responsible for prosecuting cases of war crimes requested an investigation and later filed an indictment against persons responsible for the killing of 50 civilians committed on March 26<sup>th</sup>, 1999, but did not do so for the killings of 43 Albanian civilians which were committed by the same commanders and executors on the previous days March 22<sup>nd</sup> and 25<sup>th</sup>, 1999<sup>3</sup>.

**6.** The War Crime Prosecutor's failure to indict commanders and perpetrators of the killings of 43 Kosovo Albanians under these circumstances was a direct precondition and determining factor for the entire progress of the first-instance trial and the the retrial of Commander Repanović.

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<sup>3</sup> Provisions of Articles 156. to 165. of the Constitution of Serbia's Law on Public Prosecution, Criminal Procedure Code or any other regulation, and generally accepted principles of international law and signed treaties and ratified international conventions, which, according to Article 16 of the Constitution of the Republic of Serbia, represent an integral part of the legal system of Serbia and are applied directly, do not allow for selective criminal prosecution and "forgiveness" of a war crime in which 43 civilians were killed.

Inter alia, the War Crimes Chamber stated the following in the final verdict: “Considering this, the Court also established from the statement given by Muharrem Shala in the main hearing on December 5<sup>th</sup>, 2007 that killings of Albanian civilians also happened on March 25<sup>th</sup>, 1999 in the carpenter’s workshop and in front of the carpenter’s workshop. Also, from the investigation records from March 30<sup>th</sup>, 1999, the Court determined that an investigation was also carried out at the *Trijeza* carpenter’s workshop where four bodies were found. However, the Court did not go into the assessment of the aforementioned evidence, considering that the events and acts the defendant is charged with in this criminal case cannot be determined from them and the specific event is not covered by the indictment<sup>4</sup>.”

**7.** In this specific case, it is apparent that both Courts decided in advance to deny Mitrović’s command responsibility. Since no one, not even the two Courts of Serbia, can determine that the Commander of the Special Police Unit 37<sup>th</sup> Detachment did not know that his subordinates in a small area in three consecutive days killed 85 civilians, mostly children, women, a woman in the eighth month of pregnancy and a hundred-year-old lady, they simply ignored the existence of local regulations from which it is absolutely clear that Commander Mitrović is criminally liable on the basis of this command and individual responsibility. In the same manner, his company, platoon and squad commanders who accepted his orders and committed the crimes, or at least knew or could have known that units under their command or other units or individuals were preparing the execution of such violations at a time when it was still possible to prevent the execution thereof, did not take any measures to prevent it. Commander Mitrović is also responsible on the basis of individual responsibility and so are all of his subordinate commanders because they must have known that the regulations of the laws of war were violated and yet no disciplinary measures or criminal proceedings were initiated. Even if they were not responsible for initiating the procedures, they still failed to report them to the respective military or police authorities.

**8.** There were only two legal opinions in both judgments. The first legal opinion related to the possible form in which an order by a military and police officer to his subordinates for the execution of war crimes could have been issued. The second instance court, the Court of Appeals in Belgrade, properly insists<sup>5</sup> on the accuracy of the opinion of the first-instance court given in the first-instance judgment<sup>6</sup>. Ac-

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4 Final verdict K.V. 2/2006 from April 23<sup>rd</sup>, 2009.

5 Judgment of the Court of Appeals in Belgrade, p.39.

6 Judgment of the District Court in Belgrade War Crimes Chamber, p.93.

According to this opinion, the order for the execution of crimes “does not have to be in any special form but can rather be issued in a whole series of different manners and can be proven also by circumstantial evidence”. The second legal opinion relates to the execution and issuance of orders: “A war crime can be executed by ordering the execution of incriminated acts or by executing them. Issuing an order is an act which is already completed and there is no need to execute an order<sup>7</sup>”.

HLC considers both legal opinions to be well-founded and significant for relevant decision making in this case. HLC also notes that both courts are inconsistent, and the first-instance court applies these opinions only in assessing the command responsibility of Commander Repanović, but not in the case of Commander Mitrović. The second-instance court accepted both opinions, yet it ordered the first-instance court to distance itself from them and not to address them, in the retrial when the responsibility of Commander Repanović was reconsidered.

**9.** The first-instance court founded its decision on the command responsibility of Commander Repanović on these two legal points. In the original judgment and in the new judgment rendered during the retrial, the first-instance court established that given the circumstances of the case there was no doubt that Repanović, Commander of the Department of Interior in Suva Reka/Suharekë, issued an order to his subordinate police officers to kill Kosovo Albanians, torch their houses and expel them from houses in Suva Reka/Suharekë; and that the fact there is no evidence proving that Repanović was present during the subsequent execution of his orders does not negate his command responsibility.

HLC believes that the first-instance court acted correctly and lawfully on both occasions when determining that Commander Repanović was responsible on the basis of his individual and command responsibility, that is, for issuing orders for the commission of a war crime, even though there is no evidence proving he was later present during its execution; and that the first-instance court ruled correctly and legally when finding Repanović guilty and convicting him in the first trial and in the retrial<sup>8</sup>.

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<sup>7</sup> Judgment of the District Court in Belgrade War Crimes Chamber, p. 186.

<sup>8</sup> The Court of Appeals in Belgrade, June 6<sup>th</sup>, 2011 rendered a verdict finding Repanović and dismissed the appeal filed by his defence counsel Gradimić Nalić as unfounded. The Court confirmed the jail sentence in the duration of 20 years.

Since Commander Repanović and Commander Mitrović acted in the same location and under exactly the same circumstances, it remains unclear what the legal reasons are for the first-instance and the second instance courts removing responsibility from Commander Mitrović while finding Commander Repanović guilty

Is there not an obligation to respect the reasons for which the first-instance judgment was dismissed in that part relating to the convicted Repanović, as obligatory reasons for the dismissal of the first-instance judgment in that part relating to the case of the acquitted Commander Mitrović? And also, was the case not supposed to be sent for retrial in those parts relating to both indictees, the convicted Commander Repanović and the acquitted Commander Mitrović?

**10.** The individual and command responsibility of the acquitted Commander Mitrović is more evident than is the individual and command responsibility of the convicted commander Repanović.

Not only is there more evidence proving the responsibility of Commander Mitrović, but the evidence is also more direct, authentic and convincing, and it emanates from the circumstances that Courts had in mind when stating that the manner in which a superior and a commander address their subordinates may constitute an order for the execution of war crimes, if talking about a spoken address (with raised threatening voice and gestures) to the subordinates who had already been introduced to the plan and orders for the killings.

For every subordinate commander or police officer who participated in the killing of the 43 civilians at the same place during the previous two days, March 22<sup>nd</sup> and March 25<sup>th</sup>, 1999, or who only had knowledge that these people were killed by members of the Special Police Unit, the Ministry of Interior, the Yugoslav Army, or any other group which was a part of the Serb forces or acted in concert with them, the words spoken by Commander Mitrović, Commander Repanović, or Assistant Commander Jovanović, on March 26<sup>th</sup>, 1999 to the effect of: “what is all this crowd, what are you waiting for? Go on, what are you waiting for? kill, drive them... What is this, am I supposed to kill for you? Come on! Go on, come on! Let’s go, let’s go!” certainly represented a clear and imperative order to kill, commit arson, and transport the killed.

In those circumstances, to anyone who was there listening to Commander Mitrović, heard him and looked at him, his words represented an order given to subordinates

and all the officers present, to police officers from the Special Police Unit of the Department of Interior of Suva Reka/Suharekë, and to all others present, to kill and continue with the killings that had been initiated during the previous days.

**11.** As was the case in the original trial, in the retrial of Commander Repanović the Presiding Judge prevented the Prosecutor on dozens of occasions from asking questions that appeared lawful and to be leading to more comprehensive insights into the individual roles of the indicted Mitrović, Repanović and others. On several different occasions, the Presiding Judge even failed to note in the trial minutes those questions that she had prevented from being asked.

It can be clearly noted from the reasoning of the first-instance judgment, that it was based on the testimonies of persons who participated in the killings of Albanian civilians, some of whom (Commander of 549<sup>th</sup> Motorized Brigade, Commander of the Fifth Task Force of the 549<sup>th</sup> Brigade, Commander of the Niš, Pirot and Vranje Company of the Special Police Unit, platoon commanders of the aforementioned companies, chiefs and commanders of police stations in Prizren and Suva Reka/Suharekë and officers from their police departments and the headquarters and the branch office of the State Security Agency in Prizren) ordered and led, even personally, the commission of the crimes, not only the crimes committed on March 26<sup>th</sup>, but also the crimes committed on March 22<sup>nd</sup>, 1999 and March 26<sup>th</sup>, 1999, and as such are responsible on the basis of their command and individual responsibility.

The first-instance court unhesitatingly took as indisputable and authentic those parts of witness statements that supported the decision it had apparently already made on the lack of responsibility of Commander Mitrović and the accused Nenad Jovanović and Zoran Petković, and it dismissed as untrue all other parts of statements given by the same witnesses, who had – from their first statements in the pre-trial case until the end of the main hearing – claimed in a consistent, convincing and well-argued manner that the indicted Commander Mitrović acted in the way it was described in the indictment.

**12.** Both courts, the first-instance and second-instance ones, did not accept a single piece of evidence, including the report by the Ministry of Interior of Serbia, Department for the Fight Against Organized Crime (UBOPOK), 05. No. 2369/05 from July 7<sup>th</sup>, 2005, which showed that Mitrović was the Commander of the “joint unit” made up of the 37<sup>th</sup> and 83<sup>rd</sup> Detachments of the Special Police Unit.

All the exhibited evidence regarding the wartime activities of the 37<sup>th</sup> and 83<sup>rd</sup> Detachment of the Special Police Unit, confirms the authenticity of the aforementioned UBOPOK statement – that it was a joint unit, that Mitrović had effective command authority over each of the units that were part of the joint unit, and that he also had command of its commanders and members in general

It is the role of the 37<sup>th</sup> Detachment of the Special Police Unit in particular, as an operational and fighting unit (which “liberates” territories under the control of the KLA), that implies the full subordination of the 83<sup>rd</sup> Detachment of the Special Police Unit as a unit maintaining order on territory “cleared” by the 37<sup>th</sup> Detachment of the Special Police Unit. It is not only a complementarity of actions, but rather a single uninterrupted chain of command in which Mitrović, as Commander of the 37<sup>th</sup> Detachment, as superior and senior officer in the command police hierarchy and subordination, with the right to command all the officers and police officers from the 83<sup>rd</sup> Detachment, since they were only a reserve unit of the 37<sup>th</sup> Detachment, just like the 67<sup>th</sup> Detachment of the Special Police Unit was, and were basically logistical support and a part of the joint unit, as a wider and broader unit whose attack and battle force was the 37<sup>th</sup> Detachment. All of them were under the command of Mitrović with authority to control the execution of ordered tasks.

