



HUMANITARIAN LAW CENTER
Research, Documentation and Memory

PODUJEVO
1999
BEYOND
REASONABLE DOUBT

Podujevo 1999 – beyond reasonable doubt

Documents Series

Podujevo 1999 – Beyond Reasonable Doubt



Humanitarian Law Series

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INTRODUCTION

The book in front of you portrays the court truth about the responsibility of Saša Cvjetan, charged with the war crime against civilian population committed on 28 March 1999 in Podujevo, Kosovo. The documents, chronologically sorted, show how a trial, initiated on a factually incomplete and selective indictment, grew into a serious process against denial, lies, and impunity. The great merit in this process belongs to Judge Biljana Sinanović who was led in this process exclusively by the law, as well as to the surviving children, whose words in the courtroom we listened to with the feeling of shame not being able to look them in the eye.

Evidence adduced in the proceedings, which are presented in this book, unambiguously show Saša Cvjetan's individual responsibility, but also the fact that he is not the exclusive perpetrator of this act. Thanks to the witness-insider, other "Scorpions" members, who participated in the commission of this crime, were listed in the court documents presented in this book and nobody can help them avoid the criminal liability.

Before this book, the Humanitarian Law Center (HLC) published a book called *Štrpci*, which presents the court truth pertaining to the kidnapping of 19 passengers on the Belgrade-Bar train that took place on 27 February 1993.

The HLC is dedicating the book *Podujevo 1999*, the second in a row of Documenta editions, to the surviving children Saranda, Fatos, Jehona, Lirrie, and Genc, who put me to shame because of their courage, honesty, and kindness, and to the victims blown apart by the bullets of the Serbian Ministry of Interior reserve unit called "The Scorpions": Shefkate, Nora, Sala, Shpend, Shpetim, and Shehide Bogujevci, Fexhrie Blakqory Llugaliu and Nefise Bogujevci Llugaliu, Hamdi, Esma, Fitnete, Dafina, Arbër, Mimoza, Albion Duriqi, and other victims of the Serbian Police expulsion operation, which took place on 28 March 1999 in Podujevo.

This book was published with the financial support and the understanding of the OSCE Mission to Serbia and Montenegro that the court truth should be available to the broad public.

Nataša Kandić

The Republic of Serbia
THE MINISTRY OF INTERIOR
The Organised Crime Department
"O" str. pov. br.: 230-778/01
11 March 2002
Belgrade

DISTRICT COURT
- Investigative Department-

PROKUPLJE

SUBJECT: Requested Report
With official documents

LINK: Yours Ki no. 33/01
17 July 2001

The Department for Organised Crime acted upon your request to collect the necessary information in order to conduct a successful investigation against defendants Saša Cvjetan and Dejan Demirović in connection with a war crime against the civilian population pursuant to Article 142 Paragraph 1 of the Federal Republic of Yugoslavia Criminal Code (FRY CC), as well as other offences. It found the following:

- Defendants Saša Cvjetan and Dejan Demirović were members of the Scorpions unit in March 1999.
- The Scorpions unit was established as a volunteer unit and it was comprised of 128 members.
- The Commander of the Scorpions unit was Slobodan Medić, aka "Boca", and Zoran Manojlović aka. "Srle" was his deputy.

The following persons were among the Scorpions

- Zoran Vukšić aka "Žučā",
- Željko Đukić aka "Brka",
- Dragan Medić aka "Guljo".

Upon a request of the then Republic of Serbia Ministry of Interior (MUP) Public Security Department Chief, Lieutenant General Vlastimir Đorđević, the Scorpions unit was transferred to the reserve MUP Special Counterterrorism Units (SAJ) on 25 March 1999 and sent to Prolom Banja for further deployment.

At around 18:00 on 27 March 1999, Zoran Simović, the then Belgrade SAJ Commander, went to Prolom Banja to take charge of the Scorpions unit.

On 28 March 1999, around 04:00, according to the agreement made with Slobodan Medić, Simović took authority over the Scorpions unit.

Upon arriving to Podujevo, Simović and Medić went to the facilities where SAJ was stationed where they found the then Priština SAJ Commander, Radislav Stalević.

Medić stayed in the facility where SAJ was stationed, while Simović and Stalević went to the Podujevo Department of Interior to make arrangements regarding the further deployment and position of the SAJ reserve unit - the "Scorpions".

While they were in the Podujevo Department of Interior building, Simović and Stalević heard several long bursts of gunfire coming from the direction where the unit was supposed to be located. When Simović arrived at the scene, he was informed that several reserve SAJ members, the Scorpions members, had shot at women and children who were residents of Podujevo.

Spasoje Vulević aka "Vuk" was the first active duty SAJ officer to arrive at the scene. At the time, he was the commander of the SAJ Support Platoon. At present he is the MUP SAJ Deputy Commander. A SAJ doctor, Dragan Marković, provided first aid treatment for the wounded people, after which they were transferred to the hospital in Priština by a military ambulance owned by the Yugoslav Army.

After this event, Simović ordered Medić to take all reserves under his effective command from Podujevo back to Prolom Banja, which Medić did.

ENCLOSURE: – List of all Scorpions members,

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- Zoran Simović's statement,
- Radoslav Stalević's statement,
- Srđan Manojlović's statement.

CHIEF OF THE DEPARTMENT
Major General
Radovan Knežević

INTERROGATION RECORD

Composed on 24 May 1999 before the Prokuplje investigative judge in the criminal proceedings against SAŠA CVJETAN et al., based on the reasonable doubt that he committed the criminal offence pursuant to Article 47 Paragraph 2 Item 6 of the RS CC and other legal provisions.

PERSONS PRESENT:

Investigative Judge, Mijat Bajović	Public Prosecutor
	Defendant Saša Cvjetan
Court Reporter Radica Marinković	Defence Counsellor, Dragutin Stanković

The following persons attend the interrogation of the defendant:

Public prosecutor
Defence counsellor
Injured working unit representative

Began at hours.

Pursuant to Article 218 of the Criminal Procedure Code (CPC), the defendant is providing the following personal details:

Full name	SAŠA CVJETAN
Nickname	"Kobra"
Parents' names	Milan and Milka
Mother's maiden name	Atlagić

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Place of birth	Zadar, The Republic of Croatia
Place of residence	Novi Sad, 6 Ninth May Street
Date of birth	20 December 1975
Nationality and citizenship	Serb, FRY
Profession	Machinist
Family status	Married without children
Literacy	Literate
Education	Machinist School, Military High School in Banja Luka, Vrbas Education Centre, Intelligence-scout sabotage training in Pančevo

Military Service If any, then where and when, i.e. does he have a reserve junior officer, officer, or military clerk's rank?

served

Is he listed in the Military Register?

If yes, then where?

Pančevo

Has he been awarded?

The Republic of Srpska Krajina award

Material Status

Lives on a family household

Has he ever been convicted and why? No

Has he ever served any sentence? No

Are there any criminal proceedings against him in progress? No

Legal representative, if juvenile

The defendant was advised pursuant to Article 67 Paragraph 2 of the CPC to hire a defence lawyer, who can be present during the interrogation of the defendant.

The defendant was informed of the requests submitted by the Public Prosecutor_____ the Prosecutor's Office_____ Kt. No._____ from _____ for initiating the investigation for the criminal offence pursuant to Article_____, as well as of the reasonable doubt existing against him.

The defendant was told, pursuant to Article 218 Paragraph 2 of the CPC, that he is not obliged to present his defence or to answer the questions asked, and when asked what he has to say in his defence, the defendant gave the following statement:

The defendant was informed that the Prokuplje Public Prosecutor's Office requested investigation to be initiated against him, and submitted a detention request (KT 25/99) on 24 May 1999 because of the act of murder pursuant to Article 47 Paragraph 2 Item 6 of the RS CC, act of aggravated larceny pursuant to Article 166f Paragraph 1 Item 4 of the RS CC, and act prescribed under Article 33 Paragraph 1 of the Law on Weapons and Ammunition (LWA).

He was informed of his right to take a lawyer. The court assigned him Dragutin Stanković, an attorney from Prokuplje, as an ex officio defence counsellor.

The defendant stated that he understood the district public prosecution's request, and gave the following statement in his defence:

"I live in Novi Sad. I am married. I have no children. At the beginning of the NATO airstrike on Yugoslavia, on 24 March 1999, I was deployed as a reserve SAJ member in a Special Forces unit known as the "Scorpions".

On 25 March 1999 we took off from Novi Sad by bus and a truck transporting the equipment. Boca, the Scorpions commander who came along with three persons from his personal security, accompanied us. Boca went in front of us in a metallic grey BMW. One bus belonged to a company called "Šid prevoz" and another one belonged to "Bečej prevoz". All buses were rented for the purposes of our unit.

We travelled for a long time. We took off in the evening, around midnight, and arrived to Prolom Banja late at night. There, we were issued with uniforms, which we immediately put on. When we arrived at Prolom Banja, we were placed in rooms. I was with the platoon leader, Rajko. Two or three days later, when another group was supposed to arrive, the platoon leaders ordered us to clean the weapons, which were conserved for us and for the group we expected to arrive. We were all issued with 7.62 mm automatic

rifles. We also received ammunition in Prolom Banja, where we were located until our departure to the deployment to Podujevo.

I can tell you that we were not told at all when we were engaged that we were supposed to take part in the SAJ actions. We only knew that SAJ members escorted us from Prolom Banja to Podujevo. We spent two or three days in Prolom Banja - cleaning our weapons, which were conserved. We were not issued with rifles; we were cleaning them for the group that was supposed to arrive at Prolom Banja.

I am explaining that SAJ stands for Special Counterterrorism Units, and our unit was called the Scorpions.

The commander of my unit, the Scorpions, was a man known as Boca, and I do not know his last name. I had my platoon leader and that was Rajko Olujić, whom I had known before from Dalmatia and Novi Sad. Our unit was comprised of 120 members divided in five platoons.

One platoon leader was a man known as Guljo, whose first and last name I do not know, but I do know that he is Commander Boca's brother. I also know that people known as Brka and Žuća were leaders of another two platoons.

I cannot recall the exact day, but one morning around 06:00 or 07:00, we took off from Prolom Banja, along with the SAJ escort, and headed to Podujevo to our deployment.

Then, on our way to the field, we were told that we would take part in the cleansing of the area.

When we arrived at Podujevo, SAJ members waited for us there, and I also spotted several police members. I think they were wearing blue uniform and had white "Police" print over their vests. When we arrived to Podujevo by two buses, Commander Boca went to some meeting and we got off the bus. I was standing with Rajko Olujić and several other members of our unit, talking to the SAJ members. These SAJ members told us that all the houses were empty and that everything had been cleansed.

Then, a certain number of people - acting on their own - went away from the bus and inside the surrounding houses. I know that one SAJ chief said that our commanders should place us inside the houses near by, and I went with Rajko Olujić and two other SAJ members, who escorted us, to find a house suitable for our platoon to be settled in. The SAJ members explained to us once more that houses were empty and that Serb houses were marked with white towels on the windows.

Very close to the place where our buses were parked, we found a house with a locked gate. I broke a wooden part of the fence, and Rajko went through that hole and opened the gate. A 40-year-old male came out of one house located on the left side of this gate and told us in Serbian that there were still some women and children in the house. This man was Albanian, but he spoke Serbian very well. Then we told the people inside the house to come out, and they did so, carrying bags. There were ten of them. Two were males - one was around 30 years old, and another one of around 40. The younger man was carrying a baby and a black leather jacket in his arms. When I went inside the house I found a martial arts black belt. The rest of the people were women and children.

There was a third man, besides these two, who came out of the house. He was between 40 and 50 years of age, short, with white hair and a great physique. He was wearing some old suit with a yellowish shirt with stripes. When he was coming out of the house, he kept his left arm bent under the jacket. I pulled him by the arm, for personal safety, when a woman screamed, "No, his arm is broken". I tore his shirt and I saw that he had a gun shot wound on the left shoulder. Then I slapped him and said, "Is that a broken arm or a gun shot wound?". I concluded, according to his physique and everything else, that he was a KLA member.

One man said that besides these women and children, there was another paralysed woman inside the house.

Commander Rajko and these SAJ members told these men to go out on the street and line up. Rajko then said, "Let them go", and I saw tears in his eyes. We told them to run down the street and while they were running I fired a short burst of gunfire high in the air. I do not know where they went, but they did run down the street.

After this, Rajko and I returned to the yard. This police officer stayed at the door of the house, and SAJ members stayed by the fence. This was the second house in the yard we first came to. We went inside to search the house. In a room on the upper floor I found a Zbrojevka M-75 9mm pistol with a clip full of ammunition, and I also found a Dupon lighter. I took the pistol and the lighter and I did not say anything about that to Rajko. The police confiscated these items in Novi Sad on 21 May 1999.

When we went out on the street, I heard some noise in the neighbouring yard. Commander Rajko told me to go there and see what was going on. He also said he would go and get some help and told me to join the rest of the soldiers and help them. I went inside the yard and passed by the house and a water pipe where a blue Volvo was parked. When I passed that water pipe I saw a group of people lined against the wall of the house. There were some 15 people there, including Guljo and Brko. One of them was short and he was the youngest among them. He was searching these people and I was looking at the windows to make sure that nobody shot at them. Then, one member of our unit separated one blonde woman from the group, but he immediately came back. I heard that he asked her, "How come you do not know whose hand and rifle grenades these are?" He pushed this woman against the wall immediately. One of the people who had police printed on their vest said, "Kill them all".

This guy immediately took the blonde woman towards the house and fired a short gun burst in her back. The woman fell on the concrete trail. I do not know who did this, but I do know that the perpetrator was blond. Guljo was mad and he said that all these people should be lined against the wall and killed. Then, we fired diverse weapons, some ten to 20 weapons. I was shooting along with Guljo. I fired ten shots at most. The guy who was searching them was also shooting, as were some six or seven other people. All people who were lined up were shot, and they all fell in one pile. We did not check whether there were any survivors among them, but immediately withdrew from the yard and went back on the street.

Then I noticed that panic was everywhere. Certain SAJ chiefs yelled at us to line up and asked who was shooting. I knew one of these chiefs; his nickname was "Vuk", and he is a good guy. Simović also told us to withdraw. Boca also appeared and he was mad. He was saying, "You motherfuckers,

I cannot leave you one minute alone without you making a mess". In that moment, he did not know what happened. I think that Vuk also had no idea. I think so because they said that everything was clear.

Guljo was late with his guys for the formation and we were ordered to get on the buses. We heard several more rifle bursts and then Boca told Rajko to go back because there were probably some of our men still there. Rajko returned with these men and then we heard several sniper shots. We were 100 per cent sure that it was KLA shooting at Žuća's group.

We stayed in Prolom Banja for another ten days and then we were told to go back home and not tell anybody about what happened. Colonel Trajković thanked us for the mission accomplished and, as of that moment, we knew that we were members of the SAJ reserves. They told us that they would call us when necessary and that we were free to go home.

We left the rifles and ammunition already in Prolom Banja and then we went to Belgrade. I remember that one of the ministers, whose name I cannot recall now, also thanked us. They also told us that we would turn in our uniform in Novi Sad and that they would keep them in one place. They also told us that we would be given some overalls for our second deployment.

I am explaining that every order must be executed, not only in this unit, but also in all special operation units, regardless of the consequences. I did not see a single child, but I have just explained that orders must be executed. Guljo was the closest to us at the scene and we acted upon his order.

That is my defence, I heard the statement from the record loud and clear, I accept it, and I put my signature on it."

SAŠA CVJETAN

Court Reporter
Radica Marinković

Investigative Judge
Mijat Bajović

INTERROGATION RECORD

Composed on 24 May 1999 before the Prokuplje District Court investigative judge in the criminal proceedings against SAŠA CVJETAN et al., because of the reasonable doubt that he committed the criminal offence pursuant to Article 47 Paragraph 2 Item 6 of the RS CC.

PRESENT PERSONS

Public Prosecutor
Investigative Judge,
Mijat Bajović

Defendant
Dejan Demirović

Court Reporter
Radica Marinković

Defence Counsellor
Živorad Šubaranović

Persons present during the interrogation of the defendant:

Public prosecutor

Defence counsellor

Injured working unit representative

Began at hours.

Pursuant to Article 218 of the CPC, the defendant is providing the following personal details:

Full name

DEJAN DEMIROVIĆ

Nickname

“Nečko”

Parents’ names

Ismet and Ružica

Mother's maiden name	Stamatović
Place of birth	Bihać
Place of residence	Beška, 38 Kneza Miloša Street
Date of birth	18 May 1975
Nationality and citizenship	Serb, FRY
Profession	Student
Family Status	Single
Literacy	Literate
Education	High School of Interior in Sremska Kamenica
Military Service If any, then where and when, i.e. does he have a reserve junior officer, officer, or military clerk's rank?	
	Served
Is he listed in the Military Register?	
If yes, then where?	Indija
Has he been awarded?	
Material Status	Lives on a family household
Has he ever been convicted and why? No	
Has he ever served any sentence? No	
Are there any criminal proceedings against him in progress? No	
Legal representative if juvenile	

The defendant was advised pursuant to Article 67 Paragraph 2 of the CPC to hire a defence lawyer, who can be present during the interrogation of the defendant.

The defendant was informed of the requests submitted by the Public Prosecutor _____ the Prosecutor's Office _____ Kt. No. _____ from _____ for initiating the investigation for the criminal offence pursuant to Article _____, as well as of the reasonable doubt existing against him.

The defendant was told, pursuant to Article 218 Paragraph 2 of the CPC that he is not obliged to present his defence or to answer the questions asked, and when asked what he had to say in his defence, the defendant gave the following statement:

The defendant was informed that the Prokuplje Public Prosecutor's Office requested investigation to be initiated against him, and submitted a detention request (KT 25/99) on 24 May 1999 because of the act of murder pursuant to Article 47 Paragraph 2 Item 6 of the RS CC.

The court assigned him Živorad Šubaranović, an attorney from Prokuplje, as an ex officio defence counsellor.

The defendant stated that he understood the district prosecutor's public request, and gave the following statement in his defence:

"I live in Beška. Two days after the NATO bombing started, I was called into the SAJ reserve unit - the Scorpions - under the command of Slobodan Medić, aka Boca. We were issued with a uniform in Belgrade and with weapons in Prolom Banja after we arrived there from Novi Sad. Two days later, we were told that we were going to Podujevo to cleanse the area. One morning, the whole unit comprised of 125 members arrived to Podujevo where we were turned over to the SAJ command. Upon our arrival, people started getting off the bus without any control, while I stayed on the bus with other people for another half an hour. I asked one of the SAJ members to find one old colleague of mine, Dejan Latnik. One of the SAJ commanders told us to find ourselves accommodation and we asked him to let some of his men come with us.

One older man with a beard came out of the second house I passed, and he told me, "Where is my son, I paid for freedom". One guy previously asked him, "Where is the money?" My colleague Miloš from Sremska Mitrovica took over this man and I went with another three colleagues inside another house in the same yard. Several women and children came out of that house, along with an old man carrying luggage. We stopped them. They left their things beside the wall and we searched them and found no weapons on them.

We also searched the house and found no weapons in there either. Almost at the same time, one blond guy went away from the group, selected a blonde woman, and took her inside the house. While I was heading towards an unfinished house, that blond guy dragged the woman out - I saw him grabbing her by the hair and hitting her head against the wall several times. He stepped back, pushed her to the path against the wall, and fired one short rifle burst in her back. She was shot and she fell on the concrete trail close to the chicken-house. In that moment I was located at the corner of the yard, at the beginning of this concrete trail, opposite from this killed woman, right next to the house. In that moment, a group of people literally jumped at me; I did not see who they were, but I heard them say, "Give that back and liquidate". There were SAJ members and the blues [police] mixed with that group.

When I mention the blues, Podujevo police was not there at all. These guys came from somewhere else, but I'm sure that none of the Podujevo blues was there.

At the same time, a group of my colleagues led by Gulja, Boca's brother, showed up, along with Saša, and the youngest member of the Scorpions, and four or five other Scorpions members. They all pushed that group towards me - to the very corner of the house, towards the wall - and opened automatic gunfire. I could have been killed, too, in that moment. In one moment I moved and then I was in direct danger of being shot, but I still managed to run away and hide in one corner where I spotted two police officers. So, I managed to escape unwounded, and I turned to the right and to the left and saved myself. I am sure and I saw that at least seven or eight barrels were shooting. I heard an order to line up - Commander Vuk Simović, showed up, and Boca came right after him. They were yelling and asking what was going on and SAJ commanders were telling us to pack our bags and go back because they did not need us like that, because nothing similar had happened before.

Right after we got on the bus we heard another rifle burst, like an isolated gunfire, and we headed towards Prolom Banja.

While I was getting off the bus, I heard constant isolated gunfire, and I do not know who was shooting.

I was sitting across from Gulja on the bus and I was furious because I could not believe that something like that could have happened, so I provoked Gulja and whispered to him that I was shooting in the yard, and he stormed at me, "So what? I, personally, was shooting". I was mad when I heard that and then I stormed at him saying that I could have got killed along with the rest of the people. He asked me how that could be possible, when he did not see me.

When we arrived in Prolom Banja by bus, one platoon led by Žuća stayed. After some ten days we headed to Novi Sad by bus. I claim that I did not use the rifle that I was carrying on me. I did not kill or hurt anybody with it.

It is only true that I fired a burst in front of one pharmacy - I broke the glass so we could take some medication and medical equipment from there for the needs of the unit. I would not even have done that unless SAJ commanders, who were standing beside us, approved of it and did the same thing. We did not have any medications and we had to take something for treatments. That pharmacy is located in Podujevo.

I know that the platoon led by Žuća arrived in Prolom Banja later in the evening. There are rumours that several people were killed in Podujevo, in a teahouse. I did not see that, but one man, originally from Borovo settlement where he worked as a waiter, who was with Žuća, told me about it.

I am repeating once more that I was not involved in the killings in Podujevo.

I would have never shot at women, children, and mothers, regardless of the order, because my father who was in Vukovar had told me, "Son, it is a great sin to shoot at children and women". I came to fight against the KLA and for my fatherland, and not against children.

I even said that the blonde woman should be taken to the command instead of killing her.

That is my defence, I heard the recorded statement loud and clear, I accept it as mine, and I will put my signature on it."

DEJAN DEMIROVIĆ

Court Reporter:

Radica Marinković

Investigative Judge:

Mijat Bajović

The defendant's lawyer submitted a request for defendant to be released from detention.

Court Reporter:

Radica Marinković

Investigative Judge:

Mijat Bajović

The PROKUPLJE DISTRICT COURT, as a criminal court in the trial panel comprised of Branislav Đ. Niketić as the Presiding Judges, Judges Svetozar Milojević and Aleksandar Stojanović as jurors, and Court Reporter Slađana Stanković, in the criminal proceedings against defendants SAŠA CVJETAN from Novi Sad and DEJAN DEMIROVIĆ from Beška, initiated because of the criminal acts pursuant to Article 47 Paragraph 2 Item 6 of the RS CC, Article 166 Paragraph 1 Item 4 of the RS CC, and Article 22 Paragraph 1 of the Law on Weapons and Ammunition, ruling on the Prokuplje District Court Investigative Judge's proposal Kl. no. 20/99 from 15 June 1999, which protests the Prokuplje Public Prosecution's request for extending the detention, in the private session organised on 16 June 1999, made the following:

RULING

1. The investigation initiated by the Prokuplje District Court Investigative Judge's decision Kl. no. 20/99 on 24 May 1999 against defendants Saša Cvjetan from Novi Sad and Dejan Demirović from Beška is DISMISSED

- pursuant to Article 171 Paragraph 1 Item 4 of the CPC.

2. The detention established against Saša Cvjetan from Novi Sad and Dejan Demirović from Beška by the Prokuplje District Court Investigative Judge's decision Kl. no. 20/99 on 24 May 1999 is ABOLISHED. The detention was enacted as of 21 May. The defendants must be released immediately.

Statement of Reasons

By the Prokuplje District Court Investigative Judge's decision Kl. no. 20/99 made on 24 May 1999, the investigation was initiated against defendants Saša Cvjetan from Novi Sad and Dejan Demirović from Beška and they were placed in detention because of the criminal acts pursuant to Article 47 Paragraph 2 Item 6 of the RS CC, Article 166 Paragraph 1 Item 4 of the RS CC, and Article 33 Paragraph 1 of the Law on Weapons and Ammunition, for defendant Saša Cvjetan, and because of the criminal act pursuant to Article 47 Paragraph 2 Item 6 of the RS CC for defendant Dejan Demirović. The

detention was established in line with Article 191 Paragraph 1 Item 4 of the CPC and it is enacted as of 21 May 1999.

The Prokuplje District Court investigative judge submitted to the Prokuplje District Court trial panel proposal Kl. no. 20/99 on 15 June 1999 demanding that the detention be extended against the defendants and also proposal Kl. no. 20/99 on 15 June 1999 requesting from the panel to rule on his objections regarding the Prokuplje District Public Prosecution's proposal for the exhumation of the corpses listed in the investigation opening order.

Upon the investigative judge's proposals, the Prokuplje District Court trial panel examined all documents from the case Kl. no. 20/99, and found the following:

Ruling on the Prokuplje District Court Investigative Judge's request for extending the detention against the defendants and for making decision regarding his objections to the Prokuplje District Prosecution's proposal for the exhumation of bodies, pursuant to Article 171 Paragraph 1 Item 4 of the CPC, the panel found that there are no sufficient evidence that defendants Saša Cvjetan and Dejan Demirović committed the acts they were charged with. It is obvious from the documents in the case file that many people divided into groups took part in the cleansing of the area. Hence, defendant Saša Cvjetan was in one of the groups, which, during the cleansing of the area, ran into a group of people suspected of being terrorists. There was shooting and several people, listed in the investigation opening order, were killed. We cannot claim with certainty, based on the documents, that defendant Saša Cvjetan killed some person from that group, since there were several people who were shooting. There is also no evidence that defendant Dejan Demirović was shooting at all that day. On the contrary, he was himself endangered by the shooting.

The district court trial panel finds that, in this case, the autopsy of the bodies was not undertaken so that it cannot be claimed with certainty that these people were killed from firearms. Out of the already known reasons, the trial panel assesses that it is not possible to exhume these bodies, since they were taken in the unknown direction and they were buried at unknown locations, and because of the present situation in Kosovo, it is impossible to find the place where these bodies were buried in order to ex-

hume them. Without that evidence, this trial panel finds that the aforementioned defendants cannot be suspected for the criminal acts they were charged with. In the documents from the case file, it is obvious that defendant Saša Cvjetan, during the cleansing of the area, found a pistol in one of the houses and took it because it was well known that every house in Kosovo possessed weapons, usually not registered. There is no evidence that Saša Cvjetan confiscated that pistol for himself.

Since the Prokuplje District Court closed the investigation against the defendants, which was initiated because of the criminal acts, they were charged with, the panel finds that the reasons for keeping them in detention have also disappeared, so the trial panel is abolishing the detention and Saša and Dejan should be released immediately.

This decision KV. no. 35/99 was made on the basis of the aforementioned reasons.

THE PROKUPLJE DISTRICT COURT, 16 June 1999,

Court Reporter
Stanković Slađana, signature

Presiding Judge
Branislav Đ. Niketić, signature

INFORMATION REGARDING LEGAL REMEDIES: The appeal against this decision can be lodged through this court to the Serbian Supreme Court in Belgrade within three days from receiving this decision.

The Republic of Serbia
DISTRICT PUBLIC PROSECUTION
KT. no. 25/99
18 June 1999
PROKUPLJE
MH/GA

SUBMISSION TO THE PROKUPLJE DISTRICT COURT
FOR
THE SUPREME COURT

BELGRADE

The Prokuplje District Prosecutor, pursuant to Article 45 Paragraph 2 Item 4 of the Criminal Procedure Code (CPC), against the Prokuplje District Court's decision KV. no. 35/99 from 16 June 1999, in the legal time limit, is lodging this

APPEAL

- because of grave breaches of the criminal procedure provisions - Art. 363 Item 1 of the CPC,
- because of falsely determined factual background - Art. 363 Item 3 of the CPC,
- because of a violation of the Criminal Code - Art. 363 Item 2 of the CPC.

Statement of Reasons

The Prokuplje District Court made a decision KV. no. 35/99 on 16 June 1999, by which it closed the investigation against defendants Saša Cvjetan from Novi Sad and Dejan Demirović from Beška, which was initiated because of the commission of criminal act prescribed under Article 47 Paragraph 2 Item 6 of the RS CC, Article 166 Paragraph 1 Item 4 of the RS CC, and Article 33 Paragraph 1 of the Law on Weapons and Ammunition. By the same decision, the defendants were released from detention, which was established by the Prokuplje District Court Investigative Judge's decision KI. no. 20/99 from 24 May 1999.

We take this decision as irregular and illegal, since it was made with numerous violations of the criminal proceedings provisions and in absence of a thorough analysis of the facts gathered in documents, which, naturally, led to the irregular application of the Criminal Code.

Every relevant and competent court's decision should be divested of arbitrariness, impressions, and assumptions. On the contrary, this decision is swarming with such elements. The decision is based on the defence counsel's stance, which is irrational and partial, and yet understandable considering the defence counsel's procedural role. However, the court has much greater responsibility when assessing the factual background and delivering a competent decision.

The Prokuplje District Court committed numerous violations of the proceedings. Before presenting all these violations, it is necessary to point to the investigation's stance when delivering address before the court. Namely, the investigative judge, without any relevant information, assessed that it was impossible to carry out an exhumation of the corpses. Thus, the investigative judge holds that there are no conditions for any further collection of material evidence that certain suspension of investigation emerged, but he still proposed that defendants stay in detention. That contradiction of the legal facts is basically the foundation of the district court's decision.

The defence counsel's thesis was that, according to the official documentation, the autopsy was not carried out, that it cannot be carried out, that it is uncertain who the persons in question were, that there are no corpses, and there is no evidence that the defendants had committed the criminal acts they were charged with.

The district court, for unknown reasons, basically accepts such allegations. The claim that there are no corpses could not be accepted as true because, at least, photo documentation in the case file proves this. The Prokuplje District Court Investigative Judge's Investigation Report KRI. no. 21/99 made on 30 March 1999 proves it as well. The forensic report from Priština dating from 30 June 1999 also proves it, since it claims that corpses were transferred on 30 March 1999 for autopsy, and that the following day somebody ordered that corpses should be buried without autopsy. The investigative judge or trial panel did not try even once to find out who prevented that in-

vestigative act - autopsy - from happening. That way, the district court panel believes that the district court's sluggishness, since the autopsy was requested already on 24 May 1999, should be the benefit of the defendants, and thus the district court should take its official omission as a mitigating circumstance for the defendants, in the absence of evidence.

Even though the prosecution officially has information, through the Kosovo state authorities' reports, that civil institutions work properly, the district court panel finds that "for the well known reasons" it is not possible to carry out the exhumation and the autopsy of the bodies. We do not know which "well known" reasons the court had in mind, since we have not received any evidence that the Republic of Serbia is not legally operating in Kosovo. It is also impossible to claim that the bodies were taken in an unknown direction and buried at an unknown location, since relevant services, of course, know where the bodies from the forensic institute were transferred and buried.

We can also see a grave violation in the district court's explanation from the decision, which says that the shooting and murders occurred because the group contained a person suspected of being a terrorist. This stance is directly confronted with the defendant Saša Cvjetan's statement that they ran into a group of people and suspected that one of them was a KLA member, but they fired a short gun burst and let them go. The second group of people, in the second yard, was killed for no reason. The partiality in the Prokuplje District Court's Statement of Reasons is obvious.

The district court decided, without any justified reason, to close the criminal proceedings. Not a single effort was put into conducting any of the investigative acts suggested by the public prosecutor. They did not even try to contact the Priština Forensic Institute and obtain a report stating whether or not exhumation and autopsy were possible. By this act, the investigative judge's order from the investigation report regarding the autopsy was not taken into consideration, and he himself forbade the autopsy. Such behaviour brings us to the absence of legal rationale and adoption of the death equilibrium theory, which is unacceptable.

The Prokuplje District Court also failed to observe the written evidence from the case file and claimed that defendant Saša Cvjetan did not take the pis-

tol confiscated from one of the Albanian houses for himself. By this, the district court denied the authenticity of the Republic of Serbia Ministry of Interior - Novi Sad Secretariat of Interior Record on the Personal Search on 21 May 1999, which shows that a pistol with ammunition was confiscated from Saša Cvjetan and the defendant confirmed this with his personal signature on the record. Thus, the district court is denying the fact offered by another state authority in an authentic and credible forms and it also tries to deny the fact that defendant Saša Cvjetan illegally possessed firearms hence obviously committing the act pursuant to Article 33 Paragraph 1 of the Law on Weapons and Ammunition. The district court's decision to act like this and deny the obvious existence of this criminal act could only be explained by its trial panel.

The district court's trial panel is constantly in the field of the "well known". It claims in the Statement of Reasons that it was well known that every Albanian household in Kosovo owned weapons, mostly unregistered. The court did not even try to determine that these weapons were unregistered, but the fact is that - regardless of the origin of this weapon - defendant Cvjetan illegally confiscated other people's movable property. We came to this conclusion because he was not acting in the capacity of the Ministry of Interior authority for the control of weapons' possession, but he confiscated the pistol in order to gain material profit for himself. It is not acceptable for the court to support the logic that a person has right to possess unregistered and unlicensed firearm confiscated from some other person, of course assuming that it was unregistered firearm. If defendant Cvjetan confiscated that weapon while acting in capacity of the authorised officer and turned it in to the respective Secretariat of Interior body, his act, for sure, would not be qualified as aggravated larceny. Under these circumstances, we believe that the defendant is the perpetrator of this crime and the reason for suspending the procedure for this act, as well, is not understandable.

Completely respecting the principle of legality and in order to act conscientiously and responsibly, the district public prosecutor believes that the district court's decision is completely illegal and directly confronted to the facts and evidence available. Hence, all these procedural violations and the contradiction of facts point to the obvious illegality of the decision regarding the application of the criminal code, thus we consider the complete decision illegal.

Based on the aforementioned reasons, the Prokuplje Public Prosecutor gives the following

PROPOSAL

The Serbian Supreme Court should DISMISS the Prokuplje District Court Trial Panel's decision KV. no. 35/99 from 16 June 1999 and return the case in the investigation phase.

DISTRICT PUBLIC PROSECUTOR
Miroslav Nikolić

The Serbian Supreme Court in the trial panel comprised of Judges: Dragomir Stojanović as Presiding Judge, Miodrag Jakovljević and Boža Rakočević as jurors, with Counsellor Olivera Purić as court reporter, in the criminal proceedings against defendants Saša Cvjetan from Novi Sad and Dejan Demirović from Beška, initiated because of the criminal act of murder pursuant to Article 47 Paragraph 2 Item 6 of the Republic of Serbia Criminal Code (RS CC) and others, ruling on the Prokuplje Public Prosecutor's appeal lodged against the Prokuplje District Court's decision Kv. number 35/99 from 16 June 1999, in the panel session on 13 July 1999, made the following

RULING

The Prokuplje Public Prosecution's appeal is SUSTAINED and Prokuplje District Court's decision Kv. number 35/99 from 16 June 1999 is DISMISSED and case returned to the first instance court for further procedure.

Statement of Reasons

The Prokuplje District Court's decision Kv. number 35/99 from 16 June 1999 under Item 1 closed the investigation against Saša Cvjetan and Dejan Demirović, which was ordered by the Prokuplje District Court Investigative Judge's ruling Ki number 20/99 on 24 May 1999 pursuant to Article 171 Paragraph 1 Item 4, and terminated the detention against the defendants established by the same investigative judge's decision Ki 20/99 from 24 May 1999, which was enacted as of 21 May 1999, and it was ordered that they be released immediately.

The Prokuplje District Public Prosecution lodged an appeal (Kv. number 35/99) against the first instance decision in the legal time limit because of the grave violations of the criminal proceedings provisions, falsely determined factual background, and violation of the criminal code with the proposal to dismiss the decision and return the case into the investigation phase.

The Republic of Serbia Public Prosecutor presented in the submission Ktž. I 1376/99 from 25 June 1999 his opinion that the appeal is founded and suggested that the first instance decision be dismissed and case returned to the investigation phase.

The Supreme Court studied all documents from this case file, examined the first instance decision upon appeal, in line with Article 397 Paragraph 4 of the CPC, and according to the assessment of the allegations from the appeal and Republic of Serbia Public Prosecutor's written opinion, it finds that:

The appeal is founded.

Ruling on investigative judge's request for extending the detention and his protests against the exhumation of bodies, the first instance trial panel (pursuant to Article 23 Paragraph 6 of the CPC) brought a ruling Kv. number 35/99 on 16 June, by which it closed the investigation in this case and abolished the detention because of a lack of evidence proving that the defendants were the perpetrators of the crimes they were charged with, and thus there were no reasons for keeping them in detention.

It is explained that during the cleansing of the area, the group - of which defendant Saša Cvjetan was a member - found a group of people that contained some terrorists. Then there was shooting, and several people from that group, who are listed in the investigation opening order, were killed. Based on the documents, it could not be determined with certainty that defendant Cvjetan killed somebody from that group as there were several persons who were shooting. There is no evidence that defendant Demirović was shooting at all, but only that he was himself endangered by the shooting.

It is underlined that the autopsy of the bodies was not carried out in order to determine with certainty that these people were killed from firearms, because it was not possible to exhume the bodies because they were taken in an unknown direction and buried at the unknown locations, and that, because of the new situation, it is not possible to inspect the burial locations in order to exhume the bodies. According to the first instance court opinion, without these proofs, the defendants could not be suspected of

committing the acts they were charged with. Relying on the documents from the case file, they claim that, during the cleansing of the area, Cvjetan found and took a pistol from one house, but there is no evidence that he took it for himself.

The Supreme Court finds that the aforementioned conclusions of the first instance court could not be accepted for the time being because the reasons given are confronting the content of evidence and the information in the documents, which represents a grave violation of the criminal proceedings provisions pursuant to Article 364 Paragraph 1 Item 11 of the CPC, and the factual background is falsely determined and thus the regularity of the Criminal Code application is also questionable, which was well noted in the Public Prosecutor's appeal.

According to Article 157 Paragraph 1 of the CPC, the investigation against certain person is opened only when there is reasonable doubt that the person committed the criminal act.

The provision from Paragraph 2 of the same article prescribes - that evidence and information necessary to file an indictment or dismiss the procedure should be collected in the investigation, as well as evidence, which could be impossible to repeat in the main hearing or its presentation could be full of difficulties and other evidence, which could be useful for the proceedings and, regarding the circumstances of the case, its presentation would be appropriate.

Based on the evidence provided and documents in the case file, the investigative judge agreed with the Public Prosecutor's Investigation Opening Request Kt. 25/99 from 24 May 1999 and pursuant to Article 159 Paragraph 1 of the CPC, he issued the investigation opening decision Ki number 20/99 on 24 May 1999 against defendants Saša Cvjetan and Dejan Demirović because of the reasonable doubt that each of them committed an act of murder pursuant to Article 47 Paragraph 2 Item 6 of the RS CC, and that defendant Cvjetan committed an act of aggravated larceny pursuant to Article 166 Paragraph 1 Item 4 of the RS CC, and act of illegal weapons possession pursuant to Article 33 Paragraph 1 of the Law on Weapons and Ammunition. By the same decision, based on Article 191 Paragraphs 1 and 2 Item

4 of the CPC, the defendants were placed in detention for 30 days. The detention was enacted as of 21 May 1999.

The reasonable doubt prescribed by Article 157 Paragraph 1 of the CPC - that the act of murder pursuant to Article 47 Paragraph 2 Item 6 of the RS CC was committed and that the defendants were involved in the commission of this act - is based on the evidence provided and proposed on the defence counsel's allegations. Thus, the Prokuplje District Court Investigative Judge's Investigation Report Kri 21/99 from 30 March 1999, which was composed regarding the events in Podujevo on 28 March 1999, gives information on the greater number of killed persons' bodies, blood traces, and presence of rifle or pistol bullet cases. A criminal technical report was composed in relation to this and it objectified the situation found at the scene and ordered the autopsy of the bodies.

In the defence statement given before the investigative judge on 24 May 1999, the defendants confirmed that, on that occasion, many people were killed from firearms. Defendant Cvjetan did not deny that he was using automatic rifle on that occasion, along with others, while defendant Demirović did not deny his presence. He claimed he did not shoot at these persons, and that he himself was exposed to danger while others were shooting. In relation to the circumstances under which these people were killed, the defendants pointed to the evidence.

Defendant Cvjetan confirmed in his defence statement that during the search of one Albanian house he found an M 75 pistol, 9 mm calibre, serial number D 4754 and a clip with 15 bullets. He took that pistol and did not say to anybody about this, not even to his colleague, who was searching the house along with him. He took it home and kept it there. The pistol was found at his home during the search conducted on 21 May 1999 and it was confiscated. This is also confirmed by the content of the certificate on the temporary confiscated property and the defendant himself does not deny this. The aforementioned allegations found reasonable doubt that the defendant committed both, the act of aggravated larceny pursuant to Article 166 Paragraph 1 Item 4 of the RS CC and the act of illegal weapons possession pursuant to Article 33 Paragraph 1 of the Republic of Serbia Law on Weapons and Ammunition. Besides the written evidence provided and criminal-technical report, the public prosecutor proposed in his investiga-

tion opening request that other evidence be presented, as well - obtaining of the Priština Forensic Institute official report on the type of wounds, instrument with which these wounds were inflicted, time when the wounds were inflicted, and time of death for 19 killed persons; examination of witnesses in order to determine personal information and reliable identification of these persons, and if necessary, the exhumation and autopsy of these bodies.

The investigative judge accepted the presentation of evidence in this order, but he did not present it. The defence counsel's allegations were not inspected either, even though it was prescribed by the investigative judge's decision in order to assess their credibility. The only thing that was obtained was the Priština Forensic Institute's report from 3 June 1999. This report provides information that on 30 March 1999, "the bodies of victims of war from the territory of the Podujevo were transferred to this institute and the following day the order was issued that the bodies should be buried without autopsy".

The investigation cannot be considered completed only because the investigative judge forwarded the documents to the public prosecutor for further procedure without collecting evidence pursuant to Article 157 Paragraph 2 of the CPC or based on his decision that evidence will not be presented. Considering that fact, the public prosecutor's submission by which he returned the case file and requested that previously provided evidence be presented, cannot be considered a proposal for the revision of the investigation and protest the presentation of this evidence.

The first instance court states that objectively there were no possibilities for the exhumation and autopsy to be carried out, and yet it did not take a single action in order to gather information and determine the burial location in order to enable the autopsy that the public prosecutor proposed. The first instance court stated in the disputable decision that the defendants could not be suspected of being the perpetrators of this murder because the bodies were missing and it was not possible to carry out the autopsy.

This observation cannot be accepted. The absence of this evidence only makes it difficult to determine the facts necessary for this decision, but it

does not make it impossible for the facts to be determined with the help of other direct and indirect evidence, as proposed by the public prosecutor.

The reasons for the first instance court to state in the disputable decision that the listed persons were killed in the exchange of fire with terrorists and that it could not be claimed with certainty without the autopsy of the bodies that these persons were killed from firearms, is not based on the evidence in the documents, first of all from the defence counsel's allegations.

After the investigation opening decision enters into effect, it can be closed pursuant to Article 171 Paragraph 1 Item 4 of the CPC only if the evidence was presented and reasonable doubt that the act was committed and that the defendant was the perpetrator was refuted.

In this case, the first instance court neglected the fact that the investigation was not closed because not a single piece of proposed evidence was presented, and neither was evidence necessary for the inspection of the defence's allegations and evidence accepted by the investigative judge. The court falsely assessed that there was not enough evidence proving that the defendants committed the crimes they were charged with and it cancelled the procedure, referring to Article 171 Paragraph 1 Item 4 of the CPC.

It was underlined that there was no information proving that the investigation opening decision (Ki. 20/99 from 24 May 1999) was delivered to the defendants and their counsellors, and it was not ruled on the defendant Cvjetan's appeals, so it could not be certainly inspected, whether the investigation decision entered into effect, and that is important for ruling in this case.

If the investigation opening decision did not enter into effect, the investigation could not be closed pursuant to Article 171 Paragraph 1 Item 4 of the CPC like the first instance court did. Upon appeal, the only thing that could be discussed was the foundation of the investigation opening request.

Considering the aforementioned, the first instance decision was made with grave violations of the criminal procedure pursuant to Article 364 Paragraph 1 Item 11 of the CPC and the factual background was falsely and in-

completely determined and because of this the proper application of the criminal code also became questionable. Because of all this, the first instance court's decision was dismissed and returned for the repeated procedure pursuant to Article 157 Paragraph 2 and Article 166 of the CPC.

Because of all these reasons, the supreme court sustained the public prosecutor's appeal pursuant to Article 397 Paragraph 3 of the CPC and decided as alleged in the enacting terms of this decision.

Court Reporter
Olivera Purić

Presiding Judge
Dragomir Stojanović

Person who guarantees the accuracy of the document

Chief of Clerks
Rada Mitrović

WITNESS EXAMINATION RECORD

Composed on 3 April 2002 before the Kuršumlja Municipal Court Judge upon the Prokuplje District Court petition in the criminal proceedings against SAŠA CVJETAN from Novi Sad and Dejan Demirović from Beška, led because of the criminal act pursuant to Article 142 Paragraph 1 of the FRY CC.

Ljubomir Jovanović - Judge

Court Reporter
Bratislava Avramović

Witness
MARKOVIĆ DRAGAN

Other persons present at the
witness examination:

Public Prosecutor
Višeslav Bukumirović

Defendant

Defence counsellor
Đorđe Kalanj,
attorney from Belgrade
(defending Saša Cvjetan)
and
Božidar Filipović,
attorney from Prokuplje
(also defending Saša Cvjetan).

Began at hours.

The witness was informed that he is obliged to speak the truth and that he must not hide anything; he was also informed of the consequences of giving a false statement; and he was also informed that he is not obliged to

answer certain questions if he would, by answering, expose himself or a close relative to great shame, significant material damage, or criminal proceedings (Article 229 of the CPC). The witness gave the following answers to the general questions:

Full name	DRAGAN MARKOVIĆ
Father's name	Vojislav
Profession	Doctor, Serbian Ministry of Interior Special Counter Terrorism Units, in Belgrade
Place of Residence	Belgrade, 56 Gandhi's Street, Apartment no. 32
Place of birth	Priština
Date of birth	20 June 1963
Relation to the defendants or injured party.	

After giving the personal details, the witness gave the following statement regarding the case itself:

"I was a doctor, at the time, for the Republic Ministry of Interior Special forces unit in Priština - SAJ, which was stationed in the Podujevo area, and I was stationed in the command post located in one of the houses in Podujevo.

I remember that a commander of the newly attached reserve unit called the Scorpions arrived on 28 March 1999. His name was Boca and that is how he introduced himself when we met. He sat there with his assistants waiting for further instructions. Stalević, the commander of the Priština special forces unit, was there with us, as well. After some time, we heard one, at least I think it was one, longer gunfire burst. We commented that something must have happened because the shooting we heard was somewhere near. The shooting was somewhere near and after some five minutes the Belgrade Special Antiterrorism Unit (SAJ) Commander Simović called me on the radio to come near the municipal building because they needed my intervention.

I went there with my equipment, which I always carry with me. Simović and Vulević waited for me there and took me to some yard. I think that we turned right from the main road and after several houses, we arrived to a yard with a one floor house and some other buildings in it, outdoor toilet, etc. I did not pay much attention to the surroundings, but I immediately started providing first aid and saving the lives of the wounded. At the spot, I provided first aid for one 12-year-old girl, who was wounded in the neck, one nine-year-old girl who had gun shot wounds through the arm and the leg, I cannot remember whether it was right or left; there was another girl, who was six or seven years old and also wounded, but I cannot remember her wounds, I think she also had her limbs wounded, and there was one four- or five-year-old boy, who, I think, had a gunshot wound in the arm, but I cannot remember whether it was right or left.

Simović, the commander of the unit, and Vulević Spasoje aka “Vuk”, along with some other active members of the unit, helped me in providing first aid. These children that I immediately took care of and prepared for transportation were placed in two vehicles that Vulević gave at my disposal, and they were escorted to the Priština hospital.

Later on, I heard from the head of the Priština hospital, Doctor Grbić, that one of these girls gave a statement for CNN and RTS because, during that war, they were offered some help in the hospital - but as I have already said, I heard about that from Doctor Grbić and some other colleagues, whose names I do not know.

As for other people found in that yard, I noticed that one old man was lying on the ground some five or six metres away from the group, on the right from the pile of victims. On that pile, if I remember correctly, there were two or three women and, I think, three children, but I do not remember their gender.

I intervened at this location and I do not know of any other victims at some other location. I was not called to some other location and I did not go anywhere else. According to my assessment, there were not more than ten persons in this yard, including both the wounded and the killed.

When I finished my part of the job in taking care of the wounded and determining death of other persons, as a doctor I had nothing else to do there, but I do know that Vulević and Simović were extremely angry because of what had happened. The Podujevo police was called and it was involved in the further work in determining the circumstances of the event in the yard, as far as I know, and I also know that this unit was ordered to go back to Belgrade or somewhere, but I do not know what was the reason for them to return.

In response to the prosecutor's question I can say that, besides the people that I took care of and provided medical treatment, I inspected each body in line with the medical rules and regulations. According to my assessment, no medical assistance could have helped these people.

There is no doubt that firearms inflicted the wounds on these people. The wounds were fresh, and haemorrhage was still present, because at the time, I was providing first aid for the wounded.

After 28 March 1999, I left Podujevo with my unit and I do not know what was happening afterwards.

I can say that I personally did not make any type of record or official report because it was not a part of my job. I just acted ethically and tried to do everything I could to help these people.

As a doctor I can say that the wounds inflicted upon the children were all serious - gunshot wounds. Had it not been for the medical assistance, the wounds would have proved deadly.

I can say that on 27 March, a day prior to this event, one of our soldiers was killed in Podujevo, and that is how I remember that this event took place on 28 March 1999.

I was only paying attention to the deadly wounds.

That is my statement. I heard the written record of my statement loud and clear, I accept it as mine, and put my signature without any remarks. I am not asking for travelling expenses to be reimbursed."

WITNESS EXAMINATION RECORD

Composed on 3 April 2002 before the Prokuplje District Court Judge in the criminal proceedings led against defendants Cvjetan Saša from Novi Sad and Demirović Dejan from Beška because of the criminal offence pursuant to Article 47/2-2-6 etc. of the Criminal Code.

Ljubomir Jovanović – Judge

Court Reporter
Bratislava Avramović

Witness
SPASOJE VULEVIĆ VUKI

Other persons present at the
witness examination:
Public Prosecutor
Višeslav Bukumirović

Defendant

Defence Counsellor
Đorđe Kalanj,
Attorney from Belgrade
(defending Saša Cvjetan)
and
Božidar Filipović,
Attorney from Prokuplje
(also defending Cvjetan Saša).

Began at hours.

The witness was informed that he is obliged to speak the truth and that he must not hide anything; he was also informed of the consequences of giving false statement; and he was also informed that he is not obliged to an-

swer certain questions if he would, by answering, expose himself or a close relative to great shame, significant material damage, or criminal proceedings (Article 229 of the CPC). The witness gave the following answers to the general questions:

- | | |
|---|---|
| 1. Full name | SPASOJE VULEVIĆ "Vuki" |
| 2. Father's name | Marko |
| 3. Profession | Serbian MUP SAJ Police Officer |
| 4. Place of Residence | Belgrade, 10/17
Partisan Waters Street |
| 5. Place of birth | Peć |
| 6. Date of birth | 21 March 1971 |
| 7. Relation to the defendants or injured party: | unrelated |

After giving personal details, the witness gave the following statement regarding the case itself:

I was in Podujevo with my unit and I remember that one unit came to Podujevo on 28 March 1999; I think they were called the "Scorpions". I was given a task to settle the men from that unit in houses.

I gathered their Platoon Leaders and we visited the facilities they were supposed to be located in; they understood what they were supposed to do; after that I went to my unit to have coffee.

As soon as I sat down, I heard several long gunfire bursts and I headed immediately to the location I assumed the gunfire was coming from. As soon as I arrived to the first house in which around 30 "Scorpions" members, one Platoon, was supposed to be accommodated, I started yelling at the soldiers who were present there because my senses were telling me that they messed up something. I was cussing, saying everything that came into my mind, and then I headed, with Dr. Marković, into the yard through one garage. There was a house in that yard and in the right corner of the yard we spotted a pile of people. When we came closer we saw that children and women were lying on the pile. We saw that they were moving. So, Dr. Marković and I started providing first-aid immediately, first of all for chil-

dren who were alive. We separated 4 children from that pile, 3 girls and 1 boy.

One girl was 12-years-old and she was seriously wounded. I think she was shot with two projectiles: one in the lungs and another one in the neck area. Other two girls were 9 or 10 years-old and they were also wounded by projectiles. I underline that Dr. had trouble stopping the haemorrhage for this oldest girl, who was throwing up foamy blood. As far as I could see, the boy was not wounded and I know that because I was carrying him to the ambulance.

We were taking care of the children in the following order: the Doctor was providing first-aid after which he would hand over the child to one of the soldiers to carry them to the ambulance. After that Doctor was going to another child who needed help. Since I was standing next to him and helping him as much as I could, I remember that he took care of all wounded persons and then he started checking others on the pile, who showed no signs of life, so there was no need for medial intervention.

After 3 girls and one boy were taken to the ambulance, I remember that around 7 or 8 children stayed on the pile showing no signs of life; their age was varying from 6 months to 7 or 8 years; there were also 4 women of which one was older and three were middle-aged, and Doctor told me, but I did not see it, that one old man also lied in the yard a little further from the pile. I really did not see that old man.

After we took care of all wounded persons and determined that there were no persons who were alive on the pile that stayed in the yard, I went out on the street, and insisted on soldiers from this "Scorpions" Platoon to tell me who did this; I cursed, yelled, threatened, but nobody answered my questions and neither did they want to give the names of people who did this.

After that, i.e. while we were still there, their Commander Boca arrived and our Commander Simović ordered us to go back to the location where our unit was located.

We, from the regular SAJ unit, were a little depressed that day because the previous day, on 27 March 1999, our Company Commander's driver was

killed and Commander and his assistant were seriously injured because they drove a car over an antitank mine. The point is that we spent over a year at the territory of Kosovo and, regardless of the casualties we had, we were trying to create an image of a professional unit that obeys the law and protects citizens regardless of their national or religious background, and then a unit with such people came and in only one act destroyed and tarnished our efforts and work and killed innocent children, women, and elderly people.

I was a Platoon Leader in the regular SAJ unit and I am responsible only for my Platoon and not for the "Scorpions" unit.

On that occasion, when I spoke to the members of the "Scorpions" unit who were located in the house where these people were killed, I mainly spoke to the people in the right part of the circle, who were the closest to the scene of the crime. There were maybe 10 of them, while there were approximately 30 of them located in this house.

Some 2 minutes passed from the moment I heard the shooting to the moment I ran into these people from the "Scorpions" unit, were located in this house. However, I did not enter the yard until Dr. Marković arrived and he arrived some 2 minutes later.

Our quick reaction was the reflection of our procedure of action. We were trained that whenever we hear shooting from certain place and we have some activities, we must react over the radio immediately and head to that place. It is the same for the Doctor.

The "Scorpions" unit was immediately taken back because of what they did.

As far as I can remember, Belgrade PJP unit and some other units, I cannot remember their names, were in Podujevo that day besides our regular SAJ unit. I know that because I was in the Headquarters that morning and I saw Company Commanders that I knew and who were Commanders of diverse units.

That day I heard 4 or 5 bursts of gunfire. One was long; I believe that a whole clip of 30 bullets was fired. Others were short or middle, 10-20 bullets.

When it was all over and when the “Scorpions” unit left Podujevo, I heard some rumours that two police officers allegedly approached the guys from the “Scorpions” and told them, “What are you waiting for, pussies, killed all the Shiptars”.

I read the record, it contains everything I stated, I accept it as my statement, and I sign it without any remarks.

WITNESS EXAMINATION RECORD

Composed on 3 April 2002 before the Prokuplje District Court Judge in the criminal proceedings led against defendants SAŠA CVJETAN from Novi Sad and DEJAN DEMIROVIĆ from Beška because of the criminal act pursuant to Article 142 Paragraph 1 of the FRY CC.

Ljubomir Jovanović - Judge

Witness
ZORAN SIMOVIĆ

Court Reporter
Bratislava Avramović

Other persons present at the
witness examination:
Public Prosecutor

Višeslav Bukumirović

Defendant

Defence counsellor
Đorđe Kalanj,
attorney from Belgrade
(defending Saša Cvjetan)
and
Božidar Filipović,
attorney from Prokuplje
(also defending Saša Cvjetan).

Began at hours.

The witness was informed that he is obliged to speak the truth and that he must not hide anything; he was also informed of the consequences of giv-

ing false statement; and he was also informed that he is not obliged to answer certain questions if he would, by answering, expose himself or a close relative to great shame, significant material damage, or criminal proceedings (Article 229 of the CPC). The witness gave the following answers to the general questions:

Full name	ZORAN SIMOVIĆ
Father's name	Budimir
Profession	Serbian Ministry of Interior Special Officer
Place of Residence	Belgrade, 12a Požeška Street
Place of birth	Novi Pazar
Date of birth	12 February 1961
Relation to the defendants or injured party.	

After giving personal details, the witness gave the following statement regarding the case itself:

"On 27 March 1999, upon the order received from the Ministry of Interior (MUP) Headquarters, I took off for Prolom Banja some time in the late afternoon, or evening in order to engage a unit from the MUP reserve troops; that unit was called the Scorpions. When I arrived in Prolom Banja, the commander of this unit introduced himself as "Boca". We agreed to leave from Prolom Banja to Podujevo on 28 March 1999. The unit was supposed to be deployed there. I slept over in Prolom Banja and we took off for Podujevo the following day.

Right upon arrival we agreed to accommodate our men in the houses and Vulević Spasoje aka "Vuk", the platoon leader in the regular SAJ unit, was in charge of that. He stayed together with the Scorpions unit platoon leaders to place the men in the facilities designated for accommodation.

I went to the command post, the so-called "headquarters", along with Boca and some of his men.

We spent some time there waiting for instructions and during our conversation we heard, if I remember correctly, two gunfire bursts. I ran out immediately to see what was happening. At certain distance, maybe some 300 or 400 metres away, I saw SAJ members, among which Vulević Spasoje aka "Vuk". I saw that something happened there and when I arrived there, somebody from that group, I cannot recall who it was, informed me that the Scorpions reserve unit members, who arrived just before this happened, opened gunfire.

As far as I can remember, two Scorpions members were the ones who did this, but I cannot claim with certainty that these two persons are the defendants, but I stick to my earlier statement that the Scorpions members were the ones who were shooting.

I can say that, when I arrived at the scene, I was informed that the Scorpions reserve unit members had opened fire in this house, civilians were shot at, and there were wounded and dead. I called Doctor Dragan immediately and engaged the Yugoslav Army Medic unit to provide first aid for the wounded civilians and take them to the Priština Hospital for hospital treatment.

When I organised the first aid, I returned to the headquarters to report what happened. I did that and then I informed Boca to gather his men and return to Prolom Banja.

Upon return to Prolom Banja, I continued travelling to Belgrade in order to attend the funeral of soldier Aleksić Radovan, while local Podujevo Department of Interior police officers stayed to carry out further operations.

As for the number of victims, I can say there were several victims, but I do not know the exact number and I cannot guess. I only know that there were two children because I was helping the others to get them to the ambulance, but I do not know the age or the gender of others.

I heard the written record of my statement loud and clear and it contains everything I said. I accept it as my statement and I am placing my signature on it. "

The Republic of Serbia

DISTRICT PUBLIC PROSECUTION

KT. number: 25/99

5 April 2002

PROKUPLJE

BV/JL

TO THE PROKUPLJE DISTRICT COURT

Pursuant to Art. 46 Para. 2 Item 3, in conjunction with Art. 265 Para. 1, of the Criminal Procedure Code, the acting Prokuplje District Prosecutor is filing the

INDICTMENT

AGAINST: SAŠA CVJETAN, from Novi Sad, Veternik settlement, 6 Ninth May Street, born on 20 December 1975 in Zadar, the Republic of Croatia, from father Milan and mother Milka (nee Atlagić), Serb, not a FRY citizen, has a status of refugee, machinist by profession, unemployed, placed in detention in the Prokuplje District Prison.

DEJAN DEMIROVIĆ from Beška, 38 Kneza Miloša Street, born on 18 May 1975 in Bihać, from father Ismet and mother Ružica (nee Stamatović), FRY citizen, graduated from the High School of Interior, unemployed, was in detention, presently at large.

BECAUSE

On 28 March 1999, during the war between the FR Yugoslavia and NATO Pact and armed conflict with the KLA terrorist organisation members, which began on 24 March 1999, as members of the Yugoslav Armed Forces - the Ministry of Interior reserve unit called the Scorpions, when they arrived that day in the Podujevo down town, on the Rahman Morina street in the yard of the house no. 15, on 260 Kosančić Ivana Street, etc, in violation of International Law in Times of War, committed a war crime against civilian population of Albanian nationality, by firing 7.62 mm automatic rifles and kill-

ing several persons identified as Selman Gashi (born in 1931), Amdi Duriqi¹ (born in 1928), Tahiri Idriz (born in 1930), and Shabani Fitnete (born in 1963)², while other victims are still unidentified. They also wounded several still unidentified persons.

Therefore, they attacked civilian population, thus violating International Law in Times of War, which resulted in the death and bodily injuries of several persons.

By this act they committed the war crime against civilian population pursuant to Article 142 Paragraph 1 of the FRY CC.

Defendant Saša Cvjetan is indicted because in March, most likely on 28 March 1999, in Podujevo, he illegally gained other person's property. As a member of the Special Counterterrorism Unit (SAJ), during the operation task, carrying the 7.62 mm automatic rifle, confiscated a "Zbrojovka" pistol made in the Czech Republic, 9 mm calibre, 75 type, serial number D 4754) and a clip with 15 9 mm bullets.

- By this he committed the act of aggravated larceny pursuant to Article 166 Para. 1 Item 4 of the Republic of Serbia Criminal Code (RS CC).

He is also indicted because he kept a "Zbrojovka" pistol (Made in the Czech Republic, 9 mm calibre, 75 type, serial number D 4754) and a clip with 15 9 mm bullets from one still unidentified house owned by a person of Albanian nationality. He illegally gained these items from an Albanian house in Podujevo in late March 1999, where he served as a SAJ reserve. These weapons were confiscated from him on 21 May 1999 after his apartment was searched.

By this he committed the act of illegal weapons possession pursuant to Art. 33 Para. 1 of the Law on Weapons and Ammunition.

Because of this, the acting district public prosecutor gives the following

¹ Hamdi Duriqi, Avdi Duriqi was registered in his personal ID card.

² Fitnete Shabani Duriqi

Proposal

I. The main hearing should be scheduled before this court, which had territorial and real competence, and following persons should be summoned:

The Prokuplje acting public prosecutor;

Defendant Saša Cvjetan from Novi Sad, Veternik settlement, 6 Nineteenth May Street, currently in detention in the Prokuplje District Prison;

Defendant Dejan Demirović from Beška, currently at large, because of which we propose trial in absentia pursuant to Article 304 Para. 2 and 3 of the Criminal Procedure Code (CPC);

Representatives of victims' family members;

Witnesses: Olujić Radoslav from Futuk, the Republic of Srpska 60; Medić Slobodan aka "Boca" from Novi Sad, 136 Petefi Šandora Street; Đukić Željko aka "Brko" from Šid, 97 Srem Front Street; Vučić Zoran aka "Žuti" from Bačko Petrovo Selo, 119 Freedom Street; Manojlović Srđan aka Srle from Belgrade, 50 AVNOJ Boulevard; Medić Dragan aka "Guljo" from Stejanovac, 62 Brilova Street, the municipality of Ruma; Marković Dragan from Belgrade, 56 Ghandi Street, apartment no. 32; Simović Zoran from Belgrade, 12A Požeška Street; and Stalević Radislav from Kucura, 1 Nova Street, the municipality of Vrbas.

II. In the main hearing, the following written evidence should be inspected:

1) Prokuplje District Court Investigative Judge's Investigation Record Kri. no. 21/99 from 30 March 1999, 2) sketch and photo documentation from the scene, 3) Priština Forensic Institute Report on tracing 19 bodies at the territory of the Podujevo Municipality, signed by Živojin Cvetković, and 4) List of the Scorpions unit members.

III. The defendants' record of prior convictions should be inspected.

IV. As a safety measure, pursuant to Art. 69 of the FRY CC, the aforementioned "Zbrojevka" pistol should be confiscated from Saša Cvjetan.

V. The defendants should be placed in detention because they are charged with the commission of a crime, for which mandatory detention is prescribed.

Statement of Reasons

The existence of the aforementioned criminal offences is founded on evidence gathered in investigation, as well as defendants Cvjetan and Demirović's admission of guilt.

After the war between the FR Yugoslavia and NATO Pact coalition, as well as an armed conflict with the so-called KLA terrorist organisation members, broke out on 24 March 1999 at the territory of Kosovo, a reserve Ministry of Interior (MUP) SAJ unit was formed; they had the Scorpions patches on their uniform and as the members of the Yugoslav Armed Forces they were sent to Kosovo; on 27 March 1999, they arrived in Prolom Banja by buses; there they were issued with automatic weapons - 7.62 mm rifles with 150 bullets; they cleaned the weapons and prepared themselves for combat. After that, they headed to Podujevo in order to execute a task and, in the early morning of 28 March 1999, they arrived in Podujevo. Upon arrival, the buses parked in the centre of the town, and the commander of the unit, Slobodan Medić aka "Boca", went to the town command post to make operation plans, while other unit members were ordered to stay by the buses for safety reasons. Certain individuals did not follow this order and walked away from the buses. Defendants Cvjetan and Demirović were among these individuals. They went to inspect the houses on Rahmana Morine and Kosančić Ivana Streets. They entered the yard of the house no. 15 carrying automatic rifles and ran into a group of civilians comprised of women, children, and several men. On that occasion, they used their automatic weapons and fired bursts of bullets at the civilians. They killed some of them, while others were wounded. By this act they committed a war crime against the civilian population. The motives of such actions are inexplicable and a normal person could not comprehend them.

This factual background was determined by the Prokuplje Investigative Judge's Investigation Record Kri. no. 21/99 from 30 March 1999, the sketch and photo documentation from the scene of the crime with a comment that the scene with corpses stayed unchanged until 30 March 1999 when

investigation was carried out. According to the record made at the scene in the yard and the surrounding facilities on Kosančić Ivana Street, the corpses of six children, five women, and five men were found; the description of their clothes and visible wounds was given in the report, but the autopsy of these bodies was not carried out. Four of these persons were registered as unidentified. The Priština Forensic Institute's report states that 18 corpses were transferred from Podujevo to that institute on 30 March 1999.

After this event, the unit commanders in Podujevo arrived at the scene of the crime. They were furious and they cursed because of what happened. Because of this event, this unit was gathered and withdrawn from Podujevo, after which it was taken back to Vojvodina and was dissolved.

Witnesses Radoslav Olujić, Slobodan Medić, Željko Đukić, Zoran Vukšić, Srđan Manojlović, Dragan Medić, and Dragan Marković were all at the scene after this event. In their statements they do not explain precisely what happened there, why the shooting occurred, and was it ordered. We underline that Dragan Marković, the SAJ doctor, arrived at the scene with several other persons and provided first aid to four small children. For the rest of the people lying in the yard and other places, he declared death and gunshot wounds with fresh bleedings, which indicated that the crime happened one or two minutes before he arrived. The persons who were in the command post and who were examined as witnesses also heard several long bursts of gunfire. After being informed of the event, they immediately went to the scene and concluded that the Scorpions members committed a crime, and they specified that the defendants committed this crime.

In his defence statement, defendant Cvjetan partially admitted that he committed this act explaining that he was shooting at the civilians who were lined up next to the wall. He also added that he did that upon somebody's alleged order.

Defendant Demirović, who is still at large, admitted that he was present at the scene of the crime, but he claims that he did not shoot. However, his escape from prison points to his involvement in the commission of this crime.

The acts of defendants Cvjetan and Demirović contain significant elements of the crime against civilian population pursuant to Article 142 Para. 1 of the FRY CC for which they are liable. They committed this act as members of the Yugoslav armed forces, during the war, in violation of International Humanitarian Law provisions, Geneva Convention relative to the Protection of Civilian Persons in Time of War from 1949, ratified by our country, and Protocol Additional to the Geneva Conventions relating to the Protection of Victims of International Armed Conflict from 1977, etc.