Milivoje Grkajac, Commander of the Aleksandrovac Police Station, as Commander of the Third Company of the 37<sup>th</sup> Detachment, emphasized the following during his testimony, inter alia: “The Commander of the 37<sup>th</sup> Detachment could give orders to the Commander of the 87<sup>th</sup> Detachment due to the fact that the 37<sup>th</sup> Detachment was a unit of well trained men, which was combat-oriented and mobile, which conducted battles, freed territories and cleared terrain, whereas the 87<sup>th</sup> Detachment had poorly trained men, some of whom never had any training, a lot of whom were on sick leave, and many of whom had left the service; so the 87<sup>th</sup> Detachment would only occupy terrain captured by the 37<sup>th</sup> Detachment, control it and make sure that there was no more terrorist insurgency<sup>9</sup>”.

**13.** Of the dozens of generally-known circumstances, items of evidence exhibited, official documents that were read, and witness statements that were heard, HLC points to the following, which directly proves the de facto authority of Commander Mitrović and his sovereign power to give orders to all the subordinate commanders, officers and police officers of the Special Police Unit and the police department Suva

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<sup>9</sup> Transcript, number. K.V.02/2006, Main hearing, June 30<sup>th</sup>, 2008.

Reka/Suharekë, Yugoslav Army volunteers and all others, who acted beside or with the unit, platoons and squads of the 37<sup>th</sup> Detachment of the Special Police Unit from March 22<sup>nd</sup>, 1999 until March 26<sup>th</sup>, 1999 in the town of Suva Reka/Suharekë, and who killed Albanian children, women and elderly.

**14.** After the withdrawal of the OSCE mission from Kosovo on March 20<sup>th</sup>, 1999, the Joint Command (Yugoslav Army and Ministry of Interior of Serbia) for Kosovo – expecting the start of NATO armed operations – issued a combat order on March 23<sup>rd</sup>, 1999 – Top secret No.455-63 from March 23<sup>rd</sup>, 1999, for the unblocking of communications Suva Reka-Orahovac”;

**14.1.** On the same day, March 23<sup>rd</sup>, 1999, the order was personally received by the Yugoslav Army Colonel Božidar Delić, the Commander of the 549<sup>th</sup> Motorized Brigade, and Police Lieutenant Colonel, Radoslav Mitrović, Commander of the 37<sup>th</sup> Detachment of the Special Police Unit, members of which were reserve troops of the 87<sup>th</sup> Detachment of the Special Police Unit. The Command and a number of units within the 549<sup>th</sup> Motorized Brigade and the Command and one unit of the 37<sup>th</sup> Detachment of the Special Police Unit were at the time located in a special separate building at the *Car Dušan Silni* barracks in Prizren;

**14.2.** On the same day, March 23<sup>rd</sup> and the following day, March 24<sup>th</sup>, 1999, the Commanders of the 549<sup>th</sup> Motorized Brigade and the 37<sup>th</sup> Detachment of the Special Police Unit, Delić and Mitrović, each held meetings with the highest officers from their Command and their immediate subordinate commanders, made a plan of joint action, and specified their roles and tasks in the execution of the task.

**14.3.** There were no KLA soldiers or units fighting with against them in Suva Reka/Suharekë in the period from late 1998 until March 1999.

The Fifth Task Force from the 549<sup>th</sup> Motorized Brigade operated on the territory of Suva 2Reka/Suharekë, led by the then Major and the Chief of the Operational Department of the 549<sup>th</sup> Motorized Brigade and now Colonel, S.K.

Three companies of the 37<sup>th</sup> Detachment of the Special Police Units – Niš, Kruševac and Vranje companies – from the Special Police Unit which was under the direct command of Mitrović, operated in the area from Suva Reka/Suharekë towards the village of Studenčan/Studenčan, and further in the direction of Orahovac/Rahovec, in cooperation with the 5<sup>th</sup> BG of the 549<sup>th</sup> Motorized Brigade.

**14.4.** From the direction of Orahovac/Rahovec towards the village of Dobrodeljani/Dobërdelan and further towards Suva Reka/Suharekë, it was troops of the Sixth Task Force of the 549<sup>th</sup> Motorized Brigade under the Command of Colonel Božidar Delić and Lieutenant Colonel Vladimir Đokić that conducted operations jointly with the Leskovac (Fourth) and Pirot Companies of the 37<sup>th</sup> Detachment of the Special Police Unit, under the Command of Mitrović's Deputy Police Major Predrag Grujić.

According to the plan, after the unblocking of Suva Reka – Orahovac – Prizren communications, the fighting group and the companies of the 37<sup>th</sup> Detachment were supposed to meet in the village of Dobrodeljane/Dobrodëlan, since they were heading towards each other. They met there on March 26<sup>th</sup> or 27<sup>th</sup>, 1999, a fact that the first-instance court did not want to determine precisely, even though it is an important piece of information.

**14.5.** The operation started on March 25<sup>th</sup>, 1999 at around 04:00 by the departure of the Fifth Task Force of the 549<sup>th</sup> Motorized Brigade from the military compound in Prizren on the main asphalt road towards Suva Reka/Suharekë, where they, according to the claims of group commanders, arrived at around 06:00. Allegedly, the Niš, Kruševac and Vranje Companies of the 37<sup>th</sup> Detachment arrived from the same direction from Prizren under the Command of Mitrović. However, nobody wanted to clearly and precisely state where exactly these companies were located, when they started, in which direction they went and when exactly they arrived on the territory of Suva Reka/Suharekë. The first-instance court and all the indictees did not want to speak about the events from March 25<sup>th</sup>, 1999 since, allegedly, these events were not the subject of the trial and were not covered by the indictment. The real reason was that they all knew that the same persons, at the same place and under the same circumstances on that day and on March 22<sup>nd</sup>, killed 33 Albanians and 8 Albanians respectively.

**14.6.** It emerges from the testimonies of company and platoon commanders of the 37<sup>th</sup> Detachment of the Special Police Units that the Third (Kruševac) Company of the 37<sup>th</sup> Detachment and its platoon were on the territory of Suva Reka/Suharekë constantly after March 16<sup>th</sup>, 1999, which means that they were in Suva Reka/Suharekë on March 22<sup>nd</sup> and March 24<sup>th</sup> as well, but also in the evening and early in the morning on March 25<sup>th</sup>, 1999 as well as during the day, when they passed on the Reštani road from the police station towards the village of Reštane/Reshtan and further to Studenčani/Studenčan.

Zoran Siketić, the Commander of the Kruševac Company, constantly and convincingly claimed<sup>10</sup> that his company was in the town of Suva Reka/Suharekë significantly before March 25<sup>th</sup>, 1999, already since March 16<sup>th</sup>, 1999 while some platoons from that company were in the wider area of the town, and in the villages in the area of the municipality of Suva Reka/Suharekë. Siketić claims that on March 24<sup>th</sup>, 1999, as Commander of the Kruševac Company, he was already in the village of Movljane/Mohlan and that from there he came to the town of Suva Reka/Suharekë, on the order given by 37<sup>th</sup> Detachment Commander Mitrović, and then he went on the Reštani road and took his Company to the village of Reštane/Reshtan. Siketić emphasized that there were no civilians or KLA members in the village. Siketić claims categorically that his Company was acting exclusively on orders given by Mitrović, which is a very significant piece of information for deciding in this case and the evaluation of Mitrović's true role. Three platoon commanders from the Kruševac Company, Rade Jović, second platoon commander, Spasić Goran, first platoon commander, and Milorad Obradović, fifth platoon commander, confirm all the statements and claims given by Siketić. It is clear that parts of the 37<sup>th</sup> Detachment were in the town of Suva Reka/Suharekë and in the villages of the municipality of Suva Reka/Suharekë, constantly after March 16<sup>th</sup>, 1999. Obradović stresses that his Fifth Platoon, as a specialized platoon, separated into three parts as needed. Obradović claims that on March 25<sup>th</sup>, 1999 his mortar squad was constantly by the Police Station building in Suva Reka/Suharekë, and that he was with one part of the subordinate policemen at the Hotel Balkan in Suva Reka/Suharekë, while some parts of his platoon and other members of the Third Company and other companies from the 37<sup>th</sup> Detachment were also in the town. This means that Commander Mitrović, S.K. and Delić are lying when they claim that on March 25<sup>th</sup>, 1999 all members of the Third Company of the 37<sup>th</sup> Detachment went through Suva Reka/Suharekë and, without stopping there, went on to the village of Reštane/Reshtan and further to the village of Studenčane/Studenčan. This is how they cover up their presence at the scene where 41 Kosovo Albanians were killed on March 22<sup>nd</sup> and March 25<sup>th</sup>, 1999 by their units.

However, Mitrović himself does not deny that during his entire stay in Suva Reka/Suharekë his command post was in the HQ building of the *Metohija vino* company, in the settlement Široko/Shiroko at the entrance to the town of Suva Reka/Suharekë from the direction of Prizren. His immediate subordinates, company commanders and tens of others examined witnesses, constantly and convincingly testified that the

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10 Transcript, number K.V.02/2006, Main hearing, February 6<sup>th</sup>, 2008.

command post of the 37<sup>th</sup> Detachment of the Special Police Unit at the HQ building of the *Metohija vino* company since March 22<sup>nd</sup>, 1999. Commander Mitrović does not deny that his subordinates stayed at the *Balkan Hotel* factory in Suva Reka/Suharekë, or that he often spent time at the hotel.

Dozens of witnesses consistently claimed that Mitrović – *Čegar 1* and other members of the 37<sup>th</sup> Detachment known as *Čegrovi*, and some known as *Mambas*, spent some time in the town of Suva Reka/Suharekë, even during 1998 and almost constantly since the beginning of 1999, mostly at the *Balkan Hotel*. Many of them saw Mitrović, the officers and policemen from the 37<sup>th</sup> Detachment in the town on the March 25<sup>th</sup> and 26<sup>th</sup>, 1999.