In view of the act of aggravated larceny pursuant to Article 166 Para. 1 Item 4 of the RS CC and the act of illegal weapons possession pursuant to Art. 33 Para. 1 of the Law on Weapons and Ammunition, it is determined without any doubt that he was the perpetrator of these crimes since the pistol was found in his house and Secretariat of Interior officers confiscated it.

Hence, this indictment is grounded and based on the law.

ACTING DISTRICT PROSECUTOR
Višeslav Bukumirović

RECORD FROM THE MAIN HEARING

(Before the district court)

Before the Prokuplje District Court on 9 October 2002

Trial panel

Presiding Judge Miodrag Lapčević³

Jury:

Miodrag Milošević

Jovanka Vukajlović

Zoran Poštić

Court reporter

Vesna Milenković

Parties, defence counsellors and representatives

Prosecutor

Višeslav Bukumirović, acting state prosecutor

Defendant

Saša Cvjetan from Novi Sad

Defence counsellors

Kalanj Đorđe and Goran Rodić for Saša Cvjetan

Božidar Filipović for Dejan Demirović

Injured party:

The court opens the main hearing at 09:00 and pronounces the trial jurors.

The court pronounced the trial jurors. No objections to the trial jurors.

³ Milorad Lapčević

The court determined that the following summoned persons are present in the courtroom:

Defendant Saša Cvjetan, his defence counsellors Goran Rodić and Đorđe Kalanj from Belgrade;

State District Prosecutor Višeslav Bukumirović;

Defendant Dejan Demirović's defence counsellor, attorney Božidar Filipović, from Prokuplje.

Pursuant to Article 89 of the Criminal Procedure Code (CPC) the court confirms the identity of the defendant.

SAŠA CVJETAN, from father Milan and mother Milka (nee Atlagić), born in Zadar, with residence in Veternik, 6 First May Street, date of birth 20 December 1975, Serb, citizen of the FRY, machinist, graduated from high school, single, no children, literate, graduated from the Military High School, served army, possesses the rank of sergeant, registered in the military records in the Pančevo Garrison 5,000, no property, has not been convicted, criminal proceedings are led against him before the Bijelo Polje District Court because of the attempted murder i.e. conspiracy for the commission of criminal acts, another proceedings against him are ongoing in Novi Sad because of the act of blackmail.

Pursuant to Article 318 of the CPC, the defendant was warned to carefully follow the course of the main hearing. He was also informed that he can present facts and propose evidence in his defence, that he can interrogate the examined persons in this procedure, raise objections and give explanations regarding their statements.

The main hearing begins with the reading of the indictment.

The indictment was read.

The defendant stated that he understood the indictment completely with all its parts.

The defendant is being informed that he is not obliged to declare himself in view of the indictment or present his defence, and that he is not obliged to answer certain questions.

“I was born in Zadar and my family lived in Dalmatinska Ostrovica. I am coming from a working class family; my father was a driver and my mother was a housewife. My parents have two more children, besides me. So, I have a younger brother and a younger sister. The whole family lived in Ostrovica where I finished the first four years of elementary school, after which I continued going to elementary school in a village close to Ostrovica. My family was living modestly, honestly, and we believe it was a nice life. I graduated from the high school for machinists in Benkovac. After that I graduated from the Military High School in the Education Centre in Vrbas, i.e. Banja Luka.

I was in Croatia when the war broke out. My family was in the village where I was born. The village was attacked on 15 July 1991. All Serb families, women and children were transferred to Kistanja, near Knin, for safety reasons. There we were accommodated in the collection centre inside the elementary school.

Two months later, my family returned to Ostrovica in 1992. Because of the war I went to Banja Luka where I graduated from the military school. My family stayed in Ostrovica. During all that time, my father was mobilised as a driver in the Republic of Srpska Krajina Armed Forces.

After I graduated from the military school I received my diploma and was engaged in the 7th Knin Corps. 2nd Infantry Brigade as a company commander. I was a company commander in two places around Knin, Čista Mala and Čista Velika. After that I was transferred to Benkovac 92nd Motorised Brigade where I was in charge of training young soldiers. I stayed there for two months until the infantry training of young soldiers was over. After that I was transferred to the place called Pruška; that was the 72nd Education Centre Alpha, which was under Captain Dragan’s command.

In that education centre I was trained to be a special forces soldier. After that, I took over one Scout Sabotage Detachment of the Republic of Srpska Krajina Army 92nd Motorised Brigade at Forwarded Operation Base in

the settlement of Biljane Gornje. I stayed there for a short time and then I received the new war post. I took over the Scout Sabotage Company of the 7th Knin Corps. I was practically the youngest company commander since I was only 18 at the time. When I joined such an elite unit, I was informed and I knew, and later on I relayed to my soldiers, that rules of war must be obeyed in every sense - international and local rules must be obeyed and I always supported that. It was strictly forbidden to kill old people, women and children. The inhumane treatment of prisoners of war and injured persons was forbidden, too. I obeyed that, and my unit, every soldier in it, had to obey these rules.

I was wounded three times in diverse operations, but nothing could influence my commitment to being an honest soldier. In late 1994, I was deployed to Dinara Mountain and I stayed there until Operation "Storm" i.e. Croatian armed forces' attack on the Republic of Srpska Krajina began. Nobody even told us of such operations and for two whole days, my unit was surrounded. My unit took off from Dinara. We walked for 50 km until we reached Drvar in Republika Srpska. In Drvar, I went to the brigade command looking for instructions and explanations, because I had no idea what was going on. I did not even know what was happening with my family. I only knew that my brother was alive because he was on a school trip in Serbia, in Vranje, at the time. Then I went to the education centre in Banja Luka where I graduated from the military school. I only wanted help to find out what was happening with my family. I was told to go to the Kozara military barracks where I found my family in a difficult position, which is not understandable for the people who did not have similar experience. The only thing I wanted and looked for was a shelter for my family, a place where we could start all over again and where we would be able to live normally.

We found shelter in Novi Sad. I was working as a bodyguard for some businessmen for some time, a civilian job that I was offered. Right after that, my father and I were practically arrested and transferred by buses to Zrenajnin. There we were told that it was not arrest, but mobilisation, and I was transferred to Erdut. Upon my insistence, my father was released and he went back to Novi Sad. Then I was sent to the Serb Volunteer Guard under the command of Željko Ražnatović "Arkan". Because of my military experience and education, one officer from the Serb Volunteer Guard, I can-

not remember who it was, offered me to create a scout sabotage platoon. This was never created even though I started creating it. Then I asked to be practically demobilised. My request was approved, so I returned to Novi Sad where I continued working as a bodyguard for some businessmen in order to earn money and support my family. In Novi Sad, I met a lot of people from Krajina that I knew from before.

On 17 November 1994, in Bihać, I met Slobodan Medić aka “Boca” who was the commander of the Scorpions Special Operations Unit. My unit, Scout Sabotage Platoon, was acting together with his Scorpions already in 1994. Upon my return from Erdut to Novi Sad, I ran into Slobodan Medić. From that time I was often going out with him. I know Rajko Olujić, one of the platoon leaders in the Scorpions from high school. I socialise with them from time to time.

NATO forces attacked the Federal Republic of Yugoslavia on 24 March. I was sitting in one of the cafes that day together with Medić and the Scorpions platoon leader. Upon FRY armed force’s request, the Scorpions, as a Special Forces unit, was supposed to go and fight NATO forces and terrorist forces that were active at the territory of Serbia.

Upon Medić’s suggestion I joined the Scorpions, I was not a member of that unit before. On 26 March I went to Petefi Šandora Street in Novi Sad. It was dark and I cannot recall the exact time. I saw two cars and a lot of people. I knew some of them and some of them I saw for the first time.

Our stay there was very short because we were ordered onto buses that then took us to Belgrade, to Makiš forest, to the Milicionar soccer stadium where we were issued with the Scorpions uniform. SAJ (Special Counterterrorism units) unit belongs to the Serbian Ministry of Interior at the moment, as a special counterterrorism unit. The Scorpions were a part of SAJ before and now they were officially deployed. The bombing was ongoing and I called my family and told them that I was deployed. Nobody knew our final destination, but we assumed that we were going to Kosovo, because there we were fighting against NATO forces and KLA terrorists. Police escorted our two buses to Prolom Banja. We travelled all night, so in the morning we were accommodated in the Radan Hotel. This all happened on 27 March 1999. Rajko Olujić was my platoon leader because I was in

his platoon thanks to the earlier friendship. We were also roommates. On 27 March 1999, the same day we arrived in Prolom Banja, we were issued with weapons, conserved 7.62 mm automatic rifles and five clips with ammunition, 30 bullets per clip i.e. a total of 150 bullets. If somebody wanted more ammunition he could take some more. After we cleaned our weapons plus the weapons for some other unit, Slobodan Medić aka Boca, the company commander, told us, "You are an elite unit. You are going in the fight against terrorists and occupiers. You are not going to loot, you are not going to steal, and you are going to defend your country, to fight against terrorists and occupiers."

He spoke to us according to the rules applicable to one regular army in times of war. At the same time, this was a chance for this unit to become an elite unit. A certain number of people, I cannot assess the number, then withdrew. They had different intentions. They were ordered to climb on the bus and go back to Belgrade. After they left, we went inside the rooms. I would only like to add that we were not issued with weapons according to the serial numbers simply because there was no time for that and, besides this, the rifles were conserved when we received them. We prepared weapons for a combat task.

We took off by buses towards Kosovo on 28 March early in the morning, probably because of the safety and needs of the unit. At that time, we did not know our final destination. I did not know our final destination and maybe only platoon leaders or the brigade commander knew where we were going. We arrived in Podujevo, an area completely unknown to me because I had never been there before. That might have been at 6 or 7 o'clock in the morning. I cannot be certain because I do not know the town, but I think that we parked in the centre of Podujevo in the vicinity of the police station. As soon as we arrived, we were told to stay on the buses because our commander was going to some meeting with the SAJ Commanders. It was a meeting of the company commanders stationed in Podujevo.

I noticed in that moment that Podujevo was not in control of the KLA, as I thought before. I saw a lot of our army and police in Podujevo and practically KLA was not present at all in Podujevo. So, I felt a little more comfortable. I was convinced that Podujevo was under KLA control because I know that Živko Trajković, the SAJ commander, was injured and his driver

killed in an attempted assassination. Even though we were not allowed to get off the buses, I saw that certain Scorpions members got off the buses and went to break into the stores and take merchandise. I was appalled because I stick to the orders.

Then Rajko Olujić spoke to me. He told me to go with him and find suitable houses in which we could be stationed. Every platoon was supposed to be stationed in a separate house. Four police officers came with us, maybe some of them were SAJ members, I really do not know, to show us the area and help us find an appropriate house since they spent more time there and they knew the situation in town. We went up some street a little further from the police station and the bus we arrived on. I do not know which street it was, it was several hundred metres away from the police station and the buses because these SAJ members told us that all houses close to the police station and the place where our buses were parked were already taken by other units that arrived to Podujevo before us.

We arrived to one house we assessed to be suitable for our platoon to be stationed in it, we came to the fence, which was locked. It was a big fence - one-third on the top was made of metal, then one third made of wood, and one third again in metal. I was kicking that wooden part until it was loose. I am not sure who entered the yard first, whether it was Rajko or I. Anyway, we entered the yard together and the police officers that escorted us came in as well. In the yard on my right side I noticed a big two-storey building and on the left side one smaller house. When I entered the yard, I noticed, on the left side, a green grenade; I cannot say which type of grenade it was.

After we entered the yard, one old man with some money and gold came to us from the house on the left side and he was telling us, "We will pay". I told him that we were not taking anything. Then he told us that there were more people inside the house. We told them to come out. That old man went to call other people to come out of the house. Four or five men and women came out carrying suitcases. After that we heard some noise in the other house in the same yard. I think that somebody called those people to come out as well. I believe that one of the police officers who were there with us called them.

Since nobody was coming out I broke the door and Rajko Olujić was behind me. One 30-year-old male came down the stairs. He had good physique, but he was holding his hand bent in a strange way. Since I knew that terrorists could use diverse techniques, for my own safety, I hit him with the gun stock. He fell on the ground and then got up again. One woman, who was standing next to him, said his arm was hurt. I removed a part of the shirt and above his elbow I saw a gunshot wound. That was a sign for me that he might be a terrorist. We told all of them to get out. Around ten persons were in that house. Maybe four or five of them came out of the house, so the total number of people in the yard was around ten. Only four or five of them were children. The others were men and women. Rajko then told these people to go out on the street. I also noticed that Rajko was crying, I saw tears in his eyes. He was probably reliving the memories of what our families went through during Operation Storm in Krajina.

Rajko told them to go down the street. It was obvious that these people were unwillingly leaving their house and yard. In order to make them hurry up and go to the place where Rajko sent them, I fired some ten bullets from my automatic rifle. I fired that short burst of bullets in the air and I guarantee that I did not hurt anybody on that occasion. Before this, before these people came out of their house into the yard I spotted some Scorpions members on the street. These people were located some 20 or 30 metres away from the fence. I recognised Goran Stuparić, a Scorpions member, Zlatko Lukić, also a Scorpions member, and I believe that Pavle Rokvić was with them, as well. These were several other Scorpions members with them that I did not know. Persons that I have just named and others, who were with them, could see that I did not hurt, kill, or harm anybody in any way.

After these people left the house I went back inside the house to search the premises in which our platoon was supposed to be situated. On the upper floor of the house, in one of the rooms on the right, I found a uniform and grenades; in one room on the left, I found a Zbrojevka M 75 pistol, made in the Czech Republic. It had a bullet loaded in the barrel, which I determined by checking; I took the clip out and loaded the weapon.

While I was still in the house, I heard gunfire - individual and bursts of bullets - from diverse weapons. It was coming from the direction we came and opposite from the direction these people - men, women, and children from

the premises we were searching - had gone. I ran out on the street thinking that our units were attacked, that SAJ and the Scorpions were attacked.

I ran, along with Stoparić, Lukić, Zlatko, and Rokvić, towards the place the gunfire was heard from. We were running for some 200 or 300 metres down the street. As a matter of fact, we did not go down the street, but we went through yards. When we entered one yard through a narrow passage, I spotted a dead woman on my left side lying on the concrete trail and some six or seven other corpses on the right side of this woman. I saw they were civilians. It was a very unpleasant event for me. In that moment, I heard some noise on the street. I turned around and saw some members of the Priština Battalion and the Scorpions. In that moment, I did not see any Scorpions members in the yard, nor did I spot the members of any other unit present in Podujevo. I went out on the street with the three aforementioned Scorpions members and found some people there yelling and talking.

In that moment, several SAJ members arrived; I know that one of them was Vuk, but I do not know his full name. He saw me and other guys coming out, so he started yelling and cussing at us. I cussed him back. The two of us got into an argument, which lasted for a short period of time. In that moment he started yelling at his own brother Dragan Medić aka "Guljo", Crni, Žuća, and Slobodan Marić. There were some other Scorpions members, whose names I cannot remember. Commander Slobodan Medić "Boca" was yelling at them. Some four or five minutes passed from the moment I heard the shooting and the moment the SAJ commander arrived, I mean Commander Boca. When he arrived, I heard him speaking to the aforementioned people, his brother and others, "You, motherfuckers, I cannot leave you alone for a second without you making a mess". I did not hear them respond to that at all.

The same moment we were ordered to go back on the buses with our platoons and return to Prolom Banja. I did not know what the reason was for us to go back, except these corpses that I saw. I returned to Prolom Banja with my platoon and my platoon leader.

We did not speak a lot about this event in Prolom Banja, but I did hear the rumours that the youngest Scorpions member - also Saša, but his nickname

was Šiljo, whom I know, but I do not know his last name - was really in that yard. However, I would not like to accuse him or put him in an inconvenient situation.

We had regular military activities in Prolom Banja, just like any other army, but I did not hear anything about who committed this act. There were no police officers in Prolom Banja; at least none of them interrogated me. We spent some ten days in Prolom Banja when Commander Medić spoke to us and told us that we were going back to Vojvodina to return our weapons and that we would be deployed again after some time. We returned our weapons in Prolom Banja.

The court is demanding that I give a separate statement regarding the pistol and the lighter. I can say the following:

After the men, women, and children left these two houses and the yard, as I have already said, in front of the gate, on the street, I found a golden Dupon lighter, later on I found out it was a gold lighter. The moment I found the lighter was immediately after I shot in the air and these civilians went down the street. In that moment, I did not know where Rajko was, but I returned inside the house to inspect it and I found a pistol, just as I explained before.

I took that pistol that I found in this Albanian house to Prolom Banja. Everybody saw that pistol because I was not hiding it. I was carrying it in the holster. My roommate saw it, too, Platoon Leader Olujić. When we were returning our weapons, I was not the only one who found weapons in Podujevo. I asked Commander Boca what to do with that pistol in the moment we were practically demobilised. He told me to report the pistol to Srle (Srđan Manojlović, who was in charge of the storage and registers), who would register the pistol and then to take it home with me, as my personal weapon, and at the end of the war we would see what to do with it. Srle registered the number of the pistol, its brand, and calibre in a special book and issued a certificate allowing me to carry that pistol. However, that certificate was practically worthless for me because there is no sense for me, as a member of a counterterrorism unit, to show around the certificate proving that I have a right to carry a pistol during the war."

The court makes the following

Ruling

The trial panel will adjourn for 30 minutes because the court has a break and it will resume at 11:45.

The main hearing resumes

At 11:45

The court informs the defendant that he gave two statements before the investigative judge in the investigative procedure. The first one was on 24 May 1999 and the second was on 18 July 2001.

The court points to the inconsistency of these two statements. The court also points to the inconsistency of these two statements with the one he gave today. The defendant replied:

“The presiding judge read to me today a part of my statement regarding the killing of civilians in Podujevo that I am charged with. In relation to this, I would like to give the following statement:

After I returned to Novi Sad I lived on 6 Radnička Street with my family, actually my family lived in Veternik. Of course, I stayed in touch with the people I was with in the unit, with the SAJ members; we were going out for drinks, to cafes, all in all we were hanging out together. Then, one day some major, a member of the Province Ministry of Interior in Novi Sad, came and he proposed to me to create a unit. That was supposed to be a unit for special purposes, I assume. I started thinking about this and making a list of people suitable for that unit. In the meantime, I refused to go in the field again because of the earlier experience in Podujevo.

In the morning of 21 May 1999, while I was sitting in a cafe with some of my friends, two civilians suddenly approached me. They pulled their pistols, pointed them at me without showing any identification documents and without any warning, and they said, “Freeze. Do not resist, or we will

kill you". They took me out of the cafe and inside some civilian vehicle, I think it was a white or beige Renault 18. They put me on the back seat and took me to the premises of the fair and swimming pool. They took me to a room with several civilians in it. They took photographs of me in line with the police procedure and that is when the first psychological torture began. They told me to stand up, then to sit down, they were telling me that I was a pussy, then one of them came in and pointed the gun at me, or they would light a cigarette for me and then take it from my mouth and throw it asking me why I lighted it. It lasted for about an hour and I had no idea what was going on.

I asked Slobodan Jovović, one of the inspectors (later on I found out his name and that he was inspector), to inform my family where I was and I wrote down my phone number for him. He said no problem. I learned later on that he did not call my family. After an hour, four men from the Quick Reaction Unit came in the combat uniform, carrying automatic rifles, grenades, and flak vests. They put me in the paddy wagon behind the driver. One of them sat in the front and I was sitting between other two inspectors. They cuffed me. Zoran Markuš was, and still is, the commander of the Quick Reaction Forces in Novi Sad. They took me to the Klisa Prison in Novi Sad. Markuš and the driver went out of the vehicle. I expected that I would also get out of the vehicle, but I stayed in the vehicle for some time. Markuš returned after some time. The driver returned as well and we went away from the prison and drove down the streets of Novi Sad. I knew Novi Sad, so I recognized that we were leaving Novi Sad and riding down the Zrenjanin road going towards Zrenjanin. Then I asked Markuš what was going on, and he told me, "Saša, do not worry, we will not do anything to you". I was told earlier that they were strictly ordered not to say why or where they were taking me.

Many things were going through my mind at the time: that they were taking me somewhere to execute me, to kill me somewhere along the road. In one moment I was even thinking of pulling the fuse from one grenade that one of the police officers had and blow up all of us. When we got on the Zrenjanin road we turned to the side roads towards Belgrade. Actually we took side roads from Belgrade and that travel lasted for a very long time, practically until evening when we arrived to Prokuplje. In Prokuplje, I was taken to one elementary school located across from the police station. I do

not know the name of that school. They took me inside one classroom and told me to sit at the first desk. They handed me over to the Prokuplje Inspectors and Novi Sad Quick Reaction Forces left the school and probably went back to Novi Sad. I spent several hours in that classroom sitting at the first desk with the police officers.

During the night, they took me to the Prokuplje prison. They placed me in a room; I think it was the room number six. Some other guy all wrapped up in bandages was in this room, as well. There was no electricity in this room. All of my personal effects were confiscated when I was entering the prison and I received a certificate on the temporary confiscation of property. I spent one whole day in this room. Afterwards I was taken to the upper floor of the building, to the premises designated for the “administration”. They took me to the first room on the left where I found two inspectors. They approached me as if I was a criminal and they obtained all information on me from Novi Sad, as if they knew who I was and what I did. They started with a psychological torture. They started asking me if I knew about the civilians killed in Podujevo. I told them that I knew and I described the event exactly the way I told you today before the court. However, they told me they would take me outside and execute me. Klikovac and Oparnica told me that. They told me that my family did not know where I was, that I will not see my family and neither will my family see me until I write and sign the statement they will read out to me. They kept repeating that they would kill me. Later on I found out that my family did not know where I was. They talked with some general from Belgrade in my presence. He told them that I am hard to break, but that they could break me in some other way. He obviously had my family in mind. In the end they clearly said to me that I could contact my family only when I wrote and signed a statement they will read to me. I knew what I could expect if I did not do that. Inspectors wrote the statement on the typing machine and the only thing I could have done and I did was to put a signature different from my usual signature. They ordered me to give the same statement before the investigative judge and then I would be released from detention.

The court tells me that the statement given before the investigative judge in both cases provides detailed information regarding the plan of the facilities, direction of the trail, execution of a blonde woman, lining along the wall, certain persons giving orders, shooting itself, number of rifles, and

the number of persons who were shooting. The court also said that only a person who was present at the scene and personally saw everything could have given a statement like this. Then I was asked to explain how was it possible that inspectors had such information unless I gave it to them. Then the court asked me if I gave them that information. Regarding this, the defendant said:

I did not give that information to the inspectors. I do not know how the Secretariat of Interior members obtained that information because it is obviously information from the field. I received the record with that content; I signed it; and I was told that I must give that statement before the investigative judge.

Investigative judge Mijat Bajović interrogated me in the district court. Besides Mijat Bajović, other persons present during my interrogation were a court reporter and these two inspectors who wrote the statement and forced me to sign it.

I especially underline that I did not have a defence counsellor, that my lawyer was not present, and that I did not have an attorney at all. The investigative judge practically wrote the same statement I gave earlier in the Secretariat of Interior."

The defendant was asked whether he heard the investigative judge's warning that he has right to a lawyer, and that Dragutin Stanković was appointed as his lawyer and the court also informed the defendant that he gave the statement and signed it. Regarding this issue, the defendant said:

"I claim that the investigative judge did not inform me of my right to have a lawyer and I would love to see that attorney appointed to be my defence counsellor, and to see the investigative judge and all of the persons present during my interrogation, so that we can see who is telling the truth and to see whether or not I had a lawyer.

I do not accept any part of the statement that I gave before the investigative judge on 24 May 1999 that is not in accordance to the statement I gave here today. The only thing they did as they promised was that after some five or six days, they informed my family where I was.

As for my statement given to the same investigative judge in the Bijelo Polje Prison, I think it complies with the statement I gave here today. It is court's duty now to inspect this statement and evaluate it in line with my whole defence."

A part of the statement given on 18 July 2001 regarding the events in Podujevo especially regarding the place where the persons were killed and who ordered the execution was read to the defendant. In this statement it was said that Slobodan Medić⁴ aka "Guljo" ordered the executions. The defendant gave the following statement regarding this issue:

"Investigative judge Mijat Bajović, whom I would like to see here and ask him some questions, had to write what was written in the record in order to justify himself. There was no threat in Bijelo Polje.

Regarding this statement I would like to say the following: I was tried in Bijelo Polje because of a specific criminal offence and my lawyer was Đorđe Kalanj, who is my defence counsellor in this case, as well. He had already been hired. The investigative judge will have to explain to me why they did not let me call an attorney whom I had already hired. The investigative judge did not ask me whether or not I wanted a lawyer."

The defendant was asked whether there were any comments in Prolom Banja regarding the event in Podujevo. The defendant replied that there were comments and that they were all trying to find out what happened, but they failed.

The defendant was asked whether he knew Dejan Demirović and he said "No".

The court has no further questions for the defendant and informs him that he has right to add to his statement anything he thinks it would be important for his defence. He replied:

⁴ Dragan Medić

"Additional to what I have just said in my statement, I would like to add, 'I am glad that I am here today, alive, and that I am able to defend myself before the court'.

Today, before this court, I said everything I wanted to say in my defence. My statement was credibly written in the record because I listened to it when it was read out. I have no objections and this is the first time I give a statement according to my free will. That is my defence.

Since the court is giving me right to say anything else I have to say in my defence, I also underline this - in May 2000, in Novi Sad cafe called Bonaparta, somebody from the State Security Service tried to kill me. Those were some people from the South hired to execute me. They rented a country house near Novi Sad. I found that from a police officer who tried to warn me of that. They were supposed to execute me, so that I would not appear before this court and say what I said today."

When the state prosecutor asked the defendant why did he say during the process of identification that he did not have a nickname, while it is written in the statement he gave to the investigative judge on 24 May 1999 that his nickname was "Kobra", the defendant said, "My only nickname could be Sale. Nobody calls me Kobra and the investigative judge could have written that my nickname was Rambo if he wanted to."

The state prosecutor asked the defendant to explain why did the SAJ Commander Vuk cuss at him after the event when the defendant went out on the street and Commander Vuk arrived there along with other commanders.

"I have already explained that he was speaking to the group of people on his right. I was in that group, too. He was looking at us, and that includes me too. So, if he cussed at them, then he cussed at me, too, and that is why I reacted. He was telling us, "You are pussies" and I told him, "You are a pussy". I responded to his curses the same way. And that is how it ended."

The state prosecutor asked the defendant to explain a part of the statement given on 24 May 1999, practically the end of the statement, a part

that says that every explanation⁵ must be obeyed no matter if the unit is for special purposes or not, regardless of the consequences, and the following sentence, “The direct superior at the scene was ‘Guljo’, and we acted upon his command”. The prosecutor is asking who was “Guljo” when Slobodan Medić “Boca” is mentioned as the commander and Rajko Olujić as his deputy. The prosecutor is asking the defendant to explain this part of the statement.

The defendant replies: “I have already explained and I thought that Mr Prosecutor has understood it, nothing in that statement is true, if we are talking about the statement given on 24 May 1999. However, I repeat again that our unit must operate according to the rules of engagement and customs of war.”

The state prosecutor asked the defendant how it was possible that he went with Rajko Olujić when the commander ordered that nobody should leave the scene at the time of the meeting.

The defendant replied, “Rajko Olujić will give you an answer to that question because he was my direct superior and he called me to come along with him.”

The defence counsellor, Đorđe Kalanj, asked the defendant whether or not he received from the presiding judge a decision for the ex officio appointment of attorney, and when was that.

The defendant replied, “I never received a decision on the ex officio appointment of attorney.”

Kalanj then asked the defendant when was the first time he had a counsellor after 24 May 1999 when he was interrogated before the investigative judge, and who was the counsellor.

The defendant replied, “Some five or six days after I was interrogated, lawyer Božidar Filipović from Prokuplje came to me for the first time, but I can-

⁵ Probably – ‘order’

not remember whether I gave him the power of attorney so that he could defend me in the further proceedings, but I think I did not.”

The defence counsellor Goran Rodić asked the defendant if he was issued with weapons every time he was going in the field.

“Every time I was going in the field with the unit in Bosnia and Croatia, I was issued with weapons because weapons are a part of the battle equipment and you simply could not go without them,” the defendant added.

Rodić then asked the defendant why he had gone inside the house after the civilians left.

The defendant answered, “The purpose of me entering the house after the civilians left was to search it and create safe conditions for other soldiers to come in. As for the pistol that I found in there, I think it is quite normal for me to take it, and it is good that I took it rather than some terrorist who could have used it in the fight against us.”

Rodić asked the defendant would he take the grenades from the house, as well, if there was no shooting because as soon as he found a pistol, he left the house.

The defendant replied, “If there was no shooting, I would, for sure, confiscate the grenades from the house, as well, put them to a safe location, and turn them in to the unit for the further procedure”.

No further questions for the defendant.

Defence counsellor Goran Rodić wants to put in the record the following remarks:

“First of all, the defence wants to note the following Saša Cvjetan’s remarks regarding the record made on 24 May 1999 and the record made on 18 July 2001 due to the following reasons.

In line with Art. 70 Para. 1 of the then applicable Criminal Procedure Code, the defendant was supposed to have a lawyer during the first interrogation,

since he was charged with the act of murder. We can conclude from his defence that he did not have a lawyer.

Then, the Secretariat of Interior Inspectors were present during the first interrogation of the defendant before the investigative judge and according to the law they were forbidden to attend the interrogation.

Regarding the record from 18 July 2001, the defence underlines that it was not made according to the Criminal Procedure Code. The record itself does not contain information it should have. And I also raise objection because the original court documentation and the copy the defence received says that the last page of the record is four, which is not true because it is obvious that the record has six pages. We underline that both records were made with absolutely relevant violations of the criminal proceedings provisions. Regarding the second record, we underline that in the new proceedings upon new Investigation Opening Request, the defendant had an attorney, who was not informed of the interrogation of the defendant in Bi-jelo Polje, and the new Criminal Procedure Code prescribes the mandatory defence during the first examination - interrogation.

In this phase of the proceedings, the defence counsel has the following proposition:

I believe that the legal prerequisites for the termination of detention against defendant Saša Cvjetan have been created and in that sense we propose that the court brings a ruling by which the detention would be terminated. Pursuant to Article 141 Paragraph 1 of the Criminal Procedure Code the detention will be established against a person for whom there is reasonable doubt that he/she committed a crime for which 20 or more years of imprisonment is prescribed. If the circumstances point to the fact that a more lenient punishment could be proclaimed, the same legal provision gives a possibility not to establish detention.

Defendant Cvjetan spent a long time in detention and he was looking forward to this hearing and the court could conclude that from his defence. He will make a promise that he would not leave a place designated as his residence, that he would respond to each summons, and that he would not leave the area without the court's permission. As for the investigation itself, the evidence was adduced a long time ago or was not adduced at all, so

Cvjetan, if released, has absolutely no possibility to influence the further course of this procedure.

As a defence counsellor, I may say before this court that I have also been hired in the Hague tribunal as General Pavle Strugar's defence counsellor and I can inform the court that the general is provisionally released to defend himself. The Federal Government also provided guarantees for him to be provisionally released. Besides him, Mrs. Biljana Plavišić was provisionally released, as well as other defendants before that court. So, I believe that our court could apply the same practice as the Hague tribunal."

Pursuant to Article 178 of the Criminal Procedure Code, the defendant's attorney Đorđe Kalanj proposes that the court extracts from the court documentation, first of all, the interrogation of the defendant record from 24 May 1999.

"If the trial panel refuses to extract the interrogation of the defendant record from 24 May 1999 from the court documentation, then I require that in the following two days, prior to the next session scheduled, the investigative judge who made the record on 24 May 1999 and the court reporter who worked with the investigative judge on the case that day, should be examined as witnesses."

Dejan Demirović's defence counsellor, Božidar Filipović, is asking that the court asks the defendant the following question: Has he ever seen or contacted with the now late Dragutin Stanković, the attorney from Prokuplje.

The court brings the

Ruling

The defendant should answer the aforementioned question even though he has already answered it.

“I have already answered that I have never seen or met attorney Dragutin Stanković and I have never had any contacts with him.”

Defendant Dejan Demirović’s attorney asked whether the court has Saša Cvjetan’s statement given to the police on 28 March 1999.

The court said that since it was the end of the working day, it could not inspect the existence of that information because the case file has several hundreds of pages.

The state prosecutor is protesting having the investigative judge and the court reporter examined as witnesses, and leaves it to the court to decide whether or not to adduce this evidence.

He also believes that there is no possibility in this phase of the proceedings for defendant Saša Cvjetan to be provisionally released and, at the end, he underlines that at the time when the event took place, the Decree on the Courts and Prosecution’s Actions in Times of War was applicable.

Dejan Demirović’s defence counsellor is asking the court to state whether or not there are court reporters’ signatures on the records from the interrogation of defendants Cvjetan and Demirović, as well as on the record from 18 July 2001 from the interrogation of Cvjetan.

The court determines that on the records from the interrogations of Cvjetan and Demirović from 24 May 1999 there are no signatures of the court reporter Radica Marinković, and on the first page of the original record from 18 July 2001 is blank, so it is not possible to determine who acted in the capacity of a court reporter. At the end of this record, at the place designated for the seal, there is no remark noting who the court reporter was. The court reporter during the interrogation on 24 May 1999 was Radica Marinković.

Exactly because of the previously mentioned omissions, defendants Cvjetan and Demirović’s defence counsels propose that the investigating judge and the court reporter be interrogated as witnesses.

Defendant Cvjetan’s counsellors, Đorđe Kalanj and Goran Rodić, and defendant Demirović’s counsellor are asking the court to examine the court reporter Radica Marinković as a witness in the probative procedure planned

for the following two days because, considering the fact that she works in the same building, somebody will put pressure on her and that it would be much more difficult to adduce this evidence later on.

Pursuant to this court's ruling KV. number 23/02 from 8 April 2002, upon District State Prosecutor's proposal, the court is bringing the following

RULING

Today's session will be terminated and resumed on 10 October 2002 at 09:00.

The session ended at 14:20

THE CONTINUATION OF THE MAIN HEARING

Before the Prokuplje District Court on 11 October 2002; the presiding judge Milorad Lapčević, Judge Svetozar Milojević, and Jury Judges Zoran Poštić, Jovanka Vukajlović, and Miodrag Milošević as jurors; court reporter Vesna Milenković.

The court determines that the main hearing is being conducted before the same trial panel.

Defendant Saša Cvjetan and his counsellors Đorđe Kalanj and Goran Rodić are present.

Dejan Demirović's defence counsellor, attorney Božidar Filipović, is present.

District State Prosecutor Višeslav Bukumirović is present.

Dragan Medić, Rajko Olujić, Radislav Stelević⁶, Dragan Marković, and Zoran Simović were summoned today as witnesses. The latter two did not come. Before the beginning of today's session, the court informs the state prosecutor, defendant, and defence counsellors that yesterday at 14:00 this

court received a report from the Hague tribunal on the autopsy of a certain number of corpses found at the territory of the Podujevo Municipality.

The state prosecutor and the defence counsellors will be given one copy of this Organisation for Security and Cooperation in Europe report on the Hague tribunal findings.

The court brings the following:

Ruling

That Slobodan Medić, Dragan Medić, Rajko Olujić, and Radislav Stalević be examined in the additional part of the probative procedure during today's session.

The court is calling Slobodan Medić to stay in the courtroom and sends the rest of the witnesses to go to a place where they should wait to be called to give evidence.

WITNESS: SLOBODAN MEDIĆ, aka Boca, from father Radivoje, agricultural technician, resident of Novi Sad, 136 Petefi Šandor Street, born in Vinkovci in 1966, not related to defendants Cvjetan and Demirović, but has a good relationship with them.

Pursuant to Article 329 of the CPC, the witness takes the declaration.

The witness was warned that he must speak the truth before the court and that he must not hide anything he knows, and that giving a false statement constitutes a criminal offence. The witness was informed that he does not have to answer certain questions by which he would expose himself or persons in close relation to him to significant material damage, great shame, or criminal prosecution.

"I am the commander of the Scorpions unit, which was a part of the reserve Counterterrorism Units (SAJ) during the whole period of war and it still is.

⁶ Radislav Stalević

I have been a member of this unit from the moment it was formed and, as I have already said, I am its commander.

The Scorpions unit was formed in 1991 as a regular Yugoslav Army unit and, as a part of its special forces units, it was deployed to Bosnia and Croatia. At the end of the combat operations in Bosnia and Croatia, the unit was transferred into the reserve units and the men were withdrawn to Serbia.

The core of the unit was kept together according to the rules and regulations and the instructions we received. Other members of the unit dispersed wherever they had accommodation and however we could provide normal living conditions for them. After the NATO aggressor's air strike on our country, the Scorpions' command structure received an order to gather the unit again. The unit was gathered, issued with equipment, partially in Belgrade regarding the weapons we received in Prolom Banja, and on 28 March 1999, early in the morning, we arrived in Podujevo."

In this phase of the procedure, the court comments that this witness gave the same statement regarding the equipment, unit's stay in Prolom Banja, and arrival to Podujevo as the already examined witness Srdan Manojlović "Srle". The state prosecutor and the defence counsellors agree that the witness should not be examined in detail in this part of his testimony.

"We arrived in Podujevo early in the morning. Our two buses parked near the Podujevo police station, which was also the command post. As a matter of fact, we parked some 300 or 400 metres away from the police station. As the rules prescribe, I went to the command post immediately with my deputy, one liaison officer, and one soldier from the personal security detachment, in order to meet with the company commanders who had already come to Podujevo and make plans with them regarding my unit's further actions, and accommodation for my unit. All in all I wanted to see how we were going to operate as of the moment we came since we were all on the same task, which was to defend our fatherland.

The Priština SAJ Deputy Commander Sava Simović, one of the SAJ commanders, and three or four other persons from their units whose ranks I did not know at the moment, attended the meeting. I know that Colonel Trajković's driver was present, too. He was wounded earlier. After we,

as soldiers, reached some kind of agreement and made plans regarding the actions and other details we were supposed to discuss, they left and Manojlović, Colonel Trajković's driver, myself and another guy stayed inside the room. After some 45-55 minutes (I cannot recall the exact time because, first of all, a lot of time has passed) some guy came in and informed us that something was going on. We knew that something was going on even before he came to inform us because we heard some shooting from diverse types of weapons, besides local infantry 7.62 calibre we also heard the shooting from the ETK machine gun (it was known among us as Šarac), then from 84⁷ weapons with stronger charging than the automatic rifle. Anyway, we heard gunfire from diverse types of weapons and diverse calibres. People who spent several years in the war and who participated in combat can immediately recognise the weapons that are being fired.

Manojlović and I ran out instantly and headed towards a place nearby where a crowd already started to gather. I would like to explain what I mean when I say crowd. When I came to the scene, I found SAJ, Scorpi-
ons, police, and active duty soldiers there. It is a small area and naturally when something happens there must be a crowd. The first thing I saw were wounded people, whom the SAJ members were carrying and providing first aid for them, as I later on learned from the SAJ doctor, Mr Marković. One ambulance came in order to provide faster transportation to the hospital and we were all taking care of the people.

I said the last time and this time I repeat, I was really angry. I was mad, first of all because they disobeyed my command that nobody must go away from the buses until I give different order. And order in my unit is like a law, it must be obeyed. I did yell at people I found there, I mean my soldiers; I do not remember what exactly I told them. It is hard to expect me to remember what I had exactly said three years ago, but I have already told you that I was angry because my soldiers left the buses and went somewhere they were not supposed to be without my order. Later on I was told that they went with SAJ to look for accommodation.

I could not determine at the scene who was the person who committed the crime, who shot the civilians. Today I solemnly declare that if I knew then

⁷ Probably M84

who committed the crime, there would be no trial because he would be convicted at the spot. The Scorpions unit is created as a military formation within the regular Srpska Krajina Army. Later on, it fought in Bosnia and Croatia. This unit's task was to defend the fatherland and, at the same time, to be honest and brave. Whoever did not behave in such manner, could not be a member of our unit. During each formation of the unit I would preach to my soldiers how each of them should behave."

The court asks the witness to explain why it was ordered that the Scorpions unit should leave Podujevo, if it was so, and who gave that order to him.

"I repeat, I was wondering the same thing all the time, I do not know why my unit was withdrawn. Simović gave that order to me, known among us as Tutinac. However, I did not ask him what was the reason for my unit to be withdrawn, but I only acted upon the superior's command.

After such an order was given, I ordered my soldiers from the Scorpions unit to line up and get on the buses and we returned to Prolom Banja immediately. One platoon under Žuća's command returned to Prolom Banja in the afternoon by a vehicle escorted by SAJ.

The court asks me to say if I did anything or undertook some measures to determine whether my soldiers committed the murder of the civilians, but I think that I have already answered that question. We did everything that was in my power and the power of the SAJ Commander, but we did not determine that any Scorpions member shot the civilians.

The court asks me to evaluate soldiers Cvjetan and Demirović. If I was supposed to evaluate them I would say that they are very good, but that would be a military evaluation, which would mean that they are good or excellent if we have in mind the evaluation for regular people.

I am saying that I knew and it was an order in the SAJ that every soldier was obliged to report to the unit if he found weapons in the field. Upon our return from Podujevo to Prolom Banja, two pistols and a rifle were reported. Cvjetan reported one pistol.

That is my testimony. I did not hide anything. I told truth and nothing but the truth before this court and that is why I made the declaration."

The state prosecutor asked the witness if some commander called Vuk reacted in some way when the Scorpions unit members gathered in front of the buses to return upon command.

“It is possible that Vuk, who might be a lieutenant or captain, at most, said something to the soldiers, but I did not notice that and I do not know anything about that. In the evening when we were in Prolom Banja, when the guys already settled in their rooms, a police patrol, i.e. two inspectors came to me and asked me about what happened in Podujevo. I did not know to explain that to them because I did not know and I still do not know.”

Saša Cvjetan’s counsellor asked the witness whether the unit was on standby after it withdrew from Prolom Banja, and he replied:

“Yes, the unit was on standby until we withdrew from Prolom Banja and after a short period of time it was deployed in combat again.”

Defendant Cvjetan’s counsellor Rodić asked the witness whether the Scorpions members during the search, or generally soldiers during the war, leave weapons and go to execute some task or they carry their weapons with them.

The witness replied, “The soldier carries his weapons with him in any case.”

The same counsellor asked whether Cvjetan was authorised to carry a pistol he found after he reported it to his unit.

The witness said, “As far as I know, it was a war and it was allowed to carry weapons.”

Defendant Demirović’s defence counsellor asked what kind of weapons the Scorpions unit had.

The witness said, “Light infantry weapons, 7.66 mm calibre automatic rifles, well known as Kalašnjikov. My unit had no other weapons, no M 53 or M 84.”

The state prosecutor asked the witness if he saw bullet cases at the scene of the crime and whether they were the same as the bullets his unit used or there were some other types of bullet cases, as well.

The witness said, "I did not go to the scene, the yard, so I was not able to see bullet cases either."

The state prosecutor then asked him why he did not go to the scene of the crime when he had already seen the wounded people being taken from there, and the witness said the following:

"I went to receive certain orders; I did not relate that event to my unit, so I did not investigate it. Things in war happen fast and without planning, so the course of the events cannot be anticipated. As a company commander, I have to think how to protect my unit and my men."

The prosecutor then asked if he said to his men at the scene, "I cannot leave you alone for a minute without you making a mess".

The witness replied, "I did not say that at the scene and I would never say something like that."

Defendant Saša Cvjetan's counsellor asked the witness to complete his statement regarding the arrival at the scene and the withdrawal of the unit.

The witness said, "I have already answered to that question and I stick to every word I have said before this court and its investigative judge."

Defendant Demirović's counsellor asked the witness whether he discussed with the platoon leaders from his unit the issue of accommodation on the way to Podujevo.

The witness said, "During the war, the area set up the conditions and we cannot plan the accommodation before we arrive to the area and see what is the situation there."

The defendant asked the witness whether he thought, since they fought in the war together for a long time, that the defendant was always ready to help the ones endangered, soldiers or civilians, regardless of their religion, national background, or any other diversity.

The witness said, "I met Cvjetan in 1994, in December. I never had any reason to doubt his bravery, humanity, and military virtues. He had never been a soldier with no discipline."

Prokuplje District Public Prosecutor's Office

Belgrade, 19 November 2002

Acting District Public Prosecutor
Mr. Višeslav Vukumirović

Mr. Vukumirović,

Regarding your request that the Humanitarian Law Centre forwards to you the information on Bogujevci Lirrie and other witnesses of Albanian nationality in order to have them examined before the Prokuplje District Court in the trial of Saša Cvjetan and Dejan Demirović, who are charged with the commission of a war crime against the civilian population, I give you the following information.

The HLC and I, as the Executive Director, cannot give you the addresses of possible witnesses without their permission. Fathers of the killed and wounded children from the Bogujevci family, who live in Kosovo, obliged me to keep their addresses in secrecy until they make a different decision.

Other Albanian witnesses of the event that took place on 28 March 1999 are not prepared to appear before the Prokuplje District Court either. They believe that this trial is a farce and that the trial panel is unwilling and incompetent to apply laws and bring justice for the defendant, as well as for the victims.

I completely agree with them. You have convinced them with your inertness that you do not represent the victims. It is obvious that you do not dare ask questions the defendant or the witnesses. They lie because they know that a trial without witnesses leads to the acquittal of the defendants.

The solution in the case of defendants Cvjetan and Demirović, as well as in all possible trials, is that the Serbian Supreme Court delegates all cases of war crimes, crimes against humanity, or any other international crimes to another court. In that case, the trial of Cvjetan and Demirović would start from the beginning. Then, Albanian victims and witnesses would be ready to give their statements. Because of the personal security it would be possible to organise their examination in the Priština District Court the same

way the international judges examine Serb witnesses in the Belgrade District Court.

Please, find my text “In the Name of the Victims” based on the direct contact with the victims of the event that took place in Prokuplje⁸ on 28 March 1999 enclosed to this letter, as well as the initiative for the Serbian Supreme Court.

Nataša Kandić

Executive Director

⁸ “Podujevo”

Serbian Supreme Court
President Mrs. Lepa KaraMarković

Belgrade, 19 November 2002

Presiding judge,

I am writing to you regarding the war crimes trial before the Prokuplje District Court, which is conducted with numerous difficulties. Even though the Serbian Supreme Court overruled the Prokuplje District Court's request for the transfer of authority, I must again present the arguments that point out the necessity to reconsider once more the court's jurisdiction for processing the cases of war crimes.

Saša Cvjetan and Dejan Demirović (tried *in absentia*) are being tried in Prokuplje for a war crime committed against the civilian population on 28 March 1999 in Podujevo, Kosovo. The trial began based on an incomplete and trivial indictment by which two members of the reserve Serbian Ministry of Interior unit are charged with the murder of 19 Kosovo civilians, mostly women and children.

The trial panel is professionally incompetent to process the case in line with the only purpose of the proceedings, which is to bring justice and hand down impartial verdicts. The trial panel obviously prefers witnesses who testify in the favour of the defendant. It turns down witnesses, without valid arguments, who could give significant contribution to the fact-finding and establishing responsibility of the defendants. The partiality of the trial panel towards defendant Saša Cvjetan prevents the court from gathering evidence that would contribute to the process of bringing justice for the defendant as well as for the victims. This way, a trial without evidence leads to acquittal and praising war criminals as heroes.

The presiding judge does not react to the defence counsellors' acts by which they insult the court. He lets the attorneys interrupt and warn him not to distract their defence. The presiding judge does not react when defendant Cvjetan threatens journalists and non-governmental organisations because of their trial monitoring reports. It is understandable that none of the Albanian witnesses is ready to testify before the Prokuplje trial panel. The fact that none of the Albanian witnesses has appeared in the trials for war crimes committed in Kosovo that are being processed in Serbia, points

to the fact that it is urgent for the Serbian Ministry of Justice and the Serbian Supreme Court to discuss the existing problems and rule in the issues such as delegating all war crimes trials to the Belgrade District Court, the cooperation with the internationalised and local courts in Kosovo, and witness protection.

I am asking you to pay considerable attention to the aforementioned problems and by your decisions contribute to the creation of prerequisites for the competent processing of war crimes.

If the trial continues before the Prokuplje District Court, I am afraid that it would represent great embarrassment for the Serbian judiciary and the whole state.

Please, find enclosed my text “In the Name of the Victims”, the Acting Prokuplje Public Prosecutor’s letter, and my reply.

Best Regards

Nataša Kandić

Executive Director

IN THE NAME OF THE VICTIMS

**WOMEN AND CHILDREN MURDERED IN PODUJEVO
ON 28 MARCH 1999**

Police and troops from Serbia began arriving in Podujevo on 20 March, shooting off their guns, shattering store windows and pillaging. When the bombing started on 24 March 1999, the ethnic Albanian population stayed indoors, communicating with each other only through their adjacent yards. Those who lived on the outskirts moved in with relatives and friends in the town centre, believing they would be safer there. Almost every Albanian home in the centre was giving shelter to people from the suburbs and surrounding villages.

Podujevo was ethnically cleansed on 28 March. More than 10,000 Albanians were driven out of their homes, formed into columns, marched through the centre and told to continue along the only route left free by the Serbian forces. Entering Albanian houses in the centre, Serbian police led by local policemen and mobilised civilians killed at least 19 Albanian civilians at three different locations. Their bodies lay where they were killed for two days before the local civil defence was able to arrange transfer to the Priština (Prishtina) morgue. None of the Albanians knows when the bodies were returned and buried in a row of shallow graves in the Podujevo cemetery. Only three of the graves were marked. Investigators of the Hague tribunal were present when the bodies were exhumed for reburial in June 1999. A second exhumation took place in 2000 when the remains of 11 persons were taken to the Forensic Medicine Institute in Orahovac to be autopsied. To avoid yet more digging up of graves, Enver Duriqi, who lost four children, his wife and parents, buried their bodies on a hill above his house on the outskirts of Podujevo.

I heard about the deaths of the Podujevo women and children in April 1999 from an elderly Albanian taxi driver in Belgrade, who was regularly visiting two children at the Belgrade Paediatric Hospital: nine-year-old Lirrie Bogujevci, a survivor of the Podujevo killings, and a boy from Peć who was seriously injured in a shell explosion.

I passed through Podujevo some time later, on 19 April, hoping to meet someone who could direct me to Lirrie's father. But the streets were teeming with uniformed men who looked like bandits and robbers, and I was afraid to stop any of them to ask questions. Two days later, I saw a column of several thousand Albanians on the road from Priština to Podujevo. An elderly man told me the police had given them permission to return to Podujevo. I saw, however, that the column did not go into Podujevo. Only people registered as residents of the town were allowed to return; the rest had to find shelter in the woods where they remained until the deployment of the international forces in Kosovo.

I found Selatin Bogujevci, Lirrie's father, two years later. He told me his children and his brothers, all five of them, had survived. We spoke many times and after each conversation he talked with his children about 28 March. He would call me on the phone or write, saying the children were still taking it very hard, that his youngest, Genc, always fell silent when they talked about what had happened or when his mother's name was mentioned. The last time we spoke, on 10 November this year, he told me that Genc, now nine, had talked about the shooting for the first time and said he remembered the man who had fired his gun at them.

In Podujevo, I spoke with people in Ivana Kosačića and Rahmana Morine Streets. On 30 and 31 October 2002, I went through all the houses and yards from which people had been thrown out on 28 March. In Halim Gashi's yard I saw the small old house against whose walls women and children from Bogujevci and Duriqi families had been shot. Although the walls had been whitewashed, bullet holes were still discernible on them and on the concrete path.

Rexhep Kastrati

Rexhep Kastrati told me how the police entered Albanian homes in Podujevo. The house he shares with the Gjata family is situated about 100 metres from the town hall and the police station, and was the first the police came to. It has three entrances. Kastrati was on the second floor with his wife, daughters, older sisters and their children. Besides them, there were also refugees they had taken in. His sons had left for Priština the day before. This is how Kastrati described what happened when the police came:

We heard the sound of the front door being broken down at about 8 o'clock. My sister Nurije went first, with me right behind her. A young man who seemed to be in charge of the group came in first. He was in green camouflage fatigues. The others wore different kinds of uniform; some like the first one, others were in blue police uniforms and still others in black. About 20 of them had black bands or scarves around their heads. A few were wearing glasses. The young man could have been 23 or 24. He was tall and strongly built and his head was shaved. He had strange greenish eyes and a nice face, like Arkan's. He had a badge on his shoulder but I couldn't make it out. As soon as he was inside, he grabbed me by the shirt with one hand and trained his automatic at me with the other. He asked how many people were in the house and I said a lot. My sister Nurije took out a roll of banknotes and held it out to him. She didn't say anything because she doesn't speak Serbian. He asked why the woman was giving him money and I replied it was because he would tell us in which direction we were to go. She also gave him gold coins, necklaces and earrings.

I remember that young man; he held me and gave me a hard time for at least half an hour. He kept me close to himself and I could smell him. It was a funny smell. From time to time, he would take a small bottle from the top pocket of his uniform and smell it. The liquid it held was colourless. He became more aggressive each time he uncorked the bottle and sniffed it. He asked me more than once how come I spoke such good Serbian, and I replied it was because of my work. He asked why we had stayed and not run away. He kept swearing all the time. He pushed me toward the stairs, smashed in the door with his foot and asked me what was in there. I said it was the basement. He tried to push me down the stairs. I struggled, my daughter cried and begged him to spare her father, and Nurije kept pulling my arm, trying to stop him from taking me away. Then they threw us out into the street.

There were police and men in camouflage and black uniforms in the street. My daughter saw Toma Petrović, a Podujevo policeman. She saw him again a month later in Prishtina, went up to him and said he was in our house when we were driven out. He asked on what date that was, calculated and admitted to her that he was in the uniformed group that 28 March. All he said was that I had been very lucky, that God himself had saved me.

We were all in our bare feet because we hadn't had time to put anything on. My other sister is paralysed and her daughters dragged her over the steps into the street. She wasn't even dressed. As we went through the yard, the young man noticed several cars that belonged to the refugees and said, "Just look at that - it's like a car show." Apart from one that wouldn't go, we didn't find any of the cars when we came back in June.

When we were all out in the street, they lined us up. The young man pulled me out of the line and began giving me a hard time again. He pointed his gun at me. Then a dog started barking and he asked me why. I didn't know what to say. As he ill-treated me, another one came up and said to him: "Leave the man alone; stop badgering him." He let me go then, turned his gun around and hit me right in the mouth with the butt, splitting my upper and lower lips. My legs buckled under me but Nurije held me up. The young man fired a burst into the air. I remember him very well and I'm sure he's the one on trial in Prokuplje. I saw his picture. He held me facing him so I got a good look at his face. I also remember his smell. I would also recognise the policeman who told him to leave me alone.

We went down the street in a column. Old Ejup and his son Florim were the last to leave their house. They told us in which direction we were to go. At the gate to the Bogujevci house, I saw them take Selman Gashi out of the column.

Florim Gjata

Florim Gjata (33) and his family were on the third floor of his uncle Isak's house when the police came. His father Ejup (70), was wounded on 24 March and, when he heard the police, he changed his shirt and put on a jacket to cover up the bloodstains. Ejup and his nephew Naser were shot by soldiers on an intersection in the centre of Podujevo. Naser was killed instantly and Ejup was hit in the right side of the back and left upper leg. He managed to get away and hide in the house of Rexhep Sekiraga. Naser's body lay in the street for 12 hours until the police allowed Sekiraga to take it to the Gjata family. They buried Naser in the yard.

When I spoke with Florim Gjata in Podujevo, I asked him about the cigarette lighter mentioned by the defendant Cvjetan at his trial in Prokuplje. Florim said the lighter was his uncle Isak's. He also said there were no Kos-

ovo Liberation Army uniforms or pistols in the house, as claimed by Cvjetan, and told me about the events of 28 March in great detail.

When the police ordered them out of Isak's house, everyone did as they were told. Florim and his wounded father, mother and one-year-old son were the last. They were going down the stairs when two uniformed men came toward them:

One of them asked my father, "What is it; are you sick or wounded?" My father said he was sick. I was behind him, with my son in my arms. When they saw me, one of them said, "It's you we're looking for. Put down the child." I said I couldn't because the baby wasn't even a year old. He said, "Put your son down or I'll kill you both." He was standing on the stairs below me and the other one was next to me. The other one didn't say anything, just kept his gun pointed at me. He was 26 or 27. Both were in camouflage fatigues and had badges on their shoulders. I think I made out the word "Scorpion" on the badges, but I can't be sure.

The one who threatened me was tall, heavily built and his head so closely shaved that he seemed to be bald. He had a big face. I had to put my son down and he started screaming. Then the one with the gun beside me said, "Leave the man be. Can't you see the child is crying? I have a child like him." I bent down to pick up my son but the bald one yelled that I was to leave him where he was. The other one told me to take the child and go. I picked up the baby and went down the stairs. I hadn't taken two steps when I saw the policeman Tomo Petrović in front of me. "Tomo, for heaven's sake. You know I have a small child and these two want to kill me," I said. He just shrugged his shoulders. I went down and was near the front door when I heard a burst of shots. I thought they had killed everyone who had left the house before me. A column had already been formed in the street. We joined it and went in the direction of the Lab river.

Selatin Bogujevci

From the Gjata yard, it is easy to get to the Bogujevci family compound in Ivana Kosačića Street (now Skenderbegova). The Bogujevci brothers, Safet and Selatin, and their surviving children no longer live there; the house is empty and their sister comes to check on it now and then. The compound also contains the houses of their late father, Uka, and uncles Maliq and Qazim. Two or three days before the start of the bombing, Selatin saw an acquaintance, Enver Duriqi, with his family on a tractor with trailer and at a loss as where to go. Selatin told them they could stay in his uncle Qazim's empty house.

Selatin, Safet, and Enver Duriqi fled before the police arrived in the compound, after hearing gunfire and some kind of uproar in the town. An armoured personnel carrier was standing in front of their house. Having heard that the police and paramilitaries were killing Albanian men, the women and children begged them to get away while they still could. Duriqi's father, the elderly Hamdi, stayed with the women and children. Running through the yards, the three men reached a field some 100 metres from the house, where there were many people who were either fleeing the police and military or had been driven by them from their homes.

More and more people kept arriving all day, some on foot with a few belongings in bags, others on tractors. No one had any news about the Bogujevci and Duriqi families. When night fell, Selatin joined a group that made its way to Ballovac village, while Safet and Enver stayed, hoping to be joined by the women and children. Safet went to Ballovac the next day, and Enver two days later, without having heard anything about their families. Together with others, they moved from village to village, driven by the Serbian forces at their heels who shelled every village in which civilians found shelter. From Ballovac, they went to Hertice, Sajkovac, and Batllava and then to Koliq where, on 14 April, they heard that the children were in hospital.

A man who had been at the hospital to pick up his son, who had been operated on before the bombing started, brought a message that Saranda, Jehona, Fatos and Genc were in the Priština hospital, and that Lirrie had been taken to Belgrade. Saranda had given him a scrap of paper with their

names on it, “just in case you meet our fathers somewhere”. The next day, Safet and Enver went to the hospital and spoke with Saranda and Jehona, but were afraid to ask about the boys, who were in the orthopaedic ward.

Shelling forced the civilians to leave Koliq on 18 April. Selatin says that many people were killed. They went to Priština, where the police told them that everyone from Podujevo was to go back home. At the gasoline station just outside Podujevo, the police directed them to Šajkovac. Since all the houses in the village had been burned, the people went on to Sibovac. Only one Albanian house in that village had not been burned and looted, thanks to a Serb neighbour. They spent the night there and returned to Šajkovac the next day. A few days later, the police told them they could return to the “liberated” parts of Podujevo. Some people did, but the majority stayed in the woods. Those who returned were accompanied by Inspector Nebojša Maljević of the Podujevo police station who rode in a police car, and Faik Jashari, a member of the Serbian delegation at the Rambouillet talks, in a black Mercedes. Maljević took the Bogujevci brothers to their compound, went into the yard, and came back saying the houses were occupied.

It was only after the arrival of the international forces in Podujevo that Selatin and Safet Bogujevci and Enver Duriqi entered the compound. In Halim Gashi’s yard, they saw evidence of the crime. Selatin recounted:

There were bloodstains on the whole path, all the way to the gate. One wall of the old house and the yard wall were pockmarked with bullet holes. There were also traces of a child’s brain on the wall of the house. I found a child’s boot near the tap in the yard; marbles and women’s scarves were scattered all around. Enver’s wife’s watch had stopped at two minutes to eleven... I found my wife Shefkate’s identity card on the storage heater in our house. I didn’t find the bags we had packed and kept in the yard near my uncle’s house all during the war. We hadn’t had time to take them with us and somebody probably took them before the war ended. I found photographs taken with my camera in Dumnice village, thrown around and damaged. We found 97 shell casings on a few square metres of ground in the yard.

A Serb at the morgue in Priština showed me a book in which 19 unidentified bodies were registered. According to the book, the bodies had been

brought there by Milan Anastasijević of the civil defence. I don't know when they were buried. Tefik Gashi, the pathologist who examined the bodies, told me the belongings found on them were taken by forensics Inspector Živojin "Žika" Cvetkovic. We found 19 unmarked graves at the cemetery, and three with the names Amdi Duriqi, Isma Duriqi, and Fitnete Shabani.

Killed in Halim Gashi's yard

Seven children and seven women were shot to death in Halim Gashi's yard: Shpetim (born in 1989) and Shpend (1986), the sons of Safet Bogujevci; his wife Sala (1960); Nora (1984), the daughter of Selatin Bogujevci; his wife Shefkate (1956); Shehide Bogujevci (1932); Nefise Bogujevci Llugaliu (1945), the sister of Selatin and Safet; her daughter-in-law Fexhrie Llugaliu (1978); Dafina (1990), Arbër (1992), Mimoza (1995), and Albion (1997), the children of Enver Duriqi; Fitnete nee Shabani (1963), wife of Enver; and Esma (1930), Enver's mother. Saranda (1985), Safet's daughter; and Selatin's children Fatos (1986), Jehona (1990), Vukumirović (1990), and Genc (1993) were seriously wounded. Enver Duriqi's father, Hamdi, was killed the same day in the "Drini" bar.

The children remember

The children told their fathers and the Hague tribunal's investigators what happened after Selatin, Safet, and Enver left the compound. Selatin would call me on the phone or write to tell me what they had said:

After the three of us left, my family and Safet's moved over to my uncle's house, where the Duriqis were. When the police started going into houses, the mothers decided it would be safer out in the street. Enver's father [1928] Hamdi was the only man with them. They were just leaving the house when a group of uniformed men came into the yard and stopped them. The children say there were a lot of them, in camouflage and police uniforms. They remember a tall policeman with longish hair and an earring, an older and shorter one with a beard, and a very young policeman with a military cap with visor that was flat on the top. They say the youngest one searched them the most. He checked their bags and didn't let them take

them when they were made to go through Selatin's yard to Naim Gashi's. The youngest one and the one with the beard went with them.

There were a lot of police in Naim's yard; they broke down the fence. A tall one with a short beard ordered the women to take off their headscarves. They searched Shpetim and Arbër, found their marbles and threw them away. A tall one with short curly hair pulled out Shefkate, put his hands in her pockets, and threw the dinars he found all around. Then he took her to the old house at the bottom of Naim's yard and dragged her inside. The children saw this just before they were made to go into Halim's yard, which was also full of police, and then out into Rahmana Morine Street. There were all kinds of uniforms in the street: military, police, men in civilian pants and military camouflage tops, or police pants and military tops. They had poles and axe handles with which they smashed shop windows, and swore all the time. They [Albanian civilians] were made to go in the direction of the police station, in a column with old Hamdi at its head.

They were ordered to halt outside the Drini Cafe. A man in police pants and military top started yelling at old Hamdi, knocked off his white cap and slapped him. Then he ordered another one to take Hamdi into the cafe and pointed to Selman Gashi, who was in the column, standing near a store. The other one led both of them into the cafe and, a few moments later, the children heard two shots. The women and children were told to go back to where they had come from.

They returned to Halim's yard where they found Shefkate whom they had left in Naim's yard, and the same police who had driven them out before. They saw the policeman who had dragged Shefkate into Naim's old house. A policeman started yelling at Fexhrie, took out his knife and hit her on the head with the hilt. The same policeman pulled Shefkate by her hair, and they saw her crying and saying something to him. She was the only one who spoke Serbian. As the children watched, the policeman pushed Shefkate and shot her in the back. She fell down and he fired another shot at her. The children started crying. They were facing the policeman when he threw away his empty rifle, took a loaded one and fired at them. The women and children fell down beside the wall of the house. Saranda heard the sound of a new clip being put in a gun and then felt more bullets hitting her. At one point, she raised her head and saw her younger brother

Shpetim without his head, and Enver's son Arbër with his face blown away. Saranda, Jehona, Fatos and Genc were all hit in several places on the body and in the left hand. They remember someone giving them first aid and being driven to the Pristina hospital in an ambulance. Lirrie was taken from there to Belgrade where she was in hospital until 10 October 1999.

More deaths in Ivana Kosančića Street

Selim and Idriz Tahiri were killed and Nazim Veseli wounded the same day in Ivana Kosančić Street. Nazim and Isak Jusufi, who survived unscathed, recounted to me what happened. There were some 50 people in the house of Nazim's uncle when the police came at about 10 o'clock. The police were in camouflage uniforms and Nazim saw they had local Serbs as guides. He recognised Dragan Biočanić, who worked in the local administration on territorial defence and military affairs. Biočanić's brother Boban was also there.

Dragan took Selim Tahiri to lead them to other houses. A lot of policemen stayed with us; the yard was full of them. One said the men should be taken to the police station. Selim had been brought back in the meantime. They took me, Selim, Idriz, and Isak and led us out into the street, and then back again and into the entrance hall of the house. Then Boban Biočanić came in and said, "What are you doing here, f... you!" He started firing at us right away. We were lined up. He shot me first, then Selim, Idriz and Isak. He emptied his gun firing at us. I was hit twice, in the stomach and the right arm, below the elbow. We fell down and they didn't check to see if anyone was still alive. They left. Our people bundled me and Isak over the wall and carried us to the Lab river where there were a lot of people.

Aftermath

Saša Cvjetan and Dejan Demirović, former members of the Serbian police force and reservists in the Scorpion unit, have been charged with war crimes against the civilian population under Art. 142 (1) of the Yugoslav Criminal Code. They are currently on trial before the District Court in Prokuplje, Demirović in absentia since he is still at large. The specific charges are the murders of four identified and several unidentified persons, and the

wounding of several unidentified persons on 28 March 1999 in Podujevo, Kosovo.

At trial, the defendant retracted the statement he gave to the investigating judge in May 1999 in which he confessed to the killings. Like Cvjetan, the witnesses, also members of the Scorpion unit, appear to be frighteningly normal. They all reiterated under oath that “nobody killed anyone, nobody fired at women and children”. They do not deny seeing the bodies of dead civilians on 28 March 1999 in an Albanian yard in Podujevo but, like Cvjetan, do not know who killed them or when.

The trial chamber denied the prosecutor’s motion that I be called as a witness to tell the court what I had heard from eyewitnesses and survivors. It thus openly demonstrated its bias in favour of the witnesses, who in giving testimony do their very best to shield the defendants. These witnesses set the tone of the trial.

The court has shown no interest in obtaining evidence of the crimes, and seems determined to treat grave breaches of international law as sporadic acts committed by individuals under the pressure of the NATO bombing.

Can the Prokuplje District Court see to it that justice is done? Can it bring any kind of relief to the victims? My answer is that the trial of Saša Cvjetan gravely undermines justice and the human dignity of the victims. Such trials are not an appropriate place for victims to appear and be heard.

Belgrade, 18 November 2002

Nataša Kandić
HLC Executive Director

Serbian Supreme Court in Belgrade, in the Trial Panel comprised of Judges: Aleksandar Ranković as presiding judge, Nikola Milošević, and Sonja Manojlović as jurors, Supreme Court counsellor Dragana Jevrić, and the court reporter, in the criminal proceedings initiated against defendant Saša Cvjetan et al. because of the criminal act pursuant to Article 142 Paragraph 1 of the FRY Criminal Code, ruling in the Prokuplje Acting District Public Prosecutor's request for the transfer of the real jurisdiction, in the session on 27 November 2002, brought the following

RULING

It is determined that the Belgrade District Court should act in the capacity of the court with the real jurisdiction in the criminal proceedings against defendants Cvjetan Saša and Demirović Dejan initiated because of the war crime against civilian population pursuant to Article 142 Paragraph 1 of the FRY Criminal Code.

Statement of Reasons

Defendants Cvjetan Saša and Demirović Dejan were charged by the Prokuplje District Public Prosecution's indictment Cp. number 25/99 filed on 5 April 2002 with the commission of the war crime against civilian population pursuant to Article 142 Para 1 of the FRY Criminal Code and defendant Cvjetan Saša was also charged with the aggravated larceny pursuant to Article 166 Para 1 Item 4 of the Republic of Serbia Criminal Code and the criminal act pursuant to Article 33 Para 1 of the Law on Weapons and Ammunition.

The Prokuplje Acting District Public Prosecutor submitted a proposal to the Supreme Court that the trial of Saša Cvjetan and Demirović Dejan initiated because of the aforementioned acts should be held before the Belgrade District Court with the explanation that the Albanian witnesses proposed in the Public Prosecutor's indictment could not be held without any incidents before the Prokuplje District Court.

The Supreme Court examined all documents from this case and after it evaluated the proposal made, it found that it was founded.

In accordance with Article 36 Paragraph 1 of the Criminal Procedure Code, it is possible that another court could be determined as the really authorized for the criminal trial if it is obvious that it would be easier for this court to conduct the procedure or if some other relevant reasons exist.

The Supreme Court evaluated that the present course of the criminal proceedings shows that there are relevant reasons showing that it is necessary to continue the trial before the Belgrade District Court. Namely, in the further procedure it is necessary to examine a greater number of Albanian witnesses from Podujevo and other places in Kosovo and the court is certain that it would be easier to assure their presence in the main hearing and regular testimony before the Belgrade District Court.

Because of the aforementioned reasons, the Supreme Court found that the request for the transfer of real jurisdiction based on Article 36 Paragraph 1 of the Criminal Procedure Code is founded and it made the decision as presented in the aforementioned ruling.

The Court Reporter
Dragana Jevrić

Presiding Judge
Aleksandar Ranković

BELGRADE DISTRICT COURT, in the Trial Panel comprised of Judges Života Dojinčević as Presiding Judge, Milena Rašić, and Saša Milovanović as Jurors, with the participation of Expert Tatjana Milenković as Court Reporter, in the criminal proceedings initiated against defendant Demirović Dejan because of the criminal act pursuant to Article 142 Paragraph 1 of the FRY Criminal Code, ruling in the proposal for the division of trial in the session held on 26 February 2003, brought the following

RULING

The CRIMINAL PROCEEDINGS initiated by the Prokuplje District Public Prosecution's indictment Cp. number 25/99 filed on 5 April 2002 because of the criminal act of war crime against civilian population pursuant to Article 142 Paragraph 1 of the FRY Criminal Code, against

DEMIROVIĆ DEJAN, from father Ismet and mother Ružica (nee Stamatović), born on 18 May 1975, resident of Beška, address 38 Kneza Miloša Street is separated from the trial of Cvjetan Saša.

Statement of Reasons

The Prokuplje District Public Prosecution filed an indictment on 5 February 2002 by which it charged defendant Cvjetan Saša and defendant Demirović Dejan with the commission of war crime against civilian population pursuant to Article 142 Para 1 of the FRY Criminal Code and defendant Saša Cvjetan was also charged with the commission of aggravated larceny pursuant to Article 166 Para 1 Item 4 of the Republic of Serbia Criminal Code and criminal act pursuant to Article 33 Para 1 of the Republic of Serbia Law on Weapons and Ammunition.

The Prokuplje District Court made a decision Kv. number 23/02 on 8 April 2002 and determined that defendant Demirović Dejan would be tried *in absentia*.

The Belgrade District Court Presiding Judge demanded this because of the reasons of efficiency.

The Trial Panel examined the case file documents and made the aforementioned decision.

As determined by the Prokuplje District Court ruling Kv. number 23/02 made on 8 April 2002, defendant Demirović Dejan will be tried *in absentia* and since defendant Demirović Dejan was arrested in Canada on 16 January 2003 and the procedure upon international arrest warrant is ongoing, because of the efficiency of the case the trial of Demirović Dejan will be separated from the trial of Saša Cvjetan since defendant Saša Cvjetan is in detention from 15 November 2001 and the process of Demirović Dejan's extradition is uncertain and since there are no problems for continuing the trial of Demirović after the extradition process is over, the Panel ruled as in the aforementioned text of this ruling pursuant to Article 34 Para 1 and 2 of the Criminal Procedure Code and based on the authorities of the Panel pursuant to Article 24 Para 6 of the Criminal Procedure Code.

COURT REPORTER
Tatjana Milenković

PRESIDING JUDGE
Života Đoinčević

STATEMENT REGARDING LEGAL REMEDIES
The appeal against this ruling is not allowed.

RECORD FROM THE MAIN HEARING

Composed before the Belgrade District Court trial panel on 11 April 2003 in the criminal proceedings conducted against defendant SAŠA CVJETAN because of the criminal offence pursuant to Article 142 Paragraph 1 of the FRY Criminal Code (FRY CC), upon the indictment Kt. 1273/02 filed in Belgrade.

PERSONS PRESENT:

PRESIDING JUDGE
Biljana Sinanović

DEPUTY PUBLIC PROSECUTOR
Ružica Janić

JURORS
Siniša Važić
Pajović Ivica
Nikolić Nada
Rakić Ljubiša

DEFENDANT
SAŠA CVJETAN

DEFENCE COUNSELLORS
Attorney Đorđe Kalanj
Attorney Goran Rodić

COURT REPORTER
Tanja Vučković

Session began at 10:00
The main hearing is public.

Witness **MILOŠ OPARNICA**, a 39-year-old male from Belgrade. Director of the Central Interpol Bureaux for Serbia and Montenegro, does not know the defendant, not related to him, warned, and states:

“During the air strike and before that I was the criminal inspector in the Criminal Police Department. That practically means that I was a chief in one of the secretariats.

I have never been in Podujevo. I remember that the General Crime Chief, Miodrag Jovanović, called me in spring 1999, it was April or May. He told me that I was supposed to go to Prokuplje and interrogate some people together with my colleague from the Niš Secretariat of Interior, Klikovac Duško. He also told me that I would learn more details in the Prokuplje Secretariat of Interior. I found out immediately that two people were brought and that their names were Saša Cvjetan and Dejan Demirović. I was supposed to interrogate them. As for the documentation, I received the photo documentation from the scene of the crime. I know that a criminal investigation of the scene of the crime was conducted and the documentation contained a report stating that the bodies were sent to the Priština Forensic Institute or some Department in Priština where the bodies were externally examined. I found out that the autopsy was not carried out. That was all the documentation that I had. We talked to the investigative judge Mijat Bajović as well. He told us that he was at the scene and that he made a report on that. He told us everything that was in the report and that the scene with the corpses in the yard that were piled was mysterious. I remembered one detail. I remember that there were many corpses in one yard, about 15, I think. Two corpses were located close to that yard. As far as I can remember, I think one of the names was Gashi. I think that name was put in the photo documentation below one photo. It was the Gashi family yard. It is obvious that these people were murdered and it could be seen from the photo documentation. When I took off from Belgrade, where I met with Miodrag Jovanović, I went to Prokuplje to interrogate two persons who, presumably, were at the scene at the time of the event and committed this crime. That was the information I had before the interrogation.

My colleague Klikovac Duško and I interrogated Cvjetan and Demirović. We examined them in the Prokuplje Prison. Klikovac and I were with the defendants during the whole interrogation. Nobody was in the room with us during the interrogation and only one guard was in the corridor. I did not attend the interrogation conducted by the investigative judge. I am sure that Klikovac also did not attend that interrogation because we were together all the time; we did not separate at all. I want to remind you that

all this was happening during the state of emergency when police had authority to keep a person in detention more than 30 days, but still Demirović and Cvjetan were handed over to the investigative judge, as far as I know, after two days of detention. I do not know how long they were detained in Novi Sad. That was the limiting factor at the time so that the detention did not exceed three days according to the old law. After the interrogation we made a criminal complaint and gave it to the Prokuplje Secretariat of Interior officers who submitted it, along with the accompanying documentation, to the Prokuplje District Court, i.e. District Prosecutor's Office. We sent a letter to the public prosecutor and to the investigative judge and, right after we wrote the criminal complaint, we left."

As an answer to a trial juror's question, the witness said,

"It is true that I had mentioned that I found it strange that the Prokuplje department was conducting this task and this happened in Podujevo, but I found an explanation in the state of emergency - the bombing. The Prokuplje Secretariat of Interior should have been in charge of this case. Another thing was strange. We were supposed to conduct the interrogation and submit the criminal complaint. There were other things that needed to be done, as well, like to find the rifles and other material traces and to undertake the expertise. We spoke about this to the Prokuplje Public Prosecutor and we expected him to submit the requests in order to obtain necessary information. As far as I know, there were no such requests. I never received such a document again and I was never again asked to give any information on this case. I am reminding you that we conducted the whole procedure against the defendants very correctly and we treated them as if they were our colleagues, which means that when we were eating, they were eating as well; when we drank coffee, they drank coffee as well. We did not threaten them; we never suggested to them to sign something; they were personally writing their statements and we only made grammatical corrections in order for sentences to have sense."

As an answer to the defence counsellor's question, the witness said,

"I know that the Podujevo Police Station Criminal Department conducted an investigation before we arrived. I want to say that the first investigation was conducted by the Podujevo police and the second by the Proku-

plje Secretariat of Interior and I do not know whether they collected bullet cases, and yes, bullet cases were collected because I personally saw them. I personally saw the bullet cases. I think there were 20 or 30 of them and they were rifle bullet cases. These bullet cases were forwarded to the Secretariat of Interior's technicians, which is a usual procedure and I do not know whether they were forwarded to the Prokuplje Secretariat of Interior or the Podujevo Police Station. And I do not know if they were forwarded to the court.

I saw a bunch of bullet cases in a bag and I do not know if there were rifle bullet cases, too. We were interested to find out who were the people who were killed, but we could not request or carry out their identification at the time. Podujevo was an empty city and we could not ask anybody. Since we arrived in Prokuplje one month after the event, I do not think that the corpses were still at the scene. I know that colleague Klikovac has a document containing the description of the bodies and I know that the identification process was not carried out. I cannot remember whether or not I inspected the investigation report. I interrogated the defendant based on the documentation that was in my possession. However, I cannot remember the details because it's been four years. I do not remember the Drini bar. I cannot remember and I think that before I interrogated the defendants I saw a report on the location of 19 corpses, which the Priština Secretariat of Interior composed and which was presented to me. I think this is the first time for me to hear that death occurred after five or six days. Besides the evidence I have already mentioned, I also learned about the content of the confiscated possessions and I think that it was a pistol confiscated from Saša Cvjetan and a cigarette holder or a watch, I cannot quite recall it today, and we made a certificate of the confiscated possessions. We made the criminal complaint in the Prokuplje Elementary School where Prokuplje Secretariat of Interior was and we interrogated the defendants in the prison. All information regarding the event we obtained from Demirović and Cvjetan. We did not physically take them to the investigative judge because the defendants were already in the prison. I worked as a criminal inspector for nine years before this event took place and I had never had a case with so many victims. This procedure was different in many ways. First of all, we began the procedure one month after the event took place. Then, the bombing was underway, 80 per cent of people we were supposed to talk to were unavailable. These are the injured parties and people who men-

tion the defendants in their statements. We also had a limited mandate for undertaking certain actions. When I was mentioning a grammatical correction I meant that punctuation was not conducted after they gave their statements. That means that the defendants were writing their own statements and we wanted them to be clearer. While defendants were writing the statements we were telling them where to put a point and make the sentences logical”.

As an answer to the defence counsellor’s question, the witness said:

“I met with the investigative judge and Klikovac was with me, as well as the Prokuplje Secretariat of Interior Chief of the Crime Department. I cannot recall who of the defendants that was. I called the family and informed them that he was in detention. There is a rule saying that whoever is in detention his or her family must be informed. I do not have any documentation or decision for the three day long detention. Persons taken in for interrogation are usually handcuffed so that they could not hurt themselves. I cannot remember whether it was Cvjetan or Demirović that wanted to contact the family. I only remember it was approved, but I cannot remember was it Demirović or Cvjetan Saša. I am trying to say that the defendants were interrogated in the office. I was in constant contact with Jovanović Miško, who was the Chief of the Criminal Police within the Serbian Ministry of Interior. As for the qualification of the criminal offence, Klikovac and I made an agreement with the Prokuplje Public Prosecutor and decided to qualify this act as murder pursuant to Article 47 Paragraph 1 of the Republic of Serbia Criminal Code. However, we left a possibility for the prosecutor to reconsider the qualification of this act. Dragan Ilić was major general at the time”.

As an answer to the defendant’s question, the witness replied:

“I did not tell the defendant what to write in the statement. He was writing the statement himself.”

It is noted that defence counsellor Đorđe Kalanj left the courtroom with the permission of the presiding judge. The other defence counsellor stayed in the courtroom.

As answer to the following question - "I did not threaten anybody with execution, I did not mention witness's family in any sort of threat", the witness said.

"I said in the criminal complaint that defendants Cvjetan and Demirović, along with several unidentified persons, committed the acts given in the criminal complaint where I also listed the nicknames of the unidentified persons."

No further questions.

The defendant raises objection to the witness's statement. He said that the witness mistreated him and that he spoke to the general during the interrogation. He also said that he was told that he should be interrogated in half an hour and not in two days, as he stated. He added that this witness and Klikovac attended the interrogation conducted by the investigative judge.

No further questions.

Witness **DUŠKO KLIKOVAC**, 42-year-old male from Niš, 6 Zetska Street, and lawyer by profession, employed in the Niš Secretariat of Interior in the Criminal Department, knows the defendant, did not know him earlier, warned, made the declaration, and gave the following statement:

"At the time of this event, I was working as an Inspector in the Niš Secretariat of Interior Criminal Department. I remember that it was 27 or 28 May, and I was separated and told that I have a task to accomplish in Prokuplje and that a colleague would come to pick me up. My colleague Miloš Oparnica from Belgrade came the following day and we went together to Prokuplje. He said that we needed to interrogate some people from Novi Sad who will be brought to the Prokuplje Secretariat of Interior because of some murder. I am not sure whether Oparnica showed me the investigation record right away or when we arrived to Prokuplje. Anyway, I know that the investigation was conducted and that it was noted that the event occurred on 28 March 1999 and that the investigation was conducted on 30 March 1999. Photo documentation existed besides the investigation report, the Priština Secretariat of Interior investigation report, which includes

the information that 19 corpses were found, out of which three were listed by names, as well as information that one identification document was found. The photo documentation also contained the sketch of the scene. I remember that on the photos I saw some corpses lying in the yard. In one photo there was a corpse on the staircase. I had no ideas who were the perpetrators until they were arrested. I learned about their personal details from them, as well as about their membership in the police reserve unit also known as the Scorpions. My colleague Oparnica and I interrogated the suspects together and nobody else but us was present during these interrogations.

We held individual interrogations of the defendants. They were long and they were separated into two parts. The defendants' statements were typed exactly the way they spoke and they were read to them before they signed them. Actually, my colleague and I typed the statements and read them to the defendants. These statements represented the resume of the interrogation. Neither my colleague nor I threatened the defendants. The interrogations were long because we were talking about their engagement in the unit, their deployment, and their arrest in Novi Sad. As for the events in Podujevo, the defendants made certain breaks and dropped some events, so we interrogated them again regarding these circumstances that they missed the first time. I remind you that the information alleged in the criminal complaint is the information obtained from the interview with the defendants.

I do not know exactly what was the name of the technician who went at the scene, but I can find that information in my notes. That was Inspector Atanasijević Milan, an officer from Podujevo. I think he is in Kuršumlija now. We did not threat the defendants during the interrogation in any way.

I know that the bullet cases were collected at the scene and they were in a bag. I think they were 7.62 mm rounds for automatic rifle. I do not remember how many cases there were. They were also forwarded to the Prokuplje Secretariat of Interior, along with the lighter and the pistol. These are the pistol and the lighter that were confiscated from defendant Saša Cvjetan in the Novi Sad Secretariat of Interior, as well as the personal search report. During the interrogation we were informing the Criminal Police Chief Dragan Ilić. My colleague and I made a criminal complaint and submitted it to

the prosecutor's office. I want to remind you that at that time the state of emergency decree was enacted allowing us to keep a person in detention and conduct an investigation for 30 days. Since this was a case of murder in which 19 corpses were mentioned, my colleague and I applied the criminal procedure provisions. We informed the District Prosecutor of the information we obtained and consulted him regarding the qualification of the criminal act. In line with that, we made a detention order, which was put into effect as of the moment we arrived at Prokuplje. After we interrogated the defendants, they were transferred to the prison department. They were admitted on 22 March 1999".

As an answer to the injured party's representative's question, the witness answered:

"When I stated that the defendants gave several names I thought that they mentioned different names and it was all given in the statements. Nothing from their statements was left out. We informed Dragan Ilić of all details since he was our superior in this task. We also talked to the prosecutor regarding the details. General Dragan Ilić did not suggest that we amend the criminal complaint and include other persons. We were qualified enough to know how to submit a criminal complaint. The complaint was composed in the following way: Demirović, Cvjetan, and other unidentified persons were charged with committing this criminal act. I want to remind once more that all of this was happening during the state of emergency and we decided that the detention should last for 72 hours, thus we were not able to identify other perpetrators.

I had never submitted a criminal complaint before and I did not qualify the criminal act until the Prosecutor said. After he gave his comments, we filed an indictment".

It is noted that the witness gave the following statement:

"I talked to my colleagues from Prijepolje about this event and I had a feeling that they had no idea about it. We did not discuss with our colleagues from Prokuplje about the event itself or the things we were working on. We interrogated the defendants for around six or seven hours. The interrogation began approximately at 20:00 and lasted until 02:00 or 03:00 in the

morning. Then we continued the interrogation in the morning. We typed the statements at the end of the interrogation, i.e. when it was over. The statements were typed individually. The time was noted in the detention order and that was in Prokuplje. We did not interrogate the defendants in the elementary school building, but in the District Prison premises devoted to the administration. I do not know when defendants Cvjetan and Demirović were taken to the investigative judge.

At that time it was impossible for us to identify the victims. As far as I remember, we submitted the criminal complaint for the corpses found in one yard. There were numerous corpses and one of them was lying on the staircase. We based the criminal complaint on the documentation we had; we did not go at the scene. I have the report made in the Priština Secretariat of Interior and we were not able to get in touch with the doctor who determined the time range between the moment the death occurred and the moment the corpses were examined. It is uncertain whether it was the employee of the Priština Secretariat of Interior of the Institute of Forensics. In our work on this case, we used the sketches of the scene and the documentation. I do not know how could there be a difference in the number of corpses in this report and the investigative judge's report. As of 1 July 1990, I have been working as an Inspector for Crime and Sexual Delinquency. I have never had in my whole career a case with so many victims. Except for the documentation I have already mentioned, we interrogated the defendants and we did not gather any other evidence."

As an answer to the defendant's question, the witness said:

"I did not speak with General Ilić and I do not remember whether or not Oparnica spoke to Ilić and I do not believe he did. I do not remember that Oparnica told General Ilić over the phone, 'General, he is tough'. It is not true that we threatened to execute the defendant, and it is not true that we told him he would not see his family. As far as I can remember, whenever we drank coffee, the defendant drank it as well."

No further questions.

The defendant raised objections regarding this witness's testimony for the same things he objected about the witness Oparnica's testimony, adding

that Klikovac was present when the defendant was giving statement before the investigative judge.

The court brought the following

Ruling

To adjourn the session and continue it on 14 April 2003 at 10:00.

IDENTIFICATION RECORD

Composed in the Belgrade District Court on 8 July 2003 in the criminal proceedings led against defendant SAŠA CVJETAN because of the criminal act of war crime against civilian population pursuant to Article 142 Paragraph 1 of the Republic of Serbia Criminal Code (RS CC) upon the Belgrade Districts Prosecution's indictment Kt. number 25/99 filed on 5 April 2002.

Deputy Public Prosecutor Ružica Janjić, the defendant's defence counsellors Đorđe Kalanj and Goran Rodić, the injured parties' representatives Nataša Kandić, attorneys Teki Bokshi and Dragoljub Todorović, court interpreters Mario Rosini for English and Serbian languages and Ervin Mazniku for the translation Albanian - Serbian and English - Albanian, as well as the injured parties' guardian, a citizen of England, Mrs. Rose Penn, attended the identification process.

It is noted that Lirrie Bogujevci, a 13-year-old girl who now lives in England, came to identify the person or persons who shot her mother and she said:

"There were around 20 people in the yard and I remember two of them. I remember that one of them was tall and had a beard and the other one was shorter and he had a heart shaped scar on the face. They were both dark tanned. They wore green uniform and nothing on the head."

Further on, she said she would be able to recognise some of them. She added that she fainted before the shooting began. She thinks that these two were shooting. The two persons I described were in front of the others. The scar that she noticed on one of them was on the left cheek. Now, she points to her left cheek and shows a scar some five centimetres long.

The witness begins the identification process and gives the following statement: "In the line of people I recognise a second person from the right in the red shirt."

It is noted that the witness recognised defendant Saša Cvjetan.

It is also noted that the following persons were in the line from the right:

1. Srđan Đelekar,
2. Saša Cvjetan,
3. Slobodan Mečanin,
4. Predrag Maletić,
5. Mirko Rimac.

Later on the witness said that the man she had pointed to reminded her of the man with the beard that she had described.

The defence counsellors state that persons four and five are not similar to the defendant and they suggested that pictures be taken of each man in the line.

The Deputy District Public Prosecutors protests this suggestion for taking photos considering the objection unfounded because the persons with numbers four and five⁹ are of the similar height and physique.

The defence counsellors raised objection that two of the people in the line, the persons with numbers four and five are bald while others have hair.

⁹ A part of the text missing

IDENTIFICATION RECORD

Composed in the Belgrade District Court on 8 July 2003 in the criminal proceedings led against defendant SAŠA CVJETAN because of the criminal act of war crime against the civilian population pursuant to Article 142 Paragraph 1 of the Republic of Serbia Criminal Code (RS CC) upon the Belgrade Districts Prosecution's indictment Kt. number 25/99 filed on 5 April 2002.

Deputy Public Prosecutor Ružica Janić, the defendant's defence counsellors Đorđe Kalanj and Goran Rodić, the injured parties' representatives Nataša Kandić, attorneys Teki Bokshi and Dragoljub Todorović, court interpreters Mario Rosini for English and Serbian languages and Ervin Mazniku for the translation Albanian - Serbian and English - Albanian, as well as the injured parties' guardian, a citizen of England, Mrs. Rose Penn, attended the identification process.

Jehona Bogujevci, a 15-year-old girl, came for the identification process. She stated that she would like to speak both in English and Albanian. She gave her statement in the presence of the court's psychologist and the court's interpreter (from English into Serbian, Albanian into Serbian, and English into Albanian).

As an answer to the presiding judge's question, the witness says, "I remember the event and I know why I was summoned. I think I was ten or 11 years old at the time. In this event I was shot in the arm, shoulder, and leg. I remember a little of the faces of those who shot at me. There were a lot of people and they were in the yard and on the street. I think there were two persons who shot at me. I remember one of them. He was really tall, not so huge. He was wearing a cap. It was a square cap with the green brim. I cannot remember whether he had anything else on the face. I think he had a lighter skin. I could not see his hair. I think I could recognise that man. He was not shaved. He had a short beard. He had a green camouflage uniform on."

She starts the process of identification. It is noted that following persons are standing in the line from right to left:

1. Predrag Maletić
2. Slobodan Mečanin
3. Srđan Đelekar
4. Saša Cvjetan
5. Mirko Rimac

It is noted that the witness pointed to the person standing at position four from right to left - Saša Cvjetan.

The objections to the record stay the same as the defence counsellors stated in the record of the identification process undertaken by Lirrie Bogujevci.

IDENTIFICATION RECORD

Composed in the Belgrade District Court on 8 July 2003 in the criminal proceedings led against defendant SAŠA CVJETAN because of the criminal act of war crime against the civilian population pursuant to Article 142 Paragraph 1 of the Republic of Serbia Criminal Code (RS CC) upon the Belgrade Districts Prosecution's indictment Kt. number 25/99 filed on 5 April 2002.

Deputy Public Prosecutor Ružica Janić, the defendant's defence counsellors Đorđe Kalanj and Goran Rodić, the injured parties' representative Nataša Kandić, attorneys Teki Bokshi and Dragoljub Todorović, court interpreters Mario Rosini for English and Serbian languages and Ervin Mazniku for the translation Albanian - Serbian and English - Albanian, as well as the injured parties' guardian, a citizen of England, Mrs. Rose Penn, attended the identification process.

Bogujevci Fatos, a 16-year-old boy, came for the identification process and he stated that he would like¹⁰ in Albanian. Therefore, it is noted that he would give the statement in the presence of the Court's Interpreters, who would provide translations from Albanian into Serbian, English into Serbian, and Albanian into English.

He also stated that he was aware of the reason he was summoned and he wants to give his evidence. He added that he was 12 or 13 years-old at the time of this event. Further on, as an answer to the presiding judge's question, he said,

"In this event I was shot in the both legs from an automatic weapon. I cannot remember, i.e. I cannot identify the person who shot at him¹¹ because I did not see him. I am certain that two persons were shooting and there is a possibility that several of them were shooting. I think there were more people who were shooting, some five or six persons. There were a lot of people around the place where this happened, but I saw around six or seven

¹⁰ Probably – 'to speak'

¹¹ Probably – 'at me'

people. I cannot describe the persons who were shooting because I was in front of them and they shot me in the back, so I could not see them.

I can remember the youngest member of the group. By that I mean a group of people who wore the same uniform. That man was the youngest and he wore a military cap. He had a long skinny face, no beard, and short black hair; he was short rather than tall. That man was searching us and then they took us on the street. After that, I did not see that person.

That person was maybe a little taller than I am now and I am one metre and 70 cm tall."

The witness started the identification process. The following persons are lined in the following order going from the right to the left side:

1. Srđan Đelekar
2. Mirko Rimac
3. Slobodan Mečanin
4. Predrag Maletić
5. Saša Cvjetan

It was noted that the witness recognised the person at position number 5 from the left and that is Saša Cvjetan.

As an answer to the presiding judge's question, the witness said, "This is not the person I have just described. I recognised this man because he was present there. As a matter of fact there were two persons very similar to this one, so I cannot be absolutely sure that this is the person that was present at the scene. I think that a man that I have just recognised was the leader there and he was saying something all the time. He was the only person who spoke and talked to us. When a minute ago I was describing a man before I did the identification process, I was describing only one man because I had no chance to describe more. I could also describe other people who were present."

The identification process is over.

The defence counsellors have the same remarks as they had regarding the first record on the identification undertaken by Lirrie Bogujevci.

IDENTIFICATION RECORD

Composed in the Belgrade District Court on 8 July 2003 in the criminal proceedings led against defendant SAŠA CVJETAN because of the criminal act of war crime against civilian population pursuant to Article 142 Paragraph 1 of the Republic of Serbia Criminal Code (RS CC) upon the Belgrade Districts Prosecution's indictment Kt. number 25/99 filed on 5 April 2002.

Deputy Public Prosecutor Ružica Janić, the defendant's defence counsellors Đorđe Kalanj and Goran Rodić, the injured parties' representatives Nataša Kandić, attorneys Teki Bokshi and Dragoljub Todorović, court interpreters Mario Rosini for English and Serbian languages and Ervin Mazniku for the translation Albanian - Serbian and English - Albanian, as well as the injured parties' guardian, a citizen of England, Mrs. Rose Penn, attended the identification process.

Bogujevci Saranda, an 18-year-old girl, came for the identification process. She stated that she would like to speak in English and only in case she cannot explain something, she will use Albanian language. It is noted that the witness is giving her statement in the presence of the court interpreters, who would provide translation from English into Serbian, from Albanian into Serbian, and from English into Albanian.

As the answer to the presiding judge's question, the witness said:

"I think I know why I was summoned and when this event took place I was not 14-years-old yet. The event took place in the yard of one house. There were a lot of people, I cannot say exactly how many. I was wounded, as well. I was shot in the arm, leg, and back. I saw one man who was shooting at me. Because of my wounds I conclude that there were several people who shot at me. I think I could recognise the man who shot at me. That man was quite tall; he had a beard; according to his looks, he was around 40 years old. That man was wearing a camouflage uniform. His hair was dark brown, a bit longer. I cannot recall the colour of his eyes, but I think they were brown. Besides him, I could recognise some other persons who were also there.

There was one short soldier, who was quite young. He had a cap on, but he wore it with the brim in the back. I could not see the colour of his hair because he was wearing a cap, he was quite short and I cannot remember whether he was shooting or not. I could not see if anybody else was shooting because when this man started shooting I fell on the ground, covered my eyes with hands, and closed my eyes. I could say that there was another middle-aged soldier; he was also quite short, almost the same height as this younger soldier, but he had a beard. He had blond or very light brown hair. I think his eyes were green. There was another quite tall soldier of strong physique. He also had a beard and his hair was dark brown. He did not have a cap or anything else on the head. He looked like a 40-year-old man. He wore a camouflage uniform. So, when we went out on the street, before I was wounded, (that happened close to the police station), that man entered a store. He was very young; he had a short beard; his hair was dark brown. There were two older people in the store. So, when they took us out of the house, there was another soldier with long black hair. He was quite tall and he had an earring. There is nobody else that I could clearly describe.”

It is noted that the witness is beginning with the identification process. The following persons are standing in the line from the right to the left:

1. Saša Cvjetan
2. Mirko Rimac
3. Srđan Đelekar
4. Predrag Maletić
5. Slobodan Mečanić

It is noted that the witness looked at the line of people and stated that she was sure that persons standing on positions number two, three, four and five from the right to the left did not participate in the event, but she was not sure whether person on the position number one participated in the event. It is noted that the person on the position number one is the defendant Cvjetan.

It is noted that defendant Cvjetan was wearing a shirt, which was half red half dark blue with no collar during the identification undertaken by Lirrie Bogujevci and Jehona Bogujevci. During the identification process carried

out by Fatos Bogujevci and Saranda Bogujevci, he wore a dark blue shirt with a collar.

The defence counsellors stated that they still stick to the same objections as in the previous identification records.

RECORD FROM THE MAIN HEARING

Composed before the BELGRADE DISTRICT COURT trial panel on 9 July 2003 in the criminal proceedings led against defendant SAŠA CVJETAN because of the criminal act of war crime against the civilian population pursuant to Article 142 Paragraph 1 of the FRY Criminal Code upon the Belgrade District Public Prosecution's indictment Kt. number 1273/02.

PEOPLE PRESENT:

PRESIDING JUDGE

Biljana Sinanović

JUROR

Siniša Važić

JURORS

- Jury Judges -

Pajović Ivica

Nikolić Nada

Rakić Ljubiša

COURT REPORTER

Slobodanka Nedeljković

DEPUTY DISTRICT PUBLIC

PROSECUTOR

Ružica Janić

DEFENDANT

Saša Cvjetan

DEFENCE COUNSELLORS

Attorney Đorđe Kalanj

Attorney Goran Rodić

Began at 10:00.

The main hearing is public.

It is noted that the deputy district public prosecutor Ružica Janić, defendant Saša Cvjetan (who was brought from the District Prison), defence counsellors, attorneys Đorđe Kalanj and Goran Rodić, the injured parties' representatives, attorneys Teki Bokshi and Dragoljub Todorović, as well as Nataša Kandić, court interpreter for Albanian language Gani Morina, and court interpreters for English language Mario Rosini and Albanian-English Ervin

Mazniku, and court psychologist Dušanka Garić attend the main hearing session.

It is noted that injured parties Saranda Bogujevci, Fatos Bogujevci, Jehona Bogujevci, Lirrie Bogujevci, Saget Bogujevci¹², and Selatin Bogujevci came to attend the main hearing session. However, because of the special security measures, they are placed in a special courtroom.

The injured parties' representative Nataša Kandić suggested that the juvenile witnesses/injured parties, as well as Saranda Bogujevci who is a younger juvenile person, should be examined in the private session.

The court psychologist, Dušanka Garić, stated that based on her conversation with the injured parties/juvenile witnesses - it could not be concluded that they were suffering trauma regarding their court appearance. However, because of their age it would be, for sure, more acceptable to have the public excluded during the main hearing.

The deputy district public prosecutor stated that she would leave this suggestion to the injured parties' representatives and adds that such a stance is based on the legal provision from Article 292 of the Criminal Procedure Code.

The injured parties' representative, attorney Teki Bokshi, agreed with the previous representative regarding the exclusion of public and added that the best thing would be to ask for opinion the psychologist, who came together with the children.

Defence counsellor Đorđe Kalanj stated that he objected to the suggestion for the exclusion of public saying that it is in the defence's interest that the public hears today's examination of the witnesses/injured parties. He added that a court psychologist is present and in any moment she can provide help during the examination of the witnesses. He also suggests that each juvenile person be asked whether or not he or she would like to give evidence in the private session.

¹² Safet Bogujevci

The defendant stated that he agreed with the defence counsellor's proposals. He said that he personally believed that there was no need to go into private session because he will treat the injured parties with due respect.

The court brings the following

Ruling

Juvenile Boguejvci Lirrie, Bogujevci Jehona, and Bogujevci Fatos, will be examined in the private session to protect the juveniles' interests.

The ruling is based on Article 292 of the Criminal Procedure Code since juvenile Fatos Bogujevci, Jehona Bogujevci, and Lirrie Bogujevci are less than 16 years old and, at the time of the event, they were less than 12 years old.

People who will attend the private session will be: the injured parties' representatives, as well as a part of the expert public including: the ICG representative Milanka Šaponja-Hadžić, the HLC member Jelena Stevančević, the KHK Executive Director Dr. Gazmed Fula¹³, the CDHRF Executive Director Bedžet Šalja¹⁴, JUKOM representatives Šolić Natalija and Novak Bučo¹⁵, Helsinki Committee for Serbia representative Čolak Mihajlo, the CDHRF representative Driton Bilali, and the HLC representative from Priština Anka Kurteši¹⁶.

The court brings the following

Ruling

The main hearing will take place.

The main hearing will be public in a part in which Bogujevci Safet and Bogujevci Selatin are examined.

¹³ Gazmend Pula

¹⁴ Shala Bexhjet

¹⁵ Novak Vučo

¹⁶ Anka Kurteshi-Hajdari

It is noted that the main hearing will be conducted before the same trial panel, which brings the following

Ruling

The main hearing will continue by adducing evidence.

CONTINUATION OF PROBATIVE PROCEDURE

Witness/Injured Party **SELATIN BOGUJEVCI**

Before the witness/injured party entered the courtroom, attorney Goran Rodić proposed to the court that the witness statements and the translation of their statements be recorded and reminds the court that the interpreters are not known and that they did not take the declaration.

The court interpreter for Albanian language stated that he submitted the court interpreter certificate and he took the declaration.

Interpreters Mario Rosini and Ervin Mazniku are UNMIK interpreters and it is noted that the declaration text was read to then pursuant to Article 95 Paragraph 3 of the CPC.

The court brings the following

Ruling

The proposal for the recording of the statements was overruled. The main hearing begins.¹⁷

¹⁷ The proposal for recording the statements given in the main hearing is overruled.

EXAMINATION OF WITNESS SELATIN BOGUJEVCI

The witness/injured party SELATIN BOGUJEVCI, 47-years-old, lives in England. The juvenile injured parties Fatos, Jehona, and Lirrie are his children. He is a machinist by profession. He stated that he would like to give his statement in Albanian language. It is noted that the witness was informed, warned, he made the declaration, and he gives his statement in Albanian language in the presence of the interpreter who would translate from Albanian into Serbian.

“When the event took place in the house, my mother Shehide Bogujevci and my five children (Nora Bogujevci - daughter, Fatos Bogujevci - son, Jehona Bogujevci - daughter, Lirrie Bogujevci - daughter, and Genc Bogujevci - son) were in the house. My sister-in-law was also there (my brother's wife), as well as my wife and three children. My wife's name is Shefkate Bogujevci, my sister-in-law is Sala Bogujevci, Saranda Bogujevci is my brother's daughter, Shpend Bogujevci is my brother's son and so is Shpetin Bogujevci. In that moment aunt Nefise Llugalin¹⁸ and her daughter-in-law Fezhrie Fuganjini¹⁹ were at our house, too. My house was in Podujevo on 265 Ivana Kosančića Street.

That day, 28 March around 06:00 my wife and children persuaded me to leave the house. The reason why I left the house was that the action of entering houses began already in the morning. Along with my cousin Valdet Bogujevci I went out; I left the house. Enver Duriqi was also with us. He was my uncle's guest and was hidden in my uncle's house. We went away from the house approximately some 300 metres distance and there we found a shelter. We were there from 06:00 in the morning until 20:00. There were few people at that place at 6 o'clock in the morning, but later on more people started coming over from other surrounding villages and at the end there was a lot of people there. I stayed there with these people from 06:00 until 20:00 and in that time I managed to get in touch with my brother who told me to leave this place and go to the Balovac village near Podujevo. I wanted to look for my family and that was the reason for me to leave that place. I had no idea where my family went and hid.

¹⁸ Nefise Bogujevci Llugaliu

¹⁹ Fezhrie Blakqori Llugaliu

While I was still in Podujevo Mr. Nazim Veseli told me that father and son, Idriz and Selif ²⁰(I cannot remember their last name), were killed and Nazim, who told me that, was wounded. These two people were killed on the same street where my house was. It happened right across my house. I spent that night in Balovac and the following day I went on the road leading to Niš. Other Podujevo citizens started gathering there. I hoped some of my family members would be there. I spent that whole day there. I did not see anybody and I did not learn anything about them. I did the same thing the following day. On the third day, I tried to break through; I went to Šajkovac, Ladovc, Hertica looking for my family. The following day I arrived to Baklava²¹ in the place known as Diz. I waited there from 07:00 throughout the whole day waiting for them. I tried to return to Balovac in the evening.

Around 7 o'clock in the evening when I tried to return to Balovac, I heard shooting in the direction of Podujevo and the surrounding settlements - as I understood, the gunfire was coming from the direction of the church and the bridge located on the road to Niš. It was 14 April in the village of Kuliqi²² that I found out for the first time about the fate of my children. I learned about this from a person whose child had a surgery right before the bombing and his child was in the same room in hospital as my children. The children gave him a letter with names and last names and asked him to give that letter to some of their fathers who were somewhere in the forests. I found out from that person that my children were in the hospital. Saranda, Fatos Bogujevci, Jehona Bogujevci, and Genc Bogujevci were in the hospital and Lirrie was at that time already in Belgrade. My brother Safet and friend Enver agreed on 15 April to go to the hospital in Priština. They were going from the Diz village located some 30 km from Priština. That is when we found out the truth about their fate and what happened to the children. My brother Safet and my friend Enver Duriqi went to Priština and found out from my children what happened to my family and then they told me.

When Safet came back from the hospital I found out this: Safet's daughter Saranda said she was wounded and Lirrie was transferred to Belgrade. Then I knew that other family members were killed. I was in shock and I

²⁰ Selim

²¹ Batlava

²² Koljić/Koliq

could not believe that something like that happened and that there was no opportunity in that moment to find out the details about what had happened.

I saw my children on 1 May for the first time. That was in the hospital when they made all of us leave the forest and go towards Priština. After we went from Priština to Podujevo, they forbid us to stop by Podujevo, but we had to continue going further towards the village of Šajkovac.

I realised that the children were seriously wounded. Jehona had three gunshot wounds. Two were in the back and one was in the leg. She was aged only 11 at that time. Lirrie was wounded in the neck, in the trachea, which was almost completely destroyed. She was almost nine years old. Fatos was wounded in the leg with five or six bullets - he was almost 13 years old. Genc was wounded in the left thigh and the bullet has not yet been removed. He was six years old. Saranda, my brother's daughter, was the most seriously wounded. I think she had nine or ten bullets in her right arm and the back. She was 14 years old at the time of the event.

I found out from the children what happened with the rest of the family. I did not bury any of them because I did not find them. Some people who had the authorisation of the Podujevo Municipality buried them. I heard they were buried in the town cemetery. Then I heard that there were 19 graves inside the town cemetery. There was a wooden plate in front of each grave. Each grave was marked and only one name was written clearly. That was Ambi Duriqi²³, Enver Duriqi's father, and his mother Isme²⁴, and his wife's name and nee Neda Shabani²⁵. That was Enver Duriqi's wife. Based on that, we concluded that our family members died together with them and that they must be buried together, since they were all together at the time of the event.

During the war, nobody called me to identify the bodies. I was not allowed to go to the cemetery and see the graves. I even did not have access to my own house. Then representatives from KFOR, OSCE, and the Hague tri-

²³ Amdi Duriqi

²⁴ Esma Duriqi

²⁵ Fitnete Shabani Duriqi

bunal called me. The exhumation took place, I think on 19 July or August 1999. We recognised the victims. We recognised some of them because of the clothes they had on, while the rest of the bodies were whole and it was easy to see who that was. On that occasion, I identified three members of my family. I recognised all members of my and Enver's family. My neighbour Selman Gashi was also buried there. The exhumation was conducted at the Podujevo Town Cemetery. That is the cemetery by the railroad, on the road to Šajkovac. Nineteen people were buried there. They were all exhumed. I recognised my mother Shehide Bogujevci, my wife Shefkate, my brother's wife Sala Bogujevci, my daughter Nora Bogujevci, my nephews Shpend Bogujevci and Shpetin Bogujevci, my aunt Nefise Bogujevci-Dugaliu²⁶, her daughter-in-law Fezhrie Bogujevci (nee Blaković - Lugačariju)²⁷, my friend's father Kandi Duriqi²⁸, who was hiding over at my family house the day I left, his wife Esma Duriqi, their daughter-in-law Fitnete Duriqi, Enver's daughter Dafina Duriqi, their grandson Arbor Duriqi²⁹, their granddaughter Mimoza Duriqi, and their grandson Arbion Duriqi³⁰. They were all together, but I think that some of them might have been in my uncle's house, while the rest of them were in my house, and the both houses are in the same yard. That day, my family members were scared to they went to uncle Hamdi's house, which is in the same yard - and that is how they were all together.

After the exhumation, we buried the bodies. Besides the people I have just named there were some others, who were also buried at the same location, Selim Gashi for example, who was my next-door neighbour. I also recognised Idriz and Selim, father and son, but I do not remember their last name. I did not recognise only one of all these people. I saw all 19 bodies and I recognised 18 of them. The bodies were re-exhumed in 2001. I was not able to attend that exhumation for I was in England and I had no documents.

²⁶ Nefise Bogujevci Llugaliu

²⁷ Fezhrie Blaković Llugaliu

²⁸ Hamdi Duriqi

²⁹ Arbër Duriqi

³⁰ Albion Duriqi

I did not receive any documentation related to the exhumation. When the bodies were re-exhumed in 2001, I received documentation. After the mortal remains were re-exhumed, they were sent to Orahovac where the team authorised to undertake the identification process was. After the first exhumation in 2001, only the identification process was undertaken. As far as I know pathologists from the Priština Hospital, Muharem Rama and Tefik Gashi, inspected the bodies and that was on 30 March 1999.

I agree with the criminal proceedings led against the defendant and later on I will make a declaration regarding a claim for damages.”

When the witness was presented with the photos from the photo documentation, he explained:

“Old Alen Gashi’s house could be seen on the photos one and two in the photo documentation marked with number 16. This house was located at the end of our yard. In the photo documentation marked with number 15 I declare that I do not recognise the persons from the photo. In the same documentation, I recognise the Drini bar, and I think that a person in the photo number two is Hamdi³¹ or Selman Gashi, I am not quite sure. Hamdi Duriqi should be the person in the photo number three. I cannot recognise anybody in the photo number four. On the photo number five I recognise my mother Shehida Bogujevci³². On the photo number six I recognise Shefkate Bogujevci, my wife.”

In an answer to the deputy district prosecutor’s question, the witness said:

“The road from Podujevo to Šajkovac was the only safe road and the only passage that could be taken. We did not leave because somebody told or ordered us to leave, but the shooting that was all around made us leave. I am sure that was anti-aircraft weaponry. There were a lot of casualties. I cannot give you the exact answer; I am just explaining that Idriz and Selman, whose last names I cannot remember, lived in the house across from ours.

³¹ Hamdi Duriqi

³² Shehida Bogujevci

It is true that their last name is Tahiri as the public prosecutor has just said, but they lived in that house as lessees.”

It is noted that the witness made the sketch of the scene where his house is located and that sketch was placed in the documents.

The injured parties’ representative Dragoljub Todorović asked the witness what kind of action was that action of entering houses; how did he find out about it; who commanded the action, the witness said:

“I cannot tell you the names and the last names of the police officers, who first showed up in front of our house where one armoured vehicle parked. However, I do claim that they were members of the local police force and I do not know who was their leader or commander. I saw this personally. They started hitting and kicking and throwing things at the house doors, i.e. at the fences. There was shooting and forcible breaking into the houses before, but this action was huge.

Naser Gjata was murdered the first day of the bombing and his uncle was wounded. His body stayed like that the whole day. I think it was necessary to say this because this event preceded the others. I was scared to go back home and see what happened to my family and I believe that everybody left Podujevo. Maybe some 20 people - older Albanians - stayed in the town. That was the reason why I could not go back and look for my family in Podujevo. Tahiri father and son were murdered on 28 March 1999. I found out about that the same day around 12:00. I was in a field across from my house where I hid. Abdi Durqi³³ was around 71 years old and Selman Gashi around 68.”

As an answer to the question asked by Nataša Kandić, the injured parties’ representative, the witness said:

“On 19 April 1999, we started going towards Priština because of the shooting. It was a long line with a great number of people. When we arrived in Priština they told us that those from Priština should stay and others from Podujevo should continue going towards Podujevo. When we came near

³³ Hamdi Durqi

Podujevo, we were told that none of us could go in the town, but that we should go further towards Šajkovac.

I was in Podujevo only once during the bombing; I cannot remember the exact date. They first demanded that we go to the municipal authorities and get some documents, forms, which we were supposed to fill in, in order to be able to move freely. There I ran into Mr. Petrović Pero, I think he worked in the municipal authorities; he was something like a trade Inspector. I asked him to help me get to Mr. Srboljub. He said he would take care of it and let me know whether or not I could speak to him. I also asked him to inform me if he found out anything about my daughter's fate. She was in Belgrade at that time. I insisted three times and this gentleman told me to come to his office at 2 o'clock in the afternoon. Since it was not possible to walk around at that time, I gave up this idea. I went there for the first time on 20 or 21 April 1999. Nebojša Maljević escorted me, as well as Shefqet Jashari³⁴. Nebojša Maljević was the first to enter my house and told us that we could not go inside because the house was taken. Army took over our house. Then Svetlana Filipović came. She was crying and asking what happened to my family. She said, 'Thank God you were all saved'. She asked me what happened with Shefqet³⁵ as if she did not already know. I told her that she knows better than I do what happened since they worked together in the Outpatient Clinic. My cousin asked Maljević if he knew anything about our family. He said that nothing happened in our yard. He added that something happened in Selman Gashi's yard; he said that two old men were killed. I did not speak to anybody else. My cousin and my friend Enver did. I just went to Srboljub Biserčić and he did not want to speak to me. He kept saying he was busy."

As an answer to the question asked by the injured parties' representative, attorney Teki Bokshi, the witness said:

"I know where Rahman Morina Street is. The crime happened on that street. It happened in Halim Gashi's yard, which is on the Rahman Morina Street as well. There were traces of blood showing they dragged the bodies. There were bloodstains on the walls, as well. There were parts of hu-

³⁴ Shefkate Bogujevci

³⁵ Witness meant Faik Jashari

man brain and corpses, and in the Drini Bar I saw blood mixed with Russian tea. This place that I have just describe is located some fifty metres away from the police station in Podujevo. The teahouse is located some 20 metres away from the police station.

I asked Mr. Rama's patrol to describe to me in detail the corpses and he told me he had no time to talk to me because I was not an authorised person he could talk to. Then, Mr. Gashi told me that he had a list of unidentified bodies and based on the description he gave me I concluded that it was my family.

That man had information for only four bodies and based on the description I concluded that they were my family members. The fact is that they had some gold jewellery and some money, which was placed beside the bodies. I heard that Inspector Živojin Živković took the jewellery and the money."

As an answer to the question asked by the defence counsellor Goran Rodić, the witness said:

"That day, 28 March, when I left the house, I did not take the main streets. I was moving through different yards and therefore I was not able to see the people on the streets or the army on the streets, but I did spot the people in uniform before that. I saw that some people arrived in white jeeps the previous day. They wore camouflage uniform and they started breaking every shop window they saw. There were also police officers in blue uniform and some people in bluish or black overalls. The police only had letters printed in white on the uniform. I did not see very well these people from the jeeps. I only saw when the white jeeps arrived and when people from these jeeps, who wore uniform, came out and started breaking everything.

My house and my uncles' houses do not have access to the Rahman Morina Street because Selman Gashi, Naim Gashi, and Marin Gashi's³⁶ houses are located in front of our houses. After the first exhumation, I buried the bodies of my family members in the cemetery located across from this one they were previously buried in. My friend Enver Duriqi buried his family mem-

³⁶ Halim Gashi

bers in his field in the village of Obranče³⁷. The location where I buried my family members after they were exhumed is some 200 or 300 metres away from the location they were exhumed from. I gave a written statement regarding that. I gave the personal details of my family members who were killed to the Hague tribunal during the identification I conducted. I gave this information to the officers, who were present during the exhumation, but I do not know who they were. That was in July 1999. I gave to the same people, the same commission, the information regarding the year of birth and other information. Enver Duriqi did the same, but he let the mortal remains of his family members be exhumed again in 2001.

In photos five and six in which I recognised my mother and wife, I see that the place where this happened was Alim Gashi's³⁸ yard, between his old and new house, at the end of the yard behind the old Gashi's house, just as a draw in this sketch. In the photograph number three in the same documentation, I recognise the Drini Bar. This location is close to the bar.

When I visited my children in the hospital, I did not speak with them about the details of the event. I did not need to speak with them about that because they were wounded. I understood what happened, so I did not want to bother them with that. I spoke with them regarding the details of this event later on. I spoke to Nataša Kandić about the details of this event for the first time last year."

Then, one of the defence counsellors asked whether the witness spoke about this event and the details and whether he presented the information he possessed, and the witness said:

"Of course I did."

The defence counsellor asked the witness whether he mentioned this Sr-boljub Biserčić to Nataša Kandić.

The court brings the following

³⁷ Obrandža/Obrance

³⁸ Halim Gashi

Ruling

This question should not be answered.

As the answer to the following question asked by the defence counsellor, the witness said:

"I came to Podujevo for the first time on 24 April 1999. When I mentioned that I came to Halim Gashi's yard for the first time escorted by KFOR. That was on 19 August 1999. I saw a lot of bullet cases and bullet traces in front of Halim Gashi's house. I saw a blanket, too, needles, and a paper in which bandages were packed. 'First aid' was written on it. I found a woman's scarf, my daughter's shawl, one children's boot, which, I think, belonged to Enver's son. Enver found his wife's watch and almost 120 bullet cases from automatic weapons. All of the bullet cases were identical. I took these cases and gave them to the Hague investigators when I was leaving for England. The traces are still visible on the walls. I also found bullet cases in the Drini Bar. They were the same as those that I found in the yard. I also found Selim Gashi's³⁹ health care ID card. I did not take two bullet cases from that bar.

I did not follow the beginning of the proceedings, the one that took place in Prokuplje. I have never seen the defendant until now. I have never seen a photograph of the defendant. I talked to Nataša Kandić about the event, but not about the defendant's details. Of course, I have been informed of the course of the proceedings. Otherwise, I would not be here. I do not know the content of the witness statements given in this case."

As the answer to the defendant's question, the witness said:

"My goal is to reach justice and not to accuse anybody of anything."

The defendant replied:

"I feel sorry because of everything Mr. Bogujevci went through, but I want to say that I have never killed women and children. I graduated from the

³⁹ Selman Gashi

military school and I attended numerous specialisations, and I have always behaved in line with the law. I think it is a scandal that I have been charged with this and the injured party has a completely wrong image of me.”

RECORD FROM THE MAIN HEARING

Composed before the BELGRADE DISTRICT COURT trial panel on 10 July 2003 in the criminal proceedings led against defendant SAŠA CVJETAN because of the act of war crime against civilian population pursuant to Article 142 Paragraph 1 of the FRY Criminal Code upon the Belgrade District Public Prosecution's indictment Kt. number 1273/02.

PERSONS PRESENT:

PRESIDING JUDGE

Biljana Sinanović

DEPUTY DISTRICT PUBLIC PROSECUTOR

Ružica Janić

TRIAL PANEL JUDGE

Siniša Važić

TRIAL JURORS

- Jury Judges -

Pajović Ivica

Nikolić Nada

Rakić Ljubiša

DEFENDANT

SAŠA CVJETAN

COURT REPORTER,
Slobodanka Nedeljković

DEFENCE COUNSELLORS,
Attorney Đorđe Kalanj
Attorney Goran Rodić

Ruling

The main hearing is public.

EXAMINATION OF WITNESS/INJURED PARTY SARANDA

The witness/injured party BOGUJEVCI SARANDA, an 18-year-old girl, from father Safet, a student, living in England; she did not know the defendant

from before; not related to him; warned; take the oath; she would give the statement in English with the translation provided; she stated:

“I was 13, almost 14 years old. We were in the house; we were sleeping there; my mother Sala was there, as well as my two brothers Shpender⁴⁰ and Fetin⁴¹, my aunt Shevkate⁴², and my cousins Nora, Fatos, Jehona, Lirrie, and Genc, my granny Shehida⁴³, and my father’s aunt Nefise and her daughter-in-law Vejzie⁴⁴. So, while we were inside the house, somebody said that a police vehicle pulled over in front of the house. So, we went to the house of my father’s uncle, which was nearby. The family of my father’s friend was over there, including his parents, wife, and four children. We went over there because we believed we would be safer there since our house was on the main road and a police vehicle pulled over in front of it. We took some food and after some time we spent in that other house, we saw police officers inside the yard.

After some time, several soldiers entered the house. Our things were packed in bags, so that we could leave. Other people did that, too. As soon as we saw the police, we started going out of the house. Then, they told us to put our hands in the air and leave the bags at the place we were standing. Then, they asked if anybody stayed in the house. However, they personally went inside the house to check. Then, they ordered us to go through our neighbour’s yard. Since it was cold, I put my hands inside my pockets. When one police officer saw that, he searched only me. He searched me around my legs. Then we had to pass a neighbour’s yard and enter another neighbour’s yard. When we got there, we found more soldiers there. There, we were standing on a trail leading through the yard. Then, they started searching others: my mother, brothers, and other people, who were there. Since there were two trucks in the yard, one of the soldiers asked what was inside these trucks. We said we did not know because that was not our yard. Then they separated Enver’s father, Hamdi Duriqi. They told him to put his hands against the wall; they searched him; took everything out of

⁴⁰ Shpend Bogujevci

⁴¹ Shpetim Bogujevci

⁴² Shefkate Bogujevci

⁴³ Shehide Bogujevci

⁴⁴ Fexhrie Blakqori Llugaliu

his pockets; they took his hat off (that is a hat that we call fez). Then they told him to pick his things up. Since they were yelling, he tried to pick up his things as soon as he could. They separated Enver's wife, Esma, and two of their kids (I think their names are Mimoza and Albion).

Then, they were saying something that I could not understand and returned the people to the places they were at previously. Then they approached my brother and took his marbles out of his pockets and threw them on the ground. They were yelling and my mother tried to pick up as many marbles as possible. My brother's name was Shpetin; he was nine years old.

They continued searching us and they were telling older women, who wore scarves, to take them off. I was standing at the end of the line with my aunt Shefkate and Genc. She had some money. Some soldier came and took the money away from her. The soldiers were yelling something, I could not understand what. Then they separated my aunt Shefkate, who was carrying Genc. My granny Shehide and my cousin Nora came to her to take over Genc. There was a small house behind us where they took my aunt. Then they took us to another neighbour's yard. They were laughing and since I did not understand Serbian that much, I only understood that they said, 'We took your mother away'.

One of the soldiers took a can out of the water well and came to me and asked if I wanted some. When we went from our yard, though our neighbour's yard they took us on the street in front of the police station. There, we were standing in the line. There were many soldiers and police officers. They had diverse uniform. The soldiers were laughing, yelling, cussing at us, and breaking shop windows. Then, one of the soldiers (I could not see clearly which one because I was at the end of the line) approached Hamdi Duriqi, said something, and slapped him. I saw mum's uncle Selman Gashi on the street. One of the soldiers was playing with his hat. Then, they took the two of them, Hamdi Duriqi and Selman Gashi, inside a bar or a store. Soldiers went in behind them. Then we heard two shots from an automatic rifle. Immediately after that, they took us back into the yard where our house was; they were yelling and saying something that I could not understand. Then one of the soldiers, who stood beside us, took out the scalpel,

which is usually used in surgery. Then he yelled something that I could not understand and put the scalpel back in the pocket.

Then I saw aunt Shefkate little further down in the yard. She was separated from us. She was crying. She knew Serbian and she was saying something in Serbian, but I only understood, 'they are only children'. Then one of the soldiers pushed her while she was walking down the trail leading behind the house. He shot her. My cousins started crying. When I looked at Shefkate, she was already lying on the ground and they shot at her again. When this man shot my aunt several other soldiers were standing over there, as well. He threw away his rifle and took another rifle from some soldier.

Then he started shooting at us. When he started shooting, I was in the middle of our group, close to the wall. I leaned against the wall and slid to the ground. When I was sliding, he was still shooting and he shot me twice in the leg. He kept shooting and only after some time did he stop. One person could not breathe normally, so I heard that person breathe heavily. Then they started shooting again. This time, I was shot in the arm and the back. The shooting ceased after some time. I could not hear a thing and I do not know how long it lasted.

Then I raised my head to look around because I was not lying, but sitting. My brother Shpetim was lying with his head on my legs, so I could only see half of his face. My cousin Fatos was lying on the ground in front of me. Something was coming out of his back, which meant that he was wounded. At first I thought he was dead, but he raised his head and then I knew he was alive, but I did not know if he was feeling bad. Then I saw Enver's oldest son. I think Arbar⁴⁵ is his name. He was shot in the face; his face was destroyed. Then I saw my granny Shehide, who was lying across from me. She was all yellow and her eyes popped. She was lying across from a group I was in. We were behind her. Then I saw Fezrie⁴⁶, my aunt's daughter-in-law. I could not see her face, but I saw her body. She was lying and she was dark blue. Genc lay close to her and he raised his head. 'Saranda, look what they did to Shpetim', he said thinking about my brother. Then I heard some voices and yelling and I told Genc, 'Lie down' and I went back

⁴⁵ Arbër Duriqi

⁴⁶ Fexhrie Blakqori Llugalii

to the place I was before. I closed my eyes and heard that somebody was standing beside us, around us. Then I heard some of my cousins moaning quietly with pain.

I did not know what was going on, but I decided to open my eyes because I thought they assumed I was dead. When I moved, I think two men came and dragged me out of the pile of people where I was lying and put me on the ground and I think they were checking where I was wounded. They were speaking in Serbian, but they wore uniform different from the one that these people who shot at us wore. Then they put me somewhere, I assume it was a military ambulance because there were a lot of medications and blankets, and they drove off. They were doing something; I could not see what that was. After some time I felt the vehicle was moving. I fell asleep, I do not know for how long. I woke up because I heard some yelling. At first I kept my eyes closed and when I opened my eyes I saw that I was in hospital, in hospital they asked me for my name and the place I came from; they took off my clothes, x-rayed me, and I fell asleep again. I assume that they gave me sedative.

I was shot 13 times in the arm, twice in the leg, and once in the back. I was treated in the Priština Hospital. I think I have no medical documentation. Now, I cannot use my left hand normally. I suffer from mental consequences, as well. I cannot stay put especially when I need to study. I had physical consequences, but psychological as well, because I saw my family members being killed.”

The presiding judge asked a question and the witness said:

“When I mentioned that police officers came, I cannot say exactly how many of them were there and there were a lot of them. They wore camouflage uniform and they were all the same green camouflage uniform. The ones, who were standing on the street, wore diverse uniform. The man who shot aunt Shefkate was very tall; he was aged around 30; he had a short beard and dark brown hair; I think he did not have a cap on. I think his hair was of normal length, not very short and not very long. I saw only one man, who was shooting at aunt Shefkate. He was the same man who shot at us. I saw one man who shot at us. When the shooting began, it lasted for a long time and I could not designate the directions the bullets were com-

ing from, but according to my wounds they must have come from at least two directions since I was also shot in the back”.

The witness was asked to describe some of the people who were at the scene and she said:

“Well, there was one young man who was very short. He was searching us. He wore a cap with the brim on a side. He was the one who took the scalpel out. I forgot to say that there was another man. He hit Fexhrie when he put the scalpel back in the pocket. He put the scalpel back inside the pocket and then he hit her in the back of her head. He had strong physique and he was tall. He had a beard and the colour of his hair was dark brown.”

It is noted that the witness was presented with the photo album and she stated:

“The tall strong man who hit Fezrie⁴⁷ looks a little bit like the face on the photograph number 16. He was so strong. The person who entered the bar after which we heard shots looks like the person on the photograph number 49, but I am not sure if the person from this big photograph participated in this.”

She was asked to explain her statement from the identification record where she stated that she was not sure if the person at the position number one participated in this. The witness said:

“That is because I saw one person shooting and there were more people there including the ones who searched us, yelled, took us through different yards and out on the street. After he started shooting, I fell on the ground and I could not see who else was shooting. I was not able to raise my head and see who else was shooting. Since the person, who was shooting, had longer hair and a beard it is very difficult to determine the identity. I did not see anybody else shooting, except for one person. Since it was an automatic gunfire that lasted for a longer period of time and that I was shot in the arm and the back, I assume that there were more people shooting. I

⁴⁷ Fexhrie Blakqori Llughaliu

was first shot in the arm, then in the leg, and then in the back, which means that one bullet came from some other direction. The person I saw shooting was in this direction (she pointed to the left) when I fell, while the bullet that hit the back came from this direction (she pointed to the right). Nobody else, but us, who came to testify today, and Genc survived.”

The injured parties’ representative, attorney Dragoljub Todorović, asked the witness a question and she answered:

“That moment when I saw my cousins wounded around me, I did not see any person in uniform. I did not faint and when I said that I did not hear a thing that was because it was silent. When I said for the defendant during the identification that I was not sure if he participated in this event, I said that because his eyes and physique reminded me of that person. Those were the eyes and the physique.”

The injured parties’ representative, attorney Teki Bokshi, asked the witness a question and she replied:

“Persons who took Selman Gashi and Selman Duriqi⁴⁸ inside the bar, the one I saw going inside the bar had the same kind of uniform as the one that was shooting at us. However, those standing outside had blue police pants and military shirts; I mean parts of different uniform. The blonde woman was my aunt Shefkate.

The injured parties’ representative Nataša Kandić asked the witness a question and the witness answered:

“When we were ordered to go inside the yard, Shefkate was standing at the threshold of this small house and while we were leaving, they took her inside the house. From the moment we left the yard until we returned a lot of time passed. We spent a lot of time outside while one soldier was saying something to Hamdi Duriqi and until he took him inside. Some 15-20 minutes passed until we returned or maybe even more, I am not sure. The same soldier, who separated Shefkate, took her inside the house. When we

⁴⁸ Hamdi Duriqi

returned it was not the same soldier with Shefkate. There were a lot of soldiers outside. Several of them were standing around Shefkate; they were yelling; she was crying; and they pushed her. It was not the same person, the one who took her inside the house and who pushed her. I am saying this because the one who took her inside was taller than the one who pushed her”.

A defence counsellor said he was sorry because of what Saranda and her family went through. Goran Rodić asked the witness a question and the witness said:

“We started going out before the soldiers came in because we already saw them coming”.

Since the witness was reminded that during the process of identification she said one of the people was around 40 and today she said that this man was around 30. As a response to this remark, the witness stated that she meant that day, as well as today, that the man was between 35 and 40 years of age.

Defendant Saša Cvjetan said he was sorry because of what Saranda and her family went through. He had no questions for her and said that he only had one remark. First of all, he said that he was not in the yard where all of this happened and it was impossible for somebody to see his face. He added that the event took place the way he described during the main hearing in Prokuplje and Belgrade.

Besides that, he raised objections regarding the process of identification saying that his identity was not protected since a photograph of him was published in the newspapers several times and the trial in Prokuplje was broadcasted. He personally watched the scenes on the Novi Sad TV station and he possesses the video recordings. He thinks that the identification process should have been undertaken much earlier and, besides this, there were less people in the photographs shown to the witnesses than there were people in the unit. Due to that, he thinks that all member of the unit should have been present during the process of identification in their uniform in order to make the process reliable.

When the witness was asked if she agreed with the criminal proceedings, she said:

“I want the person who committed this crime against my family to be punished. As for me personally, I do not ask for any compensation because it cannot bring back my family. I do agree with the criminal proceedings against the defendant and I do not ask for the compensation of damages. That is all I have to say.”

No further questions.

EXAMINATION OF WITNESS/INJURED PARTY SAFET BOGUJEVCI

The witness/injured party **SAFET BOGUJEVCI** stated that he would give his evidence in Serbian language and only if he found something very difficult to say he would use the service of the court interpreter for Albanian language. He is 43-years-old; an electrician by profession and currently unemployed; he lives in England on social welfare; he did not know the defendant from before; they are not related; he was advised; he took the oath; and he gave the following statement:

“I was with my brother Selatin all the time. On 7 March 1999 I went together with my brother at our neighbour’s house. Mostly males were there. We were practically in a meadow. Only males from my company headed to the meadow, while whole families were already there. There were as many as 30,000 people. Women and children begged us to leave the house because they were scared that men would be killed and women and children would not. Anyway, in the evening of 27 March I wanted to go back home, but my brother Selatin convinced me not to do that and he said he would go home instead of me. When he returned the following morning I asked him what was happening with my family. He told me that they stayed at home. I was located some 20 metres away from my house in my neighbour’s yard and from there I was observing what was going on.

That morning, 28 March, a lot of people in uniform appeared suddenly out of nowhere. There were four or five different types of uniform and most of them were camouflage. When I saw so many people in uniform I ran

away to this meadow again and spent the day there. A lot of people who were driven out were also coming to this meadow. My brother Selatin and I agreed that I should stay in the meadow and he should go with the rest of the people. Just before we parted, sometime around 10 o'clock in the morning, we heard bursts of gunfire, and I think this was fire from automatic weapons. It lasted for about half an hour with pauses. I think there were several weapons shooting. I knew they started killing because a boy came to us wounded in the stomach and the shoulder. He lived in a house across from mine, but I cannot remember his name. That boy said to the doctor, who was treating him that Selim and Idriz Tahiri, father and son, were killed. I knew them very well. They lived in the same house as this boy. I heard when he said this to the doctor.

That evening around 20:00 my brother left this place and I did the same the following morning around 04:00 during the night the units made some kind of a corridor, so the people in the meadow, in this part of the town, were able to leave the town. So, we went through that corridor and through the yards, and we went out of the town, crossed the Niš-Podujevo road, and went further through the villages. Around 6 or 7 o'clock that morning I met with my brother Selatin in the village of Balovci after which we did not part. Actually, we did part because my brother Selatin and his friend Enver Duriqi were going to different villages looking for their families. I was in such mental condition that it was impossible for me to go anywhere, so we agreed that I should go with the people wherever they went and he would come in the evening.

My family members who stayed in Podujevo were: mother Dhehida⁴⁹, wife Sala, sons Shpend and Shpetim, who were aged nine and 11, sister-in-law Shefkate, daughter Saranda, nephews Nora, Fatos, Jehona, Lirrie, and Genc, aunt Nefise, her daughter-in-law Fexhrie, and our friend Enver Duriqi's family, his father, mother, wife, and four children. They were all together in my uncle's house. I heard about them for the first time after the event on 14 April 1999. Then one of my acquaintances, whose name I cannot recall, came to me. I knew that his son had a surgery even before the bombing started. Actually I did not speak to him personally, but he sent a note, which my daughter Saranda wrote for me. It turned out that my friend's

⁴⁹ Shehide Bogujevci

son was in the same room with Jehona and Saranda in the hospital. There was nothing else in that note, but the names Saranda and Jehona. So, we only knew that Saranda and Jehona were in hospital. That evening, because my brother was already very tired, I decided to go to Priština the following day through the forests. While I was going to Priština, I ran into Enver, who came along with me because he did not want to let me go alone. The same day, around 2 or 3 o'clock in the afternoon, we arrived in Priština and there we saw a lot of soldiers and police officers, who were walking down the streets. As a matter of fact, there were not so many of them. Some people in the suburbs told us that it was too risky to walk, so we decided to ask somebody let us sleep over in the house. We decided to knock on the door of one house that had smoke coming out of the chimney. One man opened and let us come in. Some 20 minutes later, we heard some shooting, but regardless of the risk, we still decided to stay in this house. The following morning I told Enver to return and so he left. I took off with this older man towards the centre of the city. When I came to the hospital, one nurse checked the list of the people in the hospital and found only Saranda's name.