Witness Nenad Stojković, had been serving in the 37<sup>th</sup> Detachment of the Special Police Units in Kosovo since February 1999; since the autumn of 1998, he was the Commander of the Fourth Company of the 37<sup>th</sup> Detachment and the immediate subordinate officer to Mitrović, the Commander of this unit. During the main hearing held on February 8<sup>th</sup>, 2008, witness Stojković stated, inter alia, that he received orders for his actions during the war and bombing on March 22<sup>nd</sup> or 23<sup>rd</sup>, 1999 from the Commander of the 37<sup>th</sup> Detachment, the defendant Mitrović. At the time, the Commander of the 37<sup>th</sup> Detachment called up all the company commanders of the Detachment to the Yugoslav Army compound in Prizren and gave them instructions about how to act in the event of bombing and gave them concrete tasks for operations against “Shiptar terrorists” including: “specific tasks given to each unit, every company commander, who is operating in which direction in the anti-terrorist fight and at the same time gave the communication codes and recognition signs, strip arm bands, and books with communication codes. These are the books we use to communicate in code on daily basis so that the communication does not go out openly, and therefore they are different for every day, for each concrete case.<sup>11</sup>”. The task of the company was to clear the terrain and neutralize 122<sup>nd</sup> and 124<sup>th</sup> Brigade of KLA in the Orahovac – Suva Reka – Prizren triangle from the direction of Orahovca/Rahovec. The operation started early in the morning on March 25<sup>th</sup>, 1999. They went over the village of Zočište/Zocishte and Opteruša/Opterushe. They protected the left flank of the task force of the 549<sup>th</sup> Brigade of the Yugoslav Army. Companies from Vranje, Kruševac and Niš were coming to meet with the witness’ Company. They met at the intersection about one kilometre away from the village of Dobrodeljane/Dobrodëlan.

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11 Transcript, number br. K.V.02/2006, Main hearing, February 8<sup>th</sup>, 2008

During the main hearing on March 15<sup>th</sup>, 2007, witness Zoran Arizanović, a regular police officer from Suva Reka/Suharekë, stated, inter alia, that he saw the Kruševac police on March 25<sup>th</sup>, 1999 when he was in front of the Police Station. It went along the Reština road in the direction of Orahovac/Rehovec.

Since the end of 1998, witness Goran Obradović was the personal security officer for Mitrović, the Commander of 37<sup>th</sup> Detachment. During the main hearing on February 5<sup>th</sup>, 2008, he said, among other statements, that the practice for the witness was to always go with the Commander while the driver Ljubiša Stojanović would stay by the vehicle. However, the witness was not present in the meetings. He waited for the defendant Mitrović in front of the room where he would be in the meeting. The HQ of the 37<sup>th</sup> Detachment of the Special Police Unit was at the Yugoslav Army compound in Prizren. One or two days before the beginning of bombing, the 37<sup>th</sup> Detachment of the Special Police Unit was dislocated to the utility cleaning company *Higijena* and Hotel *Putnik* in Prizren while the command post of the 37<sup>th</sup> Detachment was located in the vineyards at the entrance to Suva Reka/Suharekë coming from the direction of Prizren. There were several buildings of *Metohija vino* at the site (winery, warehouse, the HQ building). Aside from the command post, the communication centre of the Unit was also located there. Witness Goran Obradović knows that on March 25<sup>th</sup>, 1999, the 37<sup>th</sup> Detachment operated together with the military of General Božidar Delić. On that day, in the afternoon hours, they received information that the military compound in Prizren had been bombed and that the policeman Dragan Barać had been killed. The following day, early in the morning, the witness left for Prizren with defendant Mitrović and the driver Ljubiša Stojanović. They first went to the barracks and then to the hospital for the Commander to visit the wounded policeman Nenad Milojević. The witness did not go inside the compound or the hospital but rather waited for defendant Mitrović by the car. They left back for Suva Reka/Suharekë between 13:00h and 14:00h. It took them two or three hours to arrive in Suva Reka/Suharekë. They went to the police station in Suva Reka/Suharekë. Mitrović entered the police station. He was angry.

Witness Saša Mišković, who was the Commander of the First Company of the 37<sup>th</sup> Detachment [Niš Company] and indirectly the first subordinate officer to Commander Mitrović, among other statements during the main hearing on February 8<sup>th</sup>, 2008, emphasized that right before the beginning of the bombing (March 23<sup>th</sup>, 1999), the Commander of the 37<sup>th</sup> Detachment Mitrović called him in for a meeting to the military compound in Prizren. The Commanders of all companies of the 37<sup>th</sup> Detachment were present. The Detachment Commander Mitrović ordered for the

unit to immediately dislocate from the barracks which was done during the evening. On the following day [March 24<sup>th</sup>, 1999], the company commanders had another meeting with the Detachment Commander Mitrović. The meeting was held at the factory for agricultural products in Prizren [the witness does not know the name], which is where the Detachment was located after moving out of the military compound. The Commanders were given a precise and concrete task for the morning of the next day [March 25<sup>th</sup>, 1999]. The witness was given the task of going to from Prizren Suva Reka/Suharekë and then from there to Studenčani/Studenčan, where KLA forces were located. The task was given in order to establish control over the communication Suva Reka/Suharekë – Orahovac/Rahovec. During the operation, the witness was constantly in touch with the defendant Mitrović over the radio. According to the witness's knowledge, defendant Mitrović did not have a constant position, but was instead on the move depending on the situation and task as assessed.

**15.** Hence, neither Mitrović nor any of his subordinates or superiors in the service denies that Mitrović and Delić received orders from their superiors in the Joint Command for Kosovo and Metohija and that they held meetings on March 24<sup>th</sup>, 1999 and gave orders to each of their subordinate officers for unit operations (battle groups and battalions of the 549<sup>th</sup> Motorized Brigade and companies and platoons of the 37<sup>th</sup> Detachment of the Special Police Unit). Given such facts and circumstances, and the appropriate stance of the Court – “that orders for the execution of crime do not have to be in a special form, but can rather be given in many different ways, and can also be proven by circumstantial evidence”, it is obvious that the first-instance court was firmly resolved to justify and explain the unfounded and wrong factual conclusion that there was no evidence of the participation of members of the Kruševac, Niš and Vranje Companies of the 37<sup>th</sup> Detachment in the killing of 50 civilians in Suva Reka/Suharekë on March 26<sup>th</sup>, 1999.

In spite of the dozens of irrefutable pieces of evidence, the first-instance court left out all the factual descriptions from the amended and specified indictment (dated March 3<sup>rd</sup>, 2009) regarding the participation of unidentified members of Kruševac, Niš and Vranje Company of the 37<sup>th</sup> Detachment of the Special Police Unit in the killings of 50 civilians in Suva Reka/Suharekë on March 26<sup>th</sup>, 1999. By leaving out actions that are indisputably proven factual, the first-instance court further bolstered its erroneous conclusion on the lack of evidence of Mitrović's order, i.e. of his command responsibility.

With the same purpose of proving that Mitrović did not have command or individual responsibility, the first-instance court took up nearly one-third of the procedure for the alleged questioning where Commander Mitrović was located during the time of the massacre, actually trying to prove that Mitrović was in Prizren the whole time. One hundred pieces of evidence have been exhibited and it was not proven by them that Mitrović was in Prizren during the time of killing. On contrary, the only certain thing is that he visited a wounded soldier for a short period of time and then quickly returned to Suva Reka/Suharekë where he forced his subordinates with threats to continue with the killings that had been already initiated of Albanian children, pregnant women and elderly people.

If there is no doubt that Mitrović on gave orders March 23<sup>rd</sup> and 24<sup>th</sup>, 1999 and personally led and commanded the Kruševac, Niš and Vranje Companies on March 22<sup>nd</sup>, 25<sup>th</sup>, and 26<sup>th</sup>, 1999 when they were in the town of Suva Reka/Suharekë, the several-hour-long stay in Prizren, if it happened at all, does not rule out Mitrović's command responsibility, which is proven in the same circumstances as in the case of Commander Repanović. As in the case of Repanović, where absence during the commission of crimes he ordered his subordinates to commit does not rule out his responsibility, the potential absence of Mitrović during the execution of killings does not rule out his responsibility either.

**16.** Mitrović, as the Commander of the 37<sup>th</sup> Detachment of the Special Police Unit, his immediate subordinate commanders from the Kruševac, Niš and Vranje Companies, platoon commanders and squad leaders from these companies, Deliç (Commander of 549<sup>th</sup> Motorized Brigade), and S.K, the Commander of the Fifth Task Force of the 549<sup>th</sup> Motorized Brigade operated over a relatively small area that was completely and effectively controlled. On March 25<sup>th</sup> and 26<sup>th</sup>, 1999, Mitrović operated on territory 5 kilometres long and 2 kilometres wide. As many stated during their testimonies, from a dominant high point it was possible for him to see every one of his police officers, even without binoculars. As well as this, he was also in constant contact with his commanders assigned to control this small territory. Most commanders emphasized that there were no civilians or KLA members in the village of Reštan/Reshtan. In the town where Albanian civilians were killed on March 22<sup>nd</sup>, 25<sup>th</sup>, and 26<sup>th</sup>, 1999, there were no members of KLA. Mitrović's command post was in the town from March 22<sup>nd</sup>, 1999, amidst Albanian civilians who did not take part in the fighting. Mitrović was obliged to know and must have known, even if he did not want to know, what his subordinate police officers from the 37<sup>th</sup> Detachment squad were doing. He saw houses on fire. He heard bursts of machine

gun fire. Everyone knew, so he also knew, about the killings that his subordinates were perpetrating.

Instead of preventing them from their actions, punishing them or at least initiating or requesting punishment of them, he not only encouraged them by his presence, but also forced them to continue and finish the killings, which had been initiated and ordered by him and with his consent. Mitrović was angry and very furious, while Jovanović, the police assistant commander in Suva Reka/Suharekë, was very scared. Mitrović greeting him by yelling at him – “What are you waiting for? Do you want me to do the killings for you?” There is no doubt that all the policemen in Suva Reka/Suharekë were subordinate to Mitrović. All of the court’s attempts to deny this in fact provided open protection for Mitrović as the person who issued orders for the killings that were perpetrated.

**17.** At the time the crimes were committed on March 26<sup>th</sup>, 1999, Mitrović and his subordinate company, platoon and squad commanders from the Kruševac, Niš and Vranje Companies of the 37<sup>th</sup> Detachment of the Special Police Unit, had full and efficient control over all Serbian armed groups and volunteers operating in the town of Suva Reka/Suharekë and in the wider region, together with them or beside them.

Because of this, Mitrović and Repanović are responsible on the basis of not only command but also individual responsibility for all the killings that took place in the town of Suva Reka/Suharekë not just on March 26<sup>th</sup>, but also on March 22<sup>nd</sup> and 25<sup>th</sup>, 1999. Hence, not only did they not prevent, punish or request punishment for perpetrators and order givers, but instead deliberated, planned, ordered, and forced their subordinates to continue with the killing that was being done on their orders, and also participated personally in the execution and ordered subordinates to incinerate and transport the bodies of those killed, and conceal the traces of crime and of its immediate perpetrators.