I went to the room where Saranda was and I can say that it was the hardest day of my life. They were helpless and wounded. They were in terrible condition. They screamed when they saw I was alive. Saranda told me, 'We were lucky that you and uncle are still alive'. She did not say anything else. It was clear that since they were there that others were dead. I did not ask here what happened because it was too difficult for her to speak of that and so it was for me. It was very difficult for me, so I went out of the room to cry. While I was standing like that one doctor came and expressed his condolences. He said that these children are here and their families were killed. I asked him if anybody else from my family was there and he said that two boys from my family were there and one girl, who was seriously wounded, was sent to Belgrade. Her throat was cut.

When I asked the doctor how they were wounded, he said by bullets and that it was not connected to the air strikes. The doctor helped me buy something for Saranda and Jehona. He actually told me I should go and buy something, which I did, and he added that I should take Jehona abroad because she was seriously wounded. Her hand was supposed to be amputated. He gave me release certificates for Saranda and Jehona. I am not sure if I still have these release certificates at home.

On the 16th in the evening I headed back and on the way out of Priština I saw four corpses. When I met with Enver I told him what happened to our families. I wanted to return to Priština because of the children, but I was not able. We were ordered to leave and so we were taken in a line. Some 75 or 78 people were killed in the line, which went from Priština. So we were walking and wandering, when we arrived to Podujevo we were not allowed to enter the town. So, we had to go to the surrounding village known as Šajkovac. There I met with Selatin again and after some time I went to Podujevo again and spent seven days in one man's house. He let my brother and me stay in his house. Every evening people in uniform were coming. Some of them had some hats on; most of them had leather hats and some had leather vests.

During this time, my brother ran into the Mayor of Podujevo, Biserčić, and asked about the fate of his family. He could not find out anything from Pero or from Maljević. He met with them as well. I was not able to enter my house or my uncle's house, which is in the same yard because their army's headquarters was there. I remind you that I met with Maljević while I was still in Šajkovac and I asked him about my family. He told me that there is nothing in my house; that he does not know anything about my family, and that in Gashi's house there were three dead people. Finally on one occasion, I convinced Biserčić to let me enter my house and he gave one man, I assume, from civil protection to escort me. On the way to my house I met Svetlana Filipović. I did not want to talk to her because my brother met her before and she told him she did not know anything about my family. When I came to my house, some young man came out. He asked me what I wanted. I explained that it was my house, that I did not know anything about my family, and that I would like to at least enter the house. That young man told me that there were no corpses or traces of blood there. He added he was sorry, but he was ordered not to let me in until they are inside the house and so I did not enter my house. Until the end of the war I was not able to enter my house.

I heard there were 19 graves by the railway station and we assumed those were our family members' graves. We calculated that 16 members of our family plus Tahiri father and son and another person were buried there. However, we were never able to get closer to those graves because there was constantly somebody from the army guarding them. Only when the

war was over and KFOR arrived and when authorised experts from The Hague came, the bodies were exhumed.

Then we saw that in that place the following persons were buried: Enver's father, my son Shpend, Enver's son and daughter, my mother, aunt, sister-in-law, and son. It was the most difficult thing to collect his remains because his skull was broken and I was collecting its parts. This is the third time that I said this to somebody and it is still very hard. The names of my family members, who were buried in that place, are: Shehide, Shefkata, Nefise, and Sala. Nora, Shpend, Shpetim, then Fexhrie Blakqori-Llugaliu, then Enver's family members, father Hamdi Duriqi, mother Esmâ Duriqi, wife Fitnete Duriqi, and four of Enver's children, whose names I cannot remember, as well as my neighbour and my wife's uncle Selman Gashi. My brother, Enver, and I identified the bodies. After that we buried our family members' mortal remains in our cemetery located across the bridge.

After that The Hague investigators exhumed the bodies again. On that occasion, all of the bodies from our family were exhumed.

My house in Podujevo was located on Kosančić Ivan Street; I cannot remember the number of the house. My friend Enver Duriqi lives in the village of Obranča⁵⁰, the municipality of Podujevo."

It is noted that the witness was presented with the photo documentation and he stated:

"I recognise Halim Gashi's house in the photographs number one and two in the photo documentation marked with number 16. I see Selim Tahiri in the photograph number three in the photo documentation marked with number 15. It is possible that his father Idriz Tahiri is in the photograph 3, but I am not sure. I recognised the Drini Bar in photographs one and two and Selman Gashi and Hamdi Duriqi's bodies in the photograph 1. I cannot recognise the person in the photograph three and in the photograph three I recognise aunt Nefise. I recognise my son Shpend's legs, shoes, and jeans in the photograph four. in the photograph six I recognise my brother's wife Shefkate and I cannot recognise anybody else.

⁵⁰ Obrandža/Obrance

I agree with the criminal prosecution of the defendant and later on I will declare myself regarding the compensation of the damages.”

The district public prosecutor asked the witness a question and he answered:

“Jehona Bogujevci is my uncle’s daughter and Afrodita is my wife. My wife Afrodita does not know anything about this case. She might know something about the killings in another part of the town and Jehona does not know anything.”

Defence counsellor Đorđe Kalanj said he was sorry because of what happened to the witness. He asked the witness a question and the witness answered:

“The town was almost completely empty on 29 March 1999 and I meant the part of the town where I lived. All of my neighbours were in the meadow with us that day my brother and I left and only my and Enver’s families stayed and we did not know what happened to them.”

The defendant said he was sorry because of what the witness and family went through, but denied that he had been in the witness’ yard and said that he did not shoot at the civilians in Podujevo. He said they had the wrong man sitting in the courtroom and those who committed this should be prosecuted.

No further questions for the witness.

After this, the deputy district public prosecutor proposed that the reports from the Priština Hospital and Tiršova Children’s Hospital in Belgrade should be obtained in the course of the probative procedure in order to determine the type and level of the wounds suffered by these children. She added that Albanian witnesses listed in the Humanitarian Law Centre’s submission should be examined.

Besides them, Bogujevci Vallbona, Jusufi Isak, Duriqi Enver, and Duriqi Shemsa⁵¹ should be examined, too. It is noted that Jusufi Isak is from the village of Donja Dubnica.

The defence counsellors do not object the evidence or the examination of the witnesses who would be able to say something about the event itself, but they do object the examination of the witnesses who only have generally defined information. Therefore, they are demanding that the panel asks for an explanation regarding the circumstances these prosecution witnesses will be examined about.

The defendant agrees with his defence counsel's proposals.

The injured parties' representative Nataša Kandić stated that people listed in the submission are the eyewitnesses of the event, which occurred in the bar; the moment when Selman Gashi and Hamdi Duriqi were taken out of the line and taken inside the bar. Witness Nazim Veseli is the person who was wounded and who was mentioned today in witness Safet Bogujevci's statement. Actually Nazim has information regarding the event, which he thinks is very important since the Scorpions members went through the Gjata and Kastrati yards in order to get into the yard where women and children were shot at.

The deputy district public prosecutor proposed that the Humanitarian Law Centre's submission titled 'In the Name of the Victims' be put in the documentation as a justification of this proposal.

The defence counsellors do not object the examination of witnesses Enver Duriqi and Shemsi Duriqi, but they do object the examination of other witnesses and they add that in this report there are no addresses of these people and it was not even described where these people live.

The court brings the following

Ruling

In the next main hearing session, the following witnesses will be examined: Enver Duriqi, Shemsi Duriqi, and Vallbona Bogujevci. The following persons should be summoned in the status of witnesses: Dragan Medić, Slobodan Medić, and Radoslav Olujić. The reports on the type and level of

⁵¹ Shemsi Duriqi

the wounds suffered by children should be requested, as well as the exhumation reports. Witnesses Tefik Gashi and Muharem Rama should be examined and they should be summoned through the hospital in Priština, as well as Nazim Veseli from the village of Donja Dubnica, the municipality of Podujevo.

Because of this, the main hearing will adjourn and it will continue on 8, 13, and 14 October 2003 at 10:00. The people present in the courtroom were informed of this.

It is noted that when the representatives of the non-governmental organisations from Priština were leaving[...], the defendant turned to his family and said in a threatening tone, 'If I see these from Priština again ...'

The session adjourned at 16:45.

Court Reporter,
Presiding Judge

RECORD FROM THE MAIN HEARING

Composed before the Belgrade District Court trial panel on 5 December 2003 in the criminal proceedings led against defendant SAŠA CVJETAN because of the war crime against the civilian population pursuant to Article 142 Paragraph 1 of the FRY Criminal Code, upon the Belgrade District Public Prosecution's indictment Kt. number 1273/02.

PERSONS PRESENT:

Presiding judge
Biljana Sinanović

Deputy public prosecutor
Ružica Janić

Trial juror, judge
Siniša Važić

Trial jurors, jury judges
Pajović Ivica
Nikolić Nada
Rakić Ljubiša

Defendant
SAŠA CVJETAN

Court reporter,
Slobodanka Nedeljković

Defence counsellors:
Attorney Đorđe Kalanj
Attorney Goran Rodić

The session began at 10:00

The session is public.

It is noted that the Deputy Public Prosecutor Ružica Janić, defendant Saša Cvjetan, defence counsellor Đorđe Kalanj, the injured party's representatives Nataša Kandić, attorney Dragoljub Todorović, and Teki Bokshi, wit-

nesses Željko Đukić, Slobodan Medić, and Radoslav Olujić attend the main hearing session.

Defence counsellor Goran Rodić did not attend the main hearing session.

Defendant Saša Cvjetan and Đorđe Kalanj, the defence counsellor who is present, propose that the main hearing be conducted in the absence of attorney Goran Rodić.

The court makes the following

Ruling

The main hearing shall be conducted.

The trial panel is the same and it makes the following

Ruling

The main hearing shall continue with the adducing of evidence.

CONTINUATION OF PROBATIVE PROCEDURE

EXAMINATION OF WITNESS DRAGAN MEDIĆ

Witness **DRAGAN MEDIĆ** with the same personal details as given in the previous procedure record from 28 March 2002. He took the oath. He was warned that he is obliged to tell the truth pursuant to Article 100 of the Criminal Code Procedure (CPC).

It is noted that the witness gave the same statement regarding the description of the event until the arrival of the bus in Podujevo as he said in the previous procedure record and added,

"We arrived in Podujevo by buses and we were told to stay in the buses until the commander came back. We did not have a formed platoon because we did not receive the schedule yet. We stayed on the bus for some time and then we went to look for some accommodation because the air strike was ongoing and we heard shooting from all sides.

I went together with Brko (that is witness Željko), Nikola Kovačević, Milorad Momic, and one boy from Šid known as Sarma, to look for some accommodation. There were some other people with us that I did not know. We found one house, which was some 300 or 400 metres away from the place where our buses were parked. I think that there was nobody in that house we entered. I stayed in front of the house. I did not enter the house. I took insulin because I have diabetes, and I ate something. Then I heard the shooting from diverse infantry weapons from the light machine gun to different types of automatic and semiautomatic weapons. The shooting was coming from the direction of the buses, so we headed that way. When we came at the scene, everything was already over. I got sick then and, as my friends told me later on, they took me to the bus where I got well again. I got well again when we came to Prolom Banja because, usually when I lose consciousness, I have to lie down and sleep for a while. Before we came at the scene, I saw that they carried somebody. Only later, when I was examined before the Prokuplje District Court did I hear that civilians were killed. I did not see anything else, but a crowd of different soldiers at the scene. After that, we spent another several days in Prolom Banja before we returned home. My brother Slobodan Medić was the company commander, but I did not ask him why we were supposed to return.

Since I heard the difference between this statement and the one I gave earlier, I declare that my today's statement given in this main hearing session is true. I saw they were taking somebody out of the yard and only later on did I find out that those were civilians that they were taking. I did not see when they bandaged somebody because I could not see that, but I assume that was the doctor who bandaged them and I know that SAJ has a doctor. When I came some 30 to 50 metres away from the scene there was a crowd of people, soldiers and police officers. Several of us, who went inside that house that I mentioned before, returned together when we heard the shooting. There were several other Scorpions members that I did not know. Defendant Saša Cvjetan was not with me. And I did not see him at

the scene of the crime. I met the defendant for the first time in 1994 and after that in 1999 at my brother's house because we took off from there by buses. We were chatting later on because he was friends with Rajko. After that we were seeing each other in Prolom Banja, as well, but we did not talk about this event. I did not talk about this event with my brother either. I think that what happened is a great sin and I do not like to talk about it. We were soldiers, but we did not do things like this. We did not discuss in the unit who might have done this."

Nataša Kandić, the representative of the injured party, asked the witness something and he said the following:

"I know that the Scorpions members mentioned me as one of the perpetrators, which is absurd because I was not there. I took a rifle with 150 bullets and returned the same rifle with the same number of bullets. Police were coming the same evening or the following day, I think, to Prolom Banja and they could have determined who was shooting. Police officers talked to the Commander Slobodan Medić and the man who was in charge of issuing weapons, Srđan Manojlović. On the way from Podujevo to Prolom Banja nobody asked me anything regarding this event. I do not quite remember when was the first time I heard my name mentioned as one of the perpetrators, I think it was in the newspapers or something, and I even heard that from the investigative judge when they interrogated me, and they still ask me that question. People generally ask me what happened there. They think that I know everything because I am the commander's brother, but I do not know anything at all. That is all just a rumour. We all had the same police uniforms, green camouflage uniforms. I had long hair. I think that nobody wore a helmet. I had a camouflage cap, the same colour as the uniform. I had a short beard, some seven days' growth, and I did not have sideburns. Police have never interrogated me in relation to the allegations that I participated in the murder of the civilians. Commander Slobodan Medić opened an investigation into this event with intent to find out who killed the civilians. He was asking the soldiers if they saw anything, but I have not found out anything. My brother, the commander, knew that I did not do it and he also knew that none of our people there would do something like that. He is a man of firm character and if some of our soldiers did something like that, there would be no need for this trial to resolve this issue because he was punishing for every little thing. I stayed in Prolom Ban-

ja until the end and I think that we all stayed; I think that nobody left earlier.”

No further questions.

EXAMINATION OF WITNESS SLOBODAN MEDIC

Witness **SLOBODAN MEDIC**, with personal details the same as given in the record from the previous procedure made on 28 March 2002, knows the defendant, not related to him, warned, took the oath, warned pursuant to Article 100 of the Criminal Procedure Code (CPC), and he gives the following statement.

His statement is identical to the one he gave on 28 March 2002 and upon the presiding judge’s question, he says:

“We were in a house some 350 or 400 metres away when we hear the shooting. When we heard the shots, we were commenting on what type of weapons those were. I recognised it was a machine gun - 84. Since my unit did not have weapons of that kind, I concluded that they did not shoot. Before and after these shots, we heard sporadic gunfire - short gunfire burst from light weapons. My unit had automatic rifles.

When I came close to the scene, or the place where the buses were parked, I saw an ambulance parked some 100 metres away and I saw a doctor providing first aid treatment to two women or two girls. I saw many diverse soldiers and police officers there. My soldiers were there, too, but I cannot recall whom exactly did I see at the scene of the crime. I do not know if defendant Saša Cvjetan was at the scene. My brother Dragan Medic was also there and I think he was standing closer to the buses with some SAJ members and our guys, but I cannot remember the exact location where he was. I asked what happened, but nobody answered. Then Tutinac arrived and told me to gather my unit and take it back to Prolom Banja, which I did. It is possible that I yelled and cursed at my soldiers, but that was only because I was mad because they had left the buses. I think one of the guys gave me a logical explanation - that they got off the bus when they heard

the shooting. I think that Tutinac told them to stand aside and get off until I come back to see what we should do further on. It was strange for me that they returned us so quickly, but I was thinking that we came to somebody else's territory and the times were like that and I did not ask for any explanations. Besides that, I am a soldier and I did not conduct any investigation. I was asking around in the unit, just like the platoon leaders did, if anybody saw anything and if anybody knew anything about what happened, but nobody gave me a concrete answer. I think that nobody from the Scorpions could have done that because there was not enough time. I think it is possible that all of this, the murders, happened before we even arrived to Podujevo. I did not go to the place from which the corpses were being taken, i.e. where all this happened. It is possible that some of the people from the Scorpions were rude to the local residents; it is possible that some of them shot in the air, but I think that none of them killed civilians. They might have killed soldiers, but not civilians for sure. We spent several days in Prolom Banja before we were taken back to Novi Sad and I did not receive any explanation why we were returned. Some twenty days later, the Deputy Minister of Interior called me after which I was sent to Kosovo Polje, along with the Scorpions unit, on another mission."

Nataša Kandić, the representative of the injured party, asked the witness something and as an answer to her question, the witness said the following:

"The Scorpions unit was founded in 1992 in late May as a security unit for the Krajina Oil Company. That unit was a part of the Republic of Srpska Krajina Army from 1991 until 1996. After that I asked for the unit to be a part of the Serbian Ministry of Interior, but that was not approved because the Scorpions were a reserve counterterrorism unit within the Serbian Ministry of Interior. When Tutinac arrived, he just ordered us to go to Podujevo. He did not say why and I did not ask that. As a soldier, I went to fight the terrorist and occupiers. Soldiers from my unit also did not ask where we were going. As I have already explained, I held a speech. That was the speech after which some 30 people went back home. Later on, when I came back from Prolom Banja, I heard that some names were being mentioned, my brother's name, among others. However, at that time I thought I was manipulated and I still think that. I think that was the way to get me involved in this story. I believe I was manipulated because my men did not feel

guilty because of what had happened and I believe they are not guilty, but I was manipulated because there must be a guilty person and he had to be in my unit. If I had personally done anything I would have faced it because I would not avoid responsibility if I was aware that what I was doing was evil. Nobody from my unit left Prolom Banja.

However, while we were still in Prolom Banja, General Pavković, who was going in his regular visit of the troops, visited us and on that occasion he spoke to me. He said that he heard what happened in Podujevo and that my unit did it. I explained that we did not do it and if possible, he can prove that I am wrong. This man that I am pointing to right now, Mr. Manojlović, was also there. Police did not call me after this event and they did not interrogate me. They did not interrogate any of my men either. I have no idea why they decided to arrest defendant Saša Cvjetan. I do not know Colonel Dragan Ilić. As the answer to the question if I am rich, I can say that I only have what I brought from Croatia and what I inherited from my father and my grandfather. My possessions include a herd of 500 sheep, 30-40 horses, 20-30 cows, and 100 bulls. I am a shepherd by profession. I graduated from the Farming High School. I am a veterinarian by profession. I have around 30 acres of land."

The defendant asked the witness a question and the witness gave the following answer:

"It is true that the defendant reported the pistol he found in the house and Manojlović registered that. In practice, in such situation it is allowed for people to keep the weapons because they represent a war trophy. I know the defendant as a good person because I know him from before. I think he is a young man and who carried and directed his patriotism in the proper direction."

No further questions.

RECORD FROM THE MAIN HEARING

Composed before the BELGRADE DISTRICT COURT trial panel on 10 December 2003 in the criminal proceedings initiated against defendant SAŠA CVJETAN charged with the commission of war crime against civilian population pursuant to Article 142 Paragraph 1 of the FRY Criminal Code, upon the Belgrade District Public Prosecution's indictment Kt. number 1273/02.

PERSONS PRESENT:

Presiding Judge,
Biljana Sinanović

Deputy DPP,
Ružica Janić

Jurors
Vinka Beraha - Nikićević
Pajović Ivica
Nikolić Nada
Rakić Ljubiša

Defendant,
SAŠA CVJETAN

Court Reporter,
Slobodanka Nedeljković

Defence Attorney
Attorney Đorđe Kalanj

Began at 10:00

The main hearing is public.

It is noted that the Deputy District Prosecutor Ružica Janić, defendant Saša Cvjetan, defence counsellor attorney Đorđe Kalanj, injured parties' representatives Nataša Kandić, Attorney Dragoljub Todorović, and attorney Teki Bokshi, the injured parties, and witnesses Enver Duriki, Florim Gjata, Rexhep Kastrati, Nazim Veseli, and court interpreters for Albanian language Mira Rugova and Vegim Rugova are present in court.

The court brings the following

Ruling

The main hearing shall proceed with the probative procedure.

THE CONTINUATION OF THE PROBATIVE PROCEDURE

It is noted that the court interpreters heard the proclamation from Article 95 of the Criminal Procedure Code that they are obliged to interpret the questions addressed to the witnesses and their answers in the original meaning. The court interpreters took the oath.

EXAMINATION OF INJURED PARTY DURIQI ENVER

Before the witness is called in, the defendant suggested that the statements given by the injured parties and Albanian witnesses be recorded.

The defence counsellor supported this suggestion.

The deputy district public prosecutor stated that she does not object this suggestion.

The court brings the following

Ruling

The Court **OVERRULED** the defendant's suggestion because of the current lack of technical conditions for audio recording.

The injured party/witness **ENVER DURIQI**; from the village of Obrançe; Ibrahim Lemoli bb Street; 34-years-old; fire-fighter by profession; did not know the defendant from before; they are not related; advised; took the oath; he gave the following statement:

It is noted that the witness will testify in his mother tongue, Albanian, with the assistance of court interpreter Rugova Vegim, whose interpretation will be put directly into the record.

"I came to testify about the things, which happened on 24 December 1998. I would like to speak of the cleansing that Serb units conducted in my village. Three days before the NATO bombing began, we went to find shelter at my friends Seladin and Safet. We went to find shelter with our families. We were sitting there in the house of Selatin Bogujevci's uncle in the centre of Podujevo during the first night of the bombing. I am trying to say that we left our houses on 24 December 1998 because of the cleansing. Serb forces came and drove us out of the village of Obranča, not just me, but all residents of that village. As of 24 December until three days before the bombing began, we were at my brother-in-law's house in the village of Dubnica. We stayed there until Serb forces came from the border with Serbia and started cleansing the village of Dubnica. On that occasion, Serb forces killed several people and children. Then we went to my friend Selatin Bogujevci. When the bombing began, then Serb forces started shooting without any control; they started raging and breaking shops. This destroying and killing lasted for three days.

Then, on 28 March 1999, my father Hamdi Duriqi called me to talk to me. I was lying with my children in the house owned by Selatin Bogujevci's uncle. My daughter Dafina was sleeping on my right side; my older son Arbor⁵² was laying by my legs, while my wife Fitnete Duriqi lay on the side with another daughter and our 21-month-old baby boy. The persons present in that house together with me were: my father Hamdi, mother Isma⁵³, wife Fitnete, older daughter Dafina who was nine years old, older son Arbor⁵⁴ who was seven years old, other daughter Mimoza, and my youngest son Arbion⁵⁵ who was 21 months old.

My father came and informed us that the neighbourhood was surrounded by Serb forces and that they were breaking everything and yelling on

⁵² Arbër Duriqi

⁵³ Esma Duriqi

⁵⁴ Arbër Duriqi

⁵⁵ Albion Duriqi

their way towards our neighbourhood. I got up and placed my son in bed. Then I went into another room where my mother was preparing food for children. I spoke to my mother. I gave my father the tractor keys and tractor registration licence. I said goodbye to my wife and asked her for her ID card and gold. She took out from her pants her ID card and some jewellery that was placed in a handkerchief. I told her that she should give that gold if she had to save the children.

I said goodbye to my father and I met with Selatin and Safet Bogujevci and, together with them, I ran from yard to yard and from one wall to another until we crossed the main road on the left side. There are some willow trees beside the Lab River and we were walking between these trees until we approached Hadži Sadri's house. That is actually some ten metres away from Selatin Bogujevci's house. We stood there for approximately four hours and then we heard voices begging and shouting. Soon after that we heard that a father and son were killed and one man was wounded. We heard this from a lot of people. The people who were killed were from the village of Dubnica in the municipality of Podujevo. Their names were Idriz Tahiri and, I think, Selim Tahiri. They were killed some 20 metres away from the location I was at. I did not see anything, but I did see Nazim Veseli and the doctor providing first-aid. I saw Nazim and doctor approximately one kilometre away from the location this man was wounded at. I did not ask him anything, I just saw these people putting bandages on his stomach.

When we heard the shooting, we ran away from this shed and that was before I saw Nazim. There was a house in the yard and a wasteland around it. That same evening, 28 March, the big cleansing began and people were driven out. They were going to the villages of Balovac, Ladovac, Lumoš, Svečer, Surtiš, Baklar, and Suručica. I was personally walking through these villages looking for my family. There was a corridor through which heavy troops were going; actually not heavy troops, but only people and the tractors.

I was in the forests of Količ⁵⁶ just like the rest of the people when I heard the first news about my family. I cannot remember the exact date, but I do know that it was a week before the Serb troops drove us out of the village.

⁵⁶ Koliq

It was at least two weeks after I left Podujevo. We spent some time in Koriq and there I was in constant contact with Selatin and Safet, we were looking for our families, and we did not hear anything about them. One person from the village of Lapašnice went to take his son from the hospital. Saranda and Jehona Bogujevci were in that hospital. They wrote a letter saying that Saranda and Jehona Bogujevci were in hospital. That letter arrived to the village of Konjic⁵⁷. Then, Selatin and I decided to go the following day, Monday, to the Priština Hospital. It was not Selatin, it was Safet. We were walking to Priština and it was very difficult because of the numerous checkpoints with people in different kinds of uniform, but we did not care for the consequences; we had to get to the Priština Hospital. When we arrived in Priština, near the Nova Koljevica and the power station we saw three people who were killed. They were shot in the head. I do not know who these three persons were. We carried on towards the hospital. I did not manage to enter the hospital, but Safet did. I do not know what he was speaking about with his children. When he returned, he told me everything.

Safet told me, 'Your children and your family are dead'. I asked him what happened; was that a massacre or execution and he said that they were executed. Since I could not find out anything else and I said this to my second brother, Shemsi, and other family members did not know anything. We stayed until Serb forces drove us out of Konjic⁵⁸. We spent that night in the forest with my brother's son. That was Sunday. On Monday, we headed towards Priština. We arrived to Priština and stayed with my uncle's family. We stayed there and then the air strikes began and, after the air strikes, there were executions and mistreatment.

I went with Selatin to the Priština mortuary where we found the documents saying who sent my family members' bodies to the mortuary, who took over the bodies and when. The date of execution was 28 March, while the date on all documents was 30 March. I am not sure whether it was after 22:00 when the bodies were admitted. There were no names in this record. All bodies were marked as unidentified persons. Podujevo Civil Protection sent the bodies.

⁵⁷ Koliq

⁵⁸ Koliq

I knew these were my family members because I knew the number of my family members, Bogujevci family members, and Llugaliu family members. One Serb man, who was working with my father in a company close to the mortuary and they were friends, told me, when I introduced myself, that Duriqi family members were brought dead to the mortuary and he found me the admission book. We were looking for 28 March. This man surely must have seen them because he told me so and he said he knew my father because they were friends. I do not know this man I had no contacts with him. We came to the mortuary and asked for the names. I met this man at the mortuary admission department, which is located inside the Priština mortuary. After we found this information, I returned to my uncle's house, even though it was not safe, and I stayed there until 4 May. On 4 May I headed back to Podujevo. One bus arrived with 37 passengers in it arrived at 09:00 to the bus station near the Lab Mosque. I personally counted the people who bought the ticket and we headed towards Podujevo.

On the Mileševa-Priština road there is a Serb bar called Two Nightingales and there were a lot of people in diverse kinds of uniform. They stopped the bus and all people had to get off the bus. They lined seven of us and one of the people in uniform said, 'Take that bastard into the basement'. The basement was full of water. There were three people in there and they had boots on. They asked for our wallets. They took German marks from our wallets and left dinars. Then they returned our wallets and told us to undress. Then they started beating us hard and I still have scars on my body. After that they let us go. The bus had already gone so we had to stay at the intersection. I was in a very bad condition when we continued walking from the village of Besija to the Šukovačka Banja. Then another bus arrived and it took us to the cemetery in the village of Sekirača. I walked for several hours and it was very difficult for me to get to my aunt. I stayed with my aunt for three days and then I went to the cemetery in the Sveća village. There was a small green market. There we heard that there were 74 persons buried in the town cemetery. Some people were saying even 90 or 100. I decided to go and visit the gravesite. In front of the cemetery there was a road with willow trees on both sides of the road. There is around 300 metres from these willow trees to the Enver Qaqura's Mill⁵⁹. I came closer to that mill and then I approached the road with willow trees. There I saw a decapi-

⁵⁹ Enver Blakqori

tated body lying on the ground. This dead man was around 27-years-old. There are only 70 metres from this body to the cemetery. So, I went closer to the cemetery. The cemetery was divided into two parts by a railroad. There were four soldiers standing on the railroad. They wore an old Yugoslav Army shirt and a new Yugoslav Army pants. These people got off the railroad, came to me, and asked me what I was looking for. I told them I did not know if my children were dead or alive. He asked for money, he wanted 2,000 German marks. He told me to put my hands up in the air, took out my wallet, and with these two fingers he took 1,000 German marks. Then they returned to the railroad and I walked around the cemetery.

The grave no. 2 had the name of my wife Fitnete written on it. Name Duriqi was written on the grave no. 8 and Avdi Duriqi was written on the grave no. 19. My father's real name was Hamdi, but in his ID card it said Avdi. When I compared the date of birth and death, I knew it was my father. These four soldiers came to me again and asked if I found my family and I said no because I was scared. Then he told me that they came here not to kill women and children, but to fight terrorism.

I went with Safet and Selatin, the first day after KFOR troops arrived in the municipality of Podujevo, to the place of execution and we found 98 bullet cases there. We also found our children's shoes, our children's gloves, and marbles that I am showing here in the courtroom. Children were playing with them. I even found my wife's watch. The bullet hole is visible on it. We collected these bullet cases and we also found pictures, list of the paramilitaries, the unit they served in, time they were on duty, even the time of visits. We found all that in Safet Bogujevci's yard. It was all given to the Hague investigators.

When KFOR arrived, people from the Hague tribunal came to exhume the bodies and I was there. I identified the bodies. On that occasion, I recognised my father Hamdi Duriqi, who was 71 years old; my mother Isma; my wife Fitnete, who was 35 years old; older daughter Dafina; older son Arbion⁶⁰; younger daughter Mimoza; and the youngest son Reis⁶¹, who was 21

⁶⁰ Arbër Duriqi

⁶¹ Albion Duriqi

months old. I also recognised Shefkate Bogujevci, Llugaliye Bogujevci⁶², and Sala Bogujevci. Due to my health problems, I was not able to carry on the identification of the rest of the people. They were exhumed from the Podujevo municipal cemetery next to the railroad. I assume that the people from the Hague tribunal made a record on this, but at that time I did not pay attention to this. After this, Bogujevci family members were exhumed once more, but my family members were not.

When I returned from Priština in the search for the graves of my family members, I asked for the residence permission and Srboljub and his guys from the civil protection gave me the residence permission.

As for what happened to my family, I heard about it from Selatin and Safet's children. I heard they took them out, in front of the police station, and then another group of people in uniform came; they were not the ones who took them out of the house. Then they separated Hamdi Duriqi and Selman Gashi. Hamdi Duriqi was my father. The children saw when these people in uniform slapped them and took inside the Drini bar. After this, the children heard two shots. Afterwards, the people in uniform took the children, opened the door to Selman Gashi's house, i.e. Halim Gashi's house. In that house they shot Shefkate in front of her children. After that, they shot at other children and women. That is what I heard about this event.

I spoke to Srboljub Biserčić several times and tried to find out from him what happened to my family. However, he did not want to tell me even though I was sure that he knew what happened. I even had a feeling that my life was in danger and I had to pay for a document so that I could leave the town and go to Priština. Biserčić knew where Ajet Duriqi's grave was. Ajet Duriqi was my cousin. However, Biserčić did not want to tell me that and we still do not know where he was buried.

I agree with the criminal prosecution of the defendant and I do claim damages."

⁶² Shefkate Bogujevci

The deputy district public prosecutor asked the witness a question and the witness answered:

“There was no weaponry in the house in which my family was. Idriz and Selim Tahiri were killed near Hadži Sadri’s house, which is located some twenty metres away from this shed.

Nazim Veseli was wounded when Tahiri father and son were executed. I did not talk to Nazim about the event when he was wounded. I do not know whether there were any weapons in this house where we were staying because we were only guests there. I only know that since we left our house already on 24 December, it was impossible that we had any weapons.”

Injured parties’ representative attorney Dragoljub Todorović asked a question and the witness gave the following answer:

“I heard that army and police were coming from Prolom Banja. I think we had no problems with the regular police. However, paramilitary and military units were coming from time to time to conduct the organised cleansing operations. Paramilitaries cleansed the area, killed women and children and that is practically how they emptied the whole town. KFOR doctors attended the exhumation and they inspected the corpses. I do not even know if they made a record of it. After that I took over the bodies and buried them. After this the bodies were not re-exhumed because I could not let the bodies be exhumed again due to my health problems. Safet and I collected 98 bullet cases at the spot where we found blood in Halim Gashi’s yard. That place was maybe three metres away from the place we found blood at. We turned in all bullet cases to the Hague tribunal.”

The defence counsellor asked a question and the witness said:

“Selim and Idriz Tahiri were murdered, executed on 28 March. We heard the shooting, but we did not know who was executed around 10:30 or 11:00. I could not say exactly what date it was when the paramilitary formations arrived. We did not hear that and other people informed us. I heard that the paramilitaries arrived on 27 March from Prolom Banja and they were situated in the Brotherhood and Unity school building in Podujevo. I heard that in the evening of 27 March. The cleansing that I saw began ear-

ly in the morning of 28 March. When we left the house on 28 March, I saw people wearing black uniform without caps, with bandanas; their heads were shaved; they were breaking shop windows, doors, and they yelled a lot. We thought they were beasts and not human.”

The defence counsellor stated that he had objections and asked the panel to stick to the indictment allegations in future since the witness today spoke of the events in which the defendant did not take part and which took place after 28 March. Besides this, he underlined Srboljub Biserčić’s responsibility, which is not the subject of this indictment.

It is noted that the defence counsellor and the defendant expressed condolences to the injured party/witness because of the loss of his family. The defendant approved of his counsellor’s objections and he added that he did not shoot at any civilians nor did he shoot the injured party’s family members. He added that he was fulfilling his service and that he would do it in the future, as well, regardless of the country whose citizen he might be.

The defendant asked a question and the witness answered:

“I was not taken to this basement where I said my money was taken away from me the same day I was at the cemetery when 1,000 German marks were taken from me.”

The defendant stated that the evidence given by this witness today was partial regarding the behaviour of the Serb police. He thinks that persons responsible of this should be tried and he agrees that these people who did this are animals.

No further questions.

Then the injured party added:

“I want to point out the fact that Doctor Tefik Gashi from the mortuary gave me a document with a list of possessions found on the corpses and these possessions were handed over to the Police Inspector Živojin Cvetković.”

EXAMINATION OF WITNESS FLORIM GJATA

The witness **FLORIM GJATA** from Priština; 34 years old; salesman by profession; employed; did not know the defendant before; not related to him; advised, stated that his mother tongue is Albanian, but he speaks Serbian very well, so he will give his evidence in Serbian language:

“On 24 March 1999, I went out of my house, which is located in Podujevo on 179 Ibrahim Degol Street (at the time it was Kosovometohijska Street). We were scared because we heard that the paramilitary soldiers were coming, so we went out. We thought that we might be safer in the centre of the town. So, I went with my family to my uncle Isak Gjata’s house on 174 Kosančić Ivan Street, I think that was the name of the street at the time. There were a lot of our relatives in this house. My father’s cousin and his cousins from the Dubnica village occupied one floor. There was another house in the same yard and it was Uncle Sabit Gjata’s house. Rexhep Kas-trati lives in the same house. They were all with their families in these houses.

Around 08:00 on 28 March our cousin Beitush Gjata came and told us that we were all supposed to leave the houses because the paramilitaries told him so. The paramilitaries already went to my uncles’ houses in the same yard and told them to leave. So, they all left. So, my cousin Beitush Gjata came to us and said that we were all supposed to leave. My wife packed the bags immediately, took two of our children, and left. I stayed with my parents. My father was previously wounded and that day he wore a new shirt. My father and mother left the house first. I followed them with my one-year-old son. When we were on the stairs I saw two men in uniform. They were already on the stairs. One of them spoke to my father and asked him if he was wounded. My father told him that he was not wounded, but sick and he opened the coat he was wearing and said he was sick. They let him go immediately. So, my father and mother descended the stairs and left. The two of them wore the same camouflage uniform. One of them was bald. The other one wore a black bandana.

The one who was bald spoke to my father and when I came carrying a baby, he said, ‘Come here, we are waiting for you’. I carried a baby and he

said, 'Let the child go so that I do not have to kill you with a child'. I let the child go. The child cried and the other guy with the bandana on the head said, 'Let the man go. I have a child of the same age at home'. Then he told me, 'Take the child and run'. He said that again because the other one told me to let go of the child. I took the child in my arms again and ran down the stairs. While I was going down the stairs I ran into a local police officer Toma Petrović whom I knew.

I told him, 'Look I have a child' and he just pointed to the direction I was supposed to go. Then I heard a burst of automatic gunfire approximately coming from the direction of the road. It was only one burst. When I went out on the street I saw my cousins walking in line and I saw that none of them was wounded. There were a lot of police officers who wore different types of uniform. Some of them wore blue, some green, and some black uniform. They were all telling us to go up the road. While we were walking in line I did not hear any more shooting.

I know Safet and Selatin Bogujevci. Their house is located some 30 metres away from my uncle Isak's house on this same street. When I left I did not see their family because they were still inside their houses since these people did not get to their houses yet. When I was walking up the street I only saw that Selman Gashi's family started coming out. I did not dare look around a lot because there were a lot of police. I do not know exactly who of these police troops entered other houses. Later on, when we were already out of Podujevo, we heard that something happened in the Bogujevci family's yard, but I did not see anything. While I was in Podujevo I did not see if anything happened to Selman and Idriz Gashi and later on I heard that something happened to them.

As an answer to the question if I remember seeing the defendant at the scene I must say that it has been five years since the event happened and I cannot say with certainty if I saw the defendant there or not. Maybe I would recognise the people who came to me, the bald one and the one with the bandana. I cannot say if defendant Cvjetan could have been one of them because I am really not sure of that.

Since photographs were shown to me I can say that in the photograph one I see the house in which Enver Duriqi's family was staying. I think it is the

house owned by Selatin Bogujevci's cousin. In photograph number two, which shows the position of a human body across from the house number 167, I state that it is the body of Hamdi Duriqi, Enver's father. I cannot recognise the people in other photographs because I cannot see their faces very clearly. In the photograph number seven, which shows the position of a human body in the yard of the house on 7 V. Morina Street, I state that I see Selatin Bogujevci's wife. I am not certain for the others, except for the photograph number three in which, I think, I recognise Selman Gashi."

The deputy district public prosecutor asked the witness a question and the witness said:

"I could not tell you any more details about the looks of these two men in uniform that I spoke to. That bald man was tall; he was taller than me. The other one was maybe as tall as I am and he had the similar physique as I do. I am 1.74 metres tall."

It is noted that the photo album with the Scorpions was presented to the witness and the witness stated:

"I cannot tell you anything with absolute certainty. They all have hair in these photos. Everything was taken from my uncle Isak's house: clothes, TV set, washing machine, and kitchen appliances. Only furniture stayed and it was destroyed. All machines were taken away. I returned to Podujevo around June the same year."

To the following question asked by the deputy district public prosecutor, the witness said:

"I did not have weapons and neither did my family members."

The injured parties' representative, attorney Dragoljub Todorović, asked the witness a question to which the witness answered:

"I am sure that two persons who spoke to me had patches on their arms with the Scorpions written on them. I personally saw that. It is possible to get to Halim Gashi's house through our yard. It is possible to see from my uncle Isak Gjata and Rexhep Kastrati's houses what was happening in

Halim Gashi's yard because these are two storey houses. Since my uncle Isak Gjata was a reserve police officer in 1981, it is possible that he had that uniform in the attic of his house. My father was wounded on 25 March on his way to our house. His cousin and he were ambushed. On that occasion, my father was wounded and his cousin killed. I think there were five or six cars in my uncle's yard. One of them was my father's and the rest were cousins'. When we returned, we only found my car. Since we did not stay in Podujevo, but we carried on towards Ladovac, we could not hear the gunfire coming from the centre of the town."

The defence counsellor asked a question and the witness answered:

"When I went out on the street I did not dare look or count much, I only looked in front of me, but I did see there were a lot of people wearing uniform. There were maybe 20 to 30 police officers and maybe even more."

To the defendant's question, the witness answered:

"Half of the staircase goes along the left wall and another half along the right half of the wall. When you take the stairs to the first floor, the first room on the right is the bedroom. This is not my bedroom because I do not live there. I do not know what was in the closet in this room. The kitchen was on the left side on that floor and two other rooms were a little further down the hall. It is true that when you get out of the house the fence is located right beside the stairs, less than half a metre away from the stairs. There is another house on the left side of this house. That is Gjata Gashi's house. There is one smaller door in that house under the staircase."

Then the defendant stated:

"The house the witness is mentioning is the house I went into and the gunfire he heard was the gunfire I opened. I am not the bald guy the witness mentioned; I have never shaved my head."

The witness gave the following answer to the defendant's additional question:

“I was the last one who left the house and I could not hear if any of the police officers called us in Albanian to come out. Nobody pushed me with the gunstock or hit me with a gunstock to the head.”

The photo documentation was presented to injured party Enver Duriqi and he gave the following statement:

“Halim Gashi’s house is in the photograph one - I can see that by the pillar of the house; I do not recognise anybody in the photographs one, two or three. In photograph three where a closer picture of Selman Gashi’s corpse is shown, I state that I recognise my father. I know that because he was wearing the coat I bought him. By the same coat I recognise his corpse in the photograph one in the teahouse. In the photograph four I recognise my wife by the wall in the grey and dark green clothes. My older daughter Dafina is in the pink and violet clothes. My mother Isma is also there in the brown coat and Nora, Selatin’s daughter is in front of them. Shefkate Bogujevci, Selatin’s wife, is in the photograph six.”

EXAMINATION OF WITNESS GORAN STOPARIĆ

Witness **GORAN STOPARIĆ** with personal details as in the record from the Main Hearing from 11 November 2002 before the Prokuplje District Court; did not know the defendant before; they are not related; warned; advised pursuant to Article 100 of the Criminal Procedure Code; he gave the following statement:

“I was in the Scorpions unit, we took off from Šid to Belgrade and then to Prolom Banja. We spent some time in Prolom Banja because we were waiting for some other people from our unit to join us. When these people arrived we took off for Podujevo. We were issued with 7.62 mm automatic rifles in Prolom Banja. Before we arrived to Podujevo, our company commander Slobodan Medić told us that approximately half of the town was under Serb control and we were supposed to participate in the action of taking over other half of the town.

We came by buses in the centre of the town and after we arrived we were ordered to get off the buses because it was not safe to stay on the buses because of the bombing. I got off the bus. I was mostly with my friend Milovan Tomić whom I knew from before. After some 20 or 30 minutes of hanging around, we were told to look for accommodation in the houses. Tomić and I went together and I saw a lot of police in the town. I think that somebody from SAJ told us to go in that specific street. I saw a lot of police on this street. It was in the afternoon, I do not know the exact time. It was still daylight. I did not see a lot of civilians on the street. I only saw, at the end of the asphalt road, that some civilians were running across the road. Tomić and I went inside one yard where there is something that I call amphora passage. That means two houses connected with a roof. I saw that there was nobody in the house. I went inside one of the rooms in the house and according to the things I found in there, I concluded that people left the house recently. I was in the yard in front of the entrance to the room and that is actually like a small separated house.

In that moment I saw a group of civilians entering the yard. Defendant Saša Cvjetan escorted them. There was one man in that group of civilians, the rest of them were women and children. When I entered this yard there were already several Scorpions members in there. There were little Zicko whose last name is Šolaja, Aleksandar Dabić and Zdravko Smiljić. I think that Dragan Medić "Gulja" came with the civilians then. Actually, I know this because I saw him. I paid more attention to the civilians and I did not see who came with Medić. I think there was another police officer from the regular police force besides the people that I have just mentioned. However, I do not know him and I am not even sure if he stayed in that yard or not. It is possible that he left together with the civilians. When these civilians entered the yard then Zicko Šolaja searched them. I did not see if anybody else searched them. Milovan Tomić stopped this searching. He told Zicko not to do that anymore or something like that.

In this moment all people from the Scorpions that I have already named were in the yard, as well as Dragan Borojević and Nebojša Cekić, but he went out with the civilians and he did not return. Tomić said that civilians should be taken out on the street. Tomić, Pero Čubra, and I were standing together when Tomić said, 'What should we do? The best thing is to take

them out on the street'. There were a lot of people and I did not see all of them.

There was a rumpus and there were a lot of civilians. In that moment I did not see if some of the civilians were killed. Before I read about this in the newspapers I thought there were 12 or 13 of them. I was probably wrong because they were carrying some of the children in their arms. Tomić and I went out with these civilians to the fence. Nebojša Cekić, I, and this police officer in uniform went out together with the civilians. None of the other Scorpions members went in front of the fence where I was standing. Since there are also other houses in this yard, I assume they went inside these houses because it was all happening so fast. When these civilians went some 20 or 30 metres down the street in the direction where Boca and Tuti-nac were because we sent them there, since we assumed that Boca and Tu-tinac would know what to do in situations like this one, some of the police officers on the street shouted something like, 'why are you chasing them out, take them back'. After somebody said this, women, I think, just turned around and returned to the yard where I was still standing at the gate. The man who was with them did not return. I saw that there was some fuss around this man, but I did not pay any more attention. I do not even know if the man entered somewhere. In that moment these women and children passed by me and went inside the yard again.

From the spot I was standing at, it was impossible for me to see very well what was going on inside the yard where these women were. Besides this, I was not even looking in that direction. I was looking across the road at some house for which I thought was good for my accommodation. In that moment I heard gunfire. It sounded chaotic. Probably one started shooting first, then the second started shooting, and then the third started shooting. I heard that several automatic rifles were shooting, maybe four or five automatic rifles. I assumed that they were shooting at the civilians inside the yard. I wanted to go to the place I heard the gunfire coming from, but Milan Tomić stopped me and told me, 'Do not go there, fool, and get your hands dirty'. Then I stayed at the gate. I was at a position some one and a half metres inside and from there I could see a part of the yard, actually a staircase.

Then Scorpions members started coming out of that yard. I first saw Dabić and Smiljanić who came down the stairs. I assume they came down from the house. There is probably some balcony or something on the floor where they came from. Dragan Medić, Saša Cvjetan, Dragan Borojević, and Dejan Demirović came after them. I think that all of them, except Demirović, changed their ammunition clips while walking. Demirović came out last and I did not see if he changed his clip. The last person I saw was Demirović because after I saw him I turned around and went out and there were people in the yard who were coming out later. Olujić was already lining his platoon and we lined up on our own initiative because we knew that something happened, which should have not happened.

Everything was happening very fast. A minute passed after these women returned to the yard and before we heard the shooting. I think that the shooting lasted less than one minute. Right after the shooting stopped they started coming out of the yard. I did not hear anything from the yard. Later on when I was thinking about it, I was really surprised that I did not hear any crying from the yard. I did not hear if the Scorpions members talked among themselves about it and I did not even pay attention because I could not have believed that somebody would be able to kill civilians, especially children. I know there were children, but then, at the scene, I could not assess how many children there were. Now, based on the information from the newspapers, I know the exact number. I know that some other people came out from that yard, but I cannot say who they were. I think they were the Scorpions members. I did not see where Olujić came from.

After a short period of time, maybe a minute, two, or three, one SAJ member, Vuk, arrived. He went inside the yard and brought out a wounded girl. One of his colleagues came after him and he wanted to enter the yard, but Vuk did not let him. Vuk told his colleague, 'There is nothing for you to see'. The colleague asked him if they killed everybody and Vuk said yes. After this, doctor Dragan arrived. I saw that he was giving first aid to this girl. Commander Boca came, as well as Tutinac. Some people followed them. Tutinac and Vuk were yelling, 'Idiots, you should all be killed.' They were probably thinking of us. I did not go inside the yard and soon after that we went inside the buses and returned to Prolom Banja. There was an argument on the bus regarding who did this. Brka Željko Đukić reacted first and said, 'Who could have done something like that? Well, I have three chil-

dren.’ Gulja then said, ‘Shut up, Brka, I did it. So what?’ Then Brka shut up. Cekić was sitting behind me. He reacted really badly. He said he wanted to go back home immediately and he was mad because they called him after all. There was no other topic, but this event, on the bus and during the following ten days we were in Prolom Banja. I heard from Borojević that he allegedly participated in this, but that he did not do it. Later on, he did not want to talk about it. . Tomić mostly conducted his own private investigation. We, actually, all knew who did it. The names of Cvjetan, Demirović, Dragan Medić, and Borojević were being mentioned in Prolom Banja in relation to this event. Later on, the name of Borojević somehow disappeared and only these three names stayed.”

The presiding judge asked an additional question and the witness answered:

“In the moment the civilians came out of the yard and then went back inside the yard, I did not hear shooting, except for one shot and I did not pay attention to it because I did not know where it was coming from. After the shooting in the yard, the first shot that I heard was when I was already on the bus. That was only one shot that sounded a bit rougher. After that shot, the driver took off because he was scared.

When we returned to Prolom Banja the fuss and the argument culminated with the platoon leader’s speech after which a part of the people returned the uniform and weapons and desired to go home immediately because they did not want to stay with us any more. The reason was the murder of children. The people who returned were mostly the ones who joined us later. It was mostly, but not exclusively, them. We all had civilian clothes so it was not a problem to take the uniform off and return it.”

When the witness’ statement given in the main hearing on 17 December 2002 was presented to him, he said:

“What I said during today’s session is the truth that I saw. I gave a different statement in the earlier main hearing because the defence attorney advised me to do so. I was targeted. Now, I am considered a great traitor of Serb people and it is normal that I am scared.”

Then the defendant stated, "Lies have no wings!"

The witness then stated:

"I will be probably hounded because of this. Because of these children I am not sorry if I have to suffer. I fought in the wars for ten years. I was a member of the Scorpions unit for a long time and I have never seen that somebody killed a child. I believe the court should order special security measures for me."

It is noted that the witness stated that, when the civilians were returned from the street back in the yard, the person who said that the civilians should be returned also said, "why are you taking them out. Take them back inside the house. Tomorrow when we start, we'll take care of whoever stays in the houses".

Injured parties' representative attorney Dragoljub Todorović asked a question and the witness answered:

"I heard in Prolom Banja that Borojević allegedly separated one woman from this group of civilians and took some money from her. Just as I have already said, Borojević was proud of it in the beginning. I assume he killed this woman, too. After this, he did not say a thing. As far as I know there was no investigation into this act. Nobody interrogated me. We were sent back home after some ten days that we spent in Prolom Banja. SAJ Commander came to us and thanked for our cooperation. He told us that we could go now and that they would call us again when they needed us. Some ten days after we returned home, we were deployed to Kosovo again, but Cvjetan and Dragan Medić were not with us this time. Olujić was with us."

Attorney Teki Bokshi asked a question and the witness answered:

"I intended to testify the last time and I was not so sick that I could not testify, but the reason for me not to testify was the conversation I had with Commander Medić. In the court hallway he was telling me about the consequences of my today's testimony. He did not say he would kill me, but

he said that the consequences would be drastic. He also told me what the advantages of the other statement were.”

The defence counsellor asked a question and the witness said:

“When the defendant entered the yard with the civilians he was walking with the rifle in his hand. We usually do not wear belts and we carry our rifles in the hands. As far as I can remember only Rajko Olujić had a bandana and it was a black bandana. The defendant had the same hair as he has now. Maybe it was a little shorter. There were several Scorpions members who had their heads shaved, but I could not say that the defendant was shaved. Our uniform was camouflage; the pattern was similar as on the NATO uniform. We were all supposed to wear caps of the same material as uniform with the police sign on them. Demirović was the only one in the unit who wore a helmet. He was also the only one in the following deployment who wore a helmet.”

Because he could not claim that the witness was lying, the defendant asked him what instructions he had received from Nataša Kandić. What did she tell him to say and what did she offer to you? The witness answered:

“I have not been instructed. The only instruction I received was when I was giving my previous statement. Then, attorney Kalanj told me to say that I was running towards the scene of the shooting and saw Cvjetan, as well.”

Then, the defendant said he raised objections against this testimony because it was impossible for the witness to see him when the civilians were entering the yard because the defendant was not there at that time, because the defendant was in the neighbouring yard. The defendant was in the yard owned by the previous witness and in his yard, he opened gunfire in the air, but he did not change the clip right away, but in Prolom Banja.

The presiding judge asked another question and the witness answered:

“I do not know if it is possible to enter the yard, which I was in, from another side or to exit at some other side.”

The injured parties' representative Nataša Kandić asked a question and the witness said:

"Commander Slobodan Medić told me on Monday when the previous main hearing was scheduled that his brother Dragan "Gulja" would die in jail in two days because he was sick. He told me, 'Do this thing for me and we will sit down at my place and we will pay it off. I know that you are not a traitor'. I told him, 'I see how you trust me when you came here' and he did not want to enter the courtroom, but he stayed in front of the court building. When I came out of the court building, Medić did not see me. I guess he did not expect me to get out so soon."

The injured parties' representative asked another question and the witness answered:

"On one occasion, I met Saša Cvjetan and Dejan Demirović in Novi Sad after they were released from detention. The two of them then said, 'Boca set us up. The police officers even asked us what the liquid that Boca used was.' They told me something like, Inspectors talked to them only about Boca. They were saying that the two of them were victims, that Boca wanted only Cvjetan to be liable for this because somebody had to be prosecuted. When somebody changes the clip that means that his rifle is empty or that he does not have enough ammunition. I changed the clip when I had only ten bullets in it because I always liked to have my clip full. The clip is full when it has 30 bullets."

No further questions.

The defendant stated, "As for me, I believe that the witness is safe. I do not know who threatened him and what happened afterwards."

The deputy district public prosecutor proposed that the authorities of interior be ordered to take special security measures in order to protect witness Goran Stoparić.

The court brings the following

Ruling

The Republic of Serbia Ministry of Interior will be asked to set up the special security measures to protect witness Goran Stoparić pursuant to Article 109 Paragraph 3 of the Criminal Procedure Code.

The court brings the following

Ruling

The session will adjourn because the working hours are over.

The defence counsellor was asked to schedule the time for the following day. He said he would try, but he is not sure if he will find the suitable substitution if the main hearing continued the following day.

The main hearing will continue on 11 December 2003 at 10:00

The session ended at 16:30.

RECORD FROM THE MAIN HEARING

Composed before the BELGRADE DISTRICT COURT trial panel on 11 December 2003 in the criminal proceedings initiated against defendant SAŠA CVJETAN because of the war crime against civilian population pursuant to Article 142 Paragraph 1 of the FRY Criminal Code upon the Belgrade District Public Prosecution's indictment Kt. number 1273/02.

PERSONS PRESENT:

Presiding Judge,

Biljana Sinanović

Deputy District Public Prosecutor
(DPP),

Ružica Janić

Jurors:

Vinka Beraha-Nikićević

Pajović Ivica

Nikolić Nada

Rakić Ljubiša

Defendant

SAŠA CVJETAN

Court Reporter,

Slobodanka Nedeljković

Defence Counsellor,

Attorney Đorđe Kalanj

Session began at 10:00

The main hearing is public.

It is noted that deputy district public prosecutor Ružica Janić, defendant Saša Cvjetan, who was brought from the district prison, and defence counsellor Rajko Jelušić, who is replacing attorney Đorđe Kalanj, are present in the courtroom. Witnesses Rexhep Kastrati and Veseli Nazim also appeared before the court.

The defendant stated that he accepted to be defended by attorney Rajko Jelušić during today's main hearing. This attorney is replacing attorney Đorđe Kalanj.

Injured parties' representatives, attorneys Dragoljub Todorović and Teki Bokshi, as well as Nataša Kandić, are present. Court interpreters Mira Rugova and Vegim⁶³ Rugova are present, too.

The court makes the following

Ruling

The main hearing shall continue with the adducing of evidence.

CONTINUATION OF PROBATIVE PROCEDURE

EXAMINATION OF WITNESS REXHEP KASTRATI

Witness **REXHEP KASTRATI** from Podujevo, 173 Skender Beograd; 57 years old; teacher by profession; currently unemployed; he did not know the defendant from before; they are not related; advised; made the declaration; informed pursuant to Article 100 of the Criminal Procedure Code; he said he would give his evidence in Serbian language, which he knows very well; and he gives the following statement:

"Approximately one month before 28 March 1999 I came with my family to my brother-in-law Sabit Gjata's house in Podujevo, I think it was Kosačić Ivan Street at the time. On 28 March I was still in this house and I believe that this day was a tragedy for the citizens of Podujevo because a lot of innocent civilians, mostly women and children, were killed. My two sisters, of whom one is paralysed, and my brother-in-law's brother were in the house, too. They were all there with their families, so there were more than 30 people in the house.

⁶³ Rugova Begim

Sometime around 08:00 in the morning, maybe it was 08:10, I heard somebody knocking on the door. I headed towards the door. In this moment there were already a lot of people in uniform in the yard. Isak and Xhafer Gjata's houses were also in this yard and there were a lot of people in these houses, too. When I went out, my sister went first and she stood in front of the house. The people in uniform already broke the fence and entered the yard. I saw approximately four different types of uniform. Ones had camouflage uniform. Some had completely black uniform with black bandanas, and they also wore black sunglasses. There were also some people in blue overalls. My sister held 1,000 marks in one hand. It was one banknote. She gave it to one of the people in uniform. He asked her what that money was for. I took the money from her and said, 'My sister is treating because you will let us go. We spent four days inside the house and we do not know where to go.' This man took the money and grabbed me by the jacket with his left arm. He aimed his automatic rifle at my chest with his right hand. This man was wearing a green camouflage uniform. He was tall and handsome. He was maybe as tall as I am and I thought he might be a good athlete and wrestler. He did not wear anything on the head. His hair was short. There were a lot of other people, too. All the time he held this automatic rifle pointed at me he was asking me what was behind the door on the left side. This door was unlocked and I told him that there are mostly bags with things from the grocery store. I opened this door and then he asked me what was behind another door, which was locked. I told him pickles. He broke the door with his leg and asked me what was located under the staircase. I told him a water pump.

Then he started shouting that everybody should get out immediately. I also started yelling in Albanian, so that all of my family members would get out of the house as soon as possible. When everybody came out I asked this man if I could go in and take my paralysed sister out. However, he did not let me do that. He still kept his automatic rifle pointed at me. We were mostly barefoot and we did not have time to dress and they did not let us dress. There was a shoe compartment on the right side from the entrance. They did not let anybody go back inside the house. My other sister took her jewellery and gave it to the soldiers. They accepted it. Then my daughter came out of the house and when she saw this man holding his automatic rifle pointed at me she screamed, 'They will kill my father'. One police offic-

er, who I did not know at the time, but I found out later that his name was Toma, gave her a pair of shoes and said, 'Do not be afraid'.

Approximately at the same time, people from Isak and Xhafer's houses started coming out and we heard some noise. There were a lot of cars in this yard and they kept asking me for the keys. I told them that I did not have any keys. Fortunately I explained to them that a part of the yard where there were no cars belonged to us and this part with the cars belonged to our neighbour. When he heard the noise, this man let go of me and ran. I heard somebody saying to him, 'Saša, what are we going to do with these over here?' I did not hear him say anything. Then one of the police officers, it might have been Toma, said, 'Everybody out' he was sending us out of the yard. We went out of the yard on the street and we were all standing in a group in front of the grocery store and a boutique. Everybody who was with me in the house was now on the street and people from Xhafer and Isak's houses were still coming out.

The man, who was holding me before, was already on the street. While we were walking down the street, he was standing in front of us and said, 'I will kill you all'. Then he came to me and separated me from the group of people and pointed his rifle at me again. He asked me why the dogs were barking, because we heard some dogs barking from some yard, and then he asked me why did I speak Serbian and I said because I learned it in Belgrade. Then one of the people in uniform came to him from the group and said, 'Let the man go'. This man let go of me, but he turned his rifle around and hit me with the gunstock in the face. I still have a scar.

Then I joined other people and went with them because some of the people in uniform told us to go up. I previously waited for my paralysed sister and when she came we joined other people. When the people in line started walking, the man, who was holding me before, started shooting in the air. I know that he was shooting in order to scare us. I did not hear gunfire other than this. As we were walking up the street, some 15 or 20 metres away from our yard, near the entrance to Selman Gashi's house, when people from that house started coming out of the yard, I saw that they kept Selman and told him, 'You with the white cap, you are staying with us'. Then they went inside his yard together with him.

After this, we left Podujevo and returned on 20 June, three months later. During these three months, my daughter was in Podujevo once. When she was returning from Podujevo, on her way out of the bus in Priština, she recognised police officer Toma and she told him that she knew him and that he was in the group of people that drove them out of the house. He took a bottle of Coca-Cola and gave it to my daughter and her friend and said that we got off easily because we could have ended up like our neighbours. At that time we already knew about the fate of the Duriqi and Bogujevci families.”

The presiding judge asked a question and the witness said,

“I could recognise the man who had his automatic rifle pointed at me and whose actions I have described, but I do not think I could recognise any other person. I recognise the defendant’s face. He is the person, who held his rifle pointed at my chest, hit me with the gunstock, and shot in the air.”

The deputy district public prosecutor asked a question and the witness said:

“The man I recognise as the defendant was behaving insolently; he was saying all the time ‘why didn’t you get out. What were you waiting for?’ I argued with him for 15 or 20 minutes, maybe longer, until my family members came out of the house. He was pushing me with the barrel of his rifle and because of his behaviour I concluded he was in charge because that is how he behaved. He was furious. I am saying that there are 20 metres from the house I was in to Selman Gashi’s house on the same street. Right behind Selman Gashi’s house on the same street there is Safet Bogujevci’s house. Halim Gashi’s house is located at the intersection between Kosančić Ivan and Rahman Morina Streets, but this house’s yard is bordering with Selman Gashi’s yard and probably with the Bogujevci’s yard. I do not know exactly who is bordering with whom. You can enter any of these yards through other yards. That means that you could go from the yard that belongs to the house I was in into Safet Bogujevci’s yard without going out on the street. This means it was possible to go in there through this yard. There was a wire around each yard. We always had passages between the neighbouring yards. We had them before and we still do.”

It is noted that the photo documentation was presented to the witness and he explained:

“In the photo number one - marked as the general view of the entrance to the house - I recognise the house in which Hamdi Duriqi was staying. I do not know whose house this is. It might be the Bogujevci family’s house. On the sketch of the scene of the crime that was shown to me, the house I was in was on Kosančić Ivan Street, somewhere between the boutique and place with the ‘Video Games’ sign. Behind the Video Games place, as it was marked in the sketch, there is an entrance into the house I was in. Gashi family’s house is located above the grocery store and this place. Selman Gashi’s house is not there, but approximately somewhere around the place marked as TV Repair Shop. Halim Gashi’s house is located further down on Rahman Morina Street at the location marked in this sketch as grocery store. After we left the yard we were going towards the northern part of the town. I am pointing this street on this sketch. That is Kosančić Ivan Street, which is in the opposite direction from Rahman Morina Street. Bogujevci family house was located approximately around the place marked as Bank. I did not see the Bogujevci family members while we were walking from our yard and neither did I see anybody in their yard. It was all closed and locked.

In this photo documentation, in the photo number two, marked as the position of the body on the staircase across from the house number 267, I recognise Hamdi Duriqi. I recognise Selman Gashi in the photo number three. I recognise him by his coat. I do not recognise other people in the photos.”

Injured parties’ representative Dragoljub Todorović asked a question and the witness said:

“I heard later on that Selman Gashi was killed and he was found in the mass grave site together with the Bogujevci and Duriqi families. I think that Halid⁶⁴ and Selman Gashi were further relatives.”

⁶⁴ Halim Gashi

Injured parties' representative Nataša Kandić asked a question and the witness said:

"I cannot remember anything else that was specific for the person I recognise as the defendant besides the things I have already described."

The defence counsellor asked a question and the witness said:

"I had a feeling that the defendant was in charge because other people in uniform looked at him and they asked him, 'Saša, what shall we do with them?' I think this man let go of me because he heard the noise elsewhere while the people from Isak and Xhafer's houses were coming out. I did not have a feeling that somebody told him something. I did not hear that. I cannot say what made him let me go the second time he caught me. Maybe he decided on his own and maybe he listened to the person, who told him to let me go. I think that this person, who told him to let me go, wore black uniform and black glasses, but I am really not sure about this detail. In these moments I did not hear any shooting nearby."

After the defence counsellor insisted, the witness rephrased a part of his statement:

"Among others, the defendant asked me, 'Why do you speak Serbian so well?'"

Then the defendant said:

"It is true that I am the person Rexhep Kastrati has recognised. It is true that I was the first one who entered this yard and the witness was there with his sister. This woman held jewellery or money in her hand and I did not take it. I asked, just as the witness said, 'What are you paying with this?' I do not know if some of the other unit members took it. It is true that I asked the witness why he was speaking Serbian so well and he said, 'Because of the job'. I carried my rifle in the hands because I was going to the unknown area and I did not know what to expect. It is possible that I pointed my rifle at the witness as he explained it today here. It is true that I asked the witness what was behind the door on the left side from the staircase. I did not break that door, I did not even get close to them even though I remember him saying that it

was a door leading to the boutique. I remember telling him that they should all get out of the house. I do not remember that the witness was barefoot. I also remember him saying that up on the floor he had a paralysed sister. It is not true that I pushed him with the gunstock as he described or that I hit him with the gunstock in the head. It is true that I pushed him with the gunstock on the head, but it did not happen in the moment the witness said. It happened later, but I want to say everything in order. I know that they all came out of the house and stood on the right side of the door. There were some bags. I think that nobody searched the bags. I do not know how many persons there were exactly. I remember that I heard the noise in the neighbouring house. I think that somebody said there were people in this house and one police officer said in Albanian that they should all leave the house. I think that I asked what to do with these people or somebody asked me and then somebody said to let them go down the street. I think that in this moment I pushed the witness with the gunstock as he described. I know that he got up and they went some 20 metres away from us, stopped, and looked at us. Then I fired a short burst of gunfire, maybe some ten bullets, in the air. I did it because of the safety reasons so that these people would hurry not to see that our platoon would move into this house. A group of people went further down the street without turning back. After this, I went back inside the house as I explained in the earlier main hearing."

The defendant asked a question and the witness said:

"I spoke to Mrs. Nataša Kandić regarding this event and I did not speak about it with anybody else. It is true that it happened on 30 or 31 October last year. During our talk, Mrs. Nataša Kandić asked me if I would testify and I said yes. As an answer to the defendant's question if somebody took some transparent bottle and put it under the nose, I may say yes, you did it. That happened in the moment when the line of people took off; the defendant took a small bottle out of his left pocket and smelled it; and yes, it is true that after this he was becoming more aggressive. I did not feel the hits with the gunstock to the body, but later when doctors were treating me, I took off my shirt and the upper part of my body was bruised. I had a feeling that the fluid in the bottle was colourless. I had no reason to say that this man had strange eyes."

The presiding judge asked another question and the witness said:

"I did see the defendant's picture last night on TV, but I think I saw his picture before, when I was speaking to Mrs. Nataša Kandić."

The defendant said to the witness that he was sorry, but that he had been acting as a professional accomplishing his duty. He suggested that the court brings in a court expert, who would determine whether such a transparent liquid existed, which you can smell and become more aggressive.

The defendant then stated that he objected a part of the witness's statement in which he mentioned this liquid and he believes that the witness was instructed to say this in order to show the worst possible picture of the Serb police and, in relation to this, he mentioned that witness statements titled "In the name of the victims" were published in the 'Danas' daily newspapers and the statement given by the witness, who was examined here today was published on 22 and 25 November 2002.

After this the witness said:

"Nobody instructed me. I said what happened that day the way it did happen. It is true that I said this to Mrs. Kandić."

EXAMINATION OF WITNESS VESELI NAZIM

The witness **VESELI NAZIM** from the village of Dubnica; 30 years old, labourer by profession; employed; does not know the defendant; they are not related; advised; informed pursuant to Article 100 of the Criminal Procedure Code; said he would testify in Albanian and therefore it is noted that the witness will give his statement with the help of the court interpreter for Albanian language.