**18.** Since they were very experienced officers, there is no doubt that Mitrović, Repanović and all other subordinates of Mitrović were very well aware of their obligations with regard to respecting and applying the rules of the international laws of war. Moreover, they were very well aware that that the unit commanders and each individual member was individually responsible for applying these regulations. They were also well aware that they were obliged to initiate procedures for issuing the punishments specified by law against persons who violated the international laws of war, as is explicitly required by Item 3 of the Order on applying regulations of the

international laws of war, which was adopted by the Presidency of the Socialist Federal Republic of Yugoslavia and published in the Official Military Gazette, Number 7/1988 of April 28<sup>th</sup>, 1988.

They were also aware they would be personally responsible if they perpetrated or ordered violations of the regulations of the international laws of war, even if they were not aware of provisions of those regulations. Ignorance the provisions of the regulations of international laws of war does not preclude responsibility of those who violate these regulations, as it is prescribed by Item 20, Paragraph 1. Instructions on the application of regulations of the international laws of war in the armed forces of the Socialist Federal Republic of Yugoslavia/Federal Republic of Yugoslavia were prescribed by the Federal Secretary for National Defence and published in the Military Official Gazette, number 10/1988 of June 10<sup>th</sup>, 1988.

All this indicates that Mitrović and his subordinates executed the massacre in the town of Suva Reka/Suharekë with direct intent, as they were aware of their actions and wanted to execute it despite being aware that they were killing unarmed and unprotected civilians solely because they were members of a different ethnic and religious group.

**19.** HLC finds it unacceptable that neither verdict sets out legal reasoning with regard to those convicted or acquitted. The failure of the Court of Appeals to verify statements by Siketić and by other company and platoon commanders subordinate to Mitrović regarding their location at the time of the commission of crimes on March 26<sup>th</sup>, as well as on March 25<sup>th</sup> and 23<sup>rd</sup>, 1999, or the facts that Mitrović's command post of the 37<sup>th</sup> Detachment of the Special Police Unit had relocated on March 22<sup>nd</sup>, 1999 and that he was in Suva Reka/Suharekë until March 30<sup>th</sup>, 1999, de facto constitutes an open refusal to determine the truth, with the purpose of acquitting Mitrović of all individual or command responsibility.

**20.** It is disturbing, confusing and daunting that neither of these two judgments mentions the aforementioned Order or Directive, i.e. provisions which were effective at the time and remain so now, and which define command responsibility in the armed forces of the then Yugoslavia and today's Serbia very clearly and precisely and in accordance with the general rules of international law and international conventions.

**21.** HLC finds it very inappropriate that the Belgrade Court of Appeals judge, Mr. Sretko Janković, who was an officer and an associate of the military security service within the JNA Guards Brigade and who spent several months taking part in military operations during the war in Vukovar and in the general area of Slavonia, and who as an officer failed to report the commission of criminal acts against the civilian population and war crimes against prisoners of war committed in that area, participated in the rendering of the second instance judgment and believes he is not fit to be a member of a trial chamber in a war crimes trial.

# I Irregularities and Abuse of Power in War Crimes Proceedings in the Republic of Serbia

## – Report

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### Case of the 37th Detachment of Special Police Units

1. On March 3, 2009, the Humanitarian Law Center (HLC) filed a criminal complaint against 16 members of the former 37th Detachment of the Serbian Ministry of Interior (MoI) Special Police Units (PJP) citing the existence of evidence that they had committed war crimes at various locations in Kosovo during the years of 1998 and 1999. Radoslav Mitrović, who was the Commander of the 37th PJP Detachment during the armed conflict in Kosovo and Assistant Commander of the Republic of Serbia Gendermerie after the war and who was acquitted by the Belgrade Appellate Court in June 2010 of allegations that he committed war crimes in Suva Reka on March 26, 1999, is one of the suspects in the 37th PJP Detachment case. The HLC based its criminal complaint in the 37th PJP Detachment case on statements given by four members of the Serbian MoI (Witness no. 1, Witness no. 2, Witness no. 3, and Witness no. 4), who gave statements to HLC alleging that a number of war crimes were committed by members of the 37th PJP Detachment during the armed conflict in Kosovo.

### 2. B92 TV Broadcast

On March 11, 2009, the B92 TV station broadcast an interview with the aforementioned witnesses who were members of the police, and whose faces were pixellated to conceal their identities, as they spoke about the crimes committed by members of the 37th PJP Detachment.

### 3. Initiating Criminal Proceedings

On March 12, 2009, at the request of the Office of the War Crimes Prosecutor, the Serbian MoI apprehended four members of the police, against whom the HLC had filed a criminal complaint in the 37th PJP Detachment case. The following day, March 13, 2009, the Office of the War Crimes Prosecutor filed an investigation request with a Belgrade District Court War Crimes Chamber Judge, demanding that an investigation be initiated against Radoslav Mitrović, Nenad Stojković (Commander of the Fourth Company of the 37th Detachment of PJP), Zoran Marković

(aka Cecko), Zoran Nikolić (aka Honda), and Dragan Milenković (aka Šišarka), all members of the 37th PJP Detachment, as there was reasonable suspicion that they had committed a war crime against the civilian population.

By March 14, 2009 the investigating judge had already issued a decision ordering an investigation against the five aforementioned members of the Serbian MoI. After the hearing, four of the suspects were held in detention for a month. One suspect, Mitrović, was already in detention, on trial for war crimes against Albanian civilians in the Suva Reka Case.

#### **4. Protests by Police Officers**

Approximately one hundred police officers and family members of the arrested individuals protested on March 14, 2009 in front of the Leskovac Police Department (PD), as they waited to hear the outcome of negotiations between a five-member police delegation and the Republic of Serbia Minister of Interior, Ivica Dačić. They demanded that the arrested police officers be provisionally released and that the MoI reveal to them the names of those police officers who gave the anonymous statements to the HLC. During the protest, the Association of War Military Reserves 1999, issued a press release to the Leskovac PD in which they called upon the citizens of Leskovac and members of the police and army, both active and reserve troops, to attend a planned protest called “Who is Next?” scheduled to be held on March 17, 2009 in front of the Leskovac PD building.

Upon returning to Leskovac on March 15, 2009, the Chief of the Leskovac PD, Slavoljub Cakić, who led the police delegation at the meeting with the Minister of Interior, held a separate meeting with the police officers involved in the protest, where he told them that Minister Dačić had promised to offer legal aid to their arrested colleagues. The police officers’ protests continued in the following days under the slogan “Who is Next?” and grew steadily in numbers, gaining support from police officers who were members of the 83rd and 87th PJP Detachments during the armed conflicts and who came from Niš, Pirot, Vranje, and Kruševac. War veterans from the south of Serbia, who had themselves been protesting for months because of unpaid monies due to them for their time spent in the war in Kosovo, also participated in the protest. The protesters wore T-shirts with the faces of the arrested police officers and the slogans “Heroes of the 37th Detachment” and “The 37th Detachment are not Criminals.” According to HLC information, the printing of the T-shirts was financed by the Independent Police Union, one of whose officials was the suspect Dejan Mihajlović (aka Čebe), a member of the former V Platoon of the IV Company of the 37th PJP Detachment. War veterans organized the last in a series of

protests on March 19, 2009 in Niš, gathering several hundred reservists, active police officers, and police officers' family members. According to the Republic of Serbia Constitution and the Law on the Police ("Official Gazette of the RS" no. 101 from November 29, 2005), and according to general regulations regarding freedom of assembly, members of the police do not have the right to freedom of assembly (such as rallies and demonstrations) in an open space or in the context of a protest, except in cases of violations of labor rights. Invitations for police officers to take part in the protest were relayed through police stations, which informed police commanders to exempt police officers from their daily activities so that they could attend the protest in greater numbers and support the arrested police officers.

### **5. Minister of Interior Offers Support to the Arrested Police Officers**

On March 15, 2009, Minister of Interior Ivica Dačić, gave a statement to the media with regard to the arrest of the police officers, saying that the decision of the Office of the War Crimes Prosecutor "invoked feelings of unrest and concern" among police officers. In his statement, the Minister told police officers that "no one should have a reason for concern" and said that "bearing in mind the sensitivity of the case, we will provide all the legal aid that is possible, because it is in the MoI's best interest to prove their [the suspect's] innocence."

### **6. Revealing the Contents of the Criminal Complaint**

The witnesses that gave statements to the HLC, informed the Office of the War Crimes Prosecutor and the HLC on March 21, 2009 that police officers in Leskovac had obtained a copy of the HLC's criminal complaint and that some police officers from the department had called them and read out parts from the criminal complaint relating to their testimonies, which detailed specific events in Kosovo and in Bosnia and Herzegovina (BiH). Prosecutor Dragoljub Stanković stated that he believed that someone from the HLC had revealed the criminal complaint to the police officers.

Police officer Predrag Zdravković (aka Peđa Mozgić), an employee of the Vlasotince Police Station in the Leskovac Municipality and a member of the Leskovac Police Union group, gained access to certificates, used to justify a police officer's absence from work, issued by the Office of the War Crimes Prosecutor, with respect to the witnesses. Only the witnesses and the Office of the War Crimes Prosecutor, which issued the certificates, were meant to be in possession of these documents. Officer Zdravković shared this information with his colleagues and the protestors.

## **7. Revealing Identities and Threatening Witnesses**

The identity of the HLC witnesses was revealed on March 13, 2009, upon their return to Leskovac from a meeting held at the Office of the War Crimes Prosecutor with regard to the criminal complaint filed by the HLC. The organizers and the participants of the protest then allegedly proceeded to threaten the witnesses, stating that they or their children would get a bullet, that they were dead people, etc. On the night of March 13, 2009, the house of Witness no. 2 was stoned. The police did not investigate this incident.

The witnesses who had come forward to the HLC, personally contacted the Office of the War Crimes Prosecutor on March 21, 2009, demanding protection because of requests by the Leskovac police and the protesters to have the MoI and the Office of the War Crimes Prosecutors publicly reveal their identities.

**8.** B92 TV broadcast the second part of their interview with the HLC witnesses on March 31, 2009 and on this occasion the police officer witnesses spoke about the pressures they were exposed to in Leskovac.

**9.** On June 16, 2009, Zoran Nikolić (aka Honda), who along with the other suspect had been released from detention, , approached Witness no. 1 on June 10, 2009, begging him to influence Witness no. 2 to recant his accounts and statements. On this occasion, the suspect said that he knew that Witness no. 3 was sick and that he could not testify, and that Witness no. 4 would not be summoned to testify. He did not reveal his source of information, but he did say to Witness no. 2 that all of the arrested knew that they would not spend long in detention and that there would be no trial. The witness informed the Office of the Prosecutor and the War Crimes Chamber about the visit from the suspect and requested protection from their offices, but none was forthcoming.