"On 28 March 1999 my family was in Skender Huseni's⁶⁵ house together with three other families. Skender Huseni⁶⁶ is a former interpreter. This house is on the street, which was previously known as Kosančić Ivan Street.

⁶⁴ Skender Hyseni

⁶⁵ Skender Hyseni

In the early morning hours on this day, diverse military and police troops filled up the street. Approximately around 09:00, one unit, I do not know what kind of unit it was, was on the street. I was looking at them from the window and among them I recognised some people from the places around Podujevo. Then, something significant happened. I saw from the window that one soldier pushed a metal fence, which was previously locked. He took a revolver that he carried on his waist and fired a bullet into the lock and broke it, opened the door, and then some police officers or soldiers started entering the yard. In this moment I was coming down from the second floor. I was going to inform Tahiri and Jusufi families that there were soldiers in the yard. I did not go through the yard. I went through the window. We intentionally left that window opened so that we could inform each other. These houses are located in the same yard. Actually, that is a two-storey house with two entrances. I went to this other family and informed them that a lot of troops came inside the yard. In this moment they knocked on the door. Selim Tahiri opened the door and said welcome. One person in uniform came in. He wore a green camouflage uniform and I only remember that he had police written on his back. In that moment when this person came inside the house, he told us that all men should go out of the house. When I went out I saw one person from the village that I knew. His name was Dragan Biočanin. He worked in the municipal building next to the Defence and Protection Office. They searched all of us and asked for my ID card, which was in my back pocket and I wanted to take it out.

One police officer said, 'I will get the ID card for you'. My ID card was in my wallet. He took my wallet and looked at my ID card. It was there together with my driver's license and some money. He checked my ID card and put it back. Dragan Biočanin and another two soldiers or police officers, I am sure they were police officers, took Selim Tahiri and Isak Jusufi. It seemed as if he took them for some kind of protection and went inside Ferhi Ibrahim's⁶⁷ yard.

Then, they went out of this yard and went inside some other yard; I do not know whose yard it was. While they were in that yard, a lot of police officers came in the yard where we were and started checking everything. When they took Selim and Isak back one of the police officers asked for

⁶⁷ Ferki Ibrahim

money. Late Selim Tahiri called his sister Shevadie⁶⁸ and asked her for the money because she kept the money. She came out and started taking out the money she kept in her bra. I do not know how much money she had, but I do know that she separated around 200 marks. One of them took all of her money. In this moment Isak's daughter Vallbone⁶⁹ was there, too. They took these two girls, Veradie and Vallbone⁷⁰, put them inside the room and searched them to see if they had any more money. They found a lot of money on Vallbone, as she said it was around 7,000 German marks. One of the police officers told me to come in and asked money also from me. I told him I only had some marks and he took that money. In that moment he loaded his automatic rifle and put it against my forehead. He asked me where I hid the rest of the money. He said, 'Tell me or I will kill you'. In this moment I concluded he was going to kill us all. I had a blue jacket and I started to put on this jacket and told him, 'Kill me, but we do not have any other money'. In this moment some other person came and dragged him back. He punched me twice in the face. Then the third person came and asked him, 'Why are you hitting this guy?' I thought he was trying to protect me, but he also started hitting me and he tried to kick me in the genitals. In this moment I raised my leg to protect myself and he hit me in the thigh. He hit me so hard that I fainted. I fell and they ordered me to get up. Then some other police officer came and he was wearing a police jacket. He had all sorts of tools in that jacket, like screwdrivers, scissors, and pincers. All these police officers that I have just mentioned wore the same uniform. There were more than 50 in the yard. They wore a green camouflage uniform with police written on the back. Not all of them wore caps, but those who did, wore the same caps. They were round, and they were also green camouflage, just like the uniform.

The police officer, who came later, took the pincers from his jacket and said, 'Do you know that I will pull all of your teeth out, one by one?' In this moment I told him, 'If I do anything to you then you pull my teeth out'. Then they said that we should send all men to the Podujevo Police Station. I was barefoot, but I did not dare ask them to take my shoes and I decided to go in my socks. When we came to the other entrance, I saw several pairs of

⁶⁸ Feradije Tahiri Jusufi

⁶⁹ Valbona

⁷⁰ Feradije [Tahiri Jusufi] and Valbona [Jusufi]

flip-flops and I asked the police officer if I could take one of them and he ordered me to put them on. Then we went out on the main street.

When we got to the street leading to the police station, they ordered us to go back to the place we were before. We went back and then they ordered us to go inside the hallway of the house we were in before. One police officer told us, 'Get ready as soon as possible and get lost from here'. In this moment I was at the end of the hallway. The hallway was covered by the green curtain and a small window at the end was opened a little bit I was looking through that window and I saw a male around 160-165 cm tall, not really a big person, in green pants. I think those were wool pants made for the army reserves. He also had a black turtleneck. In this moment he wanted to enter the house at the main entrance, but when he saw us inside the hallway, he went back and stepped inside the hallway with his right foot and said in Serbian, 'What are you doing here, bastards?' he ordered us to lean against the wall and he started shooting at us. He fired the whole clip. We found 29 bullet cases after NATO came to Kosovo. In this moment I realised I was wounded. But I still stood on my feet. I could not lie down. I think I was shot with 12 or 13 bullets in the stomach.

Selim Tahiri was screaming, 'Poor me, I am done' and his father, who had gunshot wounds all over his body, tried to escape to the other side. He climbed three steps and left lying there, dead. Isak Jusufi was also lying unconscious. We thought he was also killed. In this moment I tried to fall on the ground because I was scared. I was scared that they might return and start shooting at us again. So, I lay on my stomach. I thought that if they returned, they might think I was dead. My sister Nexhivana was the first one who came from the second floor where my family was and she saw that they killed everybody. In this moment I turned my head and said, 'Hush, I am alive'. Selim and Isak's families came afterwards. Then my mother came and asked me what happened, and I said 'Nothing, I was just wounded in the right arm'. I did not dare tell her I was wounded in the stomach, as well. Then, my mother took my daughter's diaper and put it around my arm to stop the bleeding. We did not have bandages at the time. Then she told me, 'Get up, and let's run away'. I intended to get up and walk without her noticing that I was wounded in the stomach, but then I realised I was not able to move and I told my mother, 'I cannot walk because I am wounded in the middle of the body'.

We ran away from this place. Only Selim Tahiri and Idriz Tahiri's bodies stayed there.

This all started around 11:00 and it was 11:40 or 11:45 when this man started shooting at us. I would recognise him if I saw him because his face comes back in my memory very often. When we went out of the house, before we were sent back, I cannot remember seeing any other civilians on the street. The house I was in is located some 50 to 100 metres away from the Bogujevci family house on the same street. From the first moment we left the house, we were turned to the right side while the Bogujevci family house stayed on the left side of the street leading towards the town of Podujevo. I did not see any of the Bogujevci family members on this occasion. We were running away behind the houses; we did not go out on the street. We went through three or four different yards, but we did not go through the Bogujevci family's yard because their house stayed on the other side. We went inside the yard and the garage owned by Abdulah Rahmani. I did not recognise anybody else but Dragan Biočanin in this unit. Dragan Biočanin wore the same uniform as others that I described. Before they entered our yard, the army and police were walking down the street and I noticed four other persons, two wore blue reserve police uniform. These people were Milan Biočanin aka Mičko who worked in the forest as a forester and Radoslav Vičentijević aka Crni who worked in the urbanism department as a construction Inspector.

I do not remember seeing defendant Saša Cvjetan at the scene of the crime."

It is noted that photo documentation was presented to the witness and in view of this he gave the following statement:

"In the photo number three, which shows the position of an unidentified body in the house across from the house number 267, I recognise Selman Tahiri. In the photo number two, which shows the position of a body in the same house, I recognise his father Idriz Tahiri. He is not visible so well in the photo number one. In the photo number two, which shows the position of a body in the tea house, I think I recognise Selman Gashi's face, but I am not sure. I cannot recognise anybody in the photo number three. I cannot recognise anybody else in other photos."

The deputy district public prosecutor asked a question, to which the witness answered:

“I was in this house with my family, Tahiri Selim and Jusufi Isak’s families. There were also four members of some other family that I did not know. I believe I would recognise the face of the person that shot if I saw a picture.”

It is noted that the photo album with the pictures of some of the Scorpions members was presented to the witness and the witness said:

“There is no person, who was shooting, among the faces in these photos. I did not recognise anybody in these photos.”

Injured parties’ representative Nataša Kandić asked a question and the witness said:

“I mentioned Biočanin Boban because the person, who shot at us, looked a lot like Biočanin Boban. I saw him before this event. When the state of emergency was proclaimed he came to work in the armature factory. I used to see him on daily basis when I was going to work to Podujevo and he was going from Podujevo to Dubnica. I am not absolutely certain that he was the person who was shooting, but the person who was shooting looked a lot like him.”

The deputy district public prosecutor asked another question and the witness said:

“I do not know if any of the people who were killed that day were buried in the village of Dubnica. Actually, Selim and Idriz Tahiri were buried in Dubnica later on.”

The defendant stated:

“As far as I know, special police units had police written on their backs.”

The defendant asked the witness a question and the witness said:

"I gave a statement to the representatives of the Hague tribunal. I said something, but not everything, to the reporters of the Bota Sot from Priština and I also spoke with Nataša Kandić about this event. I do not know if Dragan Biočanin was together with the person who shot at us and for whom I said it might have been Boban Biočanin. Dragan Biočanin was not inside and he might have been in the yard."

Then the defendant raised an objection:

"This witness gave a statement to Mrs. Nataša Kandić by which pressure was put upon the public, and me, regarding this case."

No further questions.

It is noted that the defendant's mother, Milka Cvjetan, stated that her and her family needed protection because she has been feeling endangered for a longer period of time. She also said that she was asking the Republic of Serbia Ministry of Interior for protection in the Novi Sad Police Station, but nobody provided any help for her. She feels endangered because she has been receiving threats like, "Are you all at home?", "Are you all together?", and threats were sometimes in Serbian and sometimes in Albanian language. She has a feeling that unidentified vehicles park in front of her house without any registration plates. Sometimes it is a white Mercedes, sometimes Golf, and sometimes other types of personal vehicles. Because of the fear, she believes she needs protection. "I live on 6 Nineteenth May Street in Veternik, the municipality of Novi Sad."

The court makes the following

Ruling

The trial panel shall adjourn and the session will continue the following day, 12 December 2003, at 10:00.

The trial panel adjourned at 15:00.

HOW TO PROTECT WITNESSES WHO ARE SEEN AS TRAITORS BY PUBLIC AND POLICE?

The new trial of Saša Cvjetan before the Belgrade District Court is the first for war crimes in Kosovo in which ethnic Albanians have testified in a Serbian court. But, as in the case of a military trial of a Yugoslav Army captain and two privates for the murder of two Kosovo Albanians, the victims remained mostly unidentified. Prosecutors here obviously do not see themselves as representing the victims and do not go to the trouble of establishing their names. This, sadly, indicates that the names of Albanian victims do not matter to us in Serbia.

At the trial of Cvjetan, who is charged with the murder of 19 Albanian civilians in the Kosovo town of Podujevo during the NATO bombing in 1999, four children who survived looked straight at the panel presided by Judge Biljana Sinanović as they gave the names of their dead mothers, brothers, sisters, and by doing so went a long way toward restoring the human dignity of the victims. Correctly pronouncing all the names, Judge Sinanović repeated them for entry into the trial record. It seemed as if she was seeing all those women and children through the eyes of the four before her.

Albanian witnesses

It took a long while to persuade Kosovo Albanians to come to testify in Serbia, which for them is the epitome of all their pain and suffering. The four children remember well the uniforms of the Serbian policemen who shot their mothers and siblings after lining them up against the wall of Halim Gashim's small house. Their fathers escaped with their lives only because they fled a couple of hours before the police arrived. Over several months, I talked with the fathers about truth and justice, and gradually they came around to my view that the courts and public in Serbia should hear the truth about what happened to their loved ones.

Since Serbia has no witness protection legislation or experience in this field, the protective measures were designed by the Humanitarian Law Centre in conjunction with the War Crimes Investigation Unit of the Serbian Ministry of Internal Affairs. It was agreed with the children's fathers, child psy-

chologist and Judge Sinanović that all security personnel would be in civilian clothes, that they would include two members of the multi-ethnic police force from Preševo and Bujanovac, and that no marked police cars would be used. Because of their experience with war crimes trials in Kosovo, it was also agreed that UNMIK translators would be the court interpreters. The judge further instructed a local child psychologist to interview the children to evaluate their ability to testify. The protection team, headed by a well-trained and outgoing police officer, was with the witnesses around the clock. The day after the children arrived in Belgrade, the team took them to the zoo and on sightseeing trips. On one of these occasions, one of the children was heard to remark: "These weren't in Kosovo; that's why they are so nice."

The children and their fathers testified in July 2003 and another four Kosovo Albanian witnesses in December that year. The second group was escorted by UNMIK police to the Merdare border crossing where they were taken over by the same team that provided protection for the first. Again, the team demonstrated a high level of professionalism and sensitivity toward the traumatised victims.

Enver Duriqi, whose four children, wife and parents were killed by Serbian police during the NATO bombing, was in the second group. As soon as the war was over and the Serbian forces had withdrawn from Kosovo, he went to the scene of the crime where his loved ones had been hastily buried and, with his bare hands, dug up a few marbles that belonging to one of his sons. Those marbles are his most prized possession. In the courtroom, he took a small white bundle from his pocket, carefully unwrapped it, and showed the marbles to the judges.

Duriqi and another Albanian witness were in the courtroom when the presiding judge had Goran Stoparić called in to testify. Hanging on to every word, they listened to this member of the Scorpions recount in detail how his special police unit made its way through Kosovo, driving Albanians from their homes, killing women and children.

Witnesses testifying against police

The defendant's counsel, his family and wartime comrades began suspecting Stoparić's "patriotism" as soon as they learned I had met with him in a cafe in the town of Šid. The local police called him in for questioning, wanting to know what we had talked about. Then his comrades began coming, asking if it was true that he was going to "betray the Serb nation." As the trial approached, they warned him to desist or "nothing will save you". Just before Stoparić was due to appear in court, on 10 December 2003, his former commander Boca offered him a substantial reward if he behaved "like a patriot should" and said the punishment for traitors awaited him if he did not.

I did not dare tell anyone that a former member of the special police forces had decided to speak out about the killing of Albanian women and children. The day before Stoparić's appearance in court, I spoke with the Serbian Public Prosecutor, gave him a statement by Stoparić and requested protection for him. When I told the prosecutor about the threats made by Stoparić's former commander and the latter's connections with the police, he replied that Stoparić need not be afraid, that the police, prosecutor's office and court would do their job in the professional and responsible way envisaged by the law.

The first measure ordered by the court was that Stoparić would join the Albanian witnesses who were already under protection. He was taken to a room near the courtroom where he found Enver Duriqi, Florim Gjata, Rexhep Kastrati and Naim Veseli. In Serbian, Duriqi said, "For the first time, I feel better." Gjata put out his hand to shake Stoparić's, and Kastrati and Veseli said: "We were afraid to come to Belgrade, but it was worth it."

The news of Stoparić's "betrayal" had in the meantime reached Šid. First, the wall around his brother's house was defaced with vulgar slogans. Then on 17 January 2004, Igor Sabo called Stoparić's brother on the telephone and, speaking for himself and Milovan Tomić, another former member of the Serbian special police forces who carries a Croatian passport, threatened to fire a LAW rocket into his house. Sabo also advised him to buy a wreath, saying his brother was a traitor and "a dead man".

When Judge Sinanović's order to place Stoparić under police protection came into effect, he was taken over by the Serbian Ministry of Internal Affairs's Protection of Persons and Facilities squad. Lt. Col. Dragan Veškovac assigned one of his captains to look after Stoparić. The witness was provided with decent accommodation and food, but it took the captain two weeks to get him a cellular phone card. Stoparić is a smoker but it appears that buying cigarettes, toothpaste and other necessities for people under their protection is not in the squad's job description. He was never allowed outdoors and all he could do all day was talk with his family and friends on the phone, watch television, read and sleep. In one and a half months, the captain charged with his safety came to see him ten times at the most. As a rule, he would hurry into the room, ask Stoparić if he was sticking to the rules, and then hurry out again.

For the New Year holidays, he arranged for Stoparić to be temporarily relocated so that he was able to spend some time with two friends from Šid. The next day, all Šid knew that Stoparić was housed in a singles apartments building in Belgrade's Bežanija district. Stoparić feels that the captain too saw him as a traitor. In a nutshell, witness protection as provided by the squad consists of isolation and mental torture.

Judge threatened

Judge Biljana Sinanović has been receiving threats for months. In July 2003, just after the Albanian children and their fathers had left Belgrade, there was an explosion outside the Palace of Justice. Since then, she has on several occasions found threatening notes under her windshield wiper and the tyres of her car have been let down twice.

Witness questioned by police

On 4 February, the day before he was due to testify in court, Nebojša Cekić was questioned by police about the subject matter of the trial. He told the court that the three inspectors behaved correctly. But this nonetheless constitutes pressure on witnesses and could lead them to reconsider telling the truth in court.

Future of war crimes trials

The prevailing view in Serbia is that war crimes suspects should be tried by domestic courts rather than the International Criminal Tribunal for the Former Yugoslavia in The Hague. This is something the international community would also like to see and has provided Serbia with major funding to make it possible. The money was used to modernise and equip courtrooms and the detention unit. What is lacking, however, is any genuine readiness of the institutions and society in this country to take responsibility for the crimes committed during the Milošević regime. This, unfortunately, is further away at present than it used to be.

Instead, what we have is a judge whose life is being threatened, a witness under police protection paying a high price for giving testimony, and police who question a witness just before his appearance in court. And all this to protect Commander Boca, and others who profited from the war, senior officers and those guilty of wrongdoing in Srebrenica, Podujevo and many other places. Legislation on witness protection can lay down the best possible measures but who will encourage people to tell the truth in court if we all know that “the nation” would be best pleased with a law prohibiting the prosecution of any Serbs for war crimes.

Nataša Kandić,
6 February 2004

IN THE NAME OF THE PEOPLE

THE BELGRADE DISTRICT COURT's trial panel comprised of Judges Biljana Sinanović as the presiding judge, Olivera Anđelković as the juror, and Judges Pajović Ivica, Nikolić Nada, and Rakić Ljubiša as the jury judges, with Slobodanka Nedeljković as the court reporter, in the criminal proceedings initiated against defendant SAŠA CVJETAN because of the act of war crime against civilian population pursuant to Article 142 Paragraph 1 of the FRY Criminal Code and the act of illegal weapons possession pursuant to Article 133 Paragraph 1 of the Republic of Serbia Law on Weapons and Ammunition, upon the Belgrade District Prosecution's (DPP) indictment Kt. number 1273/02 filed on 13 February after the main hearing, which was public, on 15 and 16 March 2004, in the presence of the deputy district public prosecutor Ružica Janić, defendant Saša Cvjetan, defence counsellors attorneys Đorđe Kalanj and Goran Rodić, injured parties' representatives Nataša Kandić, attorney Dragoljub Todorović and Attorney Teki Bokshi, handed down and pronounced on 17 March 2004 the following

VERDICT

Defendant SAŠA CVJETAN from Veternik, 6 Nineteenth May Street, Veternik; born on 20 December 1975 in Zadar; father's name Milan and mother's name Milka, nee Atlagić; the citizen of FRY; graduated from the military school; machinist by profession; single; no children; no property; regulated military service; there are criminal trials initiated against him before the Bijelo Polje District Court and Novi Sad Municipal Court.

He is found

GUILTY

Because:

On 28 March 1999, in concert with several other persons in Podujevo around 10:00, in the time of war between the Federal Republic of Yugoslavia and NATO Pact Coalition, which began with the NATO Pact's bombing of the Federal Republic of Yugoslavia's territory on 24 March 1999, as well as during the armed conflict with the KLA armed troops, as a member of the Republic of Serbia Ministry of Interior reserve unit known as the Scorpions, in violation of the IV Geneva Convention Relative to the Protection of the Civilian Persons in Time of War from 12 August 1949, provisions of Article 2 Paragraph 1, Article 3 Paragraph 1 Item 1 and Paragraph 2 Item a) and c), as well as the provisions of the Additional Protocol I relating to the Protection of Victims of International Armed Conflict 51, 76, and 77 and Additional Protocol II relating to the Protection of Victims in Non-International Armed Conflict Articles 4 and 13, he treated the civilian persons inhumanly and participated in the commission of murder of several women and children and in the infliction of wounds upon several Albanian children.

When he arrived with the unit to Podujevo at the intersection of Kosančić Ivan Street and Rahman Morina Street where several Albanian houses are located, he entered Sabit Gjata's house where Rexhep Kastrati gave him 1,000 German marks so that he would let the civilians leave the house. He took the money and pointed his automatic rifle at Kastrati's chest, ordered civilians to get out of the house. When they went out on the street with the residents of other houses, who were also ordered to leave the houses, formed a line in Rahman Morina Street, the defendant yelled that he would kill them all, he hit Kastrati with the gunstock in the face, and fired a burst of gunfire in the air in order to make them move faster.

Then he entered a house owned by an unidentified Albanian, searched it, and confiscated and kept for himself a pistol "Zbrojovka", made in the Czech Republic, M-9 type, 9 mm calibre, serial number D 4754 and 15 9 mm bullets. Then, he left the house and went on the street where already a group of women and children was because they were previously forced to leave their houses.

He went together with them inside Gashi family's yard and, in concert with several other persons in this yard, fired several rounds from his 7.62 mm automatic rifle known as a Kalašnjikov at the group of women and children.

By this act he intentionally participated in the murder of 14 persons: Shefkate Bogujevci, born in 1956; Nora Bogujevci, born in 1984; Fezdrie Llugaliu⁷¹, born in 1978; Nefise Llugaliu, born in 1945; Sala Bogujevci, born in 1960; Shpend Bogujevci, born in 1986; Shpetim Bogujevci, born in 1989, Shehide Bogujevci, born in 1932; Esma Duriqi, born in 1930; Fitnete Duriqi, born in 1963; Dafina Duriqi, born in 1990; Arbër Duriqi, born in 1992; Mimoza Duriqi, born in 1995, and Albion Duriqi, born in 1997. He also participated in the infliction of serious wounds upon five children: Saranda Bogujevci, born in 1985; Fatos Bogujevci, born in 1986; Jehona Bogujevci, born in 1988; Lirrie Bogujevci, born in 1990; and Genc Bogujevci, born in 1993.

- by which he committed the act of war crime against civilian population pursuant to Article 142 Paragraph 1 of the FRY Criminal Code.

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2. In the period from 28 March 1999 until 21 May 1999, he possessed, illegally and without a proper respective authorities' license, kept a 9 mm "Zbrojovka" M-75 pistol, made in Czechoslovakia, serial number D-4754 with a clip and 6 9-mm bullets in his apartment on 6 Nineteenth May Street. He obtained the aforementioned possessions during the commission of the criminal act described in Paragraph 1 and they were found in his apartment on 21 May 1999,

- by which he committed the act of illegal weapons and ammunition possession pursuant to Article 33 Paragraph 1 of the Republic of Serbia Law on Weapons and Ammunition.

The court is setting individual punishments for each of these crimes:

- FOR THE WAR CRIME AGAINST CIVILIAN POPULATION PURSUANT TO ARTICLE 142 OF THE FRY CRIMINAL CODE, HE IS SENTENCED TO 20 (TWENTY) YEARS OF IMPRISONMENT.
- FOR THE ILLEGAL POSSESSION OF WEAPONS AND AMMUNITION PURSUANT TO ARTICLE 33 PARAGRAPH 1 OF THE RS LAW ON WEAP-

⁷¹ Fexhrie Blakqori Llugaliu

ONS AND AMMUNITION, HE IS SENTENCED TO 6 (SIX) MONTHS OF IMPRISONMENT.

The court applied the aforementioned legal provisions from Articles 3, 33, 38, 41, and 48 of the FRY Criminal Code and reached against defendant Saša Cvjetan the following

SENTENCE

HE IS SENTENCED TO THE TOTAL OF 20 (TWENTY) YEARS OF IMPRISONMENT, which will include the time he spent in the pre-trial detention from 21 May 1999 until 16 June 1999 and from 15 November 2001 until the verdict becomes final.

The 9-mm M-75 “Zbrojovka” pistol with the serial number D-4754 was confiscated from the defendant, as well as the clip with 6 9-mm bullets because it represents the object of criminal act.

The injured parties were informed that they could claim compensation for the damages in the civil lawsuit.

The defendant was exempted from paying the costs of the proceedings.

STATEMENT OF REASONS

The Prokuplje District Prosecution’s indictment Kt. number 25/99 filed on 25 April 2002, charged defendants Dejan Demirović and Saša Cvjetan with the commission of war crime against civilian population pursuant to Article 142 Paragraph 1 of the FRY Criminal Code. Defendant Cvjetan was also charged with the act of aggravated larceny pursuant to Article 166 Paragraph 1 Item 4 of the Republic of Serbia Criminal Code and the commission of the act of illegal weapons and ammunition possession pursuant to Article 33 Paragraph 1 of the RS Law on Weapons and Ammunition.

The Prokuplje District Court brought the Kv. number 23/02 Ruling on 8 April 2002 by which it was decided that Dejan Demirović would be tried in absentia.

The Belgrade District Court made the Kv. number 391/03 Ruling on 26 February 2003 by which the trial of Demirović Dejan initiated upon the Prokuplje District Public Prosecution's indictment Kt. number 25/99 filed on 25 April 2002 because of the act of war crime against civilian persons pursuant to Article 142 Paragraph 1 of the FRY Criminal Code, was separated from the trial of Saša Cvjetan.

Serbian Supreme Court based in Belgrade, in the trial panel comprised of Judges: Novica Peković as presiding judge, Slobodan Gazivoda, Dragiša Đorđević, Sonja Manojlović, and Dragan Aćimović, as jurors, with Counsellor Jelena Petković-Milojković, and court reporter in the criminal proceedings against defendant Saša Cvjetan initiated because of the war crime against civilian persons pursuant to Article 142 Paragraph 1 of the FRY Criminal Code and illegal possession of weapons and ammunition pursuant to Article 33 Paragraph 1 of the Republic of Serbia Law on Weapons and Ammunition, made a ruling on defendant Saša Cvjetan and his defence counsellors attorney Đorđe Kalanj, Ilija Radulović, Đorđe Mamula, and Goran Rodić's appeals against the Belgrade District Court Verdict K. 792/02 handed down on 17 March 2004, in the Trial Panel's session conducted pursuant to Article 375 of the Criminal Code Procedure on 22 December 2004 and made the following

RULING

Appeals lodged by defendant Saša Cvjetan and his attorneys are APPROVED and the Belgrade District Court's verdict K. 792/02 handed down on 17 March 2004 is DISMISSED and case sent back to the court of the first instance for retrial.

The detention will be PROLONGED for defendant Saša Cvjetan, but, according to this ruling, it can last two months at most and that would be until 22 February 2005.

Statement of Reasons

The Belgrade District Court handed down verdict K. 792/02 on 17 March 2004 by which defendant Saša Cvjetan was found guilty of committing two criminal offences: war crime against civilian population pursuant to Article 142 Para 1 of the FRY Criminal Code for which he was sentenced to 20 years of imprisonment and illegal weapons and ammunition possession pursuant to Article 33 Para 1 of the Republic of Serbia Law on Weapons and Ammunition for which he was sentenced to six months of imprisonment. In line

with Article 48 of the FRY Criminal Code the Court determined a joint sentence for these two criminal acts, which is 20 (twenty) years of imprisonment and it includes the time the defendant spent in the pre-trial detention from 21 May 1999 until 16 June 1999 and again from 15 November 2001 until the verdict becomes final. The security measure of confiscating the object of the criminal act was imposed and a 9 mm M-75 "Zbrojovka" pistol, serial number D-4754 with a clip and six bullets was confiscated from the defendant. The injured parties were advised by the same verdict to initiate a civil lawsuit and claim damages and defendant Cvjetan was exempted from paying the costs of the criminal proceedings.

The following persons lodged appeals against the aforementioned verdict:

- defendant Saša Cvjetan, because of grave breaches of the criminal proceedings provisions pursuant to Article 368 Para 1 Items 10 and 11 and Article 368 Para 2 of the Criminal Procedure Code and the falsely and incompletely determined factual background; he proposed that the verdict be dismissed, as well as his detention;
- defendant Saša Cvjetan's defence counsellor, attorney Ilija Radulović, because of grave breaches of the criminal proceedings provisions, criminal code provisions, and falsely and incompletely determined factual background with the proposal that the first instance verdict be dismissed;
- defendant Saša Cvjetan's defence counsellor, attorney, Đorđe Kallanj;
- defendant Saša Cvjetan's defence counsellor, attorney Đorđe Mamula, lodged an appeal against this verdict because of grave breaches of the criminal procedure code provisions, violations of the criminal code, and falsely and incompletely determined factual background; he proposed that the disputable verdict be dismissed and case returned for retrial;
- defendant Saša Cvjetan's defence counsellor, attorney Goran Rodić, lodged an appeal against this verdict because of grave breaches of

the criminal procedure code provisions, violations of the criminal code, and falsely and incompletely determined factual background; he proposed that the disputable verdict be dismissed;

- defendant Saša Cvjetan's defence counsellor, attorney Anđelkoska Tatjana, after the statute of limitations for the appeal expired, submitted an explanation of the defendant's appeal and proposed that the Serbian Supreme Court dismissed the appealed verdict.

The Supreme Court held a trial panel session pursuant to Article 375 of the Criminal Code Procedure in the presence of the Republic Public Prosecutor Ružica Janić, who supported the stance from the Republic Public Prosecution's submission number Ktž. 1813/04, which proposed that the Supreme Court overrules defendant Saša Cvjetan and his defence counsellors' appeals. In the presence of defendant Saša Cvjetan and his attorneys Đorđe Kalanj, Ilija Radulović, Goran Rodić, and Đorđe Mamula and in the absence of the regularly summoned defence attorney Anđelkoski Tatjana, the Supreme Court discussed the documents from the case file together with the disputable verdict, evaluated the appeals and found the following:

Defendant Saša Cvjetan and his defence counsellors' appeals are founded.

The defendant and his attorneys appeals contain a founded claim that the first instance court made a grave breach of the criminal procedure provisions pursuant to Article 368 Para 2 of the Criminal Procedure Code because it did not properly apply the provision of Article 337 Para 2 of the Criminal Procedure Code regarding the reading of the Witness Examination Records from the examination of witnesses Mijat Bajović, Radica Marinković, and Aleksandar Đorđević because these witnesses were not examined in the main hearing before the presiding judge in the panel which handed down this appealed verdict and there was no consent of the parties to this procedure, especially the defence, to read these records.

These are the witnesses whose statements are important for the regular and legal judgement because witness Radica Marinković claimed that defence counsellor Dragutin Stanković did not attend the interrogation of the defendant on 24 May 1999 when he admitted that he committed the act he

was charged with. In this case this record could not be used as evidence in the criminal proceedings (Article 368 Para 1 Item 10 of the Criminal Procedure Code). Even the first instance court found that it was important and significant to have this issue resolved and alleged that in that case the criminal proceedings should be repeated.

However, this first instance court's conclusion is wrong because the court's right to evaluate the existence or non-existence of facts is neither related nor limited by the special formal probative rules (Article 18 Para 1 of the Criminal Procedure Code), which means that the first instance court was obliged to present all evidence available in the main hearing and discuss this circumstance since it concluded that the important circumstance for the judgement would be the fact whether or not the ex officio defence attorney attended the interrogation of the defendant. By this act, the court of first instance improperly applied the provision of Article 337 Para 2 of the Criminal Procedure Code, which could influence the legal and legitimate judgement.

Besides this, by this act the court of first instance violated one of the basic principles of the criminal procedure, which is the principle of immediacy since the first instance trial panel, which handed down this appealed verdict, did not have the immediate impression regarding the authenticity of witness Radica Marinković's statement. It also violated the principle of contradictoriness of the criminal proceedings because the defendant was not allowed to debate, i.e. to examine witness Mijat Bajović immediately before the trial panel, by which the right to the fair trial was also violated and it represents the omission of the first instance court and the violation of the procedure pursuant to Article 368 Para 2 of the Criminal Procedure Code and the violation of Article 352 Para 1 of the Criminal Procedure Code because the verdict can be based only on evidence adduced in the main hearing.

Besides this, acting in view of this circumstance in two different ways, first of all, if the defence attorney did not attend the interrogation of the defendant, the first instance court concluded that the omission could be corrected by the repetition of the criminal proceedings, and then the first instance court assess these witnesses' statements from the investigation in view of this circumstance, by which the first instance court made the reasons re-

lated to this key circumstances contradictory to certain extent and this represents a grave violation of Article 368 Para 1 Item 11 of the Criminal Procedure Code because it is unclear and uncertain whether or not the first instance court determined this circumstance in the procedure conducted. The circumstance in question is whether or not the ex officio defence attorney attended the interrogation of the defendant on 24 May 1999 when the defendant admitted the commission of this criminal act.

In the retrial, the first instance court will eliminate the aforementioned violations of the proceedings and it will examine witnesses Mijat Bajović, Radica Marinković, and Aleksandar Đorđević directly in the main hearing. These are the witnesses whose statements were read without the defence's consent. In order to determine these circumstances, the court is obliged to examine Miroslav Nikolić. Besides this, the court should demand that the Prokuplje District Court Administration provides information on whether attorney Dragutin Stanković's arrival to the Prison on 24 May 1999 was registered, as well as the arrival of Judge Mijat Bajović and court reporter Radica Marinković. This should be done in order to determine regularly and completely whether or not attorney Dragutin Stanković was present during the interrogation of defendant Saša Cvjetan in the investigation on 24 May 1999 as his ex officio defence attorney.

Besides this, the first instance court violated the provisions of the criminal proceedings from Article 368 Para 1 Item 11 of the Criminal Procedure Code because in the Statement of Reasons it did not provide reasons for relevant facts.

Pursuant to Article 361 Para 7 of the Criminal Procedure Code it is necessary to present clearly and completely in the Statement of Reasons which are the facts and why they are considered proved or not proved, with a special evaluation of the contradictory evidence's authenticity and the reasons the court considered when determining the existence of the criminal act and the criminal liability, and what were the reasons for the court not to approve some of the parties' proposals, for what reasons it decided not to examine directly a witness or a court expert whose statement was read without the consent of the parties (Article 337 Para 2).

The Statement of Reasons in the verdict is not in conformity with the provision of Article 361 Para 7 of the Criminal Procedure Code because the exhibits, based on which the court considered the probation of evidence, on which the existence of objective and subjective elements of criminal act depend, are not produced in the verdict in the most important segments and with the authenticity of the evidence adduced.

The first instance court stated in the first paragraph on the page 22 of the verdict, among others, that witnesses Miroslav Filipović, Svetlana Filipović, Tomislav Petrović, Željko Đukić, Dragan Medić, Slobodan Medić, Nikola Kovačević, Petar Mitrović, Nazim Veseli, Nebojša Cekić, Milovan Tomić, Dragan Borojević, and Srđan Manojlović were examined and Živojin Cvetković's report regarding 19 corpses that were found at the territory of the Podujevo Municipality was read out, as well as the UN International Criminal Court prosecutor's letter with the names of possible injured parties in this criminal procedure and the names of the persons whose autopsies were carried out by the prosecution's personnel and the court failed to evaluate any of the evidence.

Since all evidence adduced in the main hearing must be evaluated and it must be concluded whether or not it proves some relevant fact, by failure to do so the first instance court made the verdict contain no reason for the decisive facts, which represents a grave breach of Article 368 Paragraph 1 Item 11 of the Criminal Procedure Code.

When the defendant changed his defence and the first instance court still adopted the defendant's defence presented on 24 May 1999 it was especially important to evaluate the content of witness Slobodan "Boca" Medić's statement since he was the commander of the Scorpions unit at the time, as well as the statements given by witnesses Srđan Manojlović, who was the deputy commander, and Dragan Medić, also known as Guljo, who is the brother of this unit's commander, and who was, according to defendant Saša Cvjetan's allegations, a leader of one of the platoons, and Dragan Borojević.

It was also necessary to evaluate the statements of the aforementioned witnesses because in paragraph 1 on page 31 of the verdict, the court accepted witness Goran Stoparić's testimony given on record on 10 Decem-

ber 2003, who said that after the shooting in the yard, he saw witnesses Dragan Medić, Borojević, Demirović, and defendant Cvjetan coming out of the yard. They were all, except Demirović, changing the clips of their rifles while walking.

However, as it was already said, the court failed to evaluate the statements given by, first of all, Dragan Medić and Borojević, who denied, as it is visible from the documents, their involvement in this event. Because of this, their statements are contradictory to the defence presented by the defendant and accepted by the court, as well as to the witness Goran Stoparić's statement. When there are contradictory statements and the defendant's statement is considered evidence, in line with Article 327 of the Criminal Procedure Code, especially when the defendant's defence accepted by the court is inconsistent with the aforementioned witnesses' statements, then it is necessary to have the substantial analysis of each individual piece of evidence, then reciprocal analysis, and finally the analysis in regard of other evidence adduced, which was missing in this particular case and by this the first instance court committed a grave violation of the criminal procedure pursuant to Article 368 Paragraph 1 Item 11.

In relation to the aforesaid, not only that the first instance court failed to conduct the overall evaluation of individual pieces of evidence, but it also failed to conduct the substantial evaluation of individual pieces of evidence, again when we had contradictory evidence. In view of this, the court's allegations in paragraph 3 on page 24 of the verdict are vague. "When the weapons were issued, the serial numbers of rifles were not registered anywhere, and when the weapons were being returned, they were not identified..." This court's allegation is contradictory to witness Radoslav Olujić's statement, who gave the following statement in the previous trial on 11 February 2002 (page 55 of the case file): "After the weapons were cleaned, we issued our soldiers with weapons the same evening according to the numbers we had. The following morning we received an order to go to Kosovo".

Željko Đukić claimed the same. He said on the record on 28 March 2000, "I think we were also issued with weapons according to the numbers, but I cannot recall whether we signed for it right away or Srđo made the record... When we were returning the weapons, we had the same procedure. Srđo

wrote down serial numbers of each rifle...” This could represent a decisive fact, especially when related to the ballistic expert’s report and findings, which claim that all bullet cases found at the scene came from the same type of weapon, AK 47 automatic rifle known as Kalašnjikov. This report also alleges that the cases analysed by the ballistics experts, were fired from three different Kalašnjikov rifles made in the country, which could lead us to the possible number of people who were shooting at the scene from these rifles. The first instance court also failed to even try and determine whether the defendant was issued with a rifle with certain serial number and that he returned the same rifle, and if that was correct, then to demand this rifle from the Serbian Ministry of Interior in order to have it analysed by the ballistic experts and determined whether or not the bullets found at the scene were fired from the rifle the defendant was issued with and by this act verify the defendant’s defence. The first instance court will do this in the retrial.

In paragraph 2 on page 24 of the verdict, the court found the following, “Based on the autopsy records, it was determined that 11 bodies were autopsied.”

However, not once in the verdict did the court claim what was the reason for taking this fact as proved. This court’s claim is vague because it is uncertain which 11 bodies it referred to and, which is essential, it did not give the content of the autopsy records and we do not know the cause of death in each individual case and what lead to this cause of death; we do not know which were the injuries on each individual body, the precise description of their location, and the instruments the injuries were inflicted with.

In line with Article 337 Paragraph 1 of the Criminal Procedure Code, the trial panel can decide to read the statement given by the co-defendant, if it is somehow difficult for him to appear before the court because of some other important reasons. Since Demirović was examined as defendant in this criminal trial and since he is in Canada at the moment, it is not clear why the first instance court failed to read this defendant’s statement.

By these grave violations of the criminal procedure, the court incompletely and falsely determined the factual background and this also happened be-

cause the court failed to examine the former Prokuplje District Public Prosecutor Milan Nikolić.

It was necessary in this particular criminal case to completely dismiss the aforementioned verdict; to dismiss it also in view of the criminal act pursuant to Article 33 Paragraph 1 of the Republic of Serbia Law on Weapons and Ammunition because it represents integral and correlated entity with the criminal act from Article 142 Paragraph 1 of the FRY Criminal Code, which is, among others, related by the time continuance and in line with Article 389 Paragraph 3 of the Criminal Procedure Code, this part of the verdict could not be separated from the verdict without causing damage to the fairness of the entire process of making judgment.

Because of everything aforementioned, the first instance verdict should have been dismissed. In the retrial, the first instance court will act upon the remarks presented in this decision. After it removes the serious violations made in the criminal procedure it will be able to reach a legal and legitimate decision.

The Supreme Court believes that it is necessary to prolong the detention against defendant Cvjetan pursuant to Article 142 Paragraph 2 Item 5 of the Criminal Procedure Code since there is reasonable doubt that he committed a crime punishable with more than ten years of imprisonment and it is justified because of the manner of commission and serious consequences of the crime. However, in the further trial, the first instance court will especially focus on Article 146, which regulates the duration of the pre-trial detention after the verdict is dismissed.

Because of the aforementioned, based on Article 389 of the Criminal Procedure Code, this court made the decision as presented in the above written text.

Court Reporter
Jelena Petković-Milojković

Presiding Judge
Novica Peković

DRAGOLJUB TODOROVIĆ SUPREME COURT'S VAGUE DECISION

At the end of the last year, the Serbian Supreme Court dismissed the Belgrade District Court's verdict, by which Saša Cvjetan was convicted to 20 years of imprisonment for a war crime against the civilian population committed on 28 March 1999 in one yard in Podujevo when 14 Albanian civilians (children, women, old people) were killed and five children were seriously wounded.

Several months before this, the Supreme Court dismissed another verdict handed down by the Belgrade District Court, which convicted the perpetrators of war crime committed on 22 October 1992 when 16 passengers of Bosniak ethnicity were kidnapped from a bus travelling from Sjeverin to Užice, who were executed later on. Since the aforementioned verdicts were the only verdicts for this criminal act processed before the Supreme Court, it means that the per cent of the dismissed verdicts for war crimes is one hundred.

As for the reasons because of which the Supreme Court dismissed the verdict against Saša Cvjetan, they are absolutely beyond law and justice, court and codes, court practice and interpretation of legal provisions, beyond logic and common sense; they are completely absurd and nebulous. This is an insolent and flagrant abuse of the position of judge and high judicial institution for the purposes of day-to-day politics.

The first, principle, main, and essential reason for the Supreme Court to dismiss the verdict against Saša Cvjetan was the fact that the first instance court did not initiate investigation into the defendant's allegations that his attorney did not attend his first interrogation before the investigative judge in the Prokuplje District Court when he admitted completely, precisely, clearly, and in detail the commission of the act he was charged with, even though he was legally obliged to be present during the interrogation. The documents show without any doubt or dilemma that the Belgrade District Court's first instance trial panel acted properly and lawfully when it refused to open investigation requested by defendant Saša Cvjetan and his defence counsel, out of the following reasons:

1. It is noted in the record from the interrogation of Saša Cvjetan before the Prokuplje District Court investigative judge Mijat Bajović from 24 May 1999 twice that ex officio defence attorney Dragutin Stanković attended the interrogation.
2. The case file contains a decision for paying a fee to attorney Dragutin Stanković for the ex officio defence of Saša Cvjetan on 24 May 1999. The amount of the fee was determined according to the Attorney Tariff Price List.
3. The record from the interrogation of defendant is an official document composed by investigative judge who was elected by the highest state authority, the National Assembly, which put him/her under oath. There is a presumption that records, seals, signatures, and notes are valid and authentic as long as they are not proved forged in the criminal proceedings and by the valid court verdict. The court practice in all courts and all cases in Serbia is united in the stance that irregularities in the official court documents are accepted only if they are founded on the valid verdict from a criminal trial initiated because of forgery or some other criminal activity.
4. There was and still there is no criminal trial of investigative judge Mijat Bajović because of the aforementioned record.
5. After Saša Cvjetan was interrogated, another person charged with the same criminal act, Dejan Demirović, was also interrogated. According to Judge Bajović's statement, attorney Stanković did not want to defend Demirović because he could not and did not want to defend such a crime. Because of this, the judge found another defence attorney, Šubaranović, who attended the interrogation of Demirović in the capacity of an ex officio defence attorney. The situation with hiring Šubaranović imposes two logical questions: the first - why would the Judge hire and look for an attorney who would be present during the interrogation of Demirović and at the same time note in the record from the interrogation of Cvjetan that his defence attorney was present even though he was not present; and the second - why did not the Judge act the same, as the defence claimed

he acted in Cvjetan's case and stated that Attorney Stanković was present even though he was not in the investigative judge's office.

There is a broad campaign at all levels of Serbian society and broad public for taking over certain cases from the Hague tribunal in which Serbs are defendants. The transfer of the "Vukovar Three" Case (Mrkšić, Radić, Šljivančanin) is especially popular these days.

Even though there has been certain progress in Serbia and certain conditions for the trials of war criminals have been created (special courts and prosecutions have been created, legal regulations have been coordinated, optimal technical conditions have been created, and expert professional and impartial first instance trial panels have been established), the anti-Hague lobby is still very strong, spread, and influential in Serbia. The Supreme Court represents significant foothold, base, and the centre of the anti-Hague lobby in Serbia. Except for the dismissal of Presiding Judge Govedarica and Judge Lelovac, this institution kept the same organisation as it had during Slobodan Milošević's regime. The Supreme Court Judges are former chairmen of the courts, chiefs of criminal departments, and judges who administered the cases of major public and political interest during Milošević's regime. More than 90 per cent of today's Supreme Court judicial staff was elected at the time of Milošević's regime.

After 5 October 2000, the Supreme Court judges, greeted with great applause, loud cheers, and stamping of feet against the floor, the results of their General Session voting, by which they gave a vote of confidence in the Supreme Court judge who gave the key contribution to the electoral theft in Serbia in 1996.

When the new presiding judge (elected after 5 October 2000) spoke badly of Judge Goveadrica in the Supreme Court meetings, a group of judges left the meeting in protest.

The last fabricated process, directed by the Milošević secret police, was the trial of Vladimir Nikolić. The judges in charge of legal enquiring in Sjeverin and Podujevo cases, as well as one trial juror in the Podujevo case were members of Lelovac's five member panel, which convicted Nikolić.

The reasons for the Supreme Court's latest decisions regarding the convictions for war crimes become clearer in this context and it reveals the anti-Hague position of this highest judicial institution in Serbia.

DRAGOLJUB TODOROVIĆ

DECISION FOUNDED ON FALSE PREMISES⁷²

Regarding the Supreme Court's decision published in "Danas" on 4 March 2005, we are asking you to announce the following:

1) In the text, to which the Supreme Court reacted, I said that the first and the main reason for the dismissal of the verdict against Saša Cvjetan is the fact that the Supreme Court demanded that the first instance court initiate investigation and interrogate numerous witnesses by which it would determine whether the defence attorney attended the first interrogation of Cvjetan conducted before the Prokuplje District Court when Cvjetan admitted the commission of this crime, regardless of the fact that the investigative judge noted twice in the interrogation record the presence of Attorney Dragutin Stanković.

In order to clarify this situation with the reason for dismissal, it is necessary to mention that the trial of Saša Cvjetan began before the Prokuplje District Court's trial panel presided by Judge Milorad Lapčević and after several trial sessions the case was transferred to the Belgrade District Court because of safety reasons. At the very beginning of this trial before the Prokuplje District Court, investigative judge Mijat Bajović, his reporter Radica Marinković, and prison chief Aleksandar Đorđević were examined regarding the fact whether or not the defence attorney attended the first interrogation of Saša Cvjetan before the investigative judge.

In the main hearing before the Belgrade District Court's first instance trial panel, the defence's proposal for the repeated examination of investigative judge, court reporter, and head of the prison, as well as a newly proposed witness, the Prokuplje District Prosecutor. In line with Article 337 Paragraph

⁷² The following Supreme Court's reaction was published on 4 March 2005 in the 'Danas' journal: 'Your journal published on page 18 of the newspapers number 2701 published on 18 February 2005 a text written by Attorney Dragoljub Todorović titled 'Supreme Court's Vague Decision' in which the author presented a row of inaccuracies and insults addressed not only to the judges that participated in handing down the verdict in this case, but also to the Supreme Court of the Republic of Serbia. It is not our intention to argue with the author. However, in order to have the public properly, accurately, and completely informed, we are demanding that you, in line with legal provisions, publish on the same page the entire Serbian Supreme Court's verdict KŽ-1-1687/04 from 22 December 2004. This way the public would be introduced to all reasons listed in the verdict pertaining to the dismissal of the Belgrade District Court's Decision K. 792/02 from 17. March 2004'. The verdict of the Serbian Supreme Court was published with necessary summarization.

2 of the Criminal Procedure Code, with the power of attorney previously obtained from the parties, the Belgrade District Court's first instance trial panel read the aforementioned persons' statements given in Prokuplje and used them as evidence in its verdict.

However, the Supreme Court alleged in the decision, by which it dismissed the verdict against Saša Cvjetan that the first instance court made a grave violation of the criminal procedure provisions prescribed under Article 368 Paragraph 2 of the Criminal Procedure Code because the first instance court did not apply or it incorrectly applied the Criminal Procedure Code provision. In this particular case, it is noted that the first instance court improperly applied the provision from Article 337 Paragraph 2 of the Criminal Procedure Code "...because it improperly applied the provision of Article 337 Paragraph 2 of the Criminal Procedure Code regarding the reading of records from the examination of witnesses Mijat Bajović, Radica Marinković, and Aleksandar Đorđević because these witnesses were not examined in the main hearing before the presiding judge of the trial panel, which handed down this appealed verdict and the parties to this case, the defence in particular, did not give consent for these statements to be read."

This is a notorious lie, a complete nonsense, and an insolent deception.

In the main hearing sessions held on 6 February and 2 May 2004 before the Belgrade District Court trial panel comprised of five members, the parties agreed with the reading of statements given by the witnesses examined before the Prokuplje District Court, who were not examined before the Belgrade District Court. Therefore, there is no serious violation of the Criminal Procedure Code prescribed under Article 368 Paragraph 2 of the Criminal Procedure Code because Article 337 Paragraph 2 of the Criminal Procedure Code was properly applied to the first instance verdict.

Other reasons for dismissal emerged from this crude fabrication of the factual background in the documents, which the Supreme Court made in the decision on dismissal. Based on the false premise that the grave violation of the Criminal Procedure Code was made, the Supreme Court put the following remarks to the verdict handed down by the first instance court: "...it violated one of the basic principles of the criminal procedure, which is the principle of immediacy ...", then principle of contradiction, and they also claim that the

right to a fair trial was violated. All of these violations would exist if the allegation presented by the Supreme Court that the first instance court made a serious breach of the Criminal Procedure Code in its verdict by improperly applying Article 337 Paragraph 2 of the Criminal Procedure Code because it read the records without previously obtaining consent of the parties to the trial was true. However, since this information is a brazen lie, since the Criminal Procedure Code provisions were obeyed with consistency and applied properly, there is no violation of the right to the fair trial, the principle of contradiction, and the principle of immediacy. All principles of the criminal procedure are integrated and incorporated in the Criminal Procedure Code and, therefore, if they are properly applied, they cannot be violated.

In this sense, we should remind the public that this Saša Cvjetan's admission of guilt is not the only proof that he committed this act. Witnesses who survived the execution recognised Saša Cvjetan, when he was placed in line with four other persons for the identification process, as a person that was present at the scene during the shooting. One eyewitness also recognised the defendant as a person who came out of the yard where the crime took place, immediately after the shooting and changed the ammunition clip on his rifle. There is also a row of other indirect evidence, which is consistent with the direct and immediate evidence, and represents a logical entity with it and a closed circle in a system of evidence, which clearly shows that Cvjetan shot at civilians.

2) The second reason for the dismissal of the verdict is also a result of the Supreme Court's second instance trial panel's false presentation of factual background in defendant Saša Cvjetan's case file. The Supreme Court does not accept the first instance court's findings that the numbers of rifles issued to the members of the Scorpions, the unit Cvjetan was a member of, were not registered and weapons were not identified during the process of returning weapons. Since this conclusion from the first instance verdict was not accepted, the Supreme Court ordered that the rifle with the number Saša Cvjetan was issued with be obtained from the Serbian Ministry of Interior and that ballistic examination be conducted in order to determine whether or not the bullet cases found at the scene were fired from this particular rifle. The first instance court determined that none of the Scorpions members neither took nor returned weapons according to certain number and it was the same for Cvjetan. It was found based on the following evidence:

The man who handed over the weapons to the Scorpions members and later on took the weapons from them, Srđan Manojlović, gave the following statements on 28 May 2003 during the investigation and in the main hearings held on 10 October 2002 and 6 February 2004:

“When I was issuing weapons, it was not conducted according to the serial numbers...”

“The lack of time was the particular reason why we did not take numbers of the rifles, I mean serial number of a rifle for each soldier...”

“We did not issue the rifles according to the serial number. I gave each soldier a rifle and they were returning them directly on the truck in my presence.”

The commander of the Scorpions unit, Slobodan Medić stated on 28 March 2002:

“Srđan Manojlović was handing the weapons; the weapons were handed as soon as we arrived. They were handed to each soldier without writing any numbers and without any formalities because we did not have time for that.”

Defendant Saša Cvjetan personally claimed in his statement given regarding the issuing of weapons:

“...we received patches and weapons, automatic rifles, which were conserved. They just handed them to us, nobody registered anything.”

Cvjetan did not change this statement in the numerous statements he gave during the procedure.

The Scorpions members Dragan Medić, Zoran Vukšić, Milovan Tomić, Nebojša Cekić, Zdravko Smiljić, Petar Dmitrić, and Dragan Borojević confirmed that the rifles were not issued to them according to the serial numbers and the Supreme Court is calling on the statements given by the Scorpions members, Rajko Olujić and Željko Đukić, who said that each soldier was issued with a rifle according to the rifle's serial number. However, in the main hearing held on 5 December 2003, Željko Đukić gave the following statement in view of the weapons' issuing process:

“Previously, In Prolom Banja, we were issued with weapons, automatic rifles. Srdan Manojlović handed them to us. We received the rifles and I do not think there was any official issuing process. I do not think the numbers were written down.”

The first instance court had significant, valid, and first-class evidence to conclude that the Scorpions members were not issued with weapons according to the serial numbers of rifles. First of all, the statements given by the defendant himself, then Srdan Manojlović, who issued the weapons, Slobodan Medić, who was the commander of the Scorpions unit, and all Scorpions members, except Olujić represent evidence.

Therefore, the Supreme Court’s request for the ballistic examination of Saša Cvjetan’s rifle is unrealistic, illogical, impossible, and completely senseless since it is not certain which of the rifles Cvjetan carried that day. This request was the result of the false presentation of the material facts in the Supreme Court’s decision based on Cvjetan’s case file from the district court.

3) The Supreme Court found another reason for the dismissal of the first instance verdict in the fact that the verdict says that 11 bodies were autopsied while it is said in the text of the verdict that 14 Albanian women and children were executed. Because of this, the Supreme Court believes that the cause of death is not identified for each person and it is not certain what lead to that cause; we do not have wounds for each body with the detailed description of their location and the instrument they were inflicted by. The first instance court had a foothold in most of the evidence adduced in the proceedings for determining the number of executed and wounded persons, the locations where the execution took place, and the weapons used for the execution, first of all, the examination of the children who were at the scene and who survived the execution, and whose mothers, sisters, brothers, and other relatives were killed. The serious consequences of the wounds and permanent disability are very visible in the children. Then, the statement given by the SAJ doctor, Dragan Marković, who was taking the wounded persons from the scene of the crime, provided them with the first aid, and placed them in the ambulance; the statement given by the Belgrade SAJ Commander Zoran Simović; and SAJ officer Spasoje Vulević, who appeared at the scene of the crime several moments after the shooting took place and personally took the survivors out; the statements given by the Prokuplje District Court investigative judge Mi-

jat Bajović and Serb police officers, Milan Anastasijević and Radislav Janković, who participated in the investigation; then, statements given by Miško Keča, the Chief of the Department of Defence in Podujevo, and Srboljub Biserčić, the Podujevo Civil Protection HQ Commander; the examination of Enver Duriqi, Selatin Bogujevci, and Safet Bogujevci, whose children, wives, and mothers were killed or wounded; the testimony of Rexhep Kastrati; and finally, a great deal of material evidence, such as projectiles, bullet cases, personal effects of the killed people, photo documentation, investigation reports, autopsy reports, reports from the identification of bodies, exhumation reports, and international authorities reports from KFOR and the UN civil services.

It is necessary to take into account, when considering the Supreme Court's remarks that, for the legal qualification and the elements of this crime it is necessary to know how many people were killed, their names, place of execution, and the way they were executed. The first instance court determined this clearly, with documentation, and precisely.

4) As for the reasons for dismissing the verdict, which the Supreme Court saw in not evaluating Dragan Medić and Dragan Borojević's statements that the court of the first instance accepted, we believe that the court properly evaluated witness Goran Stoparić's statement in comparison to the statements given by the children, who survived the execution, Rexhep Kastrati's statement, defendant's admission of guilt, statements given by other witnesses testifying about certain segments of the event, which took place in Podujevo on 28 March 1999 when this execution occurred, mainly statements given by the SAJ Doctor Dragan Marković, investigation team, and SAJ officer Spasoje Vulević, myriad material evidence, and it draw a firm conclusion on accepting Stoparić's statement as a valid piece of evidence.

As for the comparison of witness Stoparić's statement on one side and witnesses Dragan Medić and Dragan Borojević's statements on the other, their comparison is legally impossible because witness Stoparić presented incriminating facts for witnesses Medić and Borojević and since Medić and Borojević are not obliged to make declarations regarding the facts that could expose them to criminal prosecution, evaluation of witnesses Medić and Borojević's statements in view of Stoparić's testimony is legally absurd.

RECORD FROM THE MAIN HEARING

Composed before the BELGRADE DISTRICT COURT trial panel on 19 May 2005 in the criminal proceedings initiated against defendant SAŠA CVJETAN because of the criminal act of war crime again civilian population pursuant to Article 142 Paragraph 2 of the FRY Criminal Code, upon the Belgrade District Public Prosecution's indictment Kt. number 1273/02.

PERSONS PRESENT:

Presiding Judge
Biljana Sinanović

Deputy District Public
Prosecutor (DPP)
Dušanka Dadić

Jurors
Olivera Anđelković
Slaviša Pavlović
Vukašin Đurić
Dobriša Ilić
Court Reporter
Slobodanka Nedeljković

defendant
SAŠA CVJETAN

Defence Counsellors
Attorney Đorđe Kalanj
Attorney Goran Rodić
Attorney Ilija Radulović

Began at 10:00

The main hearing is public.

It is noted that deputy district public prosecutor Dušanka Dadić, injured parties representatives Nataša Kandić and attorney Dragoljub Todorović, defence counsellors Goran Rodić and Đorđe Kalanj, defendant Saša Cvjetan (brought from the District Prison), witnesses Mijat Bajović, Radica Marinković and Aleksandar Đorđević came to participate in today's main hearing session.

Witness Nikolić Miroslav, who was summoned, defence attorney Ilija Radulović, who informed the court that he was busy with another criminal trial, did not appear in the courtroom.

The court brings the following

Ruling

The main hearing shall continue.

CONTINUATION OF PROBATIVE PROCEDURE
WITNESS EXAMINATION

Witnesses Aleksandar Đorđević and Radica Marinković are taken out of the courtroom because witness Mijat Bajović should be examined.

Witness **MIJAT BAJOVIĆ** with personal details as given on the record from the main hearing before the Prokuplje District Court on 11 November 2002. He added that he lives in Prokuplje on 63 Tatkova Street, he knows the defendant, they are not related, he was advised, and he took the oath.

He gives a statement identical to the one he gave on the record from 11 November 2002 without any changes. The presiding judge asked the witness a question to which the witness answered:

“As for the investigation that I conducted, as far as I can remember, I heard from the Chief of Police, who called me, that the investigation should be conducted. I personally informed Miroslav Nikolić by phone and he told me to go alone because he was not able to go. As far as I can remember he was not feeling well. I conducted the investigation in the way I have already explained before and I noted on the record everything I found there. When the Chief of Police called me, he said there were many victims. It is not usual to have a case with so many victims and at the time I had never conducted such an investigation. I did not insist that the prosecutor go with me since I was in a hurry because police officers were waiting for me outside. The police officers told me that they would wait for me and that I should hurry up because they might get killed there. That is why I did not

insist on the prosecutor to go with me and I did not object when he told me he was not able to go. I conducted the investigation into this case and informed the prosecutor also by phone.

I want to mention that on this occasion I told the prosecutor that I found a terrible scene there, which upset me a lot.

That was the time of the bombing and the court had been dislocated. Everybody was running away and it was usually me who stayed in the court. It was a difficult situation with the lawyers as well, because they were all away looking for shelter.

After some time, maybe one month or more, I cannot recall it anymore, I was informed that the perpetrator of this crime was found. I think that operative police officers from, I think, Republic Secretariat of Interior informed me of this. I did not see them at all. They just called me on the phone and told me that these persons were in detention. Actually, they said they had two people in detention. I cannot remember whether I had the investigation order before I went to interrogate the defendants or not. The investigation order was, of course, made, but I cannot remember whether it was before or after I interrogated the defendants. I received the criminal complaint from the court's clerical office. I informed Prosecutor Miroslav Nikolić by phone that I needed to examine the defendants and he told me to go and interrogate them myself and that he would join me later on. He was ill at the time and I think he stayed at home in bed. The interrogation had to be organised in the District Prison because the court was dislocated at the time and there was nobody in the court so, neither a trial nor interrogation could have been organised in the court building.

As I have already explained, before I went to prison I tried to reach some of the attorneys to be present during the interrogation, but I could not find any of them. Accidentally, I found attorney Dragutin Stanković. This attorney was about to run away from his office when I told him, 'Please, do not run! Come with me should the defendant accept you as his defence attorney'. That attorney was of weak health and he told me he would do it only because of me because I told him what the case was. He said he had a heart disease and he did not feel well, but he agreed to do it because of

me, because I told him what the crime was, that there were two defendants and they needed to have a lawyer.

We conducted the interrogation in the district prison premises. It was a bigger room. Court reporter Radica Marinković, attorney Dragutin Stanković, defendant Saša Cvjetan, and I were in the room and, I think, a prison guard was coming in and out from time to time. The head of the prison did not come during the interrogation and neither did the police officers, except for this prison guard. The interrogation lasted for some two hours, I am not sure. When the interrogation was over, attorney Dragutin Stanković said he could not bear it anymore because he was sick of what he heard. He was holding his stomach and when I begged him to stay to interrogate the other defendant, and I told him that he did not have another lawyer, he told me he barely handled the first interrogation and he could not stay anymore. He left and I went outside the building with him because at this moment he held his stomach and heart and I was scared for him. I accidentally ran into attorney Šubaranović. I think he had run away somewhere and he was returning. I asked him to go with me and interrogate the other defendant. He hardly accepted, but he did come with me and he was present when I interrogated defendant Demirović. I think that this interrogation did not last long and we left the prison building during the working hours. I did not drop by the head of the prison.

As far as I can remember, I went home from there because I remember that later on I received another call because I had to conduct some other investigation. When I came home I phoned Prosecutor Nikolić and told him I interrogated the defendants. He was also at home because he was not feeling well and he said there was no problem and he would issue the investigation order. He asked me if I kept the defendants in detention and I said that I did keep them in detention until the prosecutor gives his opinion and issues the investigation order request. He issued the investigation order request and proposed detention against the defendants. I did not see him again after this. I want to say that at the time I was going to Kosovo on daily basis conducting investigations during daytime and during night-time.

It is noted that the witness said that at the end of every interrogation, he asked defendants if they have anything to add. I am sure that I asked defendant Saša Cvjetan the same question and he said no.

As far as I can remember, after the interrogation was conducted and I received the investigation order request, I issued the investigation order and defendant Cvjetan complained and I forwarded the case to the criminal trial panel, which abolished the detention against the defendant.

A lot of time passed after this when the chairman of the court, who was replaced in the meantime, called me on one occasion and, as I understood, the chairman of the court and district attorney ordered me to go and interrogate defendant Saša Cvjetan again. This time, it was in Bijelo Polje. He was in detention because of some other criminal act. The district attorney submitted another investigation order request against him and the president of the court ordered me to go and interrogate him once more. He told me to find a way to go and to go immediately. He did not give me enough time to find the court reporter and he told me to hurry up and added that he would provide everything I needed, with the help of the president of the Bijelo Polje Court and that I should take off immediately and interrogate the defendant. In the meantime the prosecutor changed the qualification of the criminal act and defined it as an act, which did not require defence. The president of the court told me the same thing. When I arrived to Bijelo Polje I told defendant Cvjetan that the defence was not obligatory, but since he did not have a defence attorney I could go and return when a defence attorney is provided for him. The defendant, who behaved nicely all the time, told me that I should stay because there was no need for me to go back. My court reporter, which the court in Bijelo Polje provided, and I were present during the interrogation. I cannot remember if I had the investigation order request with me at the time. Maybe I read it in the car; I think I had this request, but I am not certain. You know, I lot of time has passed since then and I am not certain about this thing anymore, but as far as I can remember, this is how it was.

Later on, the witness was asked whether he was certain that he had the prosecutor's investigation order request and the witness answered, "I think I had the prosecutor's investigation order request before I interrogated the defendant in Bijelo Polje because I know that I based my decision regarding the detention time on this request. Before I went to Bijelo Polje I spoke to Prosecutor Miroslav Nikolić and called him to come with me, but he told me that I should go alone because he had some other business to do. I usually call him because we are also neighbours.

I spoke to the prosecutor later on about this interrogation and I told him that the defendant did not have a defence counsellor and that I told him I would come later in case he was not willing to present his defence without a defence counsellor. However, Nikolić told me I did not have to do this because the defence was not mandatory for this criminal act.

I am saying that Radica Marinković had worked with me for a long time before this event. When I was going to interrogate defendant Cvjetan in the Prokuplje District Prison I left the court building together with Radica Marinković. Radica went straight to the prison and I told her I was going to look for an attorney, if I could find anybody. I do not know if it was registered in some book that I entered the prison building or that I did not enter the prison building. They usually did not do this, so I think that nobody had ever registered me when I entered or left the building. I do not know if the defence attorney's arrival was registered anywhere and he came with me. As far as I can remember, after the interrogation of Cvjetan was over, I left the building and went to look for another attorney and Radica stayed in the prison building waiting for me. I told her to wait until I come back with or without an attorney. I went home after we interrogated another defendant and I do not know where Radica went. I do not remember if she carried a typing machine, which we usually take from the court into the prison when we have interrogations. I do not remember who was carrying the typing machine when we were going to the prison. When we are in a hurry, when we have something urgent, I help the court reporter and take her typing machine. However, this time I was in a hurry looking for an attorney and also because it was an urgent case, so I do not know who carried the machine on our way to the prison."

The deputy district attorney asked a question and the witness answered:

"I issued an order for the autopsy of bodies, but I heard from many competent people that we would be killed because there were a lot of Albanians there and we would only make the number of victims even greater than it was at the moment. After this, I withdrew the autopsy request in order to save people from being killed. The chief of the State Security told me that the autopsy should not be conducted because of the safety situation, because Albanians heard about this event and saw it and since some-

thing like this had never happened before, we were really in danger of getting killed.

At the time of the bombing the court was only officially dislocated into the school, but practically there was nobody in this school because we were told not to go there after we hear the siren. I did not go to this school. I was going to the real court building even though the court should have been dislocated. The court building is located some 50 metres away from the district prison building. When I was going to interrogate the defendant in the district prison building, I went from this court building. My court reporter came along with me from this building. After the record from the interrogation of the defendant in Bijelo Polje was presented to me, I state that it is true that I had the investigation opening request and I presented it to the defendant."

One of the injured parties' representatives asked a question and the witness answered:

"At the time I interrogated Cvjetan in Prokuplje for the first time, before and after this interrogation, it was announced that the court building in Prokuplje would be bombed. People were panicking and as soon as the siren went off, they were all leaving the building and I was the only one who stayed there. I ordered that attorneys Stanković and Šubaranović should be paid and I personally went into the accounting office and issued an order, three days after the interrogation, underlining that these attorneys sacrificed in order to attend the interrogation and it would be fair to pay them. I knew that I issued an order for Stanković very soon because I remember that I ran into him and he told me that he was supposed to go to hospital soon. That attorney died several months later. I issued a written order and the court reporter or the chief accountant typed it."