## **10. Removal of Nataša Kandić from the Proceedings**

Following a summons from the investigating judge, Dragan Plaznić, Nataša Kandić attended the court on June 5, 2009 in the capacity of a representative of the injured parties, with a power of attorney signed by victims' family members, as in other cases in which she has represented victims. The examination of Witness no. 1 was scheduled for this day. Kandić was astonished by the informal atmosphere in the courtroom. The Defense counsel addressed the judge and the prosecutor without respecting the usual procedures. Additionally, Prosecutor Dragoljub Stanković had a very friendly encounter with the suspect Dragan Milenković (aka Šišarka). At the

request of Radoslav Mitrović's Defense Counsel, the judge, with the consent of the Prosecutor, issued a decision to remove Nataša Kandić from the proceeding until she brought a power of attorney from victims' families that had been verified by the courts in Kosovo. Nataša Kandić filed an objection to this with the President of the Belgrade District Court, Siniša Važić, and the War Crimes Prosecutor, Vladimir Vukčević, with regard to this decision. According to the Criminal Procedure Code such a decision should be rendered only in cases when there is a reason to believe that the representative of the injured parties has submitted a counterfeit power of attorney. The President of the District Court issued a serious warning to the investigating judge Dragan Plaznić over his actions.

### **11. Pressure on Witness no. 1 to Discontinue Testifying**

According to Witness no. 1 the informal atmosphere in the courtroom (as chronicled at the June 5, 2009 encounter) continued throughout his examination. The witness claims that the suspect and the Prosecutor exchanged looks of support. The Defense Counsel demanded that the witness confess how much money he had received from Nataša Kandić for his perjury, while the suspect openly mocked Nataša Kandić, commenting that the witnesses would sacrifice their statements for money and would "go to bed with her." Neither the investigating judge nor the prosecutor reacted to this. The examination of the witness was interrupted when the witness claimed that he had started feeling nauseous because of these public insults and humiliation. Following medical intervention and at the request of the investigating judge, Witness no. 1 went to the third floor where the offices of the prosecutor and judges were located. Walking down the hall, he saw prosecutor Dragoljub Stanković and attorney Goran Petronijević through an open office door. Prosecutor Stanković called him in, and the witness saw that the prosecutor and Mitrović's Defense Counsel were engaged in a friendly chat and having a drink. Prosecutor Stanković directly called upon Witness no. 1 to make peace with the suspect, saying that he would organize everything necessary for this and that it would be better for him if he did not appear as a witness. Once more in early September 2009, when Witness no. 1 in the capacity of a protected witness had another meeting in Prosecutor Stanković's office, Prosecutor Stanković again suggested that the witness should make peace with Mitrović and the other suspect, calling upon Mitrović's Defense Counsel as a person who could be held in confidence and who could organize everything necessary for this to happen.

**12.** Witness no. 1 met Prosecutor Dragoljub Stanković again on October 4, 2009 in Leskovac, when the Prosecutor examined those members of the Leskovac Police Department suspected of committing war crimes in Suva Reka. On this occasion the Prosecutor called Witness no. 1 to come to the Office of the Prosecutor and to

bring along other police officers who knew what had happened in Kosovo. During this meeting, the Prosecutor suggested to Witness no. 1 that he should testify in the trial of Mitrović that he [Mitrović] had knowledge of and ordered the commission of war crimes in Kosovo, but Witness no. 1 did not accept this because he was not in Kosovo at the time when the crimes in Suva Reka were committed. In January 2008, Prosecutor Stanković went together with Witness no. 1 to the border crossing near Bujanovac, where they had a meeting with a Russian representative of UNMIK. On his way back the Prosecutor stopped in Leskovac, where he picked up paprika, paprika spread, brandy, jams, compote, juices, and roast lamb prepared for Witness no. 1, according to an earlier agreement they had made.

### **13. Suspending the Detention of the Suspects**

In line with the investigating judge's decision, rendered with the consent of the War Crimes Prosecutor, Zoran Nikolić (aka Honda) was released from detention on June 10, 2009, followed shortly thereafter by the release of all of the other suspect. The investigating judge explained that all of crucial witnesses had been examined and that there was now no danger that the suspect could influence witnesses.

### **14. Witness Protection**

On the basis of the decision of the Office of the War Crimes Prosecutor, Witness no. 1 received the status of a protected witness in late June 2009 and Witness no. 2 received this status on July 2, 2009. They were both relocated from Leskovac, together with their families. The Witness Protection Unit [WPU], which acts within the Serbian MoI, took over responsibility for these witnesses. The chief of this protection unit is Miloš Perović, who was previously a driver and an agent within the unit. According to HLC information, Perović was appointed chief of the unit by a highly ranked official of the Serbian Socialist Party, Branko Ružić.

### **15. Arbitrary and Uncontrolled behavior by members of the Witness Protection Unit**

Witness no. 1 and Witness no. 2 filed independent appeal applications to the Office of the War Crimes Prosecutor and the HLC in mid and late October 2009, in which they complained about the unprofessional and unfriendly behavior of members of the WPU and the lack of basic living conditions for them and their children. They complained that members of the WPU had asked them about the details of, and motives for their testimonies, attempted to dissuade them from testifying, and tried to scare them by claiming that the Office of the War Crimes Prosecutor would discard

them and that Nataša Kandić was only interested in making money from the criminal complaint that was submitted. Members of the WPU allegedly told them things such as: “Don’t cut off the branch you sit on,” and “We only execute the program, we can move either left or right, so beware of what you are doing.” In the appeal applications that were submitted, the protected witnesses also said that members of the WPU had come to their apartments regardless of the time, day or night, and yelled at them in front of their children, asking them for information on potential new witnesses to war crimes. The protected witnesses recount that members of the WPU also stated that the money given to protected witnesses was sufficient for basic survival, and was given to them as charity, and the protected witnesses noted that they often received cash without a receipt and that they had to live in unsuitable apartments. Witness no. 2’s daughter slept for months on an inflatable mattress meant for the beach. She now has spinal deformities.

## **16. Revoking the Status of Protected Witness**

Witness no. 1 lost the status of a protected witness on October 29, 2009 via oral notification. On that day, around noon, members of the WPU arrived in Witness no. 1’s apartment and ordered him and his family to pack their things because their protection had been revoked. They took Witness no. 1 and his family back to Leskovac without any explanation. Upon return, Witness no. 1 was harassed by members of the public for months. Pharmacists refused to issue medications to him several times and the kindergarten refused to take back and enroll his four-year-old son. He phoned Prosecutor Nebojša Marković who had replaced Prosecutor Stanković in the Case of the 37th Detachment, and the Prosecutor told him that he must not call him again. Witness no. 1 continues to live in isolation, apart from his colleagues and fellow citizens.

## **17. Pressure from the WPU on Witness no. 2 to Withdraw His Statement**

Witness no. 2 strongly believes that the WPU was tasked with making him give up on his testimony against members of the 37th PJP Detachment. He says that they often call him several times within an hour without saying anything, that they cut off his electricity from time to time, that they raid his apartment at any time of day, yell in front of his kids, have asked him if he has engaged in sexual intercourse with Nataša Kandić, and that they keep warning him that it is better for him to withdraw his statement and that if he did this, he would be relocated to some third country. The witness asked the WPU several times to bring him health care files for his children from Leskovac because the doctors at the school where they now attended did not dare to vaccinate his children before they being able to see which vaccinations

the children had already received. However the WPU did not do this until November 2010. The WPU forced him to sign receipts stating that he had received all the money necessary for his family, on a piece of paper that did not state anywhere the amount that should be given to him. He received his latest payment in the amount of 34,000 RSD (€315) on September 27, 2010. He does not have any more money to buy food for his children, and now does not know who he should address.

### **18. Examination of Witness no. 3 by the Police**

Witness no. 3 responded to the subpoena from the Service for Revealing War Crimes in March 2010, after recovering from surgery. He gave his statement in the premises of the Leskovac PD. He called Nataša Kandić in front of members of the department and informed her that everyone in the police knew that he was going to be the one giving a statement about war crimes and that one of the suspect had twice entered the room where he was sitting with the inspector of the Service for Revealing Crimes.

### **19. Indifference of Prosecutor Stanković Over the Examination of Witness no. 4**

Witness no. 4, a police officer who testified twice as a witness with protected identity (K-79) before the ICTY about the crimes committed by the 37th PJP Detachment in Kosovo, claims that Prosecutor Stanković refused on several occasions to examine him. In mid 2009, when the witness was finally called for examination, the prosecutor let his assistant examine him. The assistant started the examination but then interrupted it, explaining that he had some other urgent things to do. The witness has never again been called to finish the examination, even though he called Prosecutor Stanković on several occasions to ask him what was happening. During the first conversation Witness no. 4 had with the prosecutor, the witness told him that the MoI had kicked him out of the service. This, he believed, happened only because of his willingness and determination to testify about the war crimes committed by members of the PJP. Prosecutor Stanković offered his full understanding and promised firmly that he would personally demand that the court reverse this decision of the MoI so that Witness no. 4 could return to his career in the Serbian MoI. In June 2009, approximately 10 days before Mitrović, Stojković, Šišarka, and Honda were released from detention, prosecutor Stanković called witness no. 4 on the phone and asked him if he was willing to testify against Mitrović et al. Witness no. 4 said that he would not do this until he was given his job back in the MoI, the topic where their conversation had left off previously. Prosecutor Stanković contacted Witness no. 4 again in early November 2010 and informed him that he would summon him for an examination, and that he would be obliged to respond. The witness was very surprised by this changed attitude from Prosecutor Stanković, for which he had no explanation.

## 20. Abuse of Official Position and Unlawful Treatment

Monitoring of the trial of Milan Milutinović, Nikola Šainović, and Generals Sreten Lukić, Dragoljub Ojdanić, Nebojša Pavković and Vladimir Lazarević, held before the ICTY, shows that Dragan Milenković (aka Šišarka) appeared as a defense witness in the case of Sreten Lukić on February 21 and 22, 2008. He had stated that in early 2007 Prosecutor Dragoljub Stanković showed him more than five photos in which other police officers from the 37th Detachment other than himself, and several Russian volunteers, were standing next to an imprisoned and wounded KLA soldier, who was later killed. On this occasion Prosecutor Stanković also showed Milenković hand-written statements given by several police officers, who were eye-witnesses to crimes against Albanians. Judge Bonomi interrupted Milenković's testimony and warned him that he could refuse to testify if his testimony revealed his own participation in the crimes he was testifying about and exposed himself to criminal accountability. Even though Milenković's testimony in this case was sufficient for Prosecutor Stanković to initiate criminal proceedings against him, this only happened a year later when, under pressure, he responded to a criminal complaint filed by the HLC against Milenković and other members of the 37th PJP Detachment.