The defence counsellor asked a question and the witness answered:

"If it is noted in the interrogation record composed on 24 May 1999 that I presented the investigation order to the defendant, then I had the investigation order, and if it says I presented a criminal complaint to him, then this is what I had. I cannot remember these things now. It is not true that I spoke to inspectors Oparnica and Klikovac before I interrogated the de-

fendant. They usually contact the prosecutor. It is possible that I saw them if they were in the prosecutor's office, but I certainly did not speak to them about the case. It is possible that I ran into Oparnica in the hallway. I heard of Oparnica for the first time in relation to this case, and I had never seen him before this.

Since I was presented with a part of witness Oparnica's statement where he said that he spoke to me and that I told him that I was at the scene and that I made a record on this, I say it is possible if he said so, but I really do not remember. The court reporter always carries the case file documents. So, when I finished the interrogation in Prokuplje the case documents stayed with the court reporter. So, when I finished the interrogation of the defendants in the Prokuplje Prison, the case file stayed with the court reporter and she took them to my office in the court. She usually does this. The court reporter carries the typing machine, as well, but I help her sometimes just like I did that day. Actually, they called me on the phone and I went home from the Secretariat of Interior."

The defence counsellor asked a question and the witness said:

"What I said here today are the things I remember and before today's testimony I did not read any of the documentation pertaining to this case I worked on and about which I am enquired here today. The day I conducted the investigation in Podujevo, first I went inside the yard where a pile of dead bodies lay. Then, the guys from the Secretariat of Interior told me there were several other sites where one or two victims' bodies were. So, on that day I visited three or four sites where the victims' bodies were. I cannot remember if I put it all down on the record. Then, they told me that it was not the same person who committed this act and the one in the yard where a pile of bodies was. They came to this conclusion based on the manner in which the acts were committed. The police officers only told me that the perpetrator of the first act, meaning the act in the yard where the pile of bodies was, is not the same person who committed other acts, meaning the bodies at other locations I visited that day. One of the technicians from the Podujevo Secretariat of Interior Criminal Department was with me that day and I only know him by the nickname Pajče. Since I was asked if Milan Anastasijević was there, I say that he was there, but I am not sure. I know that he gave a report to me. I think there was also another man, but I am

not sure because they would start to feel sick one after another. They were recording what they could and leaving the scene.

The place where this pile of bodies was is on the concrete near the house. I think the area was fenced. I think they had tall walls as a fence around this house. One police officer went with me to the place where the pile of bodies was and he said he was sick of the sight. I think he was a police officer from the Podujevo Secretariat of Interior who was guarding the scene. There was also a technician in this yard and he was taking pictures of the corpses. There was a pile of corpses against the wall on the concrete and it was not very high, but it was wide. I am talking about the wall of the house. I remember one specific detail. One woman on this pile had a child by her head and another child lay at her breast and she held this child's head with her other hand. The bodies had clothes on. They were not covered with anything. This police officer, who was guarding the scene, was already there when I arrived.

Now I cannot remember how many corpses there were, but everything I found there I put on the record. I was personally counting the bodies and, as far as I could, I tried to categorise the corpses by stating the relation between them, mother and child, gender, and approximate age. When I was counting the corpses I had to lift them, but then I returned them to the previous position. Now I do not know if I counted the corpses first or the technician took the photos of them before this. On this occasion I had a notepad in which I wrote information, which I later on used to compose the investigation record. Now, I cannot remember the number of corpses, but I wrote down this number on the record. I was the only one who composed this record. I do not know if anybody else made the record of the situation at the scene. Whatever I found at the scene I put on the record. Nobody lifted, moved, or counted the corpses in my presence. I was alone in the yard for some time because the police officers would start to feel sick and then leave the yard. Then I demanded that the commander sends somebody, who could deal with the situation without getting sick, to secure the scene.

Since I was presented with a part of witness Milan Anastasijević's statement where he said that he did not inspect the bodies and he believes that the investigative judge did not inspect them either, I have to say that this is com-

pletely wrong. What kind of an investigative judge would I be if I failed to count the corpses. I am sure that I issued an order that bullet cases found at the scene should be gathered and taken to the Secretariat of Interior, but I do not know if it was done. I do not believe that after this I ordered police to gather bullet cases from the scene. Maybe I did say 'Keep the bullet cases'. I did tell the guys to gather bullet cases and the rest of the material evidence, which I always do. As far as I know, the Territorial Defence buried the bodies later on. I do not know if the bodies were transported anywhere else beside the location they were buried at. I asked the Priština Forensic Institute to carry out autopsies. I cannot remember the name of the Forensic Specialist's name. I do not know if the bodies ever reached the Priština Forensic Institute. I will not reveal the name of the State Security Chief who told me that Albanians told him that they would make a massacre if they autopsied the bodies."

Defence counsellor Goran Rodić then raised objection against the witness's statement that he would not like to reveal the name of the State Security Chief who gave him such information:

"I personally withdrew the autopsy request. I cannot remember exactly, but I think I sent this statement to the Secretariat of Interior and ordered that the bodies be buried because of the possible exhumation. I do not know if this statement exists in the case file. I remember that I wrote something in a hurry, maybe I was writing to Podujevo, but I cannot remember exactly now. When I interrogated defendant Saša Cvjetan for the first time, I had a criminal complaint with me, and it is possible that I had his statement, which he gave to the police officers, but I do not pay attention to it because this is separated from the proceedings. On this occasion, I asked the defendant if he had a defence attorney and he said he did not have. Then I asked him if he accepted this attorney and he said yes. As I have already said the defendant behaved properly in all situations. I asked him if he wanted to hire his own defence attorney and he asked me how long he would have to wait for this. He said he wanted to hire an attorney from Belgrade or some other city and I told him that it would take a lot of time because it happened during the bombing. Then I asked him if he had confidence in this attorney and in me and he said yes.

I told him that he would read the record and we would ask him if he has anything else to add. And the defendant really read the record before he signed it and said he had no objections. I do not know if these questions of mine were put down on the record, but I did ask him this as I usually do. I do not know whether his answers were put down on the record, but I usually did this. I know that I dictated the record along with the defendant's answers to my questions pertaining to the ex officio defence attorney, but I do not know if this was put down on the record. Now I see that you are also examining the court reporter and that this is some sort of manipulation if it is not on the record and I certainly did read it out. Now it could turn out that nothing of this is on the record and I certainly read it out. I retired in the meantime and God knows what this is now. I know that I signed the record and I do not know if the court reporter signed it. I did not read the record before I signed it. I do not know if the fact that mother and children were killed was mentioned in the record and the scene I have previously described to you and which upset me was probably in the criminal complaint. I had a criminal complaint in front of me and I asked the defendant if he did what was alleged in this criminal complaint.

Before I went to Bijelo Polje to re-interrogate defendant Saša Cvjetan I knew that he had a defence attorney in Prokuplje. It was Filipović Božidar. I know this because he introduced himself to me and I also called him to come along with me, but he was not there. I informed defendant Saša Cvjetan that I was looking for this Filipović, but he was not there and the defendant said he had an attorney in Belgrade. Then I asked him if he wanted me to go back home and return to interrogate him when his defence attorney arrived, but he refused this. I did not influence the defendant in any way to give his statement without his defence attorney during the interrogation in Bijelo Polje. I gave the exact statement during my interrogation before the Prokuplje District Court and God knows how my statement was taken down. I do not know either the first or the last name of the court reporter, who went with me to the interrogation of the defendant in the Bijelo Polje prison. I even heard from the earlier Acting Public Prosecutor Višeslav Bukumirović that there was the court reporter's first and the last name on the record from the interrogation of the defendant in Bijelo Polje and I have no idea what this version that is being presented to me is. Neither Višeslav Bukumirović nor another prosecutor attended the interrogation and since that was their case, I assume that the interrogation records were forward-

ed to one of them. When I was done with the interrogation I sent the documents to the prosecutor. I did not take a look at the record. I did not even see if the court reporter signed the record after this interrogation. Attorney Rodić showed me the copy of a record, which does not have the court reporter's signature. When I saw this I heard from Prosecutor Bukumirović that he had the copy with her name.

The presiding judge asked me a question and I say that my signature exists in the area designated for the investigative judge's signature on the record from 18 July 2001. I took down on this record everything that the defendant said. I have no information that somebody added anything to this record and I definitely did not. I did not add anything to this record. I made the record the same day. I cannot remember exactly at what time the interrogation began. It lasted for a long time. As for the question you asked regarding the sentence on the fourth page, which goes, 'I state I have no objections to the record' and then it continues on the fifth page, I say it is a technical issue. The sentence that the defendant has no objections to the records goes at the end and in what order the court reporter will place the page numbers is a technical issue. The whole record was composed that same day. I interrogated the defendant on one occasion that day. If the defendant had any objections, then they were taken down to the record. I did not read the record before I signed it."

Then the defence counsellor asked the following question, "Are you, as investigative judge, obliged to inspect the authenticity of the record and are you held responsible for the validity of the record?"

The court brings the following

RULING

The answer to this question is forbidden.

Defence counsellor Goran Rodić asked another question and the witness gave the following answer:

"At the time I interrogated the defendant in Prokuplje I was very busy in the field and not once I was, along with my court reporter, in the company of Prosecutor Nikolić Miroslav. He was sick and he was at home."

Then the defence counsellor asked, "Did telephone lines work in Prokuplje that day?"

The presiding judge asked another question and the witness answered:

"I did not look for defence attorneys for the defendant Cvjetan by phone. I was running around to find one. I have never been held responsible in relation to this case and I was never summoned to declare myself guilty or innocent. I am adding that attorneys' offices are located in a street close to the court building and mostly all attorneys have offices there. After all, that street is known as the Attorneys' Street."

Defence counsellor Đorđe Kalanj asked a question and the witness said:

"Filipović Božidar told me he was a defence counsellor for Cvjetan. I did not see the power of attorney signed by his family members at the time the investigation was conducted against defendant Cvjetan. I do not know if Filipović Božidar visited the defendant in the Prokuplje Prison and if Filipović remembers it, then it is possible. I do not know if there was a decision for the dismissal of Dragutin Stanković as ex officio defence counsellor."

The defendant asked a question and the witness gave the following answer:

"I remember that the attorney was sitting by the door in the room where I interrogated the defendant. I was sitting at the desk, the defendant was across from me, and the court reporter was on my right side. I think I did not see defendant again in Prokuplje after we finished the interrogation. If I went to visit the prison, I might have seen him there. I did not drink whisky with the defendant. I did not underline anything in the defendant's written statement. It is not true that I said to the court reporter, "Rodo, note the presence of Stanković, he will join us later".

Then the defendant asked, “Why did you keep the case file in your drawer for two years?”

The court bring the

RULING

This question should not be answered.

Then the defendant asked another question and the witness said:

“I did not have meetings with the defendant in prison chief Aleksandar Đorđević’s office. I do not know when I found out that Filipović Božidar was the defence counsellor. It is true that the defendant told me in Bijelo Polje during the interrogation, ‘I did not do this’, and this is how we put it down to the record. It is not true that I said to him, ‘Saša, I know, just withstand for a little longer’.”

No further questions.

The defendant stated he had objections against the entire witness Mijat Bajović’s testimony and added that he personally submitted the criminal complaint against this witness because he gave a counterfeit document to the district public prosecution. He also said he believed that Mijat Bajović gave this false statement in order to take the blame off of him because he committed this crime and this counterfeit record represents the basis of the verdict, which found him guilty and convicted him to 20 years of imprisonment and which the Supreme Court dismissed. He suggested that the witness and he should confront.

The court brings the following

RULING

The main hearing is to be continued on 20 May 2005 at 10:00.

The trial panel adjourned at 14:35.

RECORD FROM THE MAIN HEARING

Composed before the BELGRADE DISTRICT COURT trial panel on 20 May 2005 in the criminal proceedings initiated against defendant SAŠA CVJETAN because of the war crime against civilian population pursuant to Article 142 Para 1 of the FRY Criminal Code upon the Belgrade DPP's (District Public Prosecution) indictment Kt. number 1273/02.

PERSONS PRESENT:

Presiding Judge
Biljana Sinanović

Deputy DPP
Dušanka Dadić

Jurors
Olivera Anđelković
Slaviša Pavlović
Vukašin Đurić
Dobriša Ilić

defendant
SAŠA CVJETAN

Court Reporter,
Slobodanka Nedeljković

Defence counsellors,
Attorney Đorđe Kalanj
Attorney Goran Rodić
Attorney Ilija Radulović

Began at 10:00

The main hearing is public.

It is noted that the deputy district public prosecutor Dušanka Dadić, injured parties representatives Nataša Kandić and attorney Dragoljub Todorović, defendant Cvjetan Saša (brought from the District Prison), defence counsellors, attorneys Đorđe Kalanj, Goran Rodić and Ilija Radulović, witnesses Mijat Bajović, Aleksandar Đorđević, and Radica Marinković appeared before the court to attend the main hearing.

Witness Miroslav Nikolić did not appear before the court.

The Court brings the following

RULING

The main hearing shall continue with the presentation of evidence.

Witness Radica Marinković is removed from the courtroom because witness Aleksandar Đorđević is examined.

CONTINUATION OF PROBATIVE PROCEDURE
WITNESS EXAMINATION

Witness **ALEKSANDAR ĐORĐEVIĆ** with personal information as given on the record from the main hearing in Prokuplje from 11 November 2002, added that he is currently the Head of the Prison in Zaječ

“At the time you are asking me about I was the head of the Prokuplje District Prison. I remember that defendant Cvjetan and defendant Demirović were arrested on 21 May 1999, I think, and three days later the investigative judge interrogated them. They spent these three days in the Prokuplje District Prison premises. The Secretariat of Interior operation officers talked to them before the investigative judge interrogated them. I think there were two officers, but I cannot remember their names. The day when the investigative judge interrogated the defendants, he dropped by my office, with his court reporter Radica, and stayed there for a short time and had a drink because they were waiting for attorney Dragutin Stanković also known as Guta.

Since Stanković did not appear, the investigative judge and his court reporter descended to the office of the Chief of the Security Service and interrogated the defendant. I think he interrogated defendant Saša Cvjetan first. I do not know for how long the investigative judge interrogated the defendant, maybe it was one hour or more. I was visiting prison cells very often at the time because it was the time of war and we had a lot of prisoners from the area of Kosovo and Metohija and I also visited the room where investigative judge Mijat Bajović interrogated defendant Cvjetan. I did not enter that room. However, since the room had the door made of

glass and the window right next to the door, I was watching through this door and saw that investigative judge Mijat Bajović, his court reporter Radica Marinković, and the defendant were in the room. Maybe some of the prison guards were also inside, but I cannot remember this now. I know that attorney Stanković was not present. While defendant Cvjetan was still interrogated I met with attorney Šubaranović at the entrance to the prison. I cannot remember his name, but I think it was Živorad. He told me that Judge Mijatović was looking for him regarding the interrogation. I knew this was about these two defendants, Cvjetan and Demirović. I sent him to the room where the judge was interrogating the defendant. I do not know where Šubaranović went. I do not know if he went straight inside the room where the defendant was being interrogated or he waited until Judge Mijat Bajović finished the interrogation of defendant Cvjetan.

The Secretariat of Interior Inspectors, who worked with the defendants, were coming to my office that day, but I do not think they were going inside the room where the defendants were interrogated. After the interrogation was over, Judge Bajović, his court reporter Radica, and attorney Šubaranović came to my office and had a drink. I am reminding you that I had previously seen that attorney Šubaranović attended the interrogation of Demirović. I do not know if Judge Mijatović left the prison building after he finished the interrogation of Cvjetan. Maybe he went to some room other than the one where he conducted the interrogation. After the interrogation of defendant Cvjetan, the investigative judge did not come to my office and neither did the court reporter. I do not remember when exactly the air strike alert began, but I think it lasted almost the whole day. I cannot remember at what time the investigative judge arrived to the Prison building.”

The presiding judge asked a question and the witness said:

“There was a book at the entrance to the prison to which the guard was registering the arrival of every person, including the investigative judge, court reporter, attorney, and all other persons, who are not working in the prison. Besides this, the duty service had a book in which it registered the time when the detainees were being interrogated, had meetings with their attorneys, the names of people who were examined, and names of people who gave approvals for the meetings or examination.

Since parts of my statement given before the Prokuplje District Court, which are different from the statement I gave today, were presented to me, I give the following statement: As for the date, it is true that everything happened in May and not in April as I said incorrectly. As for the prison guard Mirjan Mijatović whom I mentioned earlier, I state that I do not remember whether he was inside the room or not. As for my entrance inside the room, I claim that I came close to the glass door and looked inside the room and I am certain about whom I saw in there. I do not remember whether I went inside the room or not, but I do remember being in the area in front of this room. As for the detail that I had not mentioned earlier when I was examined in relation to the investigative judge's arrival and the arrival of the court reporter to my office before the interrogation I state that, when I was examined in the court, I answered the questions asked by the judge and these questions most likely did not head in that direction. I am certain that attorney Šubaranović came to my office together with the investigative judge and the court reporter after the interrogation was finished. Judge Bajović was coming to my office almost every day because the prison was the only institution that was not relocated during the state of the war."

The deputy district public prosecutor asked a question, to which the witness said:

"It is possible to see through the door the whole room in which the interrogation was conducted because they are all placed towards the wall opposite from the door. It is not possible that somebody was sitting next to the door because there are no tables and chairs there. At the time the prison guards had to wear a uniform. It was mandatory."

Injured parties' representative Nataša Kandić asked a question, to which the witness replied:

"After attorney Šubaranović came to the prison building he could have gone inside the room where the interrogation was in process or to the duty service office because they are located next to one another, but I did not see which room the attorney went to. I exclude the possibility that Šubaranović attended the examination of Cvjetan because he told me later on that he attended the examination of Demirović. I think that Judge Bajović had contacted the defendant several more times after this interrogation, but I do

not know how many times. As far as I know, Judge Bajović did not have any special treatment for any of the detainees, but he was paying visits to all of them. Both of the defendants, Cvjetan and Demirović, had their families coming to visit them during the period of detention. The fellow soldiers from the unit were also coming to ask about them, but I do not know if they had a permission to visit them. Maybe the commander gave such permission, but it should have been noted in the register book. Cvjetan and Demirović were not treated in any special way different from the treatment of other detainees depending on the crime they were charged with and the conviction for this crime. However, the Secretariat of Interior operation officers, who brought them, warned us that they were skilled, strong, and dangerous, and that we should pay attention to them because of the security reasons so the two of them were in different rooms.”

Attorney Dragoljub Todorović asked a question and the witness answered:

“During the interrogation of Cvjetan I went down to the room he was interrogated in several times, just like I did during the interrogation of Demirović. I repeat that I am certain that Stanković was not coming to the prison building that day at all and this could be checked in the register. I know Prosecutor Nikolić and Judge Bajović did not tell me why Prosecutor Nikolić did not come to attend the interrogation that day. I think that both Demirović and Cvjetan were interrogated during the working hours. I cannot remember if Judge Bajović told me that after the interrogation he was going to some investigation, but he was doing the investigations on daily basis. I cannot remember whether the judge, the court reporter, and attorney Šubaranović left the building together or he had something else to do and had to leave earlier. Only later on did I realise that attorney Šubaranović came for drink with us. “

Defence counsellor Đorđe Kalanj asked a question and the witness gave the following answer:

“When I met with Stanković one or two days after the interrogation, he told me that the investigative judge called him. However, he did not tell me the name of the investigative judge who called him or the reason why he called. I did not talk to him about why he did not appear because his

health was poor. I assume that he did not come because he was sick. I knew the inspectors from the Secretariat of Interior, who brought the defendants. I repeat I do not know who brought the defendants, the police or the inspectors, but the inspectors from the Secretariat of Interior talked to them in the prison building. I met these inspectors earlier, but I do not know their names. The day when the defendants were interrogated, these Inspectors spent maybe some half an hour in my office, but they were in the other prison room, which is a different office. They were writing something there. I am certain that these Inspectors were in my office and in this other office in the District Prison building the same day the interrogation was conducted.”

No further questions. The Court brings the following

RULING

Witnesses Mijat Bajović and Đorđević Aleksandar should be confronted.

They were confronted and they both stick to the statement given before.

The presiding judge asked Mijat Bajović a question and he said, “I really do not know how did the door look like in this room where I conducted the interrogation. Further on I state that I did the investigation opening order and the detention order as soon as I received the investigation opening request. I cannot remember when this was.”

No further questions.

Witness **RADICA MARINKOVIĆ** with personal details as given on the record from the main hearing before the Prokuplje District Court on 11 November 2002; she did not know the defendant before; not related to him; advised; took the oath. She gave the same statement as on the record from 11 November 2002. However, she added the following:

“I remember that it was 24 May 1999 when defendant Cvjetan was interrogated. District Prosecutor Miroslav Nikolić came to investigative judge Mijat Bajović’s office, where i worked as the court reporter, and asked me to type the investigation opening request and detention order request against

defendants Cvjetan and Demirović. I remember that very well because I made a mistake in Cvjetan's name and the prosecutor corrected this. Since the investigative judge is a man who cannot sit still, he was coming in and outside the office while I was typing this. Anyway, when I finished this, the investigative judge Bajović told me we were supposed to go to the prison building and interrogate defendants Cvjetan and Demirović. Previously, he told me to call the prosecutor, tell him that we are going to the prison building to interrogate these defendants, and call him to attend the interrogation. I called the district prosecutor on the phone and he told me that the two of us should go alone because he had to go to Niš. He had to see a doctor in Niš. I cannot remember if it was for him or for his mother, but he said that we should go and after the interrogation we should come to his office because he was going to return from Niš soon.

Judge Mijat Bajović and I went together from the court building to the prison building. When we arrived there, we first went to see the head of the prison, Aleksandar Đorđević, in his office. I do not know what they were exactly talking about in the office of the head of the prison. I only know that I had coffee. Đorđević provided a room for us in the prison yard where we could interrogate the defendants. Cvjetan was brought first for the interrogation. When Judge Bajović and I went to this room, two persons in civilian clothes were already in there. I did not know these two persons. The judge did not ask them anything. Since I cannot see very well, I did not notice either the judge's reaction to their presence or their reaction and neither did I pay attention to them. They did not introduce themselves. I did not hear the two of them speaking and I do not know if they were writing something; I did not pay attention.

Since I had worked with the investigative judge since 1996, he allowed me to fill in the personal data on the first page of the form, and so I asked the defendant for his personal data and when we came to the defence counsellor, I asked the judge who was I supposed to name as the defence counsellor and he told me to place 'Guta' - attorney Dragutin Stanković. He added that we would begin and Guta would join us later on. So, I put Stanković's name.

The interrogation of the defendant did not last long - some 15 or 20 minutes. It was at most half an hour. Attorney Dragutin Stanković did not ap-

pear during this time. When we finished the interrogation of defendant Cvjetan, the investigative judge left the prison building without telling me anything. Two prison guards previously took defendant Cvjetan away. I think that Judge Bajović was the first to leave the room, then these guys took Cvjetan away, and then these two persons in civilian clothes left the room. I stayed in the room. Judge Bajović returned after five to ten minutes. Attorney Šubaranović Živorad came right after him and I assumed the judge went to look for a defence attorney for Demirović since the prosecutor previously told the judge that the defendants must have attorneys because the punishment for this crime can exceed 20 years of imprisonment. So, I assumed that since Stanković did not show up, at least one of the defendants should have a defence counsellor. After this, Demirović was also brought in and Judge Bajović interrogated him, as well, but in the presence of attorney Šubaranović. Nobody else attended this interrogation.

When the interrogation was over, Judge Bajović, Attorney Šubaranović, and I went to Chief Đorđević's office again. We stayed there for a short time and Šubaranović left before us. Judge Bajović and I left the building together and went to the court building. This was maybe around 14:30 or 15:00. As soon as we arrived at the building, we went to Miroslav Nikolić's office. He was in his office at this time. He asked Judge Bajović how it was and the district prosecutor asked the judge, 'Friend, who did you take as the defence attorney?' The judge replied that Guta promised to come, but he did not show up until the end of Cvjetan's interrogation. He said that the boy still admitted everything and that he found Šuba for Demirović. Šuba is attorney Šubaranović's nickname.

The prosecutor told the judge that he should not have done that because the defendant was supposed to have a defence counsellor. I think this was all we talked about at the moment in District Prosecutor Nikolić's office. Several days later I met with Prosecutor Nikolić who came to the judge's office. Then I told the prosecutor that I found something strange and I told him, 'Many things happened in this prison'. He asked me what happened and I said that two persons in civilian clothes attended the interrogation and I found this strange because until then it was the practice that nobody else attended the interrogation of the defendants. Prosecutor only shrugged his shoulders and asked me what these people looked like. I told him that I did not know because they were standing quite far away from me. Judge

Bajović did not attend this conversation. I cannot remember whether this was everything that I spoke to Prosecutor Nikolić about this case. He also asked me if I asked the judge who these people were I said I did not because whatever I asked him, he would say, 'Shush, Rođo. Let it go.' He called me Rođo.

I typed the investigation order and detention order. I cannot remember when did I type them. I cannot remember because sometimes it happened that I typed the investigation order right after we received the investigation opening request, which means before the interrogation of the defendant. In this case I do not know if I did it before or after we interrogated the defendants. I send the investigation orders i.e. I write delivery notes, pack them together with the decision, and the courier takes the decision. In this case I did not send the note of delivery to defendant Saša Cvjetan's defence attorney because he did not have one. I do not think I sent this note to attorney Dragutin Stanković. This all happened a long time ago and I cannot remember all of the details."

One member of the trial panel asked the witness a question and she gave the following answer:

"I did not see attorney Dragutin Stanković at all that day when we interrogated defendant Cvjetan and I did not see him a couple of days later. As you just asked me I am saying that we usually give investigation orders and detention orders to defendants right after the investigation is over, while they are still in prison. Sometimes we would bring the defendant to personally sign the note of delivery and sometimes we would leave it to the officer who is in charge of delivering mail to the prisoners. We did not deliver the decisions to the defence attorneys right away while we are still in the prison i.e. we did not give them the decisions right away, so that it would not look as if we typed the decision before somebody was interrogated.

Since the notes of delivery addressed to the Prokuplje Prison Administration Department, defendant Cvjetan, attorney Živorad Šubaranović, defendant Demirović, attorney Dragutin Stanković were presented to me, I state that the names of recipients are written in my handwriting. Since you have asked me to explain the note of delivery for attorney Stanković I must say that sometimes attorneys would put the date of interrogation as the

date they received the documents even though they received them a couple of days later. Investigative judge Mijat Bajović's case files were stored in a metal locker and the only persons who had the keys to this locker were him and me. So, I do not know how this signature appeared on this note of delivery. As I have already explained sometimes the decisions were written even before the detainees were interrogated. In these situations, I was preparing the decisions along with the notes of delivery addressed to the Prison Administration Department, the defendant, and the defence attorney. The judge told me he would be present. I cannot remember if this was the case with this interrogation. It is possible that Judge Bajović told me even before we came to the prison building to put attorney Dragutin Stanković's personal details in the form as the defence attorney.

I want to remind you that I wrote the fee invoice for Attorney Šubaranović and the judge told me to write it for attorney Stanković, as well. When I told him that attorney Stanković was not present and asked him why I was writing a decision for him, he said, 'Rodo, I am the judge here and you have to write what I tell you to write'."

A member of the trial panel asked a question and the witness said:

"Judge Mijat Bajović interrogated the defendants by giving them the investigation opening request and saying, 'Read the charges against you'. After this, the judge would take the criminal complaint and a pen, he would underline the sentences in the criminal complaint and say, 'You said this here and you said this here. Was it like this?' During all this time the defendant would not say a thing. After this, the judge would say, 'Sign here and you are free to go'. As for the interrogation of Cvjetan, I took the investigation opening request and the rest of the documents to the court building. When defendant Cvjetan was brought, investigative judge Mijat Bajović gave him the investigation opening request and told him to read the charges against him. After this, the judge took the criminal complaint and started underlining. At the same time he was asking the defendant if he said that. When the defendant said, 'It was not like that, judge', the judge would say that it was the same and things written in the criminal complaint were mainly copied to the record. It does not mean that the defendant did not say anything. He did speak; I just cannot remember what he was saying. I do not remember if the defendant signed the record because I know that after the interrogation was over the judge got up in a hurry. The judge signed it, but I cannot

remember if the defendant signed it. I did not sign the record because the practice in the Prokuplje District Court was that it was not necessary for the court reporter to sign the record. It was not important until I faced this situation and realised how important it actually was. I do not know what was attached to the criminal complaint we took to the prison."

The deputy district public prosecutor asked a question and the witness gave the following answer:

"Several days after the interrogation, I told Prosecutor Nikolić that Judge Bajović was underlining the criminal complaint and copying it to the interrogation record. I told him this because the prosecutor had this issue with the judge before and told him not to do this, but to let the defendants speak. The judge was usually telling him, 'Well, they are saying the same things'. The head of the prison chose a room for us to interrogate these defendants. We conducted interrogations in this room very rarely because we usually used the next-door room where the prison guards were, I think. The head of the prison did not tell us that there were already some people in this room. This room is about ten metres long and some three or four metres wide. When you enter this room on the right side, there is an office desk where Judge Bajović and I sat. Defendant Cvjetan was sitting across from the judge. Next to this desk, there is a conference table. These people in civilian clothes were sitting at the end of this conference table. You enter this room through a door and right next to this door there is a window. The window overlooks the yard and it has a curtain on. The door also leads into the yard. I think the door is made of wood. The court was not relocated and we were all working. We were allowed to leave the building when the air strikes alerts go off, but as soon as the danger was gone, we were obliged to return to work. We had regular working hours, from 07:00-15:00. I cannot remember when I forwarded the case file."

The injured parties' representative, attorney Dragoljub Todorović, asked the witness a question and she answered:

"I am not sure that the two men in civilian clothes were from the police. According to their conduct, the nice clothes they wore, and the nice behaviour, I concluded they were not from our town. I did not inform the president of the court that the invoice for attorney Stanković's fee was made

even though he did not attend the interrogation. It is not my obligation to go and inform the president of the court about what the investigative judge is doing. I also assume that the president of the court knew how investigative judge Mijat Bajović was working and what he was doing. I do not know if the president knew that Stanković received a fee. I did not say anything about this to the district prosecutor.”

Defence counsellor Đorđe Kalanj asked a question and the witness answered:

“When we took off from the court building to the prison building, I went together with Judge Bajović. Since we went together down this road, I claim that Judge Bajović did not take the backstreets to look for an attorney. I was going maybe five or six times a month to the prison building to attend the interrogations of the detainees. I did not leave my ID card at the entrance to the building because nobody asked me to. This was probably because they knew me. I do not know whether or not my name was registered somewhere when I was entering or leaving the building.”

It is noted that the witness gave the following answer to one of the questions:

“I do not know how it happened or when it happened that the note of delivery of the investigation opening order addressed to attorney Dragutin Stanković was signed.”

Defence counsellor Goran Rodić asked the witness a question and she gave the following answer:

“As a court reporter working for the investigative judge, I was filling in the notes of delivery and the return letters and with them I was packing decisions and other written documents, then I was giving this to the courier, who was sending this away. Any other of my colleagues does this when I am away. Even the investigative judge would sometimes give some document to some party to sign it when I am away. As I have already said Judge Bajović and Prosecutor Nikolić were friends. It happened sometimes that after the interrogation the prosecutor and the investigative judge would go home together. I know this because I was going with them sometimes.

I cannot remember when this happened exactly, but it was sometimes in 2000 or 2001 that the head of the clerical office told me I received summon from the Ministry of Justice.

I had to give a statement in view of the fact where the case against Demirović and Cvjetan was for two years. Then I wrote that the case was in the investigative judge Mijat Bajović's metal locker. I heard from my colleague Vesna that Judge Bajović stated that this case was for two years with the president of the court, Branislav Đ. Niketić. When the judge asked me what I wrote I told him I wrote the truth, that he had the case file for two years. I cannot remember giving any decision to attorney Šubaranović after the interrogation of defendant Demirović in the prison. I work in the civil suit department in the Prokuplje District Court with Judge Svetozar Milojević now. After Judge Bajović retired, I worked in the investigation department with Judge Jovanović for three or four months. Before I testified before the Prokuplje District Court, Judge Milorad Lapčević talked to me. Judge Lapčević asked me if defendant Saša Cvjetan had a defence counsellor and I said no. Then he said, 'I knew it' and I asked him how come he knew this. He said that Fića, an attorney, told him so. Then, Judge Jovanović, who was present there, told me that it would be better for me if I did not remember anything. I said to this that I was not either crazy or stupid not to remember this. Then, Judge Gordana Đurić, who was also present there, said that it could not work that way; that I was supposed to tell the truth, as much as I remembered. Judge Lapčević said then that if Cvjetan was guilty he should then bear the responsibility and if he is not guilty then we will see. Then, Judge Jovanović said that it would not be good for Mijat and I said it would be better not to call me as a witness if they believed so and that they should decide if they wanted to examine me or not. That is all I have to say."

The court brings the following

RULING

Witnesses Mijat Bajović and Radica Marinković should be confronted. They were confronted and they both stick to their earlier statements.

The Court brings the following

RULING

Witness Aleksandar Đorđević and witness Radica Marinković should be confronted.

They were confronted and they both stick to their previous statements.

However, witness Đorđević was asked another question and he answered:

“I did not see two persons in civilian clothes in the room where defendant Cvjetan was interrogated. It is possible that these two people were our support at the time.”

Witness Radica Marinković gave the following statement:

“Aco, I remember that you entered the room, looked at us, and asked if we needed anything. You did not look to the side where these people were sitting” and the witness added, “That is why, I assume, the witness did not see these people, who were sitting in the office because there is a desk right in front of the door and there is no other place to go.”

Aleksandar Đorđević was asked another question and he said, “It is possible that I did not see a part of the room and the lights in this room are bad. This room is twelve metres long and four metres wide and the desks are placed in an L-shape. I would have seen the attorney for sure because his place is right next to the door.”

Defence counsellor Đorđe Kalanj stated that during the procedure on appeal against the first instance court’s verdict, he obtained information from the Ministry of Justice Department for the Execution of the Criminal Penalties that the record on the visits to the Prokuplje District Prison was in the Ministry of Justice and in view of this, he proposed that the respective information be demanded from the administration and after this information is obtained the defence counsel will make proposals in view of this fact.

The deputy district public prosecutor and the injured parties’ representatives proposed that the statements given by witnesses to the moment be read and they have no new proposals for the probative procedure.

Defence counsellors stated they agreed that the examined witnesses' statements should be read and, besides the aforementioned, they had no new proposals.

The defendant stated that he agreed with his defence counsellors' proposal and he agreed that the statements given by the witnesses examined should be read out.

The court bring the following

RULING

The information should be demanded from the department for the Execution of Criminal Penalties and to demand again that the Prokuplje District Prison forwards the same information.

The court brings the following

RULING

The main hearing should be delayed for 6, 7, 8, 9, and 10 June 2005 at 10:00 as it was announced to the persons present in this main hearing.

The trial panel adjourned at 15:00.

IN THE NAME OF THE PEOPLE

THE TRIAL CHAMBER OF THE DISTRICT COURT IN BELGRADE, consisting of Biljana Sinanović - the presiding judge, Olivera Anđelković - a member of the trial chamber, and jurors, members of the trial chamber, Slaviša Pavlović, Vukašin Đurić and Dobrila Ilić, and Slobodanka Nedeljković, recording secretary, in the criminal proceedings against the defendant, Saša Cvjetan, accused of a war crime against civilian population as described in Article 142, Paragraph 1, of the Criminal Code of the Federal Republic of Yugoslavia, and of unlawful possession of firearms and ammunition, as described in Article 33, Paragraph 1, of the Law on Arms and Ammunitions of the Republic of Serbia, contained in the indictment of the Public Prosecution Office in Belgrade Kt. br. 1273/02 dated 13 February 2004, as specified and amended on 8 June 2005, upon completion of the main public hearing on 18, 19 and 20 May 2005, and on 6, 7, 9, 16 and 17 June 2005, in the presence of the deputy Public Prosecutor, Dušanka Dadić, the defendant, Saša Cvjetan, the defence lawyers Đorđe Kalanja, Goran Rodić, Ilija Radulović and Đorđe Mamula, and the representative of the plaintiffs, Nataša Kandić, and their lawyer, Dragoljub Todorović, did bring and, on 17 June 2005, made public:

THE VERDICT

The defendant, SAŠA CVJETAN, from Veternik, No. 6 19. maja Street, born on 20 December 1975, in Zadar, to father Milan and mother Milka, nee Atlagić, a citizen of the Federal Republic of Yugoslavia, a graduate of a secondary military school, fitter by trade, single, no children, no property, army veteran, convicted by the Higher Court in Bijelo Polje, K. broj 36/01, dated 10 November 2001, for a crime as described in Article 201, Paragraph 1, of the Criminal Code of Montenegro, to a prison term of six months, and convicted, by the verdict K. 1260/00 of the Municipal Court in Novi Sad, dated 16 November 2004, for a crime as described in Article 62, Paragraph 2, of the Criminal Code of the Republic of Serbia, to a prison sentence of one year, conditionally to four years.

IS FOUND
GUILTY

Because:

On the day of 28 March 1999, around 10:00 hours, in Podujevo, together with a number of persons, members of the Scorpions unit, part of the Reserve Corps of the Ministry of the Interior of the Republic of Serbia, and the Armed Forces of the Federal Republic of Yugoslavia, during the war between the Federal Republic of Yugoslavia and the NATO Pact Coalition which began with the bombardment of the territory of the Federal Republic of Yugoslavia by the NATO Pact Forces, and the armed conflict with the members of the armed organisation, the so-called KLA (Kosovo Liberation Army), violating the provisions of the International Law applicable to armed conflicts, contrary to Article 2, Paragraph 1, and Article 3, Paragraph 1, Item 1, and Paragraph 2, Items a and c of the IV Geneva Convention relative to the Protection of Civilian Persons in Time of War, dated 12 August 1949, and contrary to Article 51, Paragraphs 1, 2 and 3, and Article 76, Paragraph 1, and Article 77, Paragraph 1, of Protocol Additional to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts (Protocol I) dated 12 August 1949, and contrary to Article 4, Paragraphs 1 and Paragraph 2, Items a and e, and Article 13 of Protocol Additional to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts (Protocol II), dated 12 August 1949, he did treat the Albanian civilians who did not take an active part in the hostilities in an inhuman manner and did take part in the violation of the bodily integrity of the children and did take part in the killing of women and children. Upon the arrival of his unit to Podujevo - at the crossing of Kosančićev Venac and Rahmana Morine Streets, where, in a single courtyard, there were houses of a number of Albanian families - he entered the house of Sabit Gjata where Redxhep Kastrati gave him 1,000 German marks to allow the civilians to leave the house unmolested.

He took the money, leveled the automatic rifle at Kastrati's chest, ordered the women and the children present to leave the houses and the courtyard, which they did, and where, once they reached Rahmana Morine Street, a column was formed of the women and children and of the tenants from the surrounding houses who were ordered to leave their homes as well. De-

fendant Cvjetan threatened to kill them all, then hit Rexhep Kastrati in the face with the butt of his rifle, fired a volley from his automatic rifle in the air in order to scare the people in the column, then entered the house of an Albanian person whose identity has not been ascertained, searched the house, found and appropriated a Zbrojovka M-75 pistol, of Czechoslovakian make, calibre 9 mm, factory number D-4754, with a 15 rounds cartridge clip, went out into the street where he came upon a group women and children of the Bogujevci, Duriqi and Llugaliu families who were returning, as ordered, to the courtyard of the Gashi family house, and followed them back into the courtyard, holding the rifle leveled at them and there, he and a number of unidentified persons from the Scorpions unit, using automatic rifles 7.62 mm, fired a number of volleys of at the group of women and children, inflicting wounds upon their persons which killed them on the spot. He participated, with premeditation, in the taking of life of 14 persons, as follows: Shefkate Bogujevci, born in 1956, Nora Bogujevci, born in 1984, Fexhrie Llugaliu, born in 1978, Nefise Llugaliu, born in 1945, Sala Bogujevci, born in 1960, Shpend Bogujevci, born in 1986, Shpetim Bogujevci, born in 1989, Shehide Bogujevci, born in 1932, Esma Duriqi, born in 1930, Fitnete Duriqi, born in 1963, Dafina Duriqi, born in 1990, Arbër Duriqi, born in 1992, Mimoza Duriqi, born in 1995 and Albion Duriqi, born in 1997, and the fired rounds hit the bodies and thus violated bodily integrity of five children, as follows: Saranda Bogujevci, born 1985, Fatos Bogujevci, born 1986, Jehona Bogujevci, born 1988, Lirrie Bogujevci, born in 1990, and Genc Bogujevci, born in 1993, who were given medical assistance later on, and thus committed a war crime against civilian population as described in Article 142, Paragraph 1, of the Criminal Code of the Federal Republic of Yugoslavia.

And the court, by the application of the said provision and the provisions of Articles 3, 33, 38 and 41 of the Basic Criminal Code

PASSES UPON HIM

A PRISON SENTENCE OF 20 (TWENTY) YEARS which shall include the time spent in detention from 21 May 1999 to 16 June 1999 and from 15 November 2001 to the date the sentence comes into effect.

The plaintiffs are advised to initiate lawsuits for the purpose of procuring economic and legal redress.

The defendant is relieved of the obligation of bearing the costs of the criminal proceedings and of paying the lump sum fee to the court.

On the basis of Article 354, Paragraph 1, of the Law on Criminal Procedure against defendant SAŠA CVJETAN

IS RELIEVED OF THE CHARGE

That he:

In the time period between 28 March 1999 and 21 May 1999, did keep in his apartment in Novi Sad, at No. 6, 19. maja Street, without authorisation of the competent organs, a Zbrojovka pistol of Czechoslovakian make, M-375, calibre 9 mm, factory number D-4754, with a cartridge clip and six rounds of 9 mm which he had appropriated at the time of committing the crime described in Article 1 and which was discovered upon his person on 21 May 1999, whereby he would have committed the crime of illegal possession of firearms as described in Article 33, Paragraph 1, of the Law on Arms and Ammunition of the Republic of Serbia.

Explanation

With the indictment of the District Public Prosecution Office in Prokuplje, Kt. br. 25/99, dated 5 April 2002, the defendants, Saša Cvjetan and Dejan Demirović, were both charged with committing a war crime against civilian population as described in Article 142, Paragraph 1, of the Criminal Code of Yugoslavia, and the defendant Cvjetan also with the commission of a crime of robbery, as described in Article 166, Paragraph 1, Item 4, of the Criminal Code of the Republic of Serbia, and the crime of illegal provision, possession and carrying upon his person of a firearm and ammunition, as described in Article 33, Paragraph 1, of the Law on Arms and Ammunition of the Republic of Serbia.

The decision of the District Court in Prokuplje, Kv. br. 23/02, dated 8 April 2002, stipulated that defendant Dejan Demirović shall be tried in absentia.

With the decision of the District Court in Belgrade, Kv. br. 391/03 dated 26 February 2003, the criminal proceedings against Dejan Demirović, initiated with the charge of the Municipal Public Prosecution Office in Prokuplje, Kt. br. 25/99, dated 5 April 2002, for a war crime against civilian population, as described in Article 142, Paragraph 1, of the Criminal Code of the Federal Republic of Yugoslavia, were separated from the criminal proceedings against defendant Saša Cvjetan.

The District Public Prosecution Office in Belgrade took over the indictment of the District Public Prosecution Office in Prokuplje, Kt. br. 25/99, dated 5 April 2002, so that the indictment of the District Public Prosecution Office in Belgrade, Kt. br. 1273/02, dated 13 February 2004, detailed and amended on 8 June 2005, charged the defendant, Saša Cvjetan, with the commission of a war crime against civilian population, as described in Article 142, Paragraph 1, of the Criminal Code of the Federal Republic of Yugoslavia. With the same warrant, the deputy Public Prosecutor cancelled any further criminal proceedings against defendant Saša Cvjetan on the charge of committing a crime of unauthorised possession of firearms and ammunition as described in Article 33, Paragraph 1, of the Law on Arms and Ammunitions of the Republic of Serbia.

Defendant Saša Cvjetan, on a number of occasions during the criminal proceedings and at the time of investigation presented his defence. Before the District Court in Prokuplje, at the main trial, on 9 October 2002, the defendant said:

“I was born in Zadar, but my family used to live in Dalmatinska Ostružnica. My family was a family of labourers; my father was a driver and my mother a housewife. Beside me, my parents have two more children, so I have a younger brother and a younger sister. The whole family used to live in Ostrovica where I attended elementary school and completed the first four grades; the remaining grades I completed in the village of Lišane, not far from Ostrovica. My family used to live modestly, honestly, I’d say nicely. The secondary, machine engineering school I completed in Benkovac. After that, I attended and completed the secondary military school in the Instructional Centre in Vrbas, that is, in Banja Luka.

The beginning of the war activities found my family in Croatia, in my native village. The village was attacked on 15 July 1991. For safety reasons, all Serb families from the village were moved to Krstanje, near Knin, where we were lodged in a collective shelter in an elementary school.

After a couple of months, my family returned to Ostrovica. In 1992, as it was a state of war, I went to Banja Luka where I completed the secondary military school. My family remained in Ostrovica. All this time, my father was mobilised as a driver in the Armed Forces of the Republic of Srpska Krajina.

Upon completion of the secondary military school I received a diploma to prove I had completed it and I was sent to the 7th Knin Corps, to the 2nd infantry brigade, to the position of a company commander. I was a company commander in two places in the neighbourhood of Knin - Čista Mala and Čista Velika. After that, I was assigned to Benkovac, to the 92nd Motorised Brigade, to provide instruction for young soldiers. There I remained about two months until infantry instruction of the young soldiers was completed. After that, I was stationed in the place called Pruška, in the 107th Instruction Centre Alpha, commanded by Captain Dragan. I was given special operations training in this centre. Following that, I took over the command of a reconnaissance-diversionary platoon of the 92nd Motorised Brigade of the Army of the Republic of Srpska Krajina, with the forward position in the place of Biljana Gornja. I remained there for a while and then I received a new war assignment - I was officially assigned to the command position of the reconnaissance-diversionary company of the 7th Knin Corps. I was the youngest commander there as I was only some 18 years old at the time. At the time of becoming a member of such an elite unit I knew, because I was told and, in turn, I told the members of my unit, that the rules of war, ours and the international ones, had to be absolutely respected and I have always been and have remained one to do so. It was strictly forbidden to kill old men, women and children, to treat inhumanly the wounded and the prisoners of war. On my part, I respected all this, and my unit, that is, every soldier of my unit, had to respect this.

I was wounded three times in various military operations, but nothing could sway my determination to remain an honest soldier. Toward the end of 1994, I was sent to Dinara, on an assignment, and I remained there all

the time until the beginning of the Operation Storm (Oluja), that is, the attack on the Republic of Srpska Krajina by the Armed Forces of Croatia. We were not informed about these operations so my unit, all of it, remained for two days completely surrounded. From Dinara, marching 50 km on foot, my unit reached Drvar in the Republic of Srpska. When I got there, I went to the brigade command, asking for assignments and explanations, not knowing what was going on. I did not know what was happening with my family. I only knew that my brother was alive as he was, at the time, in Serbia, rather, in Vranje, with a school excursion. Then I went to Banja Luka, to the Instruction Centre where earlier I had completed the secondary school education, and asked them to help me learn what had happened with my family. I was told to go to the Kozara barracks where I found my family in a very difficult situation which it will be very difficult to understand by the people who did not have to go through all this. The only thing I wanted then and asked for was a shelter for my family, a place where we could start from scratch, where we could lead a normal life. We found shelter in Novi Sad.

There, for a while, I worked as a member of the security detail of a businessman, which means, in a privately owned firm, doing what I could find to do. In Novi Sad, immediately after that, my father and myself were practically arrested and transported to Zrenjanin. There we were told we were not arrested, but mobilised and I was transported to Erdut. I insisted upon my father being released and he returned to Novi Sad. I was then delivered to the Serbian Volunteer Guard under the command of Željko Ražnatović “Arkan”. In view of my military experience, I was asked by the Serbian Volunteer Guard, I don’t know exactly by which officer, to form a platoon, a smaller unit for reconnaissance-diversionary activity. The unit was never formed although I had started its formation and I asked to be relieved, that is, demobilised, so I could go home, which I was allowed to do. Upon my return to Novi Sad, I went on with my job of providing security to some persons, businessmen, to earn the living for my family and myself.

In Novi Sad I met a number of people from Krajina whom I had known earlier. On 17 November 1994, in Bihać, I met Slobodan Medić, aka Boca, who used to be the commander of the Special Antiterrorist Units (SAJ), the Scorpions. My unit, the reconnaissance-diversionary platoon, had already operated with his Scorpions, in 1994. In Novi Sad, upon my return from Erdut, I came across Medić, who I used to meet rather often after that, had drinks

with him in a cafe or a restaurant. I knew Rajko Olujić, the commander of a platoon of the Scorpions, from elementary school. I associated with them in Novi Sad from time to time.

On 24 March 1999, NATO forces began the bombardment of the Federal Republic of Yugoslavia. On 24 March I was sitting in a cafe with Medić and the Scorpions platoon commanders. The Scorpions, as special operations unit, upon request by the armed forces of the Federal Republic of Yugoslavia, were supposed to start fighting against NATO forces and terrorists formations operating on the territory of the Republic of Serbia.

Medić invited me and I joined the Scorpions as, until then, I had not been a member of this unit, and on 26 March I went to Petefi Šandor Street in Novi Sad. It was night; I can't say exactly what time it was. I saw two buses and many people. I knew some of them. Some of them I had never seen before.

We stayed there for a very short time as we were ordered to enter the buses and, by bus, we were transported to Belgrade, to the Makiš forest where, at the militia stadium, we were issued Scorpions uniforms. Let me say that this Special Antiterrorist Unit, at that moment, belonged to the Ministry of the Interior of the Republic of Serbia as Special Antiterrorist Unit. The Scorpions had once been part of Special Antiterrorist Unit and this time they were officially engaged. The bombardment was in full swing and I sent word to my family telling them I was going on an assignment. Nobody knew where we were going, what our destination was although, in view of the fact that in Kosovo there was fighting both against NATO forces and against KLA terrorists, we surmised we would be sent to Kosovo. Our two buses, under police escort, took us to Prolom Banja. We were billeted in the Radon hotel, early in the morning, as we had been travelling all night. All this was happening on 27 March. Rajko Olujić, who was a platoon commander, as of that moment was my commander as I was assigned to his platoon. Because we knew each other earlier we shared a room. On 27 March, that is, on the very same day when we arrived in Prolom Banja, we were issued arms, automatic rifles 7.62 mm which were oiled and each one of us was given 5 cartridges, each containing 30 rounds, that is, 150 rounds each, although whoever wanted it, could have taken more.

After cleaning the arms, not only those that had been issued to us, but also those for another group of soldiers expected to arrive soon, the whole unit was addressed by Slobodan Medić, aka Boca, the commander of the unit, and he told us something like this: “You are an elite unit and you are going to fight invaders and terrorists. You are not going to plunder, to kill; you are going to defend the country, to fight invaders and terrorists”.

He addressed us following the regulations applicable to a regular army at war and this was, at the same time, a chance for this unit to acquire the image of an elite unit. A number of people, I can’t say how many of them, fell out, certainly the people who went to war for some other reasons, who were then ordered to return to the bus and return toward Belgrade. After they had left, we were assigned to rooms. I would like to add just one more thing here, namely, that at the time we were issued the arms, I mean rifles, their factory numbers were not recorded, as there was not time enough and, besides, the rifles were oiled when they were given to us. We got our arms ready for the assignment.

On 28 March, early in the morning, probably because of the security and the needs of the unit, we boarded the buses for Kosovo. We did not know our destination at the time. I did not know the destination although the platoon commanders and the brigade commander did know it. We arrived in Podujevo, to a terrain I knew nothing about, as I had never been there before. It was probably 7 or 8 o’clock in the morning. I couldn’t tell where we were, I did not know the town, but we had stopped somewhere in the town centre of Podujevo, close to the police station. The moment we arrived we were told first to remain in the buses because our commander had gone to consult the commander of the Special Antiterrorist Unit, at a meeting, that is, the meeting of the commanders of the units stationed in Podujevo.

Then I realised that, in fact, Podujevo had not been held by KLA, as I had thought until then, but that in Podujevo there was quite a number of our soldiers, our police, and that Podujevo was, practically, without the presence of KLA and I felt, then, a bit easier. I was convinced that Podujevo had been taken by KLA because I knew that before that, there had been an attempt to assassinate Živko Trajković, the commander of the Special Antiterrorist Unit, when his driver was killed and he himself was wounded.

Although we were forbidden to leave the buses, several members of the Scorpions left the buses and I could see them start breaking into shops and boutiques and taking goods out of them. I was flabbergasted as I was following the orders given to me.

Rajko Olujić then comes to me and invites me to come with him and look for suitable houses to billet our platoon. The idea was to have each platoon billeted in a separate facility. Four policemen accompany us, some of them might have been members of the Special Antiterrorist Unit, but I know nothing about that, they are supposed to show us the terrain as they have been there longer and knew what the situation in the town was. We started down a street, a bit further from the police station and from the buses where we had been staying. I didn't know the name of the street, but we went some 200 metres further down the street as the members of the Special Antiterrorist Unit had told us that the facilities close to the police station and the place where the buses were parked had already been taken by members of other units which had come to Podujevo ahead of us.

We came to a house that, in our opinion, could provide accommodation to our platoon, to a courtyard with the closed gate. It was a big gate, with its lowest third made of metal, the second third made of wood and the top third also made of metal. I kicked the wooden part and it gave in. I am not sure who entered the courtyard first, myself or Rajko, but we did enter it together, also the members of the police accompanying us. In the courtyard, from my right-hand side as seen from the gate into the courtyard, I could identify a big two-storey house, two levels, and on my left also a single storey house. Upon entering the courtyard, on my right, I saw a green hand grenade; I could not say what type of a grenade it was.

Upon our entry into the courtyard, an elderly man came out of the house on the left, holding some money and gold in his hand, and he said: "We will pay." I told him: "We are not taking anything." He then told us that there were some more people in the house. We told them to come out of the house. The elderly man who had come out with the gold called, upon our request, the people who were in the house and they came out, four or five men and a woman with travelling bags. After that, in the other house in the same courtyard a noise could be heard. Had anybody invited them to come out, and I believe that somebody did, and that it must have been

one of the policemen who had come with us, but, as nobody was coming out, I broke through the door of the house, with Rajko Olujić at my side.

The first to come down the stairs was a man in his thirties, well built, whose arm was bent and he held it in a curious manner, curious to me, and since I knew well all the terrorists' tricks, I was suspicious and, in order to be safe, I pushed him with the butt of my rifle, and he fell down, but got up again. A woman behind him told me that his arm had been hurt. To make sure, I removed a part of his shirt; it was chequered, and saw that his arm above the elbow had a through-and-through bullet wound. For me, this meant that we had a terrorist there. They were told, all of them, to come out. There were some ten persons in that house. From the other house, also, four or five people came out, so that, all told, there were some ten people in the courtyard. Among them, there were four or five children, the rest were men and women.

Then Rajko told them to go out into the street. At the same time I saw Rajko crying, that is, that there were tears in his eyes and I supposed he was going through what my family, and his family, had gone through at the time of the Operation Storm in Krajina. Rajko told them to go down the street. It was obvious that those people were loath to leave their houses and their courtyard.

In order to urge them to leave that place and go to the place Rajko was directing them to, I fired a volley of a dozen rounds from my automatic rifle. This short volley was fired directly in the air and I can guarantee that, then, I didn't wound anyone. Before that, before these people had left their courtyard, that is, when these people had come out from their houses into their courtyard, I had seen in the street a certain number of the members of our Scorpions unit. Those people were some 20 to 30 metres far from the courtyard gate that Rajko and myself had come to. Of them all, I recognised Goran Stoparić, a member of the Scorpions, Zlatko Lukić, also a member of the Scorpions and I think that Pavle Rokvić, also a member of the Scorpions, was with them. There were a couple more persons there, also members of the Scorpions, but I did not know them. The persons I mentioned and those who were with them could have seen that I had not harmed a single one of these people, nor killed anyone, nor caused them any harm whatsoever.

After these people had gone out into the street, I went back to check the rooms of the house where the members of our platoon should be billeted. In one of the rooms upstairs, on the right, I discover a uniform and found grenades, several grenades in a box. In another room, on the left, I found a Zbrojovka M-75 pistol, of Czech make, with a round already in the barrel, of which I made sure by removing the clip and repeating the pistol. While I was in the house, I heard individual and volley shots from a number of firearms in the immediate vicinity, from the direction we came from, from the direction opposite to the one these people had gone. We had come from the bus, from completely opposite direction to the one that the men, women and children who had come out of the houses that we had entered.

I went out in the street, thinking our unit had been attacked, that the Scorpions and the Special Antiterrorist Unit had been under attack. Together with Stoparić, Zlatko Lukić and Pavle Rokvić I was running in the direction the shots were coming from.

We ran along the street for some two to three hundred metres, in fact, we were going through the courtyards, not along the street, and when we reached a house, through a narrow passage, and entering the courtyard I saw, on my left, on a concrete path, a dead woman lying and, to the right of her, I saw some six or seven corpses. I saw they were civilians. This was a very unpleasant experience for me.

At that moment, I heard some noise in the street, I turned and I saw some members of the Priština battalion and some Scorpions. At that moment, in the courtyard, I didn't see any members of the Scorpions, nor any members of any other formations present in Podujevo at that moment. With the three already mentioned members of the Scorpions I went out into the street where I found people shouting, talking. At the moment, a number of the members of the Special Antiterrorist Unit appeared, one of them I knew was called Vuk, I don't remember his family name, and, as he had seen me and the boys who had come out with me, he began cursing us. I cursed him in return. We squabbled for a while.

At that moment, the Scorpions commander, Slobodan Medić, aka Boca, arrived at the scene and angrily addressed his own brother, Dragan Medić, aka Guljo, and then Crni, and Žuća and Slobodan Marić. There were some

other members of the Scorpions unit there whose names I could not remember. The commander, Boca, was dressing them down. From the moment I had first heard the shooting to the arrival of the Special Antiterrorist Unit commander, in my opinion, four to five minutes had gone by. And I mean the commander Boca. With the arrival of Boca I heard him addressing the persons I had mentioned earlier, his brother first of all, and the others, using the words: "You motherfuckers, I can't leave you a moment alone without you causing some shit". I heard no response on their part. At the same moment, an order arrived for us to board the buses, each one with his own platoon, and that we were to go back to Prolom Banja. I didn't know the reason we were going back, but for having seen those corpses. The buses took us, and me, back to Prolom Banja, with my platoon and the platoon commander.

Not much was said about this in Prolom Banja, although there was a rumour about the youngest member of the Scorpions, named Saša, too - who I used to know as Šilja, not knowing his family name - being in the courtyard, but I don't want to implicate him and make problems for him.

In Prolom Banja we had regular activities, like any other army unit, and I failed to learn anything about who had committed this crime. No member of the police came to Prolom Banja and nobody questioned me, at least. We spent some ten days in Prolom Banja whereupon I spoke with the commander, Slobodan Medić, and told him we were going back to Vojvodina, to return the arms we had been issued, and that, after some time, we would be engaged anew. It was in Prolom Banja that we returned the arms issued to us.

The court is asking me to explain how I came to find the pistol and the cigarette lighter. After the men, women and children had left the two houses and the courtyard, as I had already said, I found, in the street in front of the gate, a Dupont gold cigarette lighter. It was only later that I learned it was a gold lighter. I found it after I had fired a volley in the air and the civilians had gone down the street. At that moment, I didn't know where Rajko was, but I was returning to the house, to check it, and I found the pistol there, as I have already explained.

I took with me, to Prolom Banja, the pistol I had found in that Albanian house. Everybody saw the pistol as I used to carry it openly in its case. My roommate, platoon commander Olujić, saw it, too. When it was time to return the arms issued us I was not the only one who had found a pistol; there were some more people with arms found in Podujevo. I asked the commander, Boca, what to do with the pistol at the time when we were, practically demobilised, and he said: "Report this to Srle", that is, to Srđan Manojlović, who was practically a record and warehouse keeper, "to record the pistol, and take it home with you, as your personal armament and, once the war is over, we will see what to do with it". Srle made a record of the pistol's serial number, its type and calibre in a separate notebook and I received a license to carry this pistol. For me, however, this license was useless because it made no sense for me, a member of anti-terrorist unit, to wave the license for using a pistol in time of war."

When the defendant was presented with the differences from his statement given to the investigative judge on 24 May 1999 and 18 July 2001, the defendant stated:

"Following my return to Novi Sad, my family and I used to live at No. 6 Radnička Street, that is, I lived there alone and my family lived in Veternik. It was normal for me to maintain contact with the people I had known before, with the members of my unit, with the members of Special Antiterrorist Unit, to go out to a restaurant for a drink with them, simply, we spent time together. One day, a major, a member of the Ministry of the Interior, Novi Sad Office, suggested that I should form a unit. I suppose he meant a unit to carry out special assignments. I started thinking about it and making a list of the people who could be members of this unit. In the meantime, I refused to be sent on a field assignment again because of the experience I had had earlier on a field assignment in Podujevo.

On 21 May 1999, in the morning hours, while I was sitting in a restaurant with some of my friends, drinking, when two civilians suddenly entered the restaurant, pulled out the guns and told me to be quiet, adding: "Don't resist or we'll snuff you." They took me out of the restaurant and into a civilian vehicle; I think it was a Renault 18, white or cream coloured. They put me in the back seat of the car and took me to a room. In the room where they took me there were a number of civilians; they took mug shots of me,

the way they do it in the police, and then a real psychological maltreatment began. This psychological maltreatment consisted of their telling me to get up, to sit down, and they called me "You pussy!", and then one of them approached me, levelled a pistol in my direction, or lit a cigarette for me and then took it away and threw it down, saying: "Why did you light it?" This went on for about an hour and I had no idea of what it all meant.

I asked Slobodan Jovović, one of those inspectors - it was later on that I learned he was an inspector and his name - to let my family know where I was, and I wrote my telephone number for him. He said there were no problems with it. It was later that I learned that he had not informed my family about this. After an hour, four members of the special unit, in battle fatigues, with automatic rifles, grenades, and vests came and they hustled me into a Black Maria and put me behind the driver's seat and one of them took a front seat while I was sitting between the remaining two inspectors. At that, they handcuffed me. Zoran Markuš was the commanding officer and is still the commander of the special unit in Novi Sad. They took me to the Plisa prison in Novi Sad. Markuš and the driver went out of the vehicle, while I, although I had expected to leave the vehicle, stayed in the vehicle for some time. After a while Markuš was back, the driver was back and we left the prison perimeter and drove along the streets of Novi Sad. I was familiar with Novi Sad and I saw that we were leaving Novi Sad and were going toward the Zrenjanin road. I then asked Markuš about all this, what was happening, and he told me: "Don't fret, Saša. We won't harm you!"

Earlier, I had been told they had strict orders not to tell me anything, nor where they were taking me. A lot of things went through my head then, that they were taking me somewhere to liquidate me, that they were going to kill me on the way so that, at one moment, I was thinking about releasing the safety catch of a grenade worn by one of the members of the special unit so that all of us would be blown up. Once on the Zrenjanin road, we turned and took side roads toward Belgrade. To be precise, we drove along side roads until Belgrade, then along the highway, and the journey took quite some time, in fact, until dusk when we arrived in Prokuplje.

In Prokuplje, they took me to an elementary school, across the street from the Secretariat of the Interior, I don't know the name of the school where I was taken into, and into a classroom and was told to take the first desk.

There, they handed me over to the inspectors of the Secretariat of the Interior in Prokuplje while the members of the Novi Sad special operations unit left the school and, probably, returned to Novi Sad. I spent a couple of hours at this school, sitting at the first school desk with some members of the Secretariat of the Interior, or inspectors of some other service, before they took me, after a couple of hours, at night, to the prison in Prokuplje. They put me in a room, I think it was room number six, where there already was a youth, bandaged all over, and where there was no electricity. At the entrance to the prison they took from me the things that, practically, had already been taken from me and gave me a receipt. I spent the whole day in that prison room and then my name was called and I was taken upstairs, where the rooms of the administration were. They took me to the first room upstairs, on the left, where the two inspectors were. At first, they treated me as a criminal. They said they knew everything about me that was known in Novi Sad, that they knew who I was and what I had done. A real psychological torture ensued and they started questioning me about the civilians that had been killed in Podujevo. I told them I knew about it and described the event exactly the way I have described it before the court today.

However, they said they were going to take me outside and shoot me, that is what Klikovac and Oparnica said to me. I was told that my family didn't know where I was, that I would never see them again, nor would they see me until I wrote and signed whatever they were going to dictate to me. At that, they kept repeating that I would be shot, that they would, personally, liquidate me. It was only later that I learned that my family had no idea where I was.

In my presence, they made a telephone call to a general from Belgrade; he told them, more or less, that I was "a tough cookie" and that I could be broken only in some other way. Obviously, what they had in mind was my family. Finally, they made it quite clear to me that they would let me contact my family the moment I had written and signed the statement that they had been dictating. If not, we knew what followed. They, the inspectors, had the statement typed on a typewriter and the only thing I could do, and I did do, was to sign differently from the way I usually sign myself. I was ordered then that, at the time I was giving a statement to the investigative judge, my statement had to be identical, that is, to be a copy and that, after that, I would be released from detention.

The court is telling me that the statement given to the investigative judge in both cases is detailed concerning the distribution of the facilities, the lay of the path, the execution of the blonde woman, of ordering the people to stand up along the wall, the issue of orders by precisely determined persons and concerning the shooting itself, relative to the number of rifles, the number of people shooting so that something like this could have been described only by someone who had really seen all that, who had been on the spot.

And I was asked to say how the inspectors could have known all this if I had not given this data to them and had I given them these data.

I did not give inspectors this data. I don't know where the members of the Secretariat of the Interior got it - it was obvious that the data was from the field. I had received the minutes with these contents, I had signed them, but I was ordered to give such a statement to the investigative judge.

I was questioned by the investigative judge, Mijat Bajović, in the district prison in Priština in the presence of a recording secretary and these two inspectors of the Secretariat of the Interior who had composed the statement and forced me to sign it.

I am emphasising the fact that I didn't have a defence lawyer, that a lawyer was not present and that I didn't even have a lawyer. The investigative judge practically copied the earlier statement given at the Secretariat of the Interior."

Asked whether he had heard the warning issued by the investigative judge that he had the right to an attorney and whether he had heard that he had been assigned a public defender - lawyer Dragutin Stanković - and the court was presenting him with the proof that he had even signed such a statement, the defendant answered: "I insist that the investigative judge has not warned me of my rights and I would be glad if the lawyer was to come, together with the investigative judge, and all those who were present at the time of my questioning so that we could look at one another and see who speaks the truth and whether I did have a defence lawyer.

I refuse to acknowledge a single sentence from the minutes of 24 May 1999 which I had given to the investigative judge of this court, which does not agree with my statement given today before this court. The only promise they kept was that, after five or six days, they did inform my family about my whereabouts.

Concerning my statement given in the premises of the prison in Bijelo Polje to the same investigative judge, I did give a statement then, but I think that this statement agrees with the statement I have given before this court today. It is upon the court to look into the statement and assess it within the framework of the totality of my defence."

The defendant was presented with the fact that a part of the statement from the minutes of 18 July 2001 concerning the events in Podujevo and the fact that, in it, the defendant clearly described the event from his point of view, but with the precise description of the place where the civilians were killed, who had ordered their killing, and he also remarked that the order had been given by Slobodan Medić.

In connection with this, the defendant replied: "The investigative judge, Mijat Bajović - whom I would like to see here and ask him a couple of questions - had to, in order to justify his actions, write what had been written in the minutes. And, by the way, there were no threats in Bijelo Polje.

In connection with this statement, I would like to say the following: in Bijelo Polje I was tried because of a certain crime and my defender was Mr Đorđe Kalanj who is the defender in this case as well. He had already been engaged, and the investigative judge will have to give me an explanation why he hadn't allowed me to have a defender who had already been engaged by me. The investigative judge didn't even ask me whether I wanted or didn't want a defence lawyer."

Asked whether there were any comments in Prolom Banja about the events in Podujevo, the defendant replied: "There were comments and we tried to learn what really happened, but we were not successful in it."

Asked by the court whether he knew Dejan Demirović, the defendant replied: "I did not.

“As the court has allowed me now to say what I have to say in my defence, I would like to point out the following.

“In May 2000, in Novi Sad, in a cafe Bonaparta, there was an attempt to liquidate me by the State Security Service, that is, by some people hired from the South of Serbia and who had rented out a summer house in the vicinity of Novi Sad. I learned about it from a policeman who warned me about it. The execution was intended to prevent me from appearing in this court and from saying what I have said today.”

Asked by the public prosecutor why he has claimed today, at the time of determination of the identity of the defendant’s statements, for the minutes, that he did not have a nickname, while in the minutes dated 24 May 1999, recorded before the investigative judge, it was written that his nickname was Kobra, and what the truth in connection with all this was, the defendant replied: “My only nickname could be Sale, an endearment, nobody has ever called me Kobra, and the investigative judge could have written my nickname was Rambo.”

Asked by the public prosecutor to explain why Vuk, the commander of the Special Antiterrorist Unit had come and cursed him, the defendant replied:

“I have already explained this, when the commander had come to the scene, he addressed the people on the right, the group that I was in, he looked at us, which means, looked at me, and if he cursed, I thought he cursed me, which is why I replied. He cursed us, saying ‘You are pussies!’ and I replied ‘You are a pussy yourself!’ I replied to his curse with an identical curse. And that’s the end of it.”

Asked by the public prosecutor to explain a part of his statement of 24 May 1999, practically the very end of the statement, the defendant said: “I am saying that every order has to be carried out not only in this unit but in every unit for special operations irrespective of the consequences. Our immediate superior in the field was Guljo. We followed his orders.”

The prosecutor wanted this explained: if the commander had been Slobodan Medić, aka Boca, and his platoon commander had been Rajko Olujić, who then was "Guljo"?

The defendant was asked to explain this part of his statement, and he replied:

"I had already explained all this and I thought that the public prosecutor had understood. Nothing in this statement is right if it refers to my statement of 24 May 1999. However, I repeat that the operations of my unit must proceed in accordance with the regulations and the rules of war."

Asked by the public prosecutor how it was possible for him to follow the bus with Rajko Olujić if his unit commander had told them not to leave the scene until the end of the meeting, the defendant replied:

"You will get the answer to this question from Rajko Olujić, he is my immediate superior and he invited me to come with him."

Asked by his defence lawyer, Đorđe Kalanj, whether he had received the decision of the presiding judge concerning the appointment of a court assigned defence lawyer and when he had received it, the defendant replied:

"I have never received the decision on the appointment of a court assigned lawyer."

Kalanj then asked the defendant when he had first been contacted by his defence lawyer after 24 May 1999, when he was questioned by the investigative judge, and who that defence lawyer was, what his name and family name were, the defendant replied: "After my hearing, after five to six days, Božidar Filipović, a lawyer from Prokuplje, came to me for the first time. I can't remember whether I had given him the authorisation to defend me in the continuation of the trial, but I think that I had not given him the said authorisation."

Asked by defence lawyer Goran Rodić whether he had been issued arms every time he went on a field assignment, the defendant replied: "Every

time I was in the field with a unit, both in Bosnia and in Croatia, I was issued arms - they are battle equipment and are simply something you can't do without."

When asked by Rodić to give additional explanation about his entering the house after the civilians had left it and why he had done so, the defendant replied: "The purpose of my entering the house after the civilians had left it was to search the house and make it secure for other members to come in, and about the pistol I found there I believe it was quite normal that I took it and it was just as well that I took it so the terrorist could not use it to fight us."

Asked by Rodić if he would also have taken the grenades he had discovered in the house had the shooting not taken place, the defendant replied: "Had the shooting not occurred, I would certainly have taken the grenades and put them into a safe place and given them to the unit for further disposition."

Before the District Court in Belgrade, at the main trial on 12 March 2003, the defendant reiterated his defence from the minutes of the main trial before the District Court in Prokuplje, dated 9 October 2002, and added: "I wore battle fatigues. As for other details and explanations and descriptions of the uniform I don't want to say what it was like because I intend to ask the Albanians who will come to describe the uniform I wore."

At the time of my meeting with the unit commander, Slobodan Medić, he said that the Scorpions unit was engaged to fight NATO forces and the terrorists in Kosovo. The unit was engaged by the armed forces of the Federal Republic of Yugoslavia, but it was a part of Special Antiterrorist Unit of the Ministry of the Interior of the Republic of Serbia. As I explained earlier, at the time of arriving in Prolom Banja, commander Medić delivered a speech telling us we were not going to plunder, we were not going to kill the civilians, that whoever had come to do just that had better go back immediately."

After the defendant had been shown the sketches of the crime scene and the photo documentation contained in the case file, the defendant ex-

plained: "I believe that our buses have been well drawn on the sketch of the crime scene in the vicinity of the police station in Podujevo.

I am saying that I was going along the street marked as Rahman Morina street and entered a gate on the right-hand side relative to the direction I was coming from. In my opinion this house, that is, the courtyard I had entered, was some 200 to 300 metres from the crossroads where our buses had been parked. I am saying that, when I heard the shooting, I was going toward the place the shooting could be heard from, going from the courtyard and the courtyard with the corpses was, as I am showing here on the sketch of the crime scene, on the same side of the Rahman Morina street between the perpendicular street and the building and the courtyard marked five and six. When I left this courtyard, I believe I went out to the perpendicular street, the one where the buses were, as it was marked on the sketch of the crime scene. As for the photo documentation, I am saying it is possible that the ground floor house one can see on sketch No. 1 in the photo documentation is the one in front of which the corpses were found, that is, the corpses were located somehow to the left of the house and not directly in front of it. On the photo No. 6 marked as the position of a separate corpse in the courtyard of house No. 7 in Rahman Morina street where one can see a corpse of a woman, I think that the corpse I had seen was in this position. As for the photo No. 4 of the corpses in the courtyard of the house No. 7 in Rahman Morina street, I say that I cannot recognise and cannot claim that those were the corpses which were piled up in this courtyard and which I had explained earlier.

Since I was shown the difference from my statement given in the preceding trial on 24 May 1999, I say that what I have said today at the main trial is correct as well as what I had stated at the main trial before the District Court in Prokuplje. I am sticking by the explanations I have already given concerning the differences in my statement given earlier and I am pointing out that even then I had told the investigative judge the same thing I have said today, but he had copied, into the minutes, the statement which I had been given by the members of the Secretariat of the Interior.

At the time of the events I am being asked about I did not know Dejan Demirović. I know he was a member of the Scorpions, but I did not know him then. In the Scorpions there were 100 or 120 members, maybe

more than that, while my platoon consisted of 20 to 30 men. At that time Demirović must have been in another platoon. Later, when we returned to Novi Sad, I learned that he had wanted to come to our platoon for reasons of personal safety. It was only later, after my return to Novi Sad that I met Demirović because he was detained, as I was, in Prokuplje.”

In response to a question by the deputy public prosecutor, the defendant replied: “Before leaving for Podujevo, we were not given any particular order, but it was understood that we were supposed to take along the battle equipment and board the buses. Nobody told us the reason we were going to Podujevo, and I think that even our unit commander, Slobodan Medić, knew nothing about all this as, once we had arrived in Podujevo, he went to attend a meeting with the leaders of the Ministry of the Interior.

Leaving us, he ordered us to stay inside the buses, but my platoon commander, Rajko Olujić, asked me to come with him and look for suitable accommodation. Olujić was with me when I entered the courtyard of the storeyed house and when we entered the house near the staircase. I think he was present when I fired a volley from my automatic rifle, but he was not with me when I went to the upper storey and I did not see him when I was running toward the courtyard of the house that the sounds of the shooting were coming from, although it is possible that he was there somewhere. I suppose he had gone to bring the other members of the platoon so the platoon could be accommodated in the house I had already entered.

The house I had entered was suitable for platoon accommodation as it could be approached from the street, because it was storeyed and new and definitely safer than any older house. Besides, it could accommodate the whole platoon, with five or six men per room. The next order was for all of us to board the bus and return. I believe that everybody in the bus was surprised with the return, at least I was and I asked for explanation for returning. It was believed it had something to do with the killing of the civilians in Podujevo, but nobody told me that.

In my unit and everywhere I spoke about running into a courtyard and coming across the corpses. This was all I spoke about. I don’t know whose interests are served by my being charged with what I am charged with. As far as I know, a platoon remained in Podujevo, with the platoon command-

er known as Žuća, and they came later to Prolom Banja, in a vehicle. We returned the arms issued to us ten days later before leaving for Novi Sad. We returned the arms in Prolom Banja in the manner the arms were issued to us. We handed in automatic rifles and ammunition but kept our personal arms.

While we were in Prolom Banja, nobody questioned or heard me, nor have I heard about anybody else being heard or questioned. I thought it unusual that we were returning although, while staying in Prolom Banja, we had some activities, and besides, NATO forces were expected to land in the area of the Radan mountain. Communication systems which were supposed to operate at the time of the landing were not installed. I am still a member of the Scorpions, my name is still on the unit roll.

Rajko Olujić was with me, as I had said, and, beside him, four members of the Ministry of the Interior, and I suppose they were from the Department of the Interior in Podujevo. I think they were present in the courtyard. It is possible that they had also run after me, and I don't know them, while I know well those whose names I have mentioned."

The defendant answered the last question of the presiding judge: "I was not given any order concerning people found in the houses. It is understood that, when the forces of the Ministry of the Interior enter houses, the arms found in the houses must be handed over, and I am being charged with robbery. It is a normal procedure that, should there be terrorists, the terrorists should be arrested at the moment of entering the house, and should they fire at me, I would fire at them. Everybody knows, and behaves accordingly, and I learned about it in the course of my schooling, that civilians must be left alone, they are not to be maltreated or fired at."

Asked whether it was understood, or whether there existed an order concerning the removal of the civilians from the houses that the members of the Ministry of the Interior and some other units were entering, the defendant replied: "The people who were there, and I mean other members of the Ministry of the Interior, must have known something about this because they had allowed those people to go down the street. It's true that, when I entered the house, I did say, louder, that they all had to leave the house because there was noise and talking in the house. In this case, I fol-

lowed the regulations because the regulations say that, should anything appear suspicious, a teargas grenade should be thrown into the house, and we didn't have teargas, and I might, in a different situation, have shot at the man holding his hand so, since I didn't know what he was holding in his hand. This is what an officer would have done in peacetime, let alone in wartime."

At the end, the defendant stated: "This is all I have to say, and I find it curious to be innocent in detention and I can hardly wait for all this to end and for the truth to come out."

At the time of the first hearing in the preceding trial before the investigative judge in the District Court in Prokuplje, on 24 May 1999, the defendant had said: "I live in Novi Sad. I am married. No children.

At the beginning of NATO attacks on Yugoslavia, on 24 March 1999, I was engaged, as a member of the Reserve Corps of Special Antiterrorist Unit, in fact, a special unit known as Scorpions.

On 25 March 1993, we started, by bus, from Novi Sad, with two buses and a truck transporting fighters and equipment, the Scorpions commander was accompanied by three men from his personal security detail. First there was Boca, in a BMW, grey metallic colour, one of the buses was Šid prevoz, the other one Bečej prevoz. All the buses were engaged for the needs of our unit.

We travelled for quite a while; we started around midnight and arrived late in Prolom Banja. On the way to Prolom Banja, we stopped at Makiš. There, we were given uniforms and put them on immediately, and when we reached Prolom Banja we were assigned to rooms. I shared a room with Rajko, my platoon commander. After two or three days, when the second group was expected to arrive, we were ordered, by our platoon commanders, to clean the arms that were oiled, both for ourselves and the second group that was yet to arrive. In Prolom Banja, where we were accommodated before going to Podujevo on an assignment, all of us were issued automatic rifles 7.62 mm, and ammunition.

I can say that we have not been told at the time of our engagement that we were to take part in the operations as members of the Special Antiterrorist Unit. We knew we were followed at all times by members of the Special Antiterrorist Unit on our way to Podujevo from Prolom Banja. We spent two or three days in Prolom Banja, cleaning rifles. We were not issued rifles, but we were cleaning rifles for those who were yet to come to Prolom Banja. I am saying that SAJ stands for special antiterrorist units, while we are called Scorpions.

The commander of my unit, called Scorpions, was a man with a nickname Boca, I don't know his family name. I had my own platoon commander, it was Rajko Olujić, whom I had known earlier, from Dalmatia and Novi Sad. Our unit has some 120 members, divided into five platoons.

The commander of one of the platoons was a man whose nickname was Guljo, I don't know his name and family name, but I do know that he was a brother of commander Boca. I am familiar with the fact that the men with the nicknames Brka and Žučo were commanders of additional two platoons.

I don't remember exactly the day and date, but one morning around six or seven o'clock, together with the accompanying SAJ members, in buses, we were transported from Prolom Banja to Podujevo where we were supposed to carry out our assignment. Then, before leaving, we were told that we were going to clean the terrain. We reached Podujevo quickly and there we were met by the members of SAJ and I saw a number of policemen there as well. I believe they had blue battle fatigues and green vests, with the white lettering Policija (Police) across the vests. Upon our arrival in Podujevo, in two buses, commander Boca went to a meeting somewhere and we left the bus. I was standing, with Rajko Olujić and some other members of our unit and we were talking with the members of SAJ. The members of SAJ told us that all those houses were empty, that everything has been cleaned.

At that moment, a number of men left the buses upon their own initiative and moved away from the buses and the houses surrounding us. I know that one of the officers of SAJ had told our platoon commanders to assign us into neighbouring houses, while I, with commander Rajko Olujić, in the company of a number of SAJ members and two policemen, was on my way

to look for a house where a platoon could be accommodated. The members of SAJ again told us that the houses were empty and that Serb houses were marked with white towels hanging from the windows.

Quite close to where our buses were parked we found a house with the gate closed. I broke down the wooden part of the gate and Rajko pulled through and opened the gate. Here, from a house standing to the left of the gate, a man in his forties came out and said to me, in Serbian, that there were some more women and children in the house. The man was an Albanian (Šiptar) but he spoke excellent Serbian. Then we told those who were in the house to get out of the house, and they did, carrying things, suitcases and travel bags. When they were all out of the house, there were about ten of them, two men, one around 30 and the other around 40 years old. The man of 30 was holding a child and wore a black leather jacket. When I entered the house, I found his black belt, testifying to his mastery of the martial arts. The rest were women and children.

Beside these two men, there was a third man, aged between 40 and 50, who was coming out of the house. He was rather short, grey of hair, well built, with a worn out suit and a yellowish striped shirt. As he was coming out of the house, he held his left arm under the coat. I pulled at his arm, automatically, for personal safety. A woman cried out then: 'Don't! His arm has been broken!' I tore his shirt and saw on his left arm, in the shoulder, a bullet wound. I slapped him, then, and told him: "Is this a broken arm or a bullet wound?" By his build and constitution and everything else this man was a member of KLA.

One of the men said that in the house, in addition to the women and children, there was a paralysed woman.

Commander Rajko and the men from SAJ ordered these persons to go out in the street and to line up. Rajko then said: 'Let them go.' I saw then tears in commander Rajko's eyes. We told them to run down the street and while they were running I fired a short volley high above their heads. I don't know where they had gone, but they did scatter down the street.

After that, Rajko and I went back to the courtyard; the policeman had remained at the entrance to the house while members of SAJ stood at the

gate. This is the second house in the same courtyard, the one we had entered first. We went in, in order to search it and, in a room on the first floor, I found a Zbrojovka M-75, 9 mm pistol, with a full cartridge, and a Dupont cigarette lighter. I took the pistol and the lighter without telling Rajko anything. The police took them from me in Novi Sad, on 21 May 1999.

When we got to the street we could hear noise in the neighbouring courtyard and the platoon commander, Rajko, told me to go and see what was going on, while he would return to get help and Rajko told me to join the rest of the soldiers and help them. I passed through the courtyard gate and continued along the house and by the fountain and by a blue Volvo that was parked there. When I came to the fountain I saw a group of people lined along the wall of the house. There were some 15 persons, including Guljo and Brko. One of them was rather short and was the youngest of all of them and he was searching the people while I was looking at the windows so nobody could shoot at them. Then one member of our group took a blonde woman aside and came back immediately and I heard him asking 'How come you don't know whose grenades those are and the rockets for hand-held rocket launchers', and then he pushed her toward the wall.

One of the policemen with the markings said 'All of them should be killed', whereupon the man took the blonde woman along the path toward the house and fired a short volley at her back and the woman fell down on the concrete path. I don't know who did this, but I do know that the perpetrator was blond. Guljo then said, all excited and angry, that all those persons should be lined up along the wall and killed. Then we were shooting from a number of firearms, there were 10 to 12 pieces of firearms. I was shooting, Guljo was shooting. I did not fire more than ten rounds. The youth who had searched them was shooting, six or seven more people were shooting. All those lined up were hit and they fell down, in a pile, one over the other. We did not check to see whether some of them were alive or not, but retreated back to the street and I realised men had panicked.

Some of the SAJ officers ordered us to fall in and asked who had been shooting. Of those officers, I know one was called Vuk, a good guy, and Simović also told us to go back. Boca appeared, angry, cursing: "You, motherfuckers, I can't leave you a moment alone without you causing some shit". At that moment he did not know what had happened. I think that

Vuk, too, was in the dark about this, I think it was so because they said everything was clean.

Guljo and his men were late for the line up; we were ordered to board the buses, a volley or two could still be heard and Boca told Rajko to return and see as there probably were some of our men there. Rajko came back with those men and at that moment a number of sniper shots were heard and we were one hundred percent sure it was KLA shooting at Žučo's group.

We stayed some ten days in Prolom Banja and were told to keep silent about all this. Colonel Trajković thanked us for carrying the assignment and from then on we knew we belonged to the SAJ Reserve Corps. They told us they would call us when we were needed and that we could go home then. Immediately we left the rifles and the ammunition in Prolom Banja and left for Belgrade. I know we were thanked by a minister whose name I cannot remember. We were also told that we would hand in the uniforms in Novi Sad and that it would be in one place. They told us we would be issued overalls when we were engaged next time.

I am saying that every order must be carried out, not only in a special operations unit, but in every single special operations unit, irrespective of the consequences. I did not see a single child there, but I did explain a moment ago that all orders must be carried out. The immediate commander on the spot was Guljo and we followed his orders."

At the time of questioning in the preceding trial before he investigative judge of the District Court in Prokuplje, in the premises of the prison in Bijelo Polje, on 18 July 2001, the defendant stated:

"I am stressing the fact that I am a member of the Reserve Corps of the Special Antiterrorist Unit (SAJ). I think, I am not sure, that at that time SAJ belonged to the Government of Serbia. The SAJ commander at the time was colonel Živko Trajković. SAJ was paying my salary normally; the unit commander, Boca Medić, handed out our salaries. I know this happened at the time NATO began attacks on Yugoslavia and, on 24 March 1999, Boca Medić, who leads the Scorpions unit as part of the SAJ, called me and I accepted his invitation, and he told me that an attack on our country had been launched. I came from Novi Sad, that is, I came to Petefi Šandor Street

in Novi Sad, and there was a bus, or rather, two buses. I know that there, near the buses, was a minister, Mrgud, I know that's his nickname and that he had signed the agreement. This happened in the evening and Boca Medić, I don't know his name, told us we would be included into SAJ as a legal formation, so we would not be a paramilitary formation. The commander of the unit was Boca Medić; he is from Mirkovci, Eastern Slavonia. When I came to Novi Sad, to the Bonaparta club, there was Boca Medić and he told me he was supposed to go to Kosovo. He said everything was under attack, everything was on fire, so I did not return home, I just called my wife on the phone.

From there, we went to the Makiš forest, near Belgrade, where we were given uniforms, boots, that is, just uniforms without arms. There was a full bus of us. I think it was a civilian bus, owned by Auto Bečej or another transport company, I don't know. It was on 24 March 1999. We did not know where we were going. Our buses had big escort of police vehicles up front, a couple of jeeps and a truck. I am not sure it was a police escort, but it was an escort. Boca Medić said we were going to Kosovo and I know we stopped on the way and we arrived in Prolom Banja, we were not taken to Kosovo, but to Prolom Banja, we were accommodated in the Radan hotel, without arms, and awaited further instructions there. There, in Prolom Banja, we spent five or six days. Another group of people arrived, we were given badges, arms, which were oiled, and we were not issued arms against the record of their factory numbers, they just distributed them among us. Just the rifles with combat sets. We were also given bayonets for the rifles.

I had known Boca Medić before. I knew Rajko Olujić, too, who, as a matter of fact, was a platoon commander, and the unit commander was Boca, I don't know his name. As I have already said, both of us were from Dalmatia. Our unit had between 100 and 120 men. Rajko Olujić was a platoon commander, and he is from Dalmatia, and lives in Novi Sad. There were five platoons and the platoon I was in was under the command of Rajko Olujić. I know that the commander of a platoon was a man nicknamed Guljo and that he was a brother of commander Boca, but I can't remember the name of commander Boca. Brko and Žuća were platoon commanders of the next two platoons. I know that Brko and Žuća had been in the Scorpions in Eastern Slavonija under Boca's command. Rajko Olujić offered me either the post of his deputy or the command of a group of men, but I re-

fused because proper organisation was lacking, because we didn't have the bare necessities, like bandages, systems of communication, so I refused. I repeat that the Scorpions were members of SAJ and I was a member of the Scorpions.

I can't remember the date exactly, but I know it was toward the end of March or the beginning of April, but I don't remember the day. I know that, in the evening, they told me, my platoon commander, Rajko Olujić, told me we were going to cleanse the terrain in Podujevo, and other men were told, by their platoon commanders, that tomorrow was the date to go. In the morning we were off, in two buses waiting in front of the hotel; there were two full buses when we started from Prolom Banja. I know general Pavković was in Prolom Banja, but he did not make contact with us, he often changed his residence in wartime. I know a military vehicle was in front of us, but I say I don't know if it was armoured personnel carrier. There was a jeep up front, that is, several vehicles, and they were going in the direction of Podujevo.

When we arrived in Podujevo, I saw quite a lot, I don't know how many exactly, members of SAJ, and we were met by the members of SAJ, and there also were members of special police units, but I didn't see any military units. When we got out of the buses, commander Boca went to attend a meeting; we got out and we were told by Rajko Olujić to take residence in the surrounding houses, that each platoon should take a house and remain stationed in those houses. When we got out of the buses and started toward the houses we found members of SAJ who had earlier come to the terrain and they told us: 'Here we are, in these houses, and you go a little further on, into those houses' and that meant that we should go into those houses and take accommodation in them.

Our unit was told so by Rajko Olujić while other commanders informed other units. After leaving the two buses, some people broke into the shops and boutiques and took what they wanted from those shops. I didn't know anyone of those people to be able to identify those who broke into the shops and took things from them. When we arrived to those houses, the members of SAJ said that the terrain had been cleansed and made secure. Rajko Olujić told me to go with them and take a look at the house we were supposed to go into. We entered the house and there were two members

of PJP unknown to me and they wore bulletproof vests with the lettering Policija, and those were net-like vests. There were two more members of SAJ, unknown to me.

I broke the wooden gate, kicking it, and we entered, behind the gate was a grenade, I know it was green, but I don't know what type it was. Six or seven of us went in. In the house courtyard there was yet another house. We entered through the gate and did not go into the first house, but the second, and an elderly man came out, with gold and money, and he said 'Let me pay'. We said we didn't want to take anything, but all of them should go out of those houses. Three or five persons went out of those houses, and there were some women and children. They had travel bags with them. We didn't search the house. We went into that house, in the same courtyard where some noise was coming from. I kicked the door down, Rajko Olujić entered behind me, I climbed the stairs and there was noise and we told everybody to go out and surrender. There was a couple of men, a couple of younger women, some 15 persons all together. A younger man, some 30 years old, was coming down the stairs; I hit him with my rife butt, for security reasons, and he fell down, but got up right away. A woman was standing beside him, I don't know if she was his wife, and she said his arm was broken, I tore the bandage and saw his arm was wounded. He didn't wear a uniform but he certainly was a member of KLA.

We let them go and told them all to go out and they went out. These people joined the people from the first house. From both houses there were 15 persons. There also were some women; I don't know exactly how many men were there, maybe seven or eight, both younger and elderly people. We told them to go down the street, I fired ten rounds in the air, we didn't shoot at anyone. I didn't know Demirović, nor did I see him. We went back to the courtyard, into the first house again, and in the first house, upstairs, we found a KLA uniform, there also were rockets for hand-held rocket launchers and some grenades, I found a pistol, a Zbrojevka which I appropriated, and a golden Dupont lighter.

These men and women went down the street and in the second courtyard, and not in this one, some shooting could be heard, a couple of volleys, it sounded like a showdown. We ran toward that house as we were threatened by the fire, jumped over the wall of this house and, on the right,

there was a fountain and I saw a dead woman on the path in front of the house. And in this house in the second courtyard there were corpses in the courtyard, I don't know how many. I think they were civilians, I don't know if there were any women and children, but it was a terrible scene for me. These corpses were along the house, near a wall, and as I said, I saw a corpse on the path. Later I learned it was Gulja's group. Gulja is Boca's brother and he wore his hair long, like Boca, and I think his family name was Medić. When we were taken, in buses, to Prolom Banja, I heard the story, like all other members, that something terrible had happened, that Gulja had ordered all those people killed. I learned that these men and women were lined up and shot, but who ordered them to be lined up and who shot them I don't know. I heard in Prolom Banja, as everybody was talking about it, that they should be lined up and killed, that it was Gulja who ordered the killing, but I can't say for sure, but that was the story."

The defendant was told that, in his statement given before the investigative judge in Prokuplje and entered into the minutes of the questioning, on 24 May 1999, he had said: "Then we were shooting from a number of firearms, there were ten to 12 pieces of firearms. I was shooting, Guljo was shooting. I did not fire more than ten rounds. The youth who had searched them was shooting, six or seven more people were shooting. All those lined up were hit and they fell down, in a pile, one over the other."

The defendant responded: "I say this is not true. I was threatened and forced to say this for the minutes. I don't know whose nickname is Vuk, and Simović he was the commander of the Belgrade SAJ and we were told to pull back into the buses. It is true that Boca had said: 'You motherfuckers, I can't leave you a moment alone without you causing some shit'. I think they had no idea whatsoever of what the platoons commanded by Gulja and Žuća were doing.

In two buses, we were returned to Prolom Banja and there was Živko Trajković and he was wounded. He greeted us. When we came to Prolom Banja, we realized a platoon was missing, Žuća's platoon. We had been in the field for an hour or two; it was only in the evening that Žuća was transported in a truck by someone from SAJ, and we did not even know where his platoon was and what they were doing.

For me, cleansing the terrain is number one - that is, orders given by superiors are followed. Orders must be carried out, which means members of KLA should be killed, not the civilians. My platoon commander was Rajko Olujić. Both Gulja and Rajko could order me around. I have no connections with Gulja. I was arrested by the police in Novi Sad, by two civilians who told me 'Don't resist or we'll snuff you'. They took my pistol.

When I was giving my statement to the investigative judge there were no threats, and when I was giving my statement to the police I was threatened.

I repeat that I did not shoot the people at all, but I did fire into the air."

While presenting the evidence, upon an agreed upon motion of the parties, the court read the statements of the witnesses heard before the District Court in Belgrade and the plaintiffs who were heard before the District Court in Belgrade, namely: Keča Duško, Filipović Miroslav, Filipović Svetlana, Oparnica Miloš, Klikovac Duško, Marković Dragan, Anastasijević Milan, Janković Radislav, Maljević Nebojša, Petrović Tomislav, Dabetić Mitar, Fabijanić Predrag, Orlović Nebojša, Radulović Milan, the plaintiffs Bogujevci Selatin, Bogujevci Lirrie, Bogujevci Jehona, Bogujevci Fatos, Bogujevci Saranda, Bogujevci Safet, the witnesses Đukić Željko, Olujić Radoslav, Medić Dragan, Medić Slobodan, Kovačević Nikola, Radić Aleksandar, Mitrović Petar, the plaintiff Duriqi Enver, the witness Gjata Fljorim, Stoparić Goran, the plaintiff Kastrati Rexhep, the witness Veseli Nazim, Smiljić Zdravko, Šolaja Miodrag, Cekić Nebojša, Tomić Milovan, Borojević Dragan, Simović Zoran, Vulević Spasoje, Manojlović Srđan, and read the following written depositions: the minutes of the crime scene investigation dated 30 March 1999, with photo documentation and the sketch of the crime scene attached to the minutes of the crime scene investigation; the letter of the head of the Institute of Forensic Medicine, Dr. Slaviša Dobričanin, dated 6 March 1999; a report on the discovery of 19 corpses on the territory of Podujevo Municipality, dated 9 April 1999; the minutes of the bodily search of persons dated 21 May 1999; the report of the Ministry of the Interior of the Republic of Serbia dated 11 March 2002; inspected photographs of the members of the Scorpions unit submitted by the Ministry of the Interior of the Republic of Serbia to the District Court in Belgrade on 4 July 2003, and the report of the Ministry of the Interior of the Republic of Serbia bearing

the same date; the findings and the opinion of expert witnesses, psychologist Stanko Ivandić and Dušanka Garić; the official note of the Secretariat of the Interior of Kuršumlja, dated 25 November 2002; ballistic testimony of expert witness Milivoje Vučković, employed by the Institute of Security dated 12 May 2003; the minutes of the lineup identification dated 8 July 2003; inspection of the sketch attached to the minutes of the hearing of the plaintiffs dated 9 July 2003; the findings and the opinion of the commission of expert witnesses, neuropsychiatric expert and clinical psychologist dated 4 February 2004 and the report from the police record of the defendant; the letter of the United Nations International Criminal Court dated 16 July 2003 with the reports on the autopsy performed by the prosecution.

In view of the fact that first instance verdict K. broj 792/02 dated 17 March 2004 had been repealed with the decision of the Supreme Court of the Republic of Serbia KŽ. number 687/04 dated 22 December 2004, the criminal proceedings have been repeated.

Following the remarks from the decision of the Supreme Court on the basis of which the earlier verdict has been repealed, the court, at the main trial, heard witnesses Miroslav Nikolić, Mijat Bajović, Aleksandar Đorđević, Radica Marinković and the witness Živorad Šubaranović, procured the record from the Ministry of the Interior of the Republic of Serbia dated 17 May 1999 about the issuance of rifles to the members of the Scorpions unit and a photocopy of the record of visits to arrested persons from 20 May to 28 May 1999 in the District Prison in Prokuplje, and a photocopy of the page of the duty roster of the Prokuplje prison security detail for 24 May 1999 and had all those written documents read at the main trial.

After a comprehensive analysis of the evidence presented at the trial and taking into account the defence of the accused the court has arrived to the facts presented in the wording of the verdict.

The events which are the subject matter of the indictment took place on 28 March 1999 on the territory of Podujevo. The facts concerning the existence of the armed conflict and the state of war as well as the status of the Scorpions unit have been determined on the basis of the letter of the Ministry of the Interior of the Republic of Serbia. Thus the fact that there existed an armed conflict on the territory of Podujevo has been determined on the ba-

sis of the letter of the Ministry of the Interior of the Republic of Serbia and the statements of the witnesses.

From the letter of the Ministry of the Interior dated 1 March 2004, whose contents have not been disputed by any party to the trial, it has been determined that, ever since 1998, on the territory of Podujevo Municipality, there has existed a guerrilla organisation, with members of Albanian nationality, that has carried out terrorist attacks mostly on the members of the Ministry of the Interior of the Republic of Serbia and the Army of Yugoslavia. In the beginning of May 1998, two movements - NPOK and NPRK - joined and became Kosovo Liberation Army so that the LAB zone of operations was formed, which, from the point of view of geography, belonged to the territory of Podujevo Municipality and a part to Priština Municipality. The KLA's military arm on the territory of this zone of operations consisted of military formations of KLA and urban and village armed forces, the so-called militia, with at least 2,000 fighters.

The KLA had a military organisation from the level of brigade to the level of battalion, company and platoon operations. Each brigade had a commander and a command headquarters and numerous units under their command, organised into battalions, companies and platoons and, in accordance with the size of the area of operations, the corresponding number of militia forces, from a single platoon to a company, whose real function was to be a strategic reserve for militarily active KLA formations.

These forces, consisting of armed civilians, were commanded by the commander of the local village or settlement headquarters responsible, in his turn, to the brigade commander whose area of operations included the commander of the headquarters of the LAB zone of operations. So that KLA had a military organisation, material means, responsible command and the ability to control parts of the territory of Kosovo, which made it possible for this organisation to carry out continuous and harmonised military actions.

The conflicts between KLA forces and the security forces of the Republic of Serbia - the army and the police - in view of their nature, means and objectives, represented internal armed conflicts which began long before the said events in Podujevo and continued after the beginning of the war be-

tween the Federal Republic of Yugoslavia and the NATO coalition which began with the bombardment of the territory of the Federal Republic of Yugoslavia by the NATO pact coalition on 24 March 1999.

On 28 March 1999, in the town of Podujevo, there were no engagements between special police units of the Republic of Serbia and the members of KLA, although, at that time, members of KLA, at a distance of three to four kilometres from Podujevo, dug out trenches which they were using to start their actions from so that special units of the Ministry of the Interior of the Republic of Serbia were engaged to prevent attacks by KLA members from those positions, which was the reason for the presence of a large number of members of the Ministry of the Interior of the Republic of Serbia, including the Scorpions unit at that time in Podujevo.

The Scorpions unit was formed as a volunteer unit and had 128 members. The defendant, Saša Cvjetan, was a member of this unit in March 1999. The commander of the Scorpions was Slobodan Medić, aka Boca, and his deputy Srđan Manojlović. On 25 March 1999, this unit was assigned to the Reserve Corps of SAJ of the Ministry of the Interior of the Republic of Serbia and sent to Prolom Banja for further engagement. On 27 March 1999, Zoran Simović, the then commander of SAJ, went to Prolom Banja to take over the command of the Scorpions unit and, on 28 March 1999, around 04:00 hours, upon agreement with Slobodan Medić, he took over the command of the unit. All this was determined on the basis of the report of the Ministry of the Interior of the Republic of Serbia - the Directorate for Fighting Organised Crime - dated 11 March 2002.

Upon their arrival in Podujevo, members of the Scorpions unit were directed to the houses belonging to persons of Albanian nationality, located near the police station, to secure accommodation.

From the statement of the SAJ commander, Zoran Simović, and the members of the Scorpions, questioned during the trial, it has been unequivocally determined that the Scorpions unit, on 28 March 1999, did arrive in Podujevo. Members of the unit were armed with Kalashnikov automatic rifles which they had been issued before starting for Podujevo. At the time they were issued the rifles, factory numbers of the rifles were not recorded, nor were the numbers of the rounds of ammunition issued them recorded, and,

at the time of returning the rifles and ammunition, nobody counted the returned numbers of rounds nor identified the rifles returned. This was determined on the basis of the statement given by witness Srđan Manojlović, dated 17 May 2005, wherefrom it follows that, for the needs of the Scorpions unit, on 27 March 1999, in Prolom Banja, where the unit was stationed, a truck brought 15 cases each containing ten 6.62 mm automatic rifles and ammunition. Srđan Manojlović signed for the arms and distributed them to the members of the Scorpions unit, without recording serial numbers of the automatic rifles before issuing them to the members of the unit.

On the same day when the Scorpions unit arrived in Podujevo, in the house of the Gjata family, located in Podujevo, at No. 174 Kosančić Ivana Street, there were, in addition to the members of the Gjata family and the Rexhep Kastrati family, members of some other families so that all together, in this courtyard, there were some 30 persons. Witness Rexhep Kastrati stated that that morning when, on hearing noise in the courtyard, he had come down to the courtyard, there were uniformed men, in about four kinds of different uniforms. Before witness Kastrati went his sister who was holding in her hand a 1,000 German mark note. His sister was offering the note to a uniformed person who asked her why she was giving him the note, and then witness Kastrati, taking the money from her hand, handed it over to that person, saying: "It's my sister's treat." The man took the money and then levelled the automatic rifle at Kastrati's chest. That man in a uniform was the defendant, Saša Cvjetan, whom witness Kastrati had, with certainty, identified at the main trial and provided a detailed description of his behaviour. Holding his rifle levelled at Rexhep Kastrati's chest all the time, the defendant was asking about what was behind the door and where the doors on the ground floor were leading to, which the witness provided an explanation for.

When the noise was heard, as people from other houses were coming into the courtyard, the defendant left witness Kastrati and ran away and then the witness heard the defendant asking someone: "Saša, what are we going to do with them?" The whole group, including witness Kastrati, left the courtyard and went out into the street where the defendant said: "I'll kill all of you." He then came up to witness Rexhep Kastrati again, took him away from the group and levelled the automatic rifle at his chest. After asking him a number of questions, and after one of the rest of the uniformed men

had told him to let that man go, the defendant hit the man in the face with the butt of his rifle and then let him go. The witness then joined a group of civilians and all of them went along the street in the direction shown them. When the column was on the way, the defendant fired a volley in the air.

Witness Gjata Florim was in the same group with Rexhep Kastrati. He was, with his family, staying in Isak Gjata's house located in the same courtyard with Sabit Gjata's house where Rexhep Kastrati and his family were staying. This witness, too, stated that on 28 March 1999 a large group of uniformed men entered their courtyard and told them all to leave the house. He, together with his wife, children and parents went out, but he and his father were stopped on the stairs by two persons in green uniforms. One of them threatened the witness, but the other one told him to let them go, as the witness was carrying his small child in his arms. The witness then left the house and, on his way out, heard the sound of a volley fired from an automatic rifle, coming from the street. Once in the street, the witness joined the column consisting of his relatives and then noticed that nobody was hurt.

Witness Florim Gjata could not say whether he had seen the defendant that day at the crime scene, although he stated that he might be able to identify the two who had approached him on the stairs, but he could not answer whether defendant Saša Cvjetan might have been one of them.

Defendant Saša Cvjetan himself, partly confirming the statement of witness Rexhep Kastrati, contributed to the explanation of his participation in the event. After the questioning of witness Rexhep Kastrati, the defendant stated that it was true that he had been the one person who the witness had identified. On that occasion, denying that he had taken the money from the witness's sister, the defendant stated that he had spoken with the witness, asked him where the doors inside the house were leading to and had pushed the witness with the butt of his rifle, allowing that he might have held the rifle levelled at the witness. The defendant confirmed that, after the witness had got up and joined the rest of the people in the street, he had fired a short volley in the air. This, in his words, he had done for security reasons, so the people would go away and couldn't see that his platoon would take accommodation in those houses. The defendant also explained the sequence of the events, stating that he had, immediately after that, returned to this house, which would mean that that was one of the

Gjata family houses. In his defence presented at the main trial, the defendant stated that he had discovered a pistol in one of the rooms that he had appropriated, reporting the event to his superiors.

The court gave complete credence to the statement of witness Rexhep Kastrati. In his description of the event, the witness was precise, and categorical in his identification of the defendant. His description of the appearance of the defendant and his behaviour completely fits the impression that the defendant usually leaves. Although the details of the event had not been described earlier by the defendant, it was only after hearing the witness Rexhep Kastrati that the defendant described the details of the event which, except the account of taking the money, overlap with the statement given by the witness Rexhep Kastrati. Obviously, the witness was telling the truth - not showing a tendency to give an inappropriate description of the event and was speaking about the things he was sure of. Because of that, the court gave credence to the part of his statement that he had given the defendant a 1,000 German mark note which the defendant had taken.

The court gave credence to the statement of witness Florim Gjata as well. However, as this witness had not identified the defendant, the court found that the defendant had not been in direct contact with him. Still, the statement of this witness explained the chronology of the event. The witness, in fact, stated that he had heard the volley which the defendant admitted to have fired in the air in the street at the moment witness Gjata was still in the courtyard. It is obvious that witness Kastrati and his family were the first to leave the same courtyard and only then witness Florim Gjata and his family so that the event described by witness Kastrati preceded the event described by witness Gjata where it is impossible to confirm with any amount of certainty the participation of the defendant.

After the event in the courtyard of the Gjata family house, the defendant returned to one of the houses to search it, in his words, and found a pistol in one of these houses which he appropriated and then, in his words, reported this to the superiors of his unit.

Witness Radoslav Olujić confirmed the part of the defendant's defence relating to the situation concerning witness Rexhep Kastrati. Namely, he was with the defendant when they had come to the Gjata family house and

when the families from the courtyard were leaving their houses. This witness, in his words, when the civilians had come out, entered the house but went out when he heard a volley and learned from defendant Saša Cvjetan that it was he who had fired a volley in order to hasten the civilians to leave as soon as possible. Witness Olujić then left in order to bring the remaining soldiers while defendant Saša Cvjetan remained. Chronologically, this corresponds with the explanation of the defendant who stated that he, after a large group of civilians had left the Gjata courtyard, had entered the house and carried out a search. In one of the houses he discovered a Zbrojovka pistol which he appropriated.

In the immediate vicinity of the Gjata house, in the street, there was a group of women and children of the Bogujevci, Ljugaliju and Duriqi families. Earlier, they had been evicted from the Bogujevci family house. Plaintiffs Selatin Bogujevci and Enver Duriqi are fathers, husbands and sons of the women and children who were in the group and who had, before the event in question, left their houses and it was on the basis of their statements that the identity and the number of the members of their families remaining together in their houses has been determined. After the killing, the members of their families who had been killed at the same occasion in the same courtyard were buried together and later exhumed and identified.

Thus, on the basis of the statements of witnesses Selatin Bogujevci who, in the morning hours of 28 March 1999, had left his home, it was determined that his family - that is, his mother, wife and underage children - had remained in this house, and the family of his brother, Safet, as well as the parents, wife and underage children of their friend Enver Duriqi. At the main trial, witness Selatin Bogujevci sketched the place their house was located in Podujevo, at No. 265 Kosančić Ivana Street, and in the same courtyard there are some more houses. As the plaintiffs and their children, present at the event, had described, they had first been in Selatin's house and then had gone to the house of Selatin's and Safet's uncle where all of them were together with the Duriqi family.

The injured party/witnesses - underage children Lirrie, Jehona, Fatos and Saranda Bogujevci - gave identical descriptions of the essence and the details of the event. It has been determined on the basis of their statements that their wives and children, their mother, aunt and sister-in-law had been

together in the house of Safet and Selatin Bogujevci. As a police vehicle had stopped in front of their house, all of them went over to the house of Selatin's and Safet's uncle, located in the same courtyard. In the house there had already been the father, mother, wife and the four children of their friend, Enver Duriqi. In that house, there were 20 people in total, among them an elderly man, the father of Enver Duriqi, 12 children between two and 14 years of age and seven women, two of which were almost 70 years old. As quite a number of uniformed men had entered the courtyard and as some of them had even entered the house where these families had been, they began getting their things into travelling bags so they could leave. However, the men in uniforms told them to leave their travelling bags, to raise their hands and go out. While the plaintiffs and everybody else were leaving the house, some of the uniformed men entered the house. After all the plaintiffs had gone into the courtyard they were told to go into their neighbour's courtyard where all of them were searched.

At that moment, Hamdi Duriqi, the father of Enver Duriqi, was taken away from the group. After that, the search of the members of the grouped continued and the mother of the plaintiffs - Lirrie, Jehona and Fatos - Shefkate Bogujevci was separated from the group, while the others were told to go out in the street, opposite the police station. Then the plaintiffs saw how Hamdi Duriqi and Seljman Gashi were taken into a restaurant, with soldiers coming after them, and then some of the plaintiffs heard the sounds of firearms shooting.

After that, the group with the plaintiff in it was ordered to return to the courtyard. Then they saw, in the courtyard, plaintiff Shefkate surrounded by some soldiers and crying and, in plaintiff's words, spoke in Serbian, saying something like "they are just children", so a soldier pushed her and shot at her, and when her children started crying and shouting "Mama!" the soldiers shot at her again. After that, the soldiers, as they are called by some of the plaintiffs, fired at all of them. Plaintiffs Jehona and Lurie lost consciousness so they could not decide on the number of people who had fired at them, while from the statements of plaintiffs Fatos and Saranda it follows that they had been shot at from at least two directions although, these plaintiffs, too, could not decide on the number of men who were shooting at them. Plaintiff Saranda Bogujevci was hit 13 times in an arm, twice in a leg and once in the back. Plaintiff Fatos Bogujevci was wound-

ed in both legs, with three bullets in one leg and two bullets in the other. Plaintiff Jehona was wounded in both shoulders, left arm and left leg, while plaintiff Lirrie was wounded in the neck, back, shoulders and a finger. According to their statements, after the wounding, they were given help and they were transported to the hospitals. Except for these witnesses and Genc Bogujevci, nobody else survived.

On the basis of the statements of these witnesses, written documentation contained in the case files and the data given by plaintiffs Safet and Selatin Bogujevci and Enver Duriqi, it was determined that then, on that spot, 14 persons had lost their lives - seven women, as follows: Shefkate Bogujevci, 42 years old, Fezdrija Ljugaliju, 21 years old, Nefisa Ljugaliju, 55 years old, Salja Bogujevci, 39 years old, Shehida Bogujevci, 67 years old, Isma Duriqi, 69 years old and Fitnete Duriqi, 36 years old; and, beside them, their seven children: Nora Bogujevci, 14 years old, Shpend Bogujevci, 13 years old, Shpetim Bogujevci, ten years old, Dafina Duriqi, nine years old, Arbër Duriqi, seven years old, Mimoza Duriqi, four years old and Albion Duriqi, two years old.

Describing the number and appearance of the uniformed persons, the plaintiffs-witnesses stated that, on that particular day, a large number of persons, all of them in green battle fatigues, entered the courtyard of the house. As they say, there were, maybe, more than 20 of them. Their number fluctuated because the group of civilians - women and children - moved from the courtyard to the street and then back into the courtyard. At the end, the witnesses were not sure how many men had fired at them, but they do know that there was fire from at least two directions. Plaintiffs-witnesses Jehona and Lirrie had lost consciousness before they were shot at. Witness Fatos, on the basis of the wounds inflicted upon him, concluded that he was shot at from two sides at least, while witness Saranda Bogujevci stated that there had been shooting from different sides, from at least two directions, as she had been hit both in the arms, the legs and the back.

Describing the appearance of the uniformed men, some of the plaintiffs called them policemen, some soldiers. In any case, the uniforms of the persons who had entered the courtyard were green battle fatigues. Plaintiffs Jehona, Lirrie and Fatos identified defendant Saša Cvjetan as one of the uniformed persons present there. Thus Lirrie Bogujevci stated that she

thought she had seen the defendant when he had told them to go out into the street, and later on to return to the garden, and then levelled his rifle at them and then leaned toward their mother whereupon the underage Lirrie lost consciousness. Plaintiff Jehona said that the defendant paced up and down all the time, and noticed him the second time when he shot at her mother. The underage plaintiff, Fatos Bogujevci, thinks that defendant Saša Cvjetan might be the top man, as he was issuing commands and was talking about something all the time. Plaintiff Saranda Bogujevci stated that the defendant reminded her of someone who had been at the scene of the crime.

The fact is that all the plaintiffs, at the time of identification, picked the defendant from a five-person lineup. The fact is, also, that they were not sure in their description of the event and the behaviour of the defendant. The plaintiffs could not say with any degree of certainty that Saša Cvjetan had been one of the persons who had shot at them.

Such uncertainties in the statements of the plaintiffs are completely logical and explainable. One must bear in mind the age of the plaintiffs who, at the time of the event had been children and, in particular, the nature of the circumstances of the event which must have influenced their capability to remember the details. First of all, in the courtyard there had come, in the words of the plaintiffs, almost 20 uniformed persons, and all the uniforms were the same - green battle fatigues. Only one of those persons had a helmet on his head, and that persons was not Saša Cvjetan, while other were either hatless or had baseball caps on their heads. The defendant did not have any characteristic details that might have set him apart from the group of the uniformed persons, which might be remembered and later described.

One must bear in mind, in particular, the situation the plaintiffs had described - and remembered. This is the situation where, before the very eyes of the children, the witnesses, their mother Shefkate was shot at and, when they moved toward her, she was shot at again, and afterward they were all shot at. A situation like this had left not only physical consequences, affecting the health and bodily integrity of the children, but must have also left psychological traumas. Although the underage plaintiffs have patiently, convincingly and surely, without being pathetic, described the events

which had affected them on 28 March 1999, uncertainties and lack of consistency in the description of the details are quite acceptable.

Their pointing to defendant Saša Cvjetan as one of the participants in the event is, therefore, quite logical despite all uncertainty, because the witnesses have described to the court the event where their families had been destroyed, without leaving an impression of persons who would want to blame the innocent. This was in particular seen at the time of identification on the basis of photographs as the witnesses were shown an album of photographs from the case file. Not once did the witnesses point to a photograph with any degree of certainty. At that, one must bear in mind the fact that the album of photographs is incomplete because, although the Ministry of the Interior of the Republic of Serbia was asked to provide a full set of photographs of all the members of the Scorpions, the court was provided with an incomplete set of photographs containing photos of only half the members of the Scorpions unit.

On the basis of the findings and opinions of the expert witnesses, psychologists Stanko Ivandić and Dušanka Garić, it has been determined that not one of the underage witnesses - the plaintiffs - suffers from cerebral impairment which would induce a tendency toward confabulation, that the psychological structure of these persons contains no symptoms of psychotic processes, mental impairment which is why these persons are capable of consciously controlling their behaviour in time and space. Their mental status corresponds to their chronological age; intellectual abilities of Saranda Bogujevci and the underage Fatos Bogujevci have been determined above the average - that is, they belong to high intelligence category, while intellectual abilities of underage Lirrie are on the upper limit of the average and those of Jehona Bogujevci at the average. All these witnesses - underage plaintiffs - in the opinion of the expert witnesses, are capable of remembering the events and reproducing them correctly.

At the hearing during the main trial the said plaintiffs were very quiet and composed, trying to present the account of the event as faithfully as possible. In their statements, given without undue emotions, in their replies to the questions put to them concerning both the said event and their present health status, the witnesses left an impression of sincerity and the desire to speak only about what had really happened. The uncertainties and lack of

precision concerning the details, as well as at the time of identification, are logical in view of the age of the plaintiffs, and the fact that these plaintiffs had been in a large group, that they had also been surrounded by a large number of uniformed men, so not all of them could perceive the same details and described them in the same way, nor give the exact number and appearance of the participants in the event. All this, all these differences in the details, but agreement concerning the decisive facts speak in favour of these witnesses so the court, after a detailed analysis of their statements has accepted them fully.

On the basis of the statements of plaintiffs Selatin Bogujevci, Safet Bogujevci and Enver Duriqi, it has been determined that the wives and children of the Bogujevci brothers, on that day - 28 March 1999 - when they had left their house, had remained in the house together with their mother, aunt and her daughter-in-law, and that, in their uncle's house, there remained the parents, wife and children of their friend, Enver Duriqi who had found shelter there. Enver Duriqi, too, had left the house of the Bogujevci family while in the same house his parents, wife and children had remained. More than two months after leaving the house, when he heard that Saranda and Jehona Bogujevci were in a hospital in Priština, he went to the hospital in Priština with Safet Bogujevci and only then learned that all the members of his family were dead.

Later on, from the children, Safet and Selatin Bogujevci, he learned that uniformed persons had taken them out of the house and to the police station, while other uniformed persons had taken his father, Hamdi Duriqi and Seljman Gashi, slapped them, taken them into Drini restaurant and that two shots were heard from there. After that, as he was told then, they shot at Shefkate Bogujevci in front of her children, and then shot at other children and women. Upon arrival of KFOR, the bodies were exhumed; plaintiff Enver Duriqi attended the exhumation and identified his parents - father Hamdi and mother Esma, wife Fitneta, daughters Dafina and Mimoza and sons Arb and Arbion. After the arrival of KFOR in Podujevo, plaintiffs Enver Duriqi and Selatin Bogujevci went to the courtyard of Safet Bogujevci and found there 98 cartridge cases which they handed over to the Hague investigators, their children's shoes, their marbles, and Enver Duriqi found his wife's watch.

Plaintiffs Safet and Selatin have also left the house earlier, leaving their families behind - wives, children, mother, aunt and her daughter-in-law. They first learned that their families were killed on 14 April when they learned that their children - Saranda, Jehona, Fatos and Genc had survived and were recovering in a hospital in Priština. From them, they learned that, beside them and Lirrie, all those who had stayed together in the house had been killed. Inquiring later on they learned that all of them had been buried in the town cemetery. The exhumation of the bodies, which they attended, was carried out by KFOR, in the presence of Hague investigators. The plaintiffs identified the members of their families and the family of their friend, Enver Duriqi. Describing the place where the house in which members of their families had remained, the witness - plaintiff Selatin Bogujevci - sketched the scene, explaining the position of his house and the house of his uncles which was in the same courtyard. On the sketch the plaintiff also drew the place where the corpses had been and which, generally, corresponded with the sketch of the crime scene in the photo-documentation in the case files so the court, on the basis of these data, determined the site of the event. Although the identity of the victims was determined on the basis of statements of the plaintiffs, the fact was corroborated by the reading the exhumation and autopsy reports.

The court accepted the statements of plaintiffs Safet and Selatin Bogujevci and Enver Duriqi and the same persons assisted in the determination of the crime scene, the sequence of events and identity of the victims, although these plaintiffs have only indirect knowledge of the event itself. Still, what they had learned from their children who had survived the event is identical with the statements of those children at the main trial so that this is a datum corroborating the veracity of the plaintiffs' statements.

The plaintiffs - the surviving children - who had been heard at the main trial could not decide on the number of persons who had fired at them and could not, with certainty, identify these persons on the photographs. They identified Saša Cvjetan, but not all of them could describe his behaviour and actions.

However, their statements were corroborated by the statement of witness Goran Stoparić. He used to be a member of the Scorpions unit and, at the main trial, on 10 December 2003, he had given an account of what he had

seen on the spot. On 28 March 1999, the Scorpions unit arrived in Podujevo where there had already been a large number of policemen so that, after getting off the buses - because there was bombardment - and after a short walk around the town, they were directed toward the street where they intended to go to and look for a house suitable for accommodation. When he came to a house with an amphora-like passage - a roof connecting two houses - and entered the house he concluded, on the basis of the things in it, that the people had left the house a short time ago. Then, in the words of witness Stoparić, he went out, in front of the house, and then saw a group of civilians, women and children and a single man, entering the courtyard accompanied by defendant Saša Cvjetan. A number of the members of the Scorpions unit had already been in the courtyard and he saw Šolaja, Aleksandar Dabić, Zdravko Smiljić, Neboja Cekić and Dragan Borojević, while with the civilian there came Dragan Medić and another policeman, from the Active Police Corps. When the civilians entered the courtyard, Šolaja, whose nickname is Zicko, started searching them, but Milovan Tomić stopped him and said that it would be best if the civilians were taken into the street. Stoparić and Tomić left the courtyard with the civilians and, with them, Nebojša Cekić and the policeman.

After the civilians had gone down the street some 20 to 30 metres, a member of the police told them to get back. In witness Stoparić's words, the group consisting of women and children just turned and came back into the courtyard, this time without the only man who had been with them. Stoparić was standing at the gate and when the women and children passed him by and entered the courtyard, he was not looking any more in the direction they had gone to, but in another direction.

The shooting was heard then - unsynchronised shooting, said the witness - from a number of firearms, four or five automatic rifles. The witness surmised that it was the civilians in the courtyard who were being shot at, but he did not go into the courtyard and remained in the same place. After that, members of the Scorpions unit started coming out of the courtyard - first Dabić and Smiljić who had come from the stairs and he supposed they had come out of the house, and after them there came Dragan Medić, Saša Cvjetan, Dragan Borojević and Dejan Demirović and all of them, except Demirović, were replacing cartridge clips on their rifles while walking.

After that, witness Stoparić turned around and went out, following Demirović, while some people had remained in the courtyard and came out later. The witness pointed out that all this had happened very quickly - from the moment the women and children had again entered the courtyard until the shooting started not more than a minute had passed; and the shooting itself took less than a minute and immediately after that the said persons were coming out of the courtyard. Immediately after that, Olujić was lining up his platoon in the street, and the others were lining up on their own initiative, knowing something has happened that should not have happened. The witness said that all the members of the Scorpions unit knew who was shooting at the civilians and that, in Prolom Banja, the names of Saša Cvjetan, Dejan Demirović, Dragan Medić and Dragan Borojević were mentioned, and that, later, the name Dragan Borojević was lost and the three already mentioned names remained. In Prolom Banja, the witness heard that, allegedly, Dragan Borojević had taken a woman out of the group of civilians and had, allegedly, taken some money from her; the witness thinks that he had killed that woman.

Describing the appearance of the members of the Scorpions unit, witness Stoparić explained that they had worn battle fatigues with colour patterns identical with those on the NATO group. All of them were supposed to wear officers' hats with the same colour pattern and the police badge. Only Rajko Olujić wore a black scarf on his head and the only one in the unit who wore a helmet was Dejan Demirović; he wore it in Podujevo and during the next field assignment.

During the proceedings witness Goran Stoparić changed his statement. When heard at the main trial before the District Court in Prokuplje, the witness said that he had seen a group of civilians and that later he learned that those civilians had been killed, but that he, at the moment of the shooting, had been removed from the place where the shooting occurred some 200 to 300 metres, and that the shots were fired from the firearms with calibres larger than that of automatic rifles, and that he had been with defendant Saša Cvjetan when the shooting was heard, and that two of them, together, were running to the courtyard. According to this statement, when they arrived in the courtyard, members of SAJ had already been taking out the people in tent canvas. Also, the witness stated on the occasion that he had never learned who did the shooting. When presented with the difference

in his statement, the witness said the truth was what he had said during the main trial on 10 December 2003 before the District Court in Belgrade. Summoned to the previous date of the main trial, on 8 December 2003, the witness did come to the trial, but said he was not feeling well. Explaining this statement at the following main trial, on 10 December 2003, witness Stoparić declared that the reason he didn't want to witness was his conversation in the corridor before the courtroom with commander Slobodan Medić who told him there that his brother Dragan, aka Guljo, would die in two days if he went to prison, and then told him "Do this for me and then we'll sit down at my place and I will pay you back; I know you are not a traitor".

Witness Stoparić said he was afraid because, after presenting his testimony, he had a bull's eye target on his back. Upon the motion of the deputy public prosecutor at the main trial, the court brought a decision to undertake special security measures concerning witness Goran Stoparić. The decision was carried out by the Ministry of the Interior of the Republic of Serbia.

The court accepted, in full, the statement of witness Stoparić given at the main trial on 10 December 2003. This statement is clear and convincing and, what's most important, it corroborates the statements of the children - the plaintiffs. The plaintiffs described their movement through the courtyard into the street and back, and the witness described it in the same way. The detail about the search carried out by Miodrag Šolaja, aka Zicko, also tallies with what witness Šolaja had said at the main trial - and agrees with the description of the persons who had searched them given by the underage plaintiffs - the Bogujevci children. It is also characteristic that the plaintiffs stated that that person had stopped searching them when somebody told him to stop searching them - exactly the same description as the one given by witness Stoparić. The statement of the witness is confirmed by the fact that defendant Saša Cvjetan had entered the courtyard with a group of civilians mentioned in her statement by underage Lirrie Bogujevci. Because of that, the court decided that the witness could not have described these details had he not really seen them. Although, at earlier hearings, he had described his arrival to the crime scene in a different manner, with an obvious intention to help the defendant and his defence at the main trial, witness Stoparić even then said that he had not entered the courtyard where the event took place. The witness repeated this piece of information - that

he had not gone into the courtyard where the shooting took place - at the main trial when he gave a new statement intending, obviously, to describe just what he had seen, while speaking about what he had not seen, he was using the phrase "I suppose", which makes it quite clear that witness Stoparić obviously did not want to describe something he was not an eye-witness of and find himself in a situation where he would falsely charge the participants in the event with something he did not see them do.

The data about the types of arms - automatic rifles identified by an expert witness on the basis of the cartridge cases found on the spot - are corroborated by the witness's statement that the plaintiffs had been shot at from exactly this type of firearms, the type that the members of the Scorpions unit were armed with.

The commander of SAJ, Zoran Simović, was not present at the crime scene at the moment of the crime, but he was, like other members of SAJ and of the Department of the Interior in Podujevo, near the crime scene and all of them learned immediately that a large group of women and children had been killed. On that day, 19 civilians of Albanian nationality had been killed, 14 in a courtyard, two in a teahouse and three in a house in Podujevo. Witnesses Nebojša Orlović - the commanding officer of the Department of the Interior in Podujevo, Milan Radulović from the same Department, Nebojša Maljević - assistant to the commander of the Department of the Interior of Podujevo, Milan Anastasijević, inspector, and Radislav Janković, criminology technician of the Department of the Interior in Podujevo, knew about the event the day it had happened.

Witnesses Radislav Janković and Milan Anastasijević, together with the investigative judge of the District Court in Prokuplje, Mijat Bajović, on 30 March 1999, compiled the minutes of the investigation, photographed the crime scene and collected some of the cartridge cases from the crime scene. In the afternoon hours, witnesses Orlović, Maljević and Radulović heard the shooting of automatic firearms. They did not go to the crime scene, but they knew that a large number of civilians had been killed, with witness Maljević also stating that he had heard that the killing was carried out by the members of the Scorpions unit. The killing took place, in his words, in a teahouse and in two houses. Witness Orlović heard that whole families had been killed, including women, children and old men and women so that, in

his words, he made arrangements for the vehicles to transport the wounded and injured to a hospital in Priština. Witness Radulović also, when he had heard the volleys, ordered the duty policeman to go and see what was going on, which was done, and then the witness learned that there were many victims, women, children and the elderly. Witness Nebojša Maljević - who, at the time, was an assistant to the commander of the Department of the Interior in Kuršumljia - did not go to the crime scene, but, in his words, he learned that that morning there was a mass killing of civilians, that 19 civilians had been killed in one or two houses and in a teahouse. This witness was attending a meeting of the officers of the Secretariat of Interior in Podujevo and the officers of special units of the Ministry of the Interior of the Republic of Serbia which was held that day, when he heard that the killing was carried out by the members of the Reserve Corps of the SAJ, the Scorpions. This witness, too, heard that this unit was returned from Podujevo in connection with this event. The statement of this witness was accepted as true and the witness, in view of the fact that he did not know anybody in the Scorpions unit, had no reason to tell untruth. Like other witnesses, not members of the Scorpions unit, this witness told what he had learned on the spot.

On the basis of the statement of the commander of the Belgrade SAJ unit, Zoran Simović, who had been questioned both in the preceding trial and the main trial as a witness, it was determined, among other things, that, on 28 March 1999, the Scorpions unit arrived in Podujevo where their accommodation was entrusted to Spasoje Vulević who, together with the platoon commanders of the Scorpions, remained there so he could assign the men to accommodation facilities intended for them. Witness Simović, in his words, went to attend a meeting at the local command headquarters together with Slobodan Medić and some of his men and, during the meeting, heard the volleys fired from automatic rifles. Because of that, he immediately left the building where the meeting was held. Describing the shooting, the witness said that this was a rather longish volley, while in the preceding trial, he had said that, as far as he remembered, he had heard two volleys. Once in the street, he could see, some 300 to 400 metres far from the building where the meeting was held, members of SAJ and Spasoje Vulević, and then someone from this group informed him that the members of the Scorpions had used firearms on civilian population and that there were both the dead and the wounded. He did not go into the courtyard where

the killing of the civilians took place because, at that very moment, Dr Dragan Marković, a SAJ physician, was giving medical assistance to the civilians. He did everything in order to assist the wounded civilians in the sense of providing an ambulance for the transport to medical facilities. He called the Scorpions commander, Slobodan Medić, and ordered the members of the Scorpions to return to Prolom Banja, which they did.

Witness Spasoje Vulević, also a member of SAJ, stated that on 28 March 1999, upon arrival of the Scorpions, he took two platoon commanders of the unit, as he was ordered, to show them the houses where they were to be accommodated. He showed them two houses, one near the other in the street, forming a right angle relative to the main street, and left them there while he went toward the place where the members of his group were. Some ten to 15 minutes later, he heard the shooting of uninterrupted volleys from a number of automatic rifles. Judging that the shooting was coming from the place where the members of the Scorpion were to be accommodated, he went there and found some 40 members of the Scorpions in the street in front of those two houses.

When he entered the courtyard he saw a pile of bodies. Among the corpses there were persons who were still alive so the witness approached them in order to help and, at the same time, was calling for the physician, Dragan Marković, who soon arrived and examined those still alive. Together, they put them into military vehicles marked with the Red Cross. Witness Simović stated that he remembered that help was given to three girls and a boy, and that, among the pile of dead bodies there were seven or eight children, aged six months to seven or eight years old, and four women. After taking care of the surviving children, the witness, in his words, went out in the street and asked the members of the Scorpions to tell him who had done that, but nobody answered him.

Witnesses Mitar Dabetić and Predrag Fabijanić are also the members of SAJ who were, on 28 March 1999, in Podujevo, as escorts of the commander of the Priština unit of SAJ. Both witnesses, during the time the meeting of their superiors was held, heard the shooting coming from the place near the police station, the shooting from automatic rifles. Witness Fabijanić went to the crime scene, some 200 to 300 metres from the building where the command headquarters were and saw that it was a courtyard where there

was quite a number of people on the ground and he, himself, gave first aid to a girl who was still alive. This witness, like Spasoje Vulević, saw a large number of the Scorpions member in front of the courtyard.

Witness Mitar Dabetić did not go to the crime scene, but he knew that there were rumours about some shooting in some building, that some reservists of the Ministry of the Interior of the Republic of Serbia had shot people. He thinks the rumours were about two or three men, members of the Scorpions, who were shooting. He had seen the members of this unit in the morning when they had arrived in Podujevo and had seen their buses returning. He said that he knew the whole of the Scorpions unit had been sent back because of the shooting. He had also learned, from the policemen from Podujevo that there had been shooting and that the unit was sent back because of this.

The court has accepted, fully, the statements of witnesses Spasoje Vulević, Zoran Simović, Predrag Fabijanić and Mitar Dabetić. Witness Vulević and witness Fabijanić, also, were the first, except for the members of the Scorpions, who had arrived to the crime scene. They, too, like witness Dabetić, left an impression of telling the true facts they saw or heard at the crime scene, without intention, obviously, of saying something they were not sure of. Beside the impression of telling the truth, the court judged that these witnesses did not want to accuse the defendant. Anyway, neither could say whether he had seen the defendant at the crime scene - the defendant who, as they say, they did not know.

It was because of this event that witness Simović, the commander of the Belgrade SAJ unit, had ordered the Scorpions to return to Prolom Banja, which they did. Much later, after the army and the police had been pulled out of Kosovo, witness Spasoje Vulević, in his words, heard that the names of Saša Cvjetan and Dejan Demirović were mentioned in connection with this event.

The statements of said witnesses were corroborated by the statement of witness Dragan Marković, a physician of the members of the SAJ unit. This witness, too, in his words, heard a longish volley and, after some five minutes, called by commander Simović, went to the courtyard near the municipality building. In the courtyard he saw a number of persons lying so he

performed a triage, assessing that there were only three or four children still showing signs of life and whom he gave help immediately. On the basis of the statement of this witness - a physician - it was determined that all the injuries of those persons had been inflicted by firearm projectiles and that the injuries had been recent and the injuries were bleeding while he was giving assistance to the wounded. On the basis of the statement of this witness - a physician - it was also determined that all the injuries of the surviving children had been serious as those were through-and-through wounds and, in the words of the witness, these injuries would have proved fatal had medical assistance not been given. The statement of this witness agrees with the statements of other witnesses, members of SAJ, and, with them, presents a logical whole.

The crime scene investigation was carried out two days later and, on the basis of the statement of witness Milan Anastasijević, it was determined that in the courtyard of a ground floor house alone there were 14 bodies, mostly women and children, and an elderly man. At the time of the crime scene investigation, two bodies were discovered in a teahouse, as well as three bodies in a nearby house. At the time of the crime scene investigation, witnesses Anastasijević and Janković collected cartridge cases from the crime scene, but not all of them as they, in their opinion, had been of the same calibre. Later one, following the order of the chief of the criminal police from Prokuplje, other cartridge cases were collected and were sent to the Department of Interior in Prokuplje. The investigative judge, after the crime scene investigation, ordered the corpses transported to the Clinic and Hospital Centre in Priština, for autopsy. However, on the basis of the letter of the Clinic and Hospital Centre in Priština it was determined that the autopsy had not been carried out, but only the surface examination of the corpses which were, then, returned to Podujevo where they were taken over by the officials of the civil defence.

Describing the crime scene investigation carried out by them, witnesses Anastasijević and Janković stated that the sight of 14 corpses in a single courtyard was so gruesome that it made it difficult for them to carry out the investigation in the usual manner. The same feeling was expressed by the investigative judge, Mijat Bajović, who performed the investigation of the crime scene himself, giving this as the reason why the data contained in the minutes of the investigation was unclear. On the basis of the photo-

documentation in the case files, it can be seen that, before the investigation, parts of the corpses had been torn before the crime scene investigation, which has, obviously, made it additionally difficult to count the corpses and attempt to describe them by the investigative judge.