Prosecutor Stanković was at the ICTY when Dragan Milenković (aka Šišarka) testified. At that time, the ICTY Office of the Prosecutor asked Prosecutor Stanković to give them the photos that witness Dragan Milenković mentioned. The prosecutor then called Nataša Kandić and asked her to email these photos to him, which she did. There is no explanation why Prosecutor Stanković did not ask members of his own services to provide these photos, because he had earlier printed copies of these photos. *Danas* a national daily newspaper received the photo from the HLC showing a wounded KLA soldier next to Dragan Milenković (aka Šišarka) and published it in January 2007. It is most unclear why Prosecutor Stanković, when asked about the origin of these photos, told a journalist from the Serbian News Agency BETA that Nataša Kandić had bought the photos from Šišarka for €200, even though the Prosecutor knew that she had received the photos from Witness no. 1, from whom the Prosecutor also received photocopies of the photos.

**21.** The police officers who gave statements to the HLC claim that in dozens of cases they attended meetings between Prosecutor Stanković and several Russians and Ukrainians who led and committed mass killings and other war crimes against Albanians in Kosovo and in Aračinovo, Macedonia. The police officers claimed that Prosecutor Stanković knew very well that these Russians and Ukrainians were not volunteers, but mass murderers, “dogs of war,” and that they had committed hundreds

of murders and other crimes, and not just in Kosovo. The question remains why Prosecutor Stanković has not initiated investigations or proceedings against them.

**22.** After Radoslav Mitrović and four other members of the former 37th PJP Detachment were released from detention, the HLC received information from several sources that Prosecutor Stanković “fixed” this release from detention for the suspect, and that he received a large amount of money from Mitrović for this favor. HLC Executive Director Nataša Kandić verbally informed both War Crimes Prosecutor Vladimir Vukcević and Bruno Vekarić, spokesman of The War Crimes Prosecution office at the time about this. In the presence of prosecutor Vukcević, Bruno Vekarić said that he had heard at the Ministry of Justice that “someone took the money for the release from detention of Mitrović, and that he had informed about Prosecutor Vukčević about this.”

**23.** MUP Serbia police officers and their superiors interviewed by the HLC in an attempt to clarify the circumstances surrounding the killing of the Bytyqi brothers, questioned the appropriateness and legality of the actions undertaken by the War Crimes Prosecutor Dragoljub Stanković. Zoran Stanković, an inspector with the Prokuplje Internal Affairs Secretariat, who was tasked with escorting the Bytyqi brothers to the border, is a close relative of the War Crimes Prosecutor Dragoljub Stanković, and the HLC believes that Prosecutor Dragoljub Stanković should have recused himself *sua sponte* because of this fact. Indeed, pursuant to the clear provisions of Article 40 in conjunction with Article 45 of the Criminal Procedure Code of the Republic of Serbia in force at the time, Prosecutor Stanković should not have been authorized to undertake any official duties in this case, and there is a reasonable cause to suspect that Prosecutor Stanković abused his office and acted in an illegal manner by making decisions in the process of establishing the truth about the role of inspector Zoran Stanković and other persons responsible for the transport and subsequent execution of the Bytyqi brothers.

#### **24. Note**

The HLC obtained information from several sources regarding the unprofessional work of the WPU, the continued intimidation of war crimes witnesses, abuse of power and the establishment of private relationships with protected witnesses particularly in cases of organized crime. The media has been contacted by members of the WPU, complaining about the arbitrary decision-making of their chief. State authorities have been informed of the problems within the WPU, but have yet to act on them.

## **II Protected Witness Appeal**

**April, 14, 2011**

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### **Case of Bojan Zlatković**

**1.** Since mid-December 2010, when, in writing, I asked you and almost all the respective institutions in the country for the third time to protect me as a witness in the Witness Protection Program, I, and my family (son, daughter, wife and mother), have suffered still more.

Quite evidently angered by my pointing to all the wrongs perpetrated against us since our falling into their hands, the members of the Police Witness Protection Unit have been abusing and humiliating me and my family even more harshly and openly.

With every encounter and contact, they try to intimidate and humiliate us, and to make it impossible for us to survive in this environment. They are doing everything they can in order to expel us from the Witness Protection Program, thus preventing me from testifying about the war crimes I witnessed.

**2.** While trying to hide it from our children, my wife and I tried to analyze our own behaviour and attitude, and to understand the reasons for the hatred and the rude and unlawful behaviour of members of the Police Witness Protection Unit towards us - towards me primarily, as one of their former colleagues in the Special Police Service. At the beginning, we lived with all the humiliations and hid the whole matter from everyone else, especially from our young children.

**3.** The most important thing for all of us - and we prayed to God for that - has been to provide the basic conditions for our children to study and finish school. My wife and I decided to endure all the torment, and to hide from our children all the bad things that were being done to us by police officers who are paid to protect us from other bullies and criminals.

**4.** We have been very careful not to speak in front of our children about all the wrong and unlawful things being done to us, constantly and openly by members of the Police Witness Protection Unit.

We have wanted to spare our children from feeling rejected and less worthy, because they know I was a member of the Special Police Unit. Not so long ago, in the small town where we used to live, my wife and all my family were proud of my service, my uniform, my job and the Ministry of Interior in general.

My son is 12 years old and my daughter is 10. They are now at the age when they are at their most emotional. It is very difficult for them to accept the separation from their earlier environment - from family and friends at school. Owing to the current circumstances, our children are already aware that something is happening, that we are hiding our identity and that we are in some way more withdrawn than other families. They are already noticing that I am under some sort of control. They are asking more frequently about our position.

**5.** Among other things, our children see that we are almost unable to go anywhere outside our little apartment. We cannot even go to the city together without permission, let alone visit our family, my mother or my wife's family. Our children are already criticizing us for not being with our family for our 'slava' (family religious holiday) or for birthdays, and for not allowing anyone to visit our apartment. It is clear to them that we are hiding, that the police are supposed to be protecting us, and that I, my wife and our children are more and more afraid of our protectors. My mother's telephone has been disconnected, in order to stop me and my children from at least speaking to her occasionally, since she is old and sick. When my mother and sister went to beg the Police and Post Office not to prevent us from having such phone conversations, they were told that this was being done for our own protection.

**6.** In order to try to improve our position, I personally went twice to Miloš Perović, the Chief of the Police Witness Protection Unit, in order to ask him to protect us and to order the police officers to act in a proper and professional manner. Saša Paunović, Perović's Assistant, was present on both of these occasions. I also asked Siniša Savić, Perović's Deputy at the time, for help and protection. The three of them poured scorn on my statements and appeals, claiming that the things I was asserting simply were not possible. They openly told me, in so many words, that if I didn't feel comfortable, I should go back where I came from, and that it was I who agreed to be in the Protection Program at the request of the Office of the Prosecutor for War Crimes. This was difficult for me, because these conversations could only be interpreted as humiliation and degradation, which I did not deserve. In fact, all three of them were clearly telling me that they had no intention of taking any measures to protect us, and that my complaints about their behaviour would make it even worse.

**7.** On several occasions, in moments of despair and helplessness, I asked them, in order to protect my children, if the purpose of their behaviour was to force me out of the Protection Program. They laughed at my suffering. At the beginning of September 2009, police officer Siniša Savić told me on two occasions, first by phone and then personally, while taking me to Dragoljub Stanković, the Deputy War Crimes Prosecutor: “Be very careful what you do. Do not end up like Zoran Vukojević, with a gun up your butt”. I was very scared, but afraid to make a statement to anyone. I could see that Siniša Savić was not joking. I realized that he was only relaying a message from his bosses in the Police Witness Protection Unit that they might kill me. Recently, my wife and I have realized that they are actually trying to drive me out of the program and prevent me from testifying, in the same way as they did with Slobodan Stojanović.

Police officer Aleksandar Lukić from the Police Witness Protection Unit said to me openly, in a mocking manner in front of others: “So what kind of a Serb are you? Scared, are you? You see, we can drive you out whenever we feel like it”.

Perišić Velimir, a high-ranking officer in the Police Witness Protection Unit, told me on several occasions: “I am your God. I am your judge, prosecutor and defence counsel. I can do anything I want. You know, we can go left, right, up and down. We can do anything we want. So you’d better decide what you want. Make sure it’s a decision you won’t regret later.”

**8.** In earlier appeals, I described how my elderly mother was also humiliated and insulted and how this was done by officers and policemen from the Ministry of the Interior in Leskovac and Vlasotince.

**9.** In order to make my family’s bare survival more difficult, and in spite of all my appeals and their promises that it would not happen, they have again cut off our electricity on several occasions. They disconnected our heating on February 21, 2011 and the warm water on February 25, 2011. The electricity, heating and water were only cut off at my apartment - that is, from my family.

**10.** Since August 26, 2010, and contrary to the agreement in the Witness Program, instead of financial assistance to the value of two average salaries in Serbia, my family and I have been receiving only one salary, the sum of 34,000 dinars, paid in a humiliating manner and irregularly.

On January 26, 2011, Siniša Savić, a police officer from the Police Witness Protection Unit, brought the monthly financial assistance for the month of February 2011.

Before allowing me to count the money, he requested that I first sign that I had received the financial assistance. Since I had to, I signed. He left immediately. After his departure, I opened the envelope and found that he had given me 5,000 (five thousand) dinars less. He had given me 34,570 dinars and he was supposed to give me 39,570 dinars, which is the amount I signed for. In other words, the police officer robbed me of 5,000 dinars.

On March 28, 2011, at around 11 a.m. a police officer from the Police Witness Protection Unit, who introduced himself as Marko Veljković, was waiting for my wife and me at the entrance to the apartment building. In his left hand he was holding a small brown bag. Waving it, he asked us: “Do you want the money?”, and pointed with his right hand to the bag in his left. I replied to him: “Of course I do, we’ve been waiting for it. You were supposed to give us this small sum two days ago, on March 26, 2011”. Smiling back at me in a rude and provocative manner, he then replied: “I am not your mailman”, turned round and left.

The same Veljković came again to the entrance door of our apartment on April 1, 2011. When I came out, police officer Veljković again asked me: “Do you want the money?”. He again pointed with his right hand to the bag in his left. I responded: “Of course I do”. He asked me again: “Do you want the money?” I responded: “Yes”. Veljković then asked me the same question three more times, while laughing provocatively and in a mocking manner: “Do you want the money?” My response was every time “Yes”. In the end, still laughing, Veljkovic said: “That means that you don’t want the money!” He turned round and left. To this day, nobody has brought me the financial assistance they were supposed to give me on March 26, 2011.

My family and I literally do not have enough money to survive. Except for bread and milk, we have not been able to buy any other food, hygiene products or school things for our children for a long time.

Even if we had been sentenced to serve a prison sentence, my family and I would have had food and we would have been less humiliated and intimidated.

**11.** When they noticed my concern for my children, they started intimidating them in order to force me to give up testifying.

**12.** On several occasions, police officers, including Alaksandar Lukić, Saša Paunović and their boss Perišić Velimir, requested that I give up testifying about war crimes and tried to convince me to agree to be taken immediately to Dragoljub Stanković

and Nebojša Marković, Deputy War Crimes Prosecutors, to declare my intention to cease testifying.

When I asked the Deputy Prosecutors to protect me and my family, they openly told me to listen to the police officers and do as requested - in other words, to give up testifying.

**13.** In November 2009, police officer Aleksandar Lukić entered my apartment at a moment when only my 9-year-old daughter was there. Even though he saw that she was very scared, he told her angrily and loudly to tell her father that he was going to take him to the Special Court. My daughter started crying and, as soon as I came back, she told me that some policeman had been in the apartment and that he had told her he would take me to the Special Court. My son heard this as well. Since that moment, both of them have begged on several occasions for us to return to our former home, and told me that they are scared for me and their mother.

**14.** After my complaints against members of the Police Witness Protection Unit regarding their constant interrogation of me about my testimony and what other policemen are likely to testify about, Siniša Savić, another police officer and their boss Vladimir Perišić from the Police Witness Protection Unit rudely entered my apartment unannounced. Yelling from the top of their lungs in a threatening manner, they told me to sit down and interrogated me in a loud tone about my complaints over their threats that I should give up testifying. My wife and my little daughter were extremely scared. I saw them crying and asked Perišić and the other two not to yell, because my children were scared. Then, in an even louder and more vulgar manner, they yelled at me: "Tell us what we've said to you, you c--t!? Tell us what we've done to you, you c--t!". My little daughter became scared, grabbed a pillow and covered her head so as not to have to watch the three of them yelling at me. Since that day, my daughter is afraid to be separated from me and tries to follow me wherever I go, whenever possible.

**15.** At the beginning of April 2011, we noticed that my 12-year-old son had become very worried and upset and that he was seriously afraid of something. We carefully asked him what it was, and he told us that on April 4, 2011, at around 1 p.m., while returning from school he was intercepted by six young men who were about 16 years old. My son had earlier seen two of them, who go by the nicknames of Peđa and Boki. The two of them live in an apartment building near the old Karaburma turntable, which is almost a kilometre and a half away from our apartment building. He did not know the other four young men. He had never had any contact with them and did not know where they lived. But it was obvious that all six of them knew

about my son, because they told him several times in a threatening and mocking manner: “You c--t, go back where you came from, you traitor!” My wife and I already feared the worst-case scenario, but still tried to give him encouragement, and to find out what it was that the young men wanted from him and why they called him such bad names, especially why they called him a traitor. We were especially worried, because we realized that our son did not socialize with any of them, as they were four years older than him. They were not the same age, they did not go to school together and they had never had any other contacts. The only thing we knew was that Bojan was a young man who lived with his grandmother because his parents had left him.

On April 11, 2011 at around 1:30 p.m. someone buzzed the intercom of our apartment. My daughter picked up the intercom receiver and asked who it was? An unknown voice said: “It is Nikola, I need Peđa”. When my son, whose name is Peđa, picked up the receiver, he heard the question over the intercom: “Aren’t you going to school? Come out if you are not afraid, we are waiting for you!” He was getting ready to go to school and my wife was next to him. She called me to take a look at my son, because he was very scared. He was shaking, and not even able to tie the laces on his sneakers. He was pale and looked as if he was going to faint. We were all scared. He told me that one week earlier he had been intercepted by six young men who had attacked him and insulted him by calling him “a traitor c--t”. He said that he was afraid they were going to attack him and that they were most probably in front of the building waiting to beat him up.

My wife and daughter were very scared. We were shocked but we could not speak openly in the apartment, because we believed we were bugged and that they could listen in on us. I left with him in order to see if anyone was really waiting for him and who was really threatening him. I waited a short while in the hallway inside the building, and then followed my son, who had left the building wearing his backpack, taken the stairway and then gone in the direction of the neighbouring building. Suddenly, I saw two young men with wooden sticks in their hands, running towards my son in order to hit him! I ran out through the doorway and yelled: “What do you want - what do you want from him?”. My son, who was scared, stopped. I ran up to him. One of the two young men, with somewhat darker features compared to the other one, who was of exceptionally fair features, threw down the stick and ran away from my son. He ran towards four other young men who also had wooden sticks in their hands and whom I had just noticed. These four young men also threw their sticks on the ground and ran away. The boy who was exceptionally blonde stayed with my son. He stood next to my son. He was wearing sweat pants and sweat shirt, had blonde short hair and was about 180 centimetres tall. I heard him, with a raised stick, cussing at my son and saying: “Now I will fuck your mother, you traitor c--t!

You are still here, and you did not go back to where you came from!” When I approached my son, the fair-haired attacker lowered the stick and addressed me provocatively, saying: “What do you want? You cannot do anything to me, I am underage. I know who you are. Fuck you!” Then he turned round and slowly walked away.

My son was very scared. I was also scared and very concerned. I thought of the worst-case scenario and immediately I realized that it was all happening because of my testimony. Since then, I have become more and more convinced that these young men were ordered either by the police from the Police Witness Protection Unit or other police officers from the Ministry of Interior to beat up my son in order to dissuade me from testifying, - that is, to force me not to testify in any trial.

It was very hard for me, extremely hard. I felt useless in front of my 12-year-old son, who should be looking up to me as a role model and protector, at least until he grows up. I saw my son crying. I also tried to hide my tears. I hugged him and told him to go. I escorted him to school. We barely said a word. As he entered the school, I could see that he was intimidated. It seemed to me that he was afraid, perhaps also for me and my life. I told him that I would wait for him when school was over. He entered the school with tears in his eyes. I nearly ran back to the apartment because of my fear for my wife and daughter. They had had a hard time waiting for me and were scared. We did not speak.

Helpless and desperate, I called the police on the phone number 92, and they connected me with the duty officer at the Palilula Police Station. Soon afterwards, at around 14:00h, two police officers came to the door of my apartment. I took them to the place where the young boys attacked my son. The wooden sticks were still there. The police patrol behaved absolutely unprofessionally, as if everything that had happened was well known to them or as if they could not have cared less. First of all, they did not even ask for my identification. They only asked me for my name, and I gave them my protected (false) name and address. Also, they only wrote down the name of my son, asking me if I knew the names of the individuals who had attacked my son. With the comment that such attacks happen in Belgrade on a daily basis and are, in that sense, normal, they left without a single word of explanation about any further proceedings.

I tried to explain to them that this was not an everyday attack such as happens among young people, and that it was very significant that the assailants were constantly insulting him by saying: “We know who you are, you traitor c--t”. I begged them to undertake all necessary measures to protect my child and my family. I could

not tell them that I was in the Protection Program and that I was convinced that my son had been attacked after the assailants had been persuaded to do so by someone from the police or other structures, with the objective of dissuading me from giving the upcoming testimony.

**16.** I am greatly concerned for the fate of my children, especially my son. I expected the police would take some action in order to identify the attackers and investigate the motives and circumstances of the event. In order to obtain more information, on April 13, 2011, at around 14:00h, I went to the Palilula Police Station. I was directed to Slađana, an inspector for juvenile delinquency. She told me that at that point, the police patrol had not submitted any report related to the attack against my son. I worked in the police for a long time and knew that this was not the usual practice. On the contrary, the police patrol were obliged to file a report on the intervention following the call, as well as to produce some sort of a sketch of the scene and the event, or at least to make an official note or take a photo of the wooden sticks intended for use in order to conduct a criminal act and potentially inflict serious bodily injuries.

**17.** On account of everything that has been done to me and my family, the circumstances of the attack against my son, the behaviour of the police against me and my children and the reaction of the police patrol described above, my family and I now definitely know that our lives are in danger, and that the danger is coming from those who are supposed to protect us. - not intimidate us with beatings and all the other means.

**18.** Since I am in the Witness Protection Program, I have already written three times to all those who are, according to the law, obliged to act when my wife and I ask for help and protection.

After all that has been done to us, in fear for my children and their mental health because of the traumas they are going through on account of my testimonies, I am asking you again to at least help my children, if you are not capable of protecting me, my wife and my mother.

**19.** We are in a desperate situation and can only hope for and expect your help and the rescue of our children.

B.Z. protected witness

### **III Withdrawal of witness from the Witness Protection Program**

**HLC Information, July 25th, 2011**

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#### **Case of Bojan Zlatković**

**1.** Protected witness B.Z. withdrew from the Protection Program on July 3rd, 2011. He could no longer bear the abuse, humiliation, and fear that he would again find himself in a situation where he had no one to borrow money from to buy food for his children. He returned to Vlasotince, the municipality of Lekovac, where he had previously lived, along with his family, his wife and two children. The witness endures in an invidious situation, where police officers, whom he had identified in the statement given to the Humanitarian Law Center and the Office of the War Crimes Prosecutor as perpetrators of war crimes in Kosovo, live and work. He is marked as a traitor. His close relatives are very worried and they warn the witness every day to be careful, to stay inside the house, and to never go out without company.

**2.** The witness's protection has been jeopardized. He receives no protection from the police or the Office of the War Crimes Prosecutor because they themselves protect the alleged perpetrators and the Commander of the 37th Detachment of the Special Police Units (PJP), who were under investigation by the Office of the War Crimes Prosecutor initiated in March 2009, which was subsequently aborted in June 2009. Witness B.I. spent two years exposed to constant pressure from the Serbian Ministry of Interior Witness Protection Unit for one reason only and that was to force him to withdraw his statement given to the Office of the War Crimes Prosecutor.

**3.** After the report sent by the Humanitarian Law Center in November 2010 to representatives of the most important institutions in Serbia, witness B.Z. contacted the most relevant officials and authorities in mid December 2010 and mid April 2011 asking them for help. He addressed the President of the Republic of Serbia, the Minister of Interior of the Republic of Serbia, the Minister of Justice of the Republic of Serbia, and the Republic of Serbia War Crimes Prosecutor.

**4.** No one has invited him for an interview or written informing him that they took measures to investigate his allegations regarding the pressure placed on him to withdraw his statement. He was forced to beg members of the Witness Protection Unit, who would appear occasionally, to connect the hot water, which they had

disconnected in February 2011; he had to beg them not to turn off the heating in the apartment, which they did every day for several hours or even for half a day. Financial assistance for the witness's wife was cancelled from September 2011, without any explanation and he received assistance irregularly. His children were hungry for days and the witness was forced to beg police officers from the Witness Protection Unit to give him the financial assistance he was entitled to. They laughed at him and advised him to go to the War Crimes Prosecutor first and promise that he would no longer testify about war crimes.