These problems at the time of the crime scene investigation and the fact that, due to the ongoing bombardment, it was difficult for the investigative judge to get to the crime scene, and the fact that the crime scene investigation was carried out two days after the event, explain the confusion about the number of corpses and their place and position on the crime scene as recorded in the minutes of the crime scene investigation. This, however, does not influence the veracity of the minutes of the crime scene investigation because the confusions from the minutes have been cleared at the hearing of witnesses Anastasijević and Janković whose statements, as far as their essential parts are concerned, agree with the contents of the minutes of the crime scene investigation and corroborate one another. On the basis of the findings of the ballistics expert witness it was determined that all cartridge cases collected at the crime scene, and analysed, were fired from the same type of firearms - Kalashnikov 7.62 mm automatic rifles.

Although the corpses were sent to the Forensic Institute of the Clinic and Hospital Centre in Priština, the autopsy was not performed and the corpses, on 1 or 2 April 1999, were returned to Podujevo. On the basis of the statement given by witness Srboslav Biserčić⁷³ who was the commander of the Civilian Defence Headquarters in Podujevo and witness Miško Keča who was the chief of the Civilian Protection Headquarters in Podujevo, it was determined that 19 corpses of unidentified persons were returned, in a truck, to Podujevo and that they had organised the burial at the existing Muslim cemetery in Podujevo.

According to the statement of witness Biserčić, exhumation was not carried out until 18 June 1999. It was carried out later on, in the presence of KFOR. On the basis of the autopsy report in the case files, it can be determined that the exhumation and autopsy were carried out by experts from the ICTY in The Hague. The exhumation and autopsy were carried out from the

⁷³ Srboljub Biserčić

grave in Podujevo and the court has received the report referring to eight persons who, as the victims killed, have been included into the indictment and the lettering of the verdict, as well as three persons not included in the indictment. So, a report was issued for Shefkate Bogujevci, Nora Bogujevci, Shpend Bogujevci, Shehida Bogujevci, Shpetim Bogujevci, Sala Bogujevci, Fexhrie Llugaliu and Nefise Llugaliu. The cause of death in each case was multiple wounds inflicted by firearms.

The court has accepted said reports as the information contained in these reports agrees with the information contained in the statements of the witnesses and plaintiffs. The fact that not all bodies have been exhumed and autopsied is explained by the fact that the surviving plaintiffs, the members of whose families had already been buried, did not allow new exhumation and autopsy. In view of the fact that the cause of death of all the persons has been doubtlessly determined, not only on the basis of the said report, but first of all, on the basis of the statements of the plaintiffs, the eyewitnesses of the event, as well on the basis of written documentation contained in the case files, the court has decided that new exhumation and autopsy are not necessary for the clarification of the facts.

During the presentation of the evidence, other members of the Scorpions unit were heard. All of them spoke about their movement through Podujevo at the critical time, but not one of them wanted to speak about essential facts, particularly who of the members of this unit did shoot the civilians. Still, from the parts of their statements certain conclusions could be drawn.

Thus witness Radoslav Olujić said that he did not know whether he saw the defendant when he returned to assign accommodation to the members of his platoon, but he did know that, arriving to the place where the shooting could be heard from, he saw the defendant quarrelling with a policeman. This witness, like witnesses Simović and Vulević, stated that, in front of the courtyard where the killing of the civilians took place, beside defendant Saša Cvjetan, there were some other members of the Scorpions. This part of his statement about the quarrel between the defendant and witness Vulević is corroborated by the statement of witness Vulević, and the defendant himself does not dispute the detail.

Witness Zdravko Smiljić was the first of the witnesses who were members of the Scorpions unit to give a detailed description of the chronology of events from the arrival of the unit in Podujevo to their return to Prolom Banja. It was only on the basis of his statement that the court was able to realise the fact that the members of this unit, on that day, had spent around five hours in Podujevo. Although, on the basis of the statements of other members of the Scorpions, it appeared that they had arrived in Podujevo, started looking for accommodation and returned, it is still clear that for all the activities describing the participation of the defendant in the event required a certain amount of time, and that is the detail that has been made clear, except by the statements of the plaintiffs and the statement of witness Smiljić.

This witness, also, stated that, after having found accommodation in a ground floor house, he heard some “rather intensive shooting” coming from the direction where the first platoon of the Scorpions was stationed. When, together with other men from his house, he arrived to the place the shooting was coming from, he saw people carrying the wounded out of the courtyard, while in the street itself he saw ambulances. The witness explained that he thought that the first platoon commander was Željko Đukić and that he had seen him, Miodrag Šolaja, Goran Stoparić, Dragan Medić, Saša Dabić and the defendant at the lineup in front of the house where the wounded were carried out of. The court has accepted these parts of his statement because they fit the description of the event whose elements are the statements given by other witness and plaintiffs.

Witnesses Miodrag Šolaja and Aleksandar Dabić agreed that, upon leaving the bus, they went into a house, and half an hour later there was shooting, which is why they went out and were told to go toward the buses, which they did. Although these witnesses obviously did not want to describe everything they had seen and heard that day, the appearance of witness Miodrag Šolaja helped clarify the fact that it was him who had been searching members of the Bogujevci family. Beside the description of this fact presented by witness Goran Stoparić, the very appearance of witness Miodrag Šolaja and his age fully agree with the description of the person who had been searching them given by plaintiff Fatos Bogujevci. This detail, and some other details, corroborate the statements of the plaintiffs and witness Goran Stoparić and thus confirmed their veracity.

These witnesses, like other members of the Scorpions, stated that the shooting they had heard was coming from firearms different from the automatic rifles they were issued with. This data does not tally, first of all, with the trace evidence at the crime scene as the cartridge cases found at the crime scene correspond to cartridges used in the automatic rifles of the type the members of the Scorpions unit had been issued with, and with the statements given by witnesses, particularly the witnesses who were the members of the SAJ Active Corps.

Other statements of these witnesses - that they did not see who had shot the civilians, that they were not, officially or unofficially, told why they had been returned to Prolom Banja on the same day - the court found to be untrue. In their attempt to hide the fact of their personal participation in the events of the day, there is the desire to cover up the fact of the participation of their co-fighters, members of the same unit, in the event. This, also, is the reason why these witnesses used to change their statements at the main trial in comparison with their statement given in the investigation, which is why the court could not accept the statements of these witnesses as true.

The presence in Podujevo on 28 March 1999 of the Scorpions unit that already at that time had been given regular SAJ status, and whose member was the defendant, Saša Cvjetan, is beyond dispute.

On the basis of the presented interlinked evidence, it has been incontestably determined that the defendant had first entered the house of Sabit Gjata where he ordered the civilians to leave the house, threatened them with murder, levelled his automatic rifle at the plaintiff, Rexhep Kastrati, hit him with his rifle, and took a 1,000 German mark note which the plaintiff had given him on his way out of the house with the members of his family and members of other families.

After all the people from these houses had gone out and gone down the street, the defendant returned to one of the houses from the same courtyard, searched it and discovered a pistol which he appropriated. At the same time, members of the Scorpions unit, from the house of the Bogujevci family which was in the immediate vicinity of the house of Sabit Gjata, drove out a group of women and children and elderly men who were staying in the house. Leaving the courtyard, they found themselves in the

street, and defendant Saša Cvjetan, coming out of the house and into the street, and together with other members of the Scorpions unit and a group of women and children of the Bogujevci family entered the courtyard of another Albanian family where the group of women and children had been returned from the street. And then, in this courtyard, there was a group, all told, of 19 persons, 12 children and seven women.

Several members of the Scorpions unit shot at this group, including defendant Saša Cvjetan, using their automatic rifles. With the bullets fired from their automatic rifles, shooting at the women and children lined up along the wall, defendant Saša Cvjetan and some other members of the Scorpions unit took the life of seven women and seven children, five children survived, albeit suffering serious bodily injuries. Shooting from an automatic rifle, simultaneously with a number of other persons shooting at the same time, defendant Saša Cvjetan showed his intention to take the life of those persons. In view of his military training, familiarity with the firearms he was issued with, the defendant knew that, if he were to shoot at a group of people from a short distance, and with some other persons doing the same, this would certainly result in the death of those persons.

Defendant Saša Cvjetan, it is obvious, intended for this to happen when he shot at unarmed group of women and children who, before that, had offered no resistance, nor given any cause to be shot at and wounded. The shooting from a firearm caused the death of 14 persons and serious injuries to five persons, realising objective and subjective characteristics of the crime of murder.

The objective circumstances surrounding this crime have determined its classification in accordance with Article 142, Paragraph 1, of the Criminal Code of the Federal Republic of Yugoslavia. The crime was committed in time of war and armed conflict, which makes it a war crime as shown by the indictment against them.

His order whereby he was directed to certain houses to look for accommodation, the defendant, together with other members of his unit, had used as a pretext to order the civilians of Albanian nationality to leave their houses, to search the people and the houses they had left. The fact that it was the civilians of Albanian nationality who had been driven out of their hous-

es, that their exile from the houses and removing them from Podujevo was not intended as a protection from the bombardment, but intended to procure accommodation for the members of the Scorpions who were in Podujevo for the purpose of undertaking action against KLA point to a behaviour of the defendant which was the consequence of the existing armed conflict on the territory of Podujevo.

Defendant Saša Cvjetan treated the plaintiff Rexhep Kastrati and the members of his family in a manner that violated their human dignity. In addition, using the situation where the civilians of Albanian nationality were leaving their houses in fear, under his threat and the threats of other armed persons, entered one of the houses and took a firearm from it, appropriating it. Armed like the other members of his unit and knowing that, out of fear of the arms in his possession and the number of armed people, nobody of the civilians would dare resist nor prevent him from entering and appropriating somebody else's thing, he had shown an overall inhuman behaviour toward the civilians of Albanian nationality which culminated in his participation in the killing of 14 women and children and seriously wounded five other children.

In this concrete case we have a case of premeditated taking of life and inflicting serious bodily injuries to a group of women and children who had left their house and then ordered to return to the courtyard where a number of persons, including the defendant, had shot at them. In their immediate vicinity - in the neighbouring houses and in the street there were many persons of Albanian nationality who were leaving the town. The shooting at a limited number of persons inside a limited space, with the intention to take the life of those persons is participation in a premeditated murder of a number of persons.

The action of appropriation of a pistol from the house of an unidentified person of Albanian nationality cannot be taken independently of the existing objective circumstances - the existence of an armed conflict and the behaviour of the defendant under the said circumstances. Thanks to these objective circumstances first of all, the defendant was armed with an automatic rifle issued to him, that is, to a member of the regular formation of the Ministry of the Interior of the Republic of Serbia. Making use of the situation, the defendant searched the houses the Albanian population had

left. It was exactly because it was a house owned by an Albanian family, in view of the fact that armed conflicts were with the members of the same nationality, the defendant obviously believed he was entitled to take things away from Albanian civilians and search their houses. This behaviour of his, in view of his previous participation in the ousting, under threat, of the persons from their house, hitting and firing salvos in the air for the purpose of intimidation is a part of obvious inhuman treatment of the civilians connected with armed conflict. All activities described here under the given objective circumstances represent the characteristics of a war crime against civilian population as described by Article 142, Paragraph 1, of the Criminal Code of Federal Republic of Yugoslavia.

In the situation where armed conflicts and war exist as objective circumstances, and the determined facts connecting these circumstances with the crime, the provisions of international law contained in the Conventions dated 12 August 1949 and ratified by the Federal People's Republic of Yugoslavia must be applied.

The Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War dated 12 August 1949 is applied to all cases of declared war or any other armed conflict between two or more contracting parties even when one of them does not recognise the state of war, as described in Article 2 of the Convention. In Article 3, Paragraph 1, Item 1, and Paragraph 2, Items a and c of the same Convention, envisage obligatory application of certain provisions in cases of armed conflict lacking characteristics of an armed international conflict occurring on the territory of one of the high contracting parties. This provision prescribes that the persons not taking active part in the hostilities, including members of the armed forces who had laid down their arms and persons incapacitated for combat by sickness, wounds, detention or any other cause, shall be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons, among other things violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; outrages upon personal dignity, in particular humiliating and degrading treatment.

In view of the fact that on the territory of the Federal Republic of Yugoslavia a state of war existed between the security forces of the Federal Republic of Yugoslavia and the NATO Coalition forces, and upon the territory of Kosovo internal conflicts as well, all participants were obliged to respect the provisions of the said Geneva Convention. Protocol Additional (I) of the Geneva Convention dated 12 August 1949, in Article 51, prescribes the protection of the civilian population and in Articles 76 and 77 prescribes special protection of the women and children. Thus Article 51, Paragraph 1 of this Protocol prescribes that the civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. To give effect to this protection, the following rules, which are additional to other applicable rules of international law, shall be observed in circumstances. Paragraph 2 prescribes that the civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited. Paragraph 3 states that the civilians shall enjoy the protection afforded by this section, unless and for such time as they take a direct part in hostilities. Article 76 of the same Protocol states that women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault. Article 77 of this Protocol defines the protection of the children so that Paragraph 1 defines that the children shall be the object of special respect and shall be protected against any form of indecent assault. The parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.

Protocol 1 is applicable to situations envisaged by Article 2 of the Geneva Conventions dated 12 August 1949 which points to its application in times of declared war and any other armed conflict of international character. Because of that, in view of the existence of the state of war on the territory of the Federal Republic of Yugoslavia, every member of the armed forces is obliged to respect the provisions of this protocol, particularly those envisaged for the protection of the civilians, particularly women and children.

Beside the fact that there existed a state of war, it was determined that an internal conflict existed as well. This fact indicated the respect of the provisions of Protocol II of the Geneva Conventions dated 12 August 1949 and relative to the protection of victim of non-international armed conflicts. Article

4 of this Protocol provides fundamental guarantees so that Paragraph 1 prescribes that: all persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors. Paragraph 2 states that: without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever: (a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment; and (e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault. Article 13 of this Protocol prescribes protection of the civilian population so that Paragraph 1 of this Article prescribes that the civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances. In Paragraph 2, it is stated that the civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited. It is also prescribed that the civilians shall enjoy the protection afforded by this part, unless and for such time as they take a direct part in hostilities.

The indictment lists the participation of defendant Dejan Demirović in the commitment of the crime. The court has omitted the use of the name of this defendant from the lettering of the verdict in view of the fact that the criminal proceedings against defendant Dejan Demirović have not been completed and his actions and participation in the said event have not been determined so that the court cannot issue statements concerning them before the completion of the criminal proceedings. Although this defendant has presented his defence before the investigative judge of the District Court in Prokuplje, the court did not read his defence at the main trial because the criminal proceedings against him had been separated. In view of the fact that a procedure for the extradition of this defendant is underway, the court finds that his defence cannot be read as the criminal proceedings against

him are underway and this defence, for the time being, cannot be the subject of the court's decision.

Defendant Saša Cvjetan, in the preceding trial, at the time of the first hearing by the investigative judge, had admitted essential facts concerning the commission of the crime of murder. Later on, in the course of the proceedings, he revoked his confession providing detailed explanations for it. The defendant, first of all, insisted that, at the time of his first hearing by the investigative judge in Prokuplje, his defence lawyer was not present, although the presence of a defence lawyer was recorded in the minutes of the hearing.

Following the objections of the Supreme Court, for the purpose of determining the facts concerning the presence of a defence lawyer, the court heard the witnesses whose hearing was mentioned in the Supreme Court's decision on the cancellation of the verdict. Following the order of the Supreme Court, the following persons were heard at the main trial: the investigative judge of the District Court in Prokuplje, Mijat Bajović, who was the first to question the defendant; Radica Marinković, the recording secretary of the District Court in Prokuplje working with this investigative judge; Aleksandar Đorđević, the then warden of the District Prison in Prokuplje. Beside them, in his capacity as a witness, attorney Živorad Šubaranović from Prokuplje was heard; he was court-assigned defence lawyer of defendant Dejan Demirović.

Investigative judge Mijat Bajović gave a detailed description of the circumstances prevailing at the time the defendant was questioned and the investigation in Podujevo was carried out. He confirmed the authenticity of the minutes of the questioning of the defendant that he himself had dictated, about the presence of the attorney of the defendant - lawyer Dragutin Stanković. In addition to the fact that the court has no legal basis to suspect the contents of the minutes, the court has no reasons to suspect the veracity of the statement of an investigative judge heard in the capacity of a witness. The investigative judge gave a detailed description of the problems he had in carrying out the investigation and ensuring the presence of a defence attorney for the defendant under the conditions prevailing at the time of war. At that, the investigative judge himself went to look for a defence attorney and found lawyer Dragutin Stanković and the two of them, togeth-

er, went to the premises of the municipal prison to hear defendant Saša Cvjetan. It was this attorney who was present at the questioning of the defendant, as recorded in the minutes of the questioning, while the inspectors of the Secretariat of the Interior were not present at the questioning. The court accepted, in full, the statement of investigative judge Mijat Bajović. His statements agree with the contents of the data entered into the minutes of the questioning of the defendant dated 24 May 1999, and agree, also, with the statements of witnesses Miloš Oparnica and Duško Klikovac, inspectors of the Ministry of the Interior, who categorically stated that, after filing the criminal indictment they had left Prokuplje and were not present at the questioning of the defendant by the investigative judge.

The veracity of the statement given by the investigative judge concerning the presence of defence attorney Dragutin Stanković at the questioning of defendant Saša Cvjetan is corroborated by the fact that this lawyer, on the day the defendant was questioned, had signed the receipt of the warrant on the delivery of the decision to initiate investigation and remand the defendant to custody as of 24 May 1999. The data referring to the name of the warrant to be delivered and the name of the person the warrant is delivered to - the attorney Dragutin Stanković, were entered by the court reporter, Radica Marinković, as she herself had said in her statement. The date of the receipt and the signature were entered by attorney Dragutin Stanković. The same signature can be found on the bill of expenses submitted to the court by this attorney and paid to him by the court for his court-assigned activities as defence attorney of defendant Saša Cvjetan. The decision on detention and initiation of investigation referring to defendant Saša Cvjetan and defendant Dejan Demirović was delivered, on the same day, to attorney Živorad Šubaranović and the Administration of the District Prison in Prokuplje. In view of the fact that, at that time, the state of emergency had been declared and that, in the words of witness Šubaranović, attorneys in Prokuplje usually did not go to court because of the bombardment, and that it had been pure chance that investigative judge Mijat Bajović had found him, it is obvious that there existed just one opportunity when it was possible to deliver the decision to attorney Stanković, namely, immediately after the questioning of the defendant in the premises of the District Prison in Prokuplje. Finally, the expenses for the court-assigned defence of attorney Stanković were paid and all this - delivery of the decision and the payment of the expenses could not have occurred had the attorney not been

present at the questioning of the defendant, as stated in the minutes dated 24 May 1999.

The data from the statement of investigative judge Mijat Bajović are contradicted by the statement of the court reporter, Radica Marinković. From the very beginning, this witness has claimed that the defence attorney, Dragutin Marinković, had not attended the questioning of defendant Saša Cvjetan. In addition to this categorical statement, the witness was definite in her claim that the questioning had been attended by two inspectors of the Secretariat of the Interior. Except for the defendant's defence, the only one the statement of this witness agrees with completely, the other details of her statement were not corroborated by the then warden of the District Court in Prokuplje, witness Aleksandar Đorđević, nor the then District Public Prosecutor in Prokuplje - witness Miroslav Nikolić. The witness was equally adamant in her claim that she did not forward the decision to initiate an investigation to defence attorney of defendant Saša Cvjetan because, in her words, he didn't even have a defence attorney. As it is obvious that the witness has forgotten the existence of the warrant wherein she herself had entered the name of the receiver - attorney Dragutin Stanković, and the name of the warrant to be delivered, when she was presented with the said warrant at the main trial, the witness gave a false, extremely illogical explanation saying that it was possible for an attorney to receive the decision a couple of days later, but enter an earlier date as if they had received the warrant earlier - the date of the questioning the defendant. A claim like this would mean that the attorneys were anti-dating the documents thus shortening or subtracting their own deadlines for filing a complaint, which is difficult to believe particularly when it is a question of deciding on custody, as in this case, when the deadline is only three days long. Except for the obvious intention to help the defendant by attempting to make the minutes where the defendant had confessed the crime unusable as evidence, there is no other logical explanation of this claim. For this reason, the court could not trust her statement.

Witness Miroslav Nikolić - the district public prosecutor - learned about the details of the questioning of defendant Saša Cvjetan from witness Radica Marinković. Miroslav Nikolić had not been present at the investigation of the crime scene, nor had he attended the questioning of the defendants, which was his duty.

It is interesting to note that this witness does not remember anything well in connection with this criminal proceedings except that the court reporter, Radica, spoke to him that defendant Saša Cvjetan did not have an attorney. Thus he does not remember whether or not, nor when he did change the decision to carry out an investigation so that defendants Saša Cvjetan and Dejan Demirović were charged with a war crime against civilian population as described in Article 143, Paragraph 1, of the Criminal Code of the Federal Republic of Yugoslavia. Although this is a very serious case, with a large number of killed persons and of the type not really seen every day in the District Prosecution Office in Prokuplje, it is extremely unconvincing and tendentious of this witness to claim that the court reporter had told him that defendant Saša Cvjetan did not have a defence attorney, that this conversation had taken place on the same day and at a strictly determined hour, while this witness cannot remember any other circumstances or activities connected with the event which is the subject matter of the indictment - not even his own activities.

Witness Aleksandar Đorđević, the then warden of the District Prison in Prokuplje, did not attend the questioning of the defendant. Still, he assumes the right to conclude that defence attorney Dragutin Stanković was not present at the time defendant Saša Cvjetan was questioned. However, the witness has arrived at such a conclusion on the basis of the hypotheses that change from one trial to another. Thus, at the time of the initial questioning at the District Court in Prokuplje, the conclusion that the defence attorney had not been present was based upon the fact that that defence attorney had not come to the office of the prison warden after the questioning. When, during the presentation of the evidence, it became certain that after the questioning of defendant Saša Cvjetan nobody had gone to fetch coffee, but the investigative judge, Mijat Bajović, had continued the questioning of the other defendant - Dejan Demirović, then the same witness, Đorđević, stated that he had, from time to time, looked into the room where the questioning took place through a window and saw that the defence attorney was not present. Bearing in mind yet another fact, namely, that that room had neither been well lit, nor had it been possible, looking through the window, to see the whole room, then it becomes obvious that the prison warden, even if he had come and had looked through the window, he could not have seen all the people present in the room. Because of that, on the basis of such an unreliable fact, it was impossible to draw a

conclusion concerning the presence of the defence attorney at the questioning of defendant Saša Cvjetan. The statement of witness Đorđević is uncertain as this witness made fundamental changes in his statements given at the first and second questioning at the main trial so that his conclusions, as indirect evidence, could not be trusted.

Witness Živorad Šubaranović came to the premises of the district prison in order to question defendant Dejan Demirović as his court-assigned defence attorney. As it has been definitely determined that the investigative judge, Mijat Bajović, had first questioned Saša Cvjetan and only then Dejan Demirović, the court could accept the claim of witness Šubaranović that he had not seen attorney Dragutin Stanković who had left the premises of the district prison following the questioning of Saša Cvjetan. However, witness Šubaranović refuted the claims of the court reporter, Radica Marinković, about the manner judge Bajović had questioned the defendant. He pointed out that the judge had carried out a detailed questioning and had even asked for additional explanations about the things that were not clear before entering their words into the minutes. This witness, contrary to what the court reporter Radica Marinković had claimed, did not go to the warden's office to have a cup of coffee after the questioning.

Because of that, only those persons whose presence at the questioning of defendant Saša Cvjetan has been incontrovertibly determined could present their opinions concerning the issue whether the defence attorney had been present at the questioning of defendant Saša Cvjetan or not - and they are the judge, the court reporter and the defendant. The truth of the statement of the court reporter has been suspect as it agreed only with the defence of the defendant who is interested in the claim that the defence attorney had not been present, so that the minutes, where he had confessed the crime, would be removed from the case files and thus could not be presented as evidence. The statement of judge Mijat Bajović has been corroborated by written documentation about the questioning of the defendant where the presence of the defence attorney had been recorded. Besides, the delivery warrant signed by the court-assigned defence attorney, lawyer Dragan Stanković and his bill of expenses. All this clearly points to the evidence of the presence of the court-assigned defence attorney whose presence could not have been suspected had he not died after the questioning

of the defendant and had the court reporter not started rumours about his alleged absence.

The said minutes of the questioning of the defendant dated 24 May 1999 before the investigative judge of the District Court in Prokuplje have been made in accordance with the provisions of the law on criminal procedure in force at the time. The minutes made by the investigative judge, in the premises of the district prison in Bijelo Polje, have also been made in accordance with the provisions of the same law. Namely, at the time the said law was in force, the presence of a defence attorney at the time of the initial questioning was indispensable only for the crimes punishable with death sentence. In view of the fact that defendant Saša Cvjetan, with the original decision to carry out a crime scene investigation, was charged with the crime of murder as described in Article 47, Paragraph 2, of the Criminal Code of the Republic of Serbia which, in accordance with the Criminal Code of the Republic of Serbia, was punishable by a death sentence, the presence of a defence attorney was obligatory, which is why a defence attorney was assigned to the defendant, namely attorney Dragutin Stanković. With subsequent changes in the Decision to initiate the investigation, defendant Saša Cvjetan was charged with a war crime against civilian population as described in Article 142, Paragraph 1, of the Criminal Code of the Federal Republic of Yugoslavia, punishable by a death sentence. For this reason, in accordance with the law on criminal procedure in force at the time, the presence of a defence attorney at the questioning in connection with the crime that defendant Saša Cvjetan has been charged with and questioned in the premises of the district prison in Bijelo Polje was not obligatory. These minutes, dated 18 July 2001, in view of the fact that they refer to the same event which is the subject matter of the warrant requesting investigation, as far as personal data of the defendant are concerned, refer to the personal data provided by the defendant at the time of the initial questioning by the same investigative judge. Because of that, the court found that both minutes had been made in accordance with the law and refused the motion of the defence attorneys of the defendant for these minutes to be removed from the case files. This decision is one of the decisions in the management of a main trial and it allows no separate complaint.

As for the contents of the confession recorded in the minutes of the questioning of the defendant by the investigative judge of the district court in

Prokuplje dated 24 May 1999, the confession of the defendant is essentially identical with the statements of the eyewitnesses of the event. The defendant described the event in connection with plaintiff Rexhep Kastrati, and did later, in his defence, give a more detailed description of the event. Besides, even at that time, the defendant admitted that he had appropriated a pistol from a house and has not changed his statement later on in his defence. At the time of the same questioning the defendant admitted that he, together with a person known as Gulja, and a youth who had previously searched the civilians, and six or seven more persons, had shot at a group of civilians who were in the courtyard near the courtyard that the group of civilians, together with witness Rexhep Kastrati, had previously left.

It is interesting to note that the description of the place where all this had happened agrees with the statement of witness Rexhep Kastrati, and the chronology of the event and what had happened inside - in the Gashi family courtyard - agrees with the statements of the plaintiffs, the surviving children of the Bogujevci family and the statement of witness Goran Stoparić. In his defence, at this place, the defendant describes the person who was searching the group of civilians as a short person, the youngest person of the group, which agrees with the description given by Fatos Bogujevci and witness Goran Stoparić and which refers to witness Miodrag Šolaja, aka Zicko. The defendant also described, in great detail, how one of those present removed a blonde woman from a group, pushed her toward the wall, took her along the path toward the house, and then shot at her, so the woman fell down on the concrete path. After that, as the defendant stated, he and Gulja, and the youth who was searching the civilians and some six or seven other men shot at the group of civilians. In the words of the defendant, all those lined-up were hit and fell down in a pile, one upon the other, and those who had been shooting went out into the street. All these details agree completely with the description of the event given by the plaintiffs - the children of the Bogujevci family and witness Goran Stoparić; and agree with the photographs where one can see the position of the body of Shefkate Bogujevci, the mother of plaintiffs Fatos, Lirrie and Jehona Bogujevci - the blonde woman in the description of the defendant, and other bodies in the courtyard.

It is obvious that this description of the event - as presented by the defendant at the time of the first questioning in the preceding trial - could only have been given by a person who was there and took part in the event.

Additional descriptions of the event - the leaving of the courtyard by the members of the Scorpions unit, line-up, the arrival and the behaviour of the members of SAJ who were the first to arrive to the crime scene - agrees with the statements of the witnesses who were members of SAJ, so it is clear that this part of the defence of the defendant is true as well as the remaining parts of the defence as recorded in the minutes dated 24 May 1999. Explaining his behaviour, the defendant stated that every order had to be carried out, and that Guljo was on the crime scene and that they had followed his order. In his complaint about the decision concerning detention and investigation, the defendant repeated his claims that he had followed orders. Claims like this speak in favour of his confession that he had taken part in the shooting because his explanation of his behaviour was that he had followed orders.

At the time of the next questioning by the investigative judge the defendant described the event in connection with the plaintiff Rexhep Kastrati and the members of his family and his appropriation of the pistol, but he did change his defence concerning the killing of the civilians - women and children.

Stating that he had come to the courtyard later on, when the civilians had already been killed, the defendant stated, among other things, that later on, in Prolom Banja, he heard that it was Guljo who had ordered the civilians lined-up and killed. Toward the end of the minutes, the defendant stated that he had not been threatened at the time he had given his statement to the investigative judge. A statement like this and the evidence presented refuted the defendant's claims that he had been threatened by the inspectors of the Ministry of the Interior who had questioned him and then, allegedly, attended the questioning before the investigative judge.

Absence of any type of abuse of the defendant has also been determined on the basis of the statements of witnesses Miloš Oparnica and Dušan Klikovac who were heard like witnesses. Their statements, on the basis of which it was determined that no illegal pressures had been used at the time and

that the two inspectors had not attended the questioning of the defendant by the investigative judge, have been accepted in full. Certain discrepancies in the statements of these witnesses are logical as the event happened almost five years ago, and that was the first and the only time the two inspectors had been working together, so that their memories concerning different details are different. However, during the proceedings the statement the defendant had given to these inspectors of the Secretariat of the Interior had been removed from the case files so that it is not the subject of evaluation in the criminal proceedings.

In view of the fact that it has been determined that the defendant, on 24 May 1999, before the investigative judge, has been questioned in the presence of attorney Dragutin Stanković, in the absence of any other persons and without application of any illegal means, and the very contents of the defendant's defence agree with evidence presented before the court, the court has accepted this defence as true. Later changes of the defence are obviously intended to avoid criminal responsibility - both his own and that of other persons mentioned by the defendant in his initial statement - which is the reason why the court has not accepted these changes as true.

The court has not accepted the claim of the defence that it has not been determined that defendant Saša Cvjetan shot at the civilians. On the basis of the evidence presented, it has doubtlessly been determined that the defendant, together and simultaneously with other persons, had shot at a group of civilians - women and children in the courtyard of the Gashi family house - and that the defendant himself had confessed this in his statement given to the investigative judge of the district court in Prokuplje on 24 May 1999. On the basis of the evidence presented to the court, the exact number of persons whose lives had been taken on the occasion was determined, as well as of those who had survived. The defence of the defendant has disputed the regularity of application of international conventions and the legal qualification of the crime. The court has determined that, irrespective of the nature of KLA organisation and their manner of fighting, the conflicts between members of KLA and the armed forces of the Police and the Army of the Federal Republic of Yugoslavia, in accordance with the generally accepted characteristics, represent an armed conflict of international character. The fact that KLA is not a military organisation under state control, as pointed out by the defence of the defendant, is what

defines the conflict between an organised armed military formation, KLA, with the regular forces of the police and the army of the Federal Republic of Yugoslavia, as an internal armed conflict, which is why the crime connected with the armed conflict, and is a violation of international conventions, had to be qualified as a war crime against civilian population as described in Article 142, Paragraph 1, of the Criminal Code of the Federal Republic of Yugoslavia.

The decisive facts in these criminal proceedings concerning the killing of women and children and the violation of the bodily integrity of children of the same group have been determined on the basis of written documentation in the case files, statements of the witnesses and the confession of the defendant. The fact of death has been doubtlessly determined on the basis of the statements of the witnesses - eyewitnesses - the surviving children who were heard at the main trial, on the basis of the statement of the SAJ physician, Dragan Marković, who, together with other members of SAJ, has come to the crime scene and has immediately started determining who, of the people shot at, was still alive and who was not, and started, immediately, giving help to surviving children. The identity of the persons has been determined on the basis of the statements of the witnesses, plaintiffs. The type of firearms used for the shooting has been determined on the basis of cartridge cases discovered at the crime scene and on the basis of expert witnesses' findings. A larger number of the members of SAJ and of the Department of the Interior in Podujevo knew that the civilians were shot by the members of the Scorpions unit and this fact has been determined on the basis of their statements. The fact that defendant Saša Cvjetan is one of the members of the Scorpions who shot at the group of women and children has been determined on the basis of the statements of the plaintiffs - the surviving children who have identified the defendant as one of the persons present in the courtyard at the time of the shooting. This fact has been determined on the basis of the statement of witness Goran Stoparić and the confession of the defendant given before the investigative judge on 24 May 1999.

As the decisive facts have been doubtlessly determined by an analysis of the evidence presented, and as the defendant, in the repeated proceedings after the first instance verdict has been repealed, has failed to change his earlier defence given at the main trial, nor given any new information which

should be verified, or a new fact which should be determined, the court has decided that the motion of the defence to hear witnesses Stevan Milićević, Nedeljko Janković, Jovan Strvački, Marko Plavšić, Zlatko Lukić and Predrag Milinović, who are also, as stated by the defence, members of the Scorpions unit, is groundless. The names of most of these witnesses are not on the list of members of the Scorpions unit submitted to the court by the Ministry of the Interior of the Republic of Serbia - the Directorate for Fighting Organised Crime - and, besides, the motion to have new witnesses heard, without giving additional information about them, without new facts to be determined, is, in the opinion of the court, an unnecessary dragging out of the criminal proceedings.

The court has refused to hear witnesses Nebojša Kovačević, Ivica Nedeljković and Igor Mitrović who have signed the Daily Report submitted to the court by the administration of the district prison in Prokuplje. Namely, on the basis of this report, it is obvious that the employees of the administration of the district prison, except for judge Mijat Bajović, who had been questioning defendants Saša Cvjetan and Dejan Demirović in the premises of the prison, have failed to record the presence of other persons in the prison, although, at the trial, it has been definitely and indisputably determined, that, apart from the investigative judge, his recording secretary and attorney Živorad Šubaranović did come to the prison. Because of that, the court finds acceptable the claim of the investigative judge and attorney Šubaranović that they had not been asked to produce their identity cards upon entering the prison as the officers of the prison obviously knew them and knew their business in the prison and so did not believe it necessary to see their identity cards and record their presence in the prison. Because of that, hearing the prison officers concerning the presence of certain persons in the premises of the district prison after six years would not produce the facts different from those already determined.

During the presentation of evidence, the court has heard, among others, witnesses Slobodan Medić, who was the commander of the Scorpions unit; Dragan Medić; Dragan Borojević and Srđan Manojlović. Witness Slobodan Medić stated that at the moment the shooting was heard he was attending the meeting in the local headquarters building and then a courier arrived with the message from Zoran Simović, aka Tutinac, the commander of SAJ, inviting him to come because, allegedly, he had a problem. Then

he saw some people carried out from the courtyard, and Tutinac told him to pull out his unit without explaining why. This witness could not say anything about anyone from the Scorpions unit taking part in the shooting of the civilians. At the main trial he expressed an opinion that no one of the Scorpions could have done that because they had arrived in Podujevo only a short time ago and that he thought that the murders had happened earlier, before the Scorpions unit had arrived in Podujevo.

Witness Dragan Medić, aka Guljo, also stated that he did not know who had shot the civilians and the only thing he had seen at the crime scene were the policemen carrying out civilians from a courtyard. Also, he stated that he had not seen the defendant, Saša Cvjetan, nor Dejan Demirović at the crime scene. At the main trial, the witness added a detail which he had not mentioned earlier - namely that he had, allegedly, got sick before the place where the shooting had occurred and that his comrades had taken him to the bus. This detail was first mentioned by his comrade, witness Željko Đukić, aka Brka. He, too, had heard the shooting, which was intense, and then saw the policemen, members of SAJ, taking out some corpses and wounded children from a courtyard. These witnesses, nicknamed Guljo and Brko, were mentioned by defendant Saša Cvjetan at the time he gave his confession as the persons who had also been in the courtyard, and the persons known as Guljo he even described as the man who, excited and angry, had said that all the persons from the courtyard should be lined up along the wall and killed.

At the hearing at the main trial these witnesses left an impression of people who were not telling the truth and, in view of the fact that they were warned that they were not obliged to answer the questions put to them if that would make them liable to criminal prosecution, it was logical that they did not want to describe their participation in this event and that they did try to annul their criminal responsibility and that of their comrades - members of the Scorpions unit. These witnesses, also, changed their statements at the main trial in relationship with what they had stated in the investigation so the court could not trust them even concerning the facts they, as witnesses, were obliged to give. The court took the same attitude toward the statement of witness Dragan Borojević who, like witness Milovan Tomić, claimed that they did not know anything about the event in question except that, while they were staying in Podujevo, they had heard

the shooting, seen the ambulances and some civilians taken into those vehicles. All these witnesses, in addition to their claims that they did not know who was shooting at the civilians, also claimed that they did not know why their unit had been returned to Prolom Banja. Claims like these are, obviously, given for the purpose of avoiding answers to essential questions that it is impossible for them not to have known. The reason the members of the Scorpions unit were returned from Podujevo to Prolom Banja is nothing else but the fact that the members of this unit had shot the civilians. For the same reason, the commander of the unit, Slobodan Medić, lined them up, dressed them down, ordered them back into the buses and then, following the order of the SAJ commander, returned the unit back to Prolom Banja, and then to Šid and Novi Sad.

All this has been determined on the basis of the statements of the witnesses which the court has accepted, and, on the basis of the statement of witness Goran Stoparić, it has been doubtlessly determined that, during the return ride in the buses to Prolom Banja, and their stay in Prolom Banja, the members of the unit spoke of nothing else but of the event because of which they had been returned - and that is the murder of the civilians in Podujevo. It is quite logical that the members of this unit spoke of nothing else but this because, for those who had not taken part in the event in question, the return had been quite an unexpected and unusual situation. The reason why the said witnesses refuse to tell the truth is an obvious attempt to avoid criminal charges both against themselves and their comrade from the unit. This is the reason the court refused to accept their statements as true.

During the trial, witness Srđan Manojlović, also a member of the Scorpions unit, was heard. He was in charge of receiving and issuing arms to members of the unit. A number of times, during the hearing, this witness had stated that every member of the Scorpions unit was issued an automatic rifle 7.62 mm, type M-70, and the combat set consisting of five 30 rounds cartridge clips, totalling 150 rounds. Not one of the members of the unit was issued arms against the record of its factory number; he simply gave them the arms without any records and, upon their return to Belgrade, they handed the arms back by simply placing them into a truck. On this occasion, too, there was no official return of the arms, there was no record of the number of arms returned, nor of ammunition. Both the arms and the ammunition were given to them by the Ministry of the Interior of the Repub-

lic of Serbia. This statement has been corroborated by the contents of the letter of the Ministry of the Interior of the Republic of Serbia dated 17 May 2005. In view of the fact that no record was made at the time members of the Scorpion units were issued arms, it is clear that it was not possible to identify the rifles used to shoot the civilians, nor to identify the rifles in possession of the members of the Scorpion unit, nor compare those rifles with the cartridge cases found on the crime scene. The court accepted this part of the statement of witness Srđan Manojlović as it was corroborated by the statements of other witnesses, including the defendant himself, who said that there was no record of the factory numbers of the rifles issued to particular members of the unit. Witness Srđan Manojlović, in his words, was not in possession of any other information; in view of the fact that he, too, is a member of the same unit, which makes it obvious that he, too, did not want to mention other details, for the same reasons other members of this unit, heard as witnesses, refused to say.

At the time of the sanctioning of defendant Saša Cvjetan, the court had in mind the law in force at the time the crime was committed and whose provisions prescribe a maximum sentence of 20 years imprisonment for a war crime. Deciding in favour of this sentence the court had in mind the circumstances and the manner of committing the crime as well as the exceptional seriousness of the consequences.

The court took into consideration the findings and the opinion of the committee of expert witnesses headed by Dr. Branko Mandić, a psychiatrist, who presented the opinion of the committee of expert witnesses, that the ability of the defendant to comprehend the importance of an action and the possibility of controlling his behaviour at the time of the crime was committed were decreased, but not significantly. In the opinion of the expert witnesses, the defendant presents himself as a stable personality whose intellectual capabilities are at the upper limit of the average. Emotionally, he is characterised by impulsive behaviour and rigidity. However, as an integrated personality, he is capable of controlling these characteristics. His basic defence mechanisms are rationalisation, increased activity and sublimation. His participation in war activities has not left any consequences in his psychological makeup in the sense of existence of post-traumatic stress impairment. The defendant pays attention to, first of all, the sense of responsibility, respect of authority, obedience and discipline. This is, surely, the

consequence of growing up in a patriarchal family on one side and the result of the choice of profession on the other, the profession he had decided on in his youth. During the time of analysis of the mental condition of the defendant at the time of the crime he has been charged with, the expert witnesses had in mind the temporal context the event took place in. In the opinion of the expert witnesses, participation in the war activities, in general, creates, in all persons, a feeling of uncertainty, insecurity and expectation, as well as apprehension for personal, social and vital existence, all of which can apply to the personality of the defendant and his psychological functioning in times of war. All this generates, in him, a continuous state of emotional tension and, at the same time, lowers his threshold of tolerance to frustration. This points to a possibility of uncontrolled and hasty reactions in certain provocative situations. Once all of this has been placed in the context of the crime he is charged with, his ability to comprehend the significance of the crime and to control his actions, in the opinion of expert witnesses, were reduced, but not significantly.

The court has accepted this opinion in full and the expert witness had explained it at the main trial. However, on the other hand, the court had in mind the fact that the defendant, at the time he committed the crime, had already been an experienced soldier so that his arrival to the field where armed conflicts took place were not something to surprise him greatly. What is of great importance is the fact that nobody of the plaintiffs, with his or her behaviour, contributed to the increase of emotional tension of the defendant. The situation, in fact, was such that, in the town of Podujevo itself, obviously, only the civilians, women and children and old men, had been left. Upon the arrival of the Scorpions unit, these people who had left their houses had offered no resistance and had formed a column that was leaving Podujevo. This was mentioned by the plaintiffs and by the members of SAJ who were present in Podujevo on that particular day. Besides, at the time of removing the people from their houses, the defendant was armed, like all other members of his unit, and not one of them ever entered a house or a courtyard all alone. On the contrary, they entered in groups and, with their behaviour, obviously created fear among the civilians. Upon entering the courtyard where the Bogujevci family was, the defendant had already seen a group of women and children who were in the street and, together with them, entered the courtyard. Because of that, in view of the fact that it was the case of the women and children leaving their houses

in fear, searched previously, with their children who they tried to protect, their behaviour could, in no conceivable manner, create a feeling of being threatened in the defendant. The fact that other persons as well had been shooting at the group of civilians simultaneously with the defendant does not lessen his criminal responsibility. On the contrary, this fact points to an exceptionally increased degree of public danger represented by the originator of the idea that a group of completely helpless persons should be lined up against the wall and killed by a number of armed men shooting at them, point blank, from automatic rifles.

Finally, the very act of shooting in the said manner at a group consisting of 12 children and seven women is so unjustifiable, and the consequences of murdering whole families so serious that they deserve only the maximum sentence. There were no extenuating circumstances on the part of the defendant, who already had a police record. Because of that, for the war crime against civilian population, as described in Article 142, Paragraph 1, of the Criminal Code of the Federal Republic of Yugoslavia, the court has sentenced the defendant to a 20 (twenty) year prison sentence. The time the defendant has spent in detention, from 21 May 1999 to 16 June 1999 and from 15 November 2001 to the time the verdict goes into force shall be included in the sentence.

The defendant has been relieved of the obligation to pay the lump sum and bear the costs of the trial in view of the fact that he personally has no means to do that so that he is not in the position to pay the costs of the criminal proceedings and the lump sum to the court which will be, because of that, paid from the budget.

The plaintiffs are directed to a trial to achieve property and legal redress in view of the fact that the court did not have enough data on the basis of which it could have decided on the property and legal redress of the plaintiffs in these criminal proceedings.

Since the deputy public prosecutor, in the course of the main trial, has relinquished the prosecution of the defendant for the crime of illegal possession of firearms and ammunition as described in Article 33, Paragraph 1, of the Law on Arms and Ammunition of the Republic of Serbia, because of the expiration of the statutes of limitations, the court, on the basis of Article

354, Paragraph 1, of the Law on Criminal Procedure, has dropped charges against defendant Saša Cvjetan for this particular crime.

Recording secretary,
Slobodanka Nedeljković

The Presiding judge
Biljana Sinanović

LEGAL REMEDY

A complaint can be filed against this verdict with the Supreme Court of Serbia within 15 days from the receipt of the writ of the verdict through the offices of this court.

IN THE NAME OF THE PEOPLE

The Serbian Supreme Court based in Belgrade, in the Trial Panel comprised of Judges Dragomir Milojević as Presiding Judge, Predrag Gligorijević, Miroslav Cvetković, Dragan Jocić, and Zoran Tatalović as jurors, and Counselor Dragana Jevrić as the Court Reporter, in the criminal proceedings initiated against defendant Cvjetan Saša because of the criminal act of war crime against civilian population pursuant to Article 142 Para 1 of the FRY Criminal Code, ruling on appeals lodged by defendant Cvjetan Saša and his Counsellors Đorđe Mamula, Đorđe Kalanj, Ilija Radulović, and Goran Rodić against the Belgrade District Court verdict K. 1823/04 handed down on 17 June 2005, after the Trial Panel session held pursuant to Article 375 of the Criminal Code Procedure in the presence of the defendant and his Counsellors, on 22 December 2005, handed down the following

VERDICT

The appeals lodged by defendant Cvjetan Saša and his Counsellors are **OVERRULED** as unfounded and the Belgrade District Court's verdict K. 1823/04 handed down on 17 June 2005 is **UPHELD**.

Statement of Reasons

In the appealed verdict defendant Saša Cvjetan was found guilty of the commission of war crime against civilian population pursuant to Article 142 Para 1 of the FRY Criminal Code and convicted him to 20 years in jail. The time he spent in the pre-trial detention from 21 May 1999 until 16 June 1999, as well as from 15 December 2001 until the verdict enters into effect, was calculated in this sentence. The defendant is exempted from paying the criminal trial expenses and the injured parties were informed of their right to claim damages in the civil suit.

Pursuant to Article 354 Para 1 of the Criminal Procedure Code the same verdict dismissed the act of illegal weapons' possession pursuant to Article

33 Para 1 of the Law on the Weapons and Ammunition the defendant was charged with.

The following persons lodged appeals against this verdict:

-Defence Counsellor Đorđe Mamula, because of the serious violations of the criminal procedure, falsely and incorrectly determined factual background, and violation of criminal code with the proposal that the appealed verdict be dismissed and case returned to the court of the first instance for the retrial and that he be informed, along with the defendant, about the second instance Trial Panel's session;

-Defence Counsellor Đorđe Kalanj, because of the serious violation of the criminal procedure provisions, violation of the criminal code, and falsely and incompletely determined factual background with the proposal that the appealed verdict be dismissed and case returned to the first instance court for the retrial and that he be informed, along with the defendant, about the second instance Trial Panel's session;

-Defence Counsellor Goran Rodić, because of the serious violation of the criminal procedure provisions, violation of the criminal code, and falsely and incompletely determined factual background with the proposal that the appealed verdict be dismissed and case returned to the first instance court for the retrial and that he be informed, along with the defendant, about the second instance Trial Panel's session;

-Defence Counsellor Ilija Radulović, because of the serious violation of the criminal procedure provisions, violation of the criminal code, and falsely and incompletely determined factual background with the proposal that the appealed verdict be dismissed and case returned to the first instance court for the retrial and that he be informed, along with the defendant, about the second instance Trial Panel's session;

-defendant Cvjetan Saša who challenged the verdict as illegitimate and illegal with the proposal that the appealed verdict be dismissed and he be informed about the second instance Trial Panel's session.

The Republic Public Prosecutor suggested in the submission Ktž. number 2050/05 from 20 October 2005 that the defendant and his Counsellors' appeals be overruled and the first instance verdict upheld.

The Supreme Court held the Trial Panel session pursuant to Article 375 of the Criminal Procedure Code in the presence of defendant Saša Cvjetan and his Counsellors Attorneys Đorđe Kalanj, Ilija Radulović, and Goran Rodić, and in the absence of the regularly summoned Deputy Republic Public Prosecutor and Defence Attorney Đorđe Mamula, who was not regularly summoned, in which the Trial Panel re-examined the first instance verdict and other documents from the case file, after which it found the following:

The appealed verdict does not contain serious violations of the criminal procedure or violations of the Criminal Code, to which the second instance courts always pay attention ex officio pursuant to Article 380 Para 1 Item 1 and 2 of the Criminal Procedure Code. It also does not contain serious violations of the criminal procedure provisions pointed out in the appeals.

First of all, the appeals are challenging the first instance verdict because of the serious violations of the criminal procedure provisions prescribed under Article 368 Para 1 Item 10 of the Criminal Procedure Code and in this relation they claim that the verdict is based on the evidence on which, according to the Criminal Procedure Code provisions, it could not be based, and this is the record from the interrogation of the defendant conducted by the Investigative Judge on 24 May 1999, because defendant Cvjetan Saša was not previously warned that he was not obliged to defend himself or answer the questions and neither was he warned that all he gives as a statement can and will be used against him as evidence pursuant to Article 13 Para 3 of the Criminal Procedure Code; the Defence Attorney did not attend the interrogation even though it was noted on the record that Attorney Dragutin Stanković was there and this represents a counterfeited document. Besides the aforementioned, this record from the interrogation held before the Investigative Judge could not be used as evidence in the criminal proceedings because Saša Cvjetan's defence was extorted with the violence and threats used by Inspectors Oparnica Miloš and Duško Klikovac during the interrogation. This was pointed out to the Investigative Judge

during the interrogation in the Bijelo Polje District Prison when Defence Attorney was also absent.

The Supreme Court finds these appeals unfounded because the first instance court adduced evidence by examining witnesses Miroslav Nikolić, Aleksandar Đorđević, Živorad Šubaranović, Radica Marinković, and Mijat Bajović in the retrial in order to remove all omissions noted in the Serbian Supreme Court's decision by which the previous verdict was dismissed. It also obtained the report from the Prokuplje District Prison Administration and the Republic of Serbia Ministry of Interior. Then it evaluated these pieces of evidence and correctly concluded that there are no grounds for the claim that the record from the interrogation of defendant Cvjetan Saša before Investigative Judge Mijat Bajović could not be used as evidence in the course of the criminal proceedings.

Investigative Judge Mijat Bajović confirmed the authenticity of the record content, which he dictated in the presence of Attorney Dragutin Stanković. In view of this, he explained what kind of problems he met with in the harsh conditions, during the time of war, when he was trying to find an Attorney. He personally went to look for an Attorney and found Dragutin Stanković. They went together to the Prokuplje District Prison building and this Attorney attended the interrogation of the defendant, as it was noted in the record from the interrogation and Secretariat of Interior Inspectors did not attend the interrogation. Judge Mijat Bajović's statement coincides in this part with the statements given by Inspectors Oparnica Miloš and Duško Klikovac who claimed that after they made the criminal complaint, they left Prokuplje and they did not attend the interrogation of the defendant and, therefore, the allegation from the appeal that defendant's statement before the Investigative Judge was extorted by violence used by these Inspectors is unfounded.

The Investigation Judge's claim that Attorney Dragutin Stanković was present during the interrogation is also supported by the fact that Attorney Stanković signed the note of delivery the same day the interrogation took place proving that he received the investigation opening decision and detention order effective as of 24 May 1999. The signature on this note of delivery is the same as the signature on the receipt for the fee paid to the At-

torney because he was the ex officio Defence Attorney for defendant Saša Cvjetan.

It could be learned, from the Prokuplje District Prison report dating from 22 April 2005 regarding the fact whether or not the entrance of Attorney Dragutin Stanković into the prison building was registered on the day the interrogation of defendant Cvjetan Saša took place, that in the Duty Register from 24 May 1999 it was only noted that Investigative Judge Mijat Bajović interrogated defendants Cvjetan Saša and Dejan Demirović in the Supervisor's office. The presence of other persons was not registered. There is no doubt that the aforementioned allegation from the Prokuplje District Prison's register is exclusively related to the moving of detainees, which is the essential purpose of the register maintained by the District Prisons. It is true that the entrance of Attorney Dragutin Stanković was not registered, but the entrance of Defence Attorney Živorad Šubaranović was not registered either and his presence during the interrogation of Dejan Demirović (conducted the same day as the interrogation of Cvjetan Saša) and his statement given in the status of appeal witness, are not challenged at all. The Court Reporter- dactylographer Radica Marinković's entrance was not registered either. She was typing the record from the interrogation of defendant Cvjetan Saša and Defence Counsellors are quoting in their appeals her allegations given in the status of witness. Because of this, the Prokuplje District Court's register brings no doubt about the presence of defendant Cvjetan Saša's Attorney Dragutin Stanković during the interrogation before the Investigative Judge Mijat Bajović. On page 44, paragraphs 2 and 3, and pages 45 and 46, paragraphs 1 and 2, the first instance court presented in detail the statements given by the witnesses who testified about the presence of Attorney Dragutin Stanković in the interrogation of Cvjetan Saša and evaluated each one of them. It especially assessed the authenticity of the contradictory statements as well as the reasons because of which it trusted Mijat Bajović's statement, which the Supreme Court completely accepted, and overruled the opposite allegations from the appeal related to this part of the first instance verdict as unfounded.

Besides the aforementioned, the records from the interrogation of the defendant before the Investigative Judge dating from 24 May 1999 and the interrogation conducted in the Bijelo Polje District Prison, in view of the defendant being informed of rights during the procedure, were made in con-

formity with the then effective provisions of the Criminal Code Procedure and, due to this, the appeals in this part are also unfounded because the assessment that the evidence was obtained in line with the law must be founded on the Procedure Code (i.e. Criminal Procedure Code) that was applicable at the time the evidence was obtained.

On the occasion of the interrogation of the defendant in Bijelo Polje, the Defence Attorney was not present for real. However, by the amended Investigation Opening Request the defendant was not charged with the commission of criminal act pursuant to Article 47 Para 2 of the Republic of Serbia Criminal Code, which was, according to the then applicable law, punishable with the death penalty, but with the act pursuant to Article 142 Para 1 of the FRY Criminal Code, which could not be punished by the death penalty. Therefore, according to the then applicable Criminal Procedure Code, the crime he was interrogated about did not require the presence of Defence Attorney.

Finally, Attorney Đorđe Mamula's appeal allegation that the record made in the interrogation before the Investigative Judge should have been separated because the defendant did not have an opportunity to choose his own Defence Attorney, which is the right granted by the FRY Constitutional Charter on Human and Minority Rights and ratified international conventions and general principles of International Law is also unfounded. It was found unfounded because his right to defence was not violated by appointing an ex officio Attorney instead of an Attorney of his choice since he was supported by an expert, Attorney Dragutin Stanković. The Court managed to provide his support in the way described by Investigative Judge Bajović and which has already been mentioned. Besides this, this was happening during the time of war when certain freedoms and rights granted by the Constitution were limited. This includes the possibility of appointing an ex officio Attorney instead of an Attorney of the defendant's personal choice. The limitation of these rights is in line with Articles 11 and 12 Para 2 of the Republic of Serbia's Constitution, Article 6 of the Charter on Human and Minority Rights and Civil Freedoms, which prescribe that during the time of war or the state of emergency the State may take measures derogating from human and minority rights to the extent strictly required by the exigencies of the situation. Contrary to the appeals lodged, the application of these limitations is not in collision with international conventions

ratified by the State Union of Serbia and Montenegro, especially Article 4 of the International Covenant on Civil and Political Rights and Article 15 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Both of these international documents allow the State Parties in time of war or in time of public emergency, which threatens the life of the nation and the existence of which is officially proclaimed, to take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures do not derogate from the obligations related to the right to life, prohibition of torture, slavery, and punishing based solemnly on law. Therefore, the defendant's statement given in the presence of the ex officio Defence Attorney Dragutin Stanković, whom the defendant accepted as an Attorney, was not taken in illegal way or in collision with International Law.

The appeals are unfoundedly challenging the first instance verdict because of the serious violation of the criminal procedure provisions prescribed under Article 368 Para 1 Item 11 of the Criminal Procedure Code. It is alleged, in relation to this, that the text of the appealed verdict is in collision with the reasons, the verdict does not contain the reasons for the relevant facts, and it especially does not contain a word about the intent; the first instance court's assessment of the evidence was challenged, especially related to the statements given by the witnesses- juvenile injured parties, witness Goran Stoparić, and Fatos Bogujevci, as well as the ballistic expertise, the way the death and injuries of persons named in the text were determined. The appeals, by explaining the aforementioned violation of the criminal procedure, give the explanation that the first instance court's verdict was challenged because of the falsely and incompletely determined factual background.

Contrary to these allegations from the appeals, the text of the appealed verdict is clear and entirely determined; it is in agreement with the reasons provided in the Statement of Reasons and these reasons are sufficient, clear, and in compliance with the real content of the evidence adduced. Therefore, the first instance court is unfoundedly challenged because of the serious violation of the criminal procedure provision prescribed under Article 368 Para 1 Item 11 of the Criminal Procedure Code.

Attorney Đorđe Mamula's allegations that the first instance court overruled the Defence Council's proposals for the interrogation of another five "Scorpions" members and other four witnesses- guards in the Prokuplje District Court and by this it made the "basic violation of the right to defence", which represents a serious violation of the criminal procedure provisions prescribed under Article 368 Para 2 of the Criminal Procedure Code.

By overruling one party's proposal to adduce some evidence, the court is not making a serious violation of the criminal procedure provisions because none of the provisions of the Criminal Procedure Code, including the provisions under Article 17 Para 1 and Article 18 Para 1 of the Criminal Procedure Code, which contain the principle of material truth in determining facts, does not oblige the court to adduce every evidence proposed nor does it limit the court in the free evaluation of evidence adduced, which has a purpose in determining entire and real truth. Because of this, possible mistake that the court might have made in the evaluation of evidence can be the basis for a possible appeal because of the falsely and incompletely determined factual background, but not because of the violation of the criminal procedure provisions or because of the violation of defendant's right to defence as it was incorrectly underlined in the appeal.

In this particular case, the first instance Court correctly assessed that the factual background was sufficiently clarified with the evidence adduced and the interrogation of additional witnesses, besides a great number of the already examined witnesses, regarding the same circumstances, would only lead towards the unnecessary prolongation of the criminal proceedings. The Court was obliged to explain its decision to overrule the Defence Council's proposal, which it did on page 49 and defendant's Defence Counsellor Ilija Radulović is quoting these reasons on pages 52 and 53 of the appeal. The Supreme Court finds it unnecessary to repeat these reasons in this verdict, which it entirely accepts otherwise.

The first instance Court determined correctly, based on the proper evaluation of defence and evidence presented during the proceedings, that defendant Cvjetan Saša, in the time, place, and manner specified in the text of the appealed verdict violated the principles of International Law in Times of War, treated Albanian civilians inhumanly, participated in the violation of children's physical integrity and murder of women and children,

in the manner described in the verdict, he intentionally participated in the murder of 14 persons and wounding of 5 children, whose names are listed in the text of the appealed verdict.

This factual background was determined mainly based on the defendant Cvjetan Saša's defence during the first interrogation before the Investigative Judge on 24 May 1999 when he admitted the main facts related to the commission of the crime he is charged with. His admission of guilt is in compliance with the statements given by the eyewitnesses. In the first interrogation, the defendant described in detail the event with injured party Kastrati Rexhep and admitted that he took a pistol from one of the houses; that together with "Gulja", a young man who was previously searching the civilians, and another six or seven persons, shot at a group of civilians. The description of the scene is the same as the one mentioned in Kastrati Rexhep's statement, the content of the Investigative Judge's record from the investigation of the scene, and the photo documentation, while the description of the event itself is the same as the description given in the injured parties' statements and the statement given by witness Stoparić Goran.

The witnesses-injured parties, juvenile Lirrie, Jahona, Fatos, and Saranda Bogujevci, described the main things and the details of the event in almost the same manner and during the identification process, out of five people in the line, they all recognized defendant Cvjetan Saša as one of the people in uniform, who were present at the scene. In the first verdict's Statement of Reasons, the Court presented the detailed content of their statements, evaluated them, evaluated that there was some uncertainty in their statements, and also gave the reasons for accepting such statements, and the Supreme Court is mainly accepting the stance of the first instance Court.

Witness Goran Stoparić also testified and by his statement he confirmed the statements given by the examined children. Among others, witness Goran Stoparić stated that he saw a group of civilians- women, children, and one man – as they entered the yard escorted by defendant Cvjetan Saša; that several other "Scorpions" members were already in this yard; that, after he heard the shooting in the yard, he saw "Scorpions" members, including defendant Cvjetan Saša, coming out of the yard, and they were all, except for Demirović Dejan, changing the clips of their rifles as they

were walking. The first instance Court gave the detailed Goran Stoparić's statement on page 32 paragraph 3 and pages 33 and 34 paragraph 1 in which he confirmed, just like the witnesses-injured parties, the children from the Bogujevci family said, that defendant Cvjetan Saša was present at the scene. The Court evaluated this statement and paid special attention to the corrections he made in his testimony during the course of the trial, as well as the reasons for accepting the statement this witness gave in the main hearing on 10 December 2003.

The identity of the killed people was determined on the basis of the witnesses-injured parties' statements (juvenile children from Bogujevci family), witnesses Safet and Selatin Bogujevci and Enver Duriqi, and written documents from the case file. Witnesses Nebojša Maljević and Zoran Simović stated that they heard that a mass murder of civilians happened on 28 March 1999 and witness Spasoje Vuletić said he went inside the yard and saw a pile of corpses, among which there were some who were still giving signs of life. Witness Dr. Dragan Marković confirmed this, after he heard a longer burst of gunfire, he went inside the yard and found several persons lying there with fresh gunshot wounds. 'I separated the persons, who were still alive, and started providing first aid for the persons, who were still showing signs of life.'

It was determined from the record made during the investigation of the scene that 14 bodies were found in the yard, mostly women and children, and one older man and that bullets cases were found, which were determined in the ballistic expertise to be 7.62 mm bullets for an automatic rifle known as AK 47.

After the bodies were exhumed, the autopsy was carried out on eight bodies included in the appealed verdict (their names are listed on page 37 in the last line and page 38 in the first line) and it was determined that the cause of death in these cases were multiple wounds inflicted by a firearm. Since the families of other victims did not let the bodies be re-exhumed or autopsied again and the cause of death for other persons was determined based on the statements given by eyewitnesses and written documentation, the first instance Court properly assesses that the repeated exhumation and autopsy of the bodies, whose families did not approve of this, would not be necessary for determining factual background.

It is also unfoundedly claimed in the Defence Council's appeals that not a word is mentioned in the verdict regarding the degree of guilt of the defendant in the commission of this crime. It is especially unfounded in Defence Attorney Đorđe Mamula's appeal in the part where he said that the first instance Court 'avoided to declare itself regarding the guilt, it does not even mention if the act was committed intentionally or out of negligence and he also said that 'the Court did not mention whether or not the act pursuant to Article 33 Para 1 of the Law on Weapons and Ammunition was committed with intent or out of negligence, but it does convict the defendant'.

In the first instance verdict, already in the enacting terms of judgement, it was noted that the defendant committed the act with intent. On page 40 of the verdict, in its Statement of Verdict, the first instance Court concluded that the defendant knew (was aware of) that, if he fired his weapon from immediate vicinity at a group of people and when he does this along with several other persons, it is certain that, by this, he would cause the death of these people; he also obviously wanted the occurrence of these consequences when he shot at the group of unarmed children and women... Right after this, the first instance Court assessed the circumstances under which the defendant committed this act, which is important for the degree of guilt and legal assessment of the criminal act.

The Supreme Court assessed that the reasons from the first instance verdict for the degree of guilt, which were mentioned before, are clear, complete, and undoubtedly sufficient. However, the facts, which the first instance Court determined in the proceedings and mentioned in the reasons for the judgement: that the defendant graduated from a Military School and went to the Special Forces training (page 4); that he knew that the murder of civilians, women, and children was forbidden; and that the provisions applicable in the time of war must be absolutely obeyed completely, according to our and international legal provisions (page 5); that the Commander of his unit warned the members of the unit already when the unit was gathering that killing and looting of civilians is forbidden (page 6)... were undoubtedly determined in order to finally determine the degree of the defendant's guilt in the commission of this crime. Therefore, these facts represent the reasons for the first instance Court, in a wider sense, to determine the defendant's intent in the commission of this act and they repre-

sent an entity with the conclusive reasons that have already been pointed out. This also stands for the part of the verdict's Statement of Reasons on page 52 i.e. the Court's evaluation that the defendant was an experienced soldier; that arrival to Podujevo was not a surprise for him; that none of the killed people or other citizens of Podujevo contributed to the defendant's emotional stress by their behaviour because none of them, unlike the defendant and the members of his unit, were armed. As for the previously determined facts, based on the experts' findings and examinations that the defendant was accountable, which is not even challenged in the Defence Council's appeals, the Supreme Court completely accepts the first instance Court's reasons for the degree of the defendant's guilt.

The allegation from the appeals that the first instance Court did not present the reasons for the degree of guilt in the commission of the criminal act pursuant to Article 33 Para 1 of the Law on Weapons and Ammunition, unless it represents a mistake in the composition of the appeals, is undoubtedly unfounded since the charges for this criminal act were dismissed because the Public Prosecutor dropped the charges. Therefore, the first instance Court's verdict must not contain reasons for the degree of guilt.

Defence Counsellor Goran Rodić challenged the first instance verdict because it stated already in the enacting terms of the judgement 'during the time of war'. According to the appeal, International Law does not recognize term 'the time of war'. It could only be an armed conflict, which could be internal or international and if there was no international conflict, then the provisions of the Geneva Conventions from 1949 could not be applied. The appeal becomes contradictory already on the following page stating that the event happened 'during the state of war' (confiscation of 'Zbrojevka' pistol) where the appeal itself is calling upon the state of war. Regardless of this fact, the allegations from the appeal are unfounded.

The first instance Court is correctly using the term 'during the time of war' in the appealed verdict because the legislature was using the same term in Article 142 of the FRY Criminal Code. And it is necessary to define notions and facts using the terms from the law. Besides this, the FRY Criminal Code uses both terms, the time of war and armed conflict, as synonyms. The Defence Council is unfoundedly pointing to the different terminology used by the Hague Tribunal, especially when the provisions from the local legis-

lative is complete, applicable, and compliant to the International Conventions on Human and Minority Rights and Civil Freedoms applicable at the territory of Serbia and Montenegro. When the Supreme Court was evaluating the allegations from this part of the appeal, it had in mind that the state of immediate war danger was pronounced in the 'FRY Gazette' number 14/99 on 23 March 1999 and that the territory of the Federal Republic of Yugoslavia was bombed by NATO forces already on 24 March 1999 and that the decision on proclaiming the state of war was proclaimed in the 'FRY Gazette' number 15/99 on 25 March 1999, due to which it is obvious that the application of the Geneva Conventions is necessary. At the same time there was an internal armed conflict in Kosovo, the territory of the Federal Republic of Yugoslavia and the Court provided sufficient reasons for this claim on pages 24 and 25 and then on pages 41 and 42 of the appealed verdict's Statement of Reasons. Thus, the first instance Court's conclusion that, in situation when both, armed conflict and war, exist as objective circumstances, as well as determined facts, which correlate these circumstances to the crime committed, International Law provisions contained in the Geneva Conventions are applied.

The Supreme Court also evaluated other allegations of the Defence Council's appeals relating to the determined factual background, which challenge the evaluation of the evidence adduced by the first Court and provide their evaluation of the evidence adduced. The Supreme Court found that these allegations are unfounded and without any significant influence to the different result of this criminal trial.

Hence, the factual background, including the facts representing the relevant elements of this crime and the facts regarding the psychological relation of the defendant towards the crime committed, is correctly and completely determined and by the qualification of defendant Cvjetan Saša's criminal activity pursuant to Article 142 Para 1 of the FRY Criminal Code, the criminal code was properly applied. In relation to this, the first instance Court gave sufficient, clear, and convincing