**5.** Local police officers from Vlasotince and Leskovac insulted witness's mother in May and June 2011 and on dozens of other occasions and they intimidated her by saying that they would kill her son and grandchildren. They would throw stones during the night at the roof of his mother's house and they damaged the roof and windows. One night someone uprooted the onions from the garden and several individuals wiped their muddy shoes on the threshold of the house. The witness protection unit did not let the witness see his mother or any other close relatives for almost two years, even though he begged them and was legally entitled to two meetings a year.

**6.** In order to get money for food, he begged police commanders from the Witness Protection unit on several occasions to find him a job or at least let him do manual labour. They kept telling him that he was in the protection program and that he was not allowed to work. They took away his employment book. He begged them for financial assistance so that he could buy school supplies and clothes and shoes for his children. They openly laughed at him and told him that he should have thought about this before he testified against his colleagues.

**7.** After cancelling several appointments, War Crimes Prosecutor, Mr Nebojša Marković, met with him on June 23rd, 2011 at 12:00. Prosecutors Miroљjub Vitorović and Snežana Stanojković and historian Vlada Petrović, who was working in the Office of the War Crimes Prosecutor on a project, attended this meeting as well. Even though the witness demanded in advance that his security be the subject of the meeting, no one from the Witness Protection Unit was present at the meeting. According to the witness, participants in the meeting criticized him because he refused to sign an agreement with the Witness Protection Unit. He claims that he has never seen this document and that no one had asked him to sign it. The Law on Witness Protection does not note the existence of any such agreement, which would regulate relations between witnesses and the Witness Protection Unit. The witness left the meeting, as he said, when Prosecutor Marković openly stated that the case

of the 37th Detachment was terminated. That is when he realized that they did not want him to testify any longer.

**8.** After this, the witness found himself in a very difficult psychological state. He came to the HLC several times and begged us to help him to speak in public about the torture he was submitted to because he wanted to testify about war crimes that had been committed. The HLC did not support him in this believing that a public appearance would only deteriorate the already bad situation he was in. He is the second protected witness who has been forced to leave the Protection Program because of abuse by officers of the Witness Protection Unit.

**9.** I contacted the Office of the Prosecutor of the Republic of Serbia, the Minister of Justice and the Minister of Interior of the Republic of Serbia regarding the issue of the protection of witness B.Z. and the HLC report. The Prosecutor and the Minister of Justice told the HLC that they are aware of the problems in the Office of the War Crimes Prosecutor but that they are were unable to change anything. The Minister of the Interior referred the HLC [Nataša Kandić] to his advisor, who informed her that he had sent a letter to the Witness Protection Unit and that he received a reply that the Unit had performed its duties professionally.

## **IV Letter to the institutions of the Republic of Serbia**

**Belgrade, September 13, 2011**

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President of the Republic of Serbia, Mr. Boris Tadić  
Serbian Deputy Prime Minister and Minister of the Interior, Mr. Ivica Dačić  
Minister of Justice of the Republic of Serbia, Ms. Snežana Malović  
War Crimes Prosecutor of the Republic of Serbia, Mr. Vladimir Vukčević  
President of the Commission for the Implementation of the Protection Program  
Serbian MUP – Head of the Witness Protection Unit, Mr Miloš Perović

### **Subject: Protection of Witness Bojan Zlatkovic**

**1.** Bojan Zlatkovic of, 11/A Karadjordjeva Street Vlasotince, was part of the Witness Protection Program between May 1, 2009 and July 4, 2011, with changed identity and changed residence.

His family (wife and two minor children) were members of the Protection Program under the same set of measures as ‘close and protected persons’ (as stipulated by Article 3 of the protection of actors in criminal proceedings) at the same time.

**2.** After illegal and degrading treatment from members of the Witness Protection Unit (WPU), Zlatkovic repeatedly appealed to the competent authorities of the Republic of Serbia and requested protection for himself and his family members.

He contacted the Humanitarian Law Center (HLC), Belgrade, asking us to help him obtain protection and enjoy the rights granted to him by the law and by the executive legal provisions and by-laws. Along with written requests submitted to the HLC, Zlatkovic submitted photocopies of documents submitted to state institutions on two previous occasions.

**3.** In those applications, Zlatkovic details in chronological order and with undeniable first hand accounts of dozens of cases of unlawful and arbitrary conduct by individuals from the WPU, who, apparently at the behest of and with the support of their superiors, repeatedly, almost daily, ever more brutally and openly, humiliated, intimidated and tortured Zlatkovic and his family.

They openly demanded that Zlatkovic withdraw his testimony on war crimes committed by members of Special Police Units (SPU) in Kosovo, which Zlatkovic himself had witnessed as a former member of the SPU, and at one time as a member

of the Serbian Interior Ministry (SIM) as well. Their demands were accompanied by threats and actions that repeatedly threatened the lives of Zlatkovic and his family.

**4.** Having stopped making payments for Zlatkovic's wife in August 2010, and subsequently for his children, the WPU then halved the financial and social assistance guaranteed to Zlatkovic under Article 15 Paragraph 4.

The financial assistance paid to him was insufficient for even the basic needs of a four-member family at the place of their temporary and forced residence. In addition to this, members of the WPU delayed payment even of this financial aid, so that Zlatkovic, concerned for the fate of his children, on several occasions requested permission to take employment so that he could feed his family. The WPU did not allow it, threatening to make things worse for him unless he went to the War Crimes Prosecutor to inform him that he would recant his testimony. The WPU cut off electricity, heat and water in his apartment. On two occasions his former colleagues from the SIM and SPU threatened to beat him to death. He saved his life by escaping. Zlatkovic is convinced that those who threatened him had been led on to do so by members of the WPU, and that the WPU had informed them about Zlatkovic's whereabouts.

**5.** Instead of the protection and assistance he requested from the authorities, members of the WPU continued to humiliate and intimidate him even more brutally, and even organized the beating of his 12-year-old son, Zlatkovic and his family. In an attempt to save their lives, in the afternoon of July 4 2011 they left the Belgrade apartment in which the WPU had housed them, and returned to Vlasotince, their former residence.

**6.** From that day, Zlatkovic has been calling the HLC almost daily, repeatedly asking us for help. He claims that their position is worsening daily. Not only do they not have the basic means for survival, nor are able to find any employment, but the members of the WPU, most likely with the knowledge and support of their superiors, informed members of the SIM of the crimes Zlatkovic had begun to testify about, and some of them subsequently „paid him a visit, just to see him, since they had heard he had come back.“ Others have damaged his yard gate, damaged the roof tiles on the already dilapidated house, uprooted vegetables planted by Zlatkovic's 78 year-old mother. Some former members of the SIM, and now local police officers, intercepted her on the street, insulted her and threatened her son and his family.

Zlatkovic filed a criminal complaint at the police station in Vlasotince and the police headquarters in Leskovac, against the police officers, former members of the SIM, who attacked him and his mother.

**7.** Particular problems for Zlatkovic and his family arise from the fact that the Head of WPU has rejected Zlatkovic's written request to have all his and his family's identification papers and official documents returned (identity cards, passports, work papers, medical identification card, birth certificates, marriage certificate, school books and children's medical records, their and their children's school diplomas, and other personal and public documents which members of the WPU had taken from them, on their departure from Vlasotnice).

Zlatkovic and his family have no ID. All they have are identification documents of their fictional, rather than their actual identities. They have identity cards and other identification documents in other people's names, and those documents expired in July 2011. This is why they cannot even attempt to exercise their fundamental rights. They cannot enrol their children in the next school year, they cannot apply for employment, social assistance, or exercise any other rights over the few personal possessions they have left.

**8.** Instead of judicial proceedings against the police officers whom Zlatkovic charged, two other protected witnesses have been publicly assaulted and insulted. These are former members of the SIM and the then SPU, who had also begun their testimony before the investigating judge of the Department for War Crimes of the High (formerly District) Court of Belgrade, against the commander Mitrovic and several members of the SPU's 37th Detachment for war crimes against civilians.

In their criminal charges, Zlatkovic and the other two protected witnesses state that the police officers, former colleagues and members of the SPU, publicly assaulted, threatened and insulted them, solely because they had provided testimony about the war crimes in Kosovo. Further, all three sought the protection of the authorities, including from the War Crimes Prosecutor, before whom they initially appeared and testified, and who had originally proposed them for the Witness Protection Program.

**9.** The HLC, among other things, has a moral obligation to seek protection for Zlatkovic and the other protected witnesses. As former members of the SPU and eyewitnesses of war crimes committed in Kosovo, the HLC proposed them for Witness Protection Program in its criminal complaint filed against Mitrovic and others from SPU's 37th Detachment.

Having accepted the criminal complaint and the HLC's proposal for them to enter the Witness Protection Program, the War Crimes Prosecutor, in his acceptance of the request for investigation, officially proposed the Witness Protection Program for Zlatkovic and another eyewitness. On October 29, 2010, without prior warning or explanation, the WPU packed up this other witness and his family's belongings, and returned them to their house. Recently, this former protected witness informed the

public during a TV show how WPU members had forced him and intimidated him into stopping further testimony.

**10.** As the organisation which first proposed the protection of those witnesses who were members of the SIM and eye-witnesses of crimes, the HLC demands from the authorities: 1) to return to Bojan Zlatkovic, formerly protected witness, his wife and their children, all personal and identification documents that were taken from them during the Witness Protection Program; 2) to pay to them all associated costs and financial aid they have been illegally deprived of, and 3) to investigate the reasons for Zlatkovic and his family's flight from the Witness Protection Program, as well as to undertake all necessary measures to fully protect Zlatkovic and other protected witnesses and persons close to them.

In particular, we request that the following is considered: As the new school year commences in a few days, the children of protected witness Zlatkovic should be allowed to at least be enrolled in the next grade in same school that they had been students at before they were included in the Witness Protection Program. It should be ensured that they are not made to feel inferior and that, in a small community such as Vlasotince, they do not suffer being branded as children of the 'Serbian traitor' because their father displayed the courage and willingness to testify about the crimes committed by officers and colleagues from the then SPU and SIM.

**11.** Witness protection of Zlatkovic and his family is a constitutional and legal obligation of the competent state authorities. We urge you to fulfill these most serious obligations, whilst ensuring that all data and all actions taken be kept confidential as they constitute a state secret (and are a matter of extreme urgency), as expressly stipulated by the provisions of Article 6 of the Act.

Executive Director, HLC,  
Natasa Kandic



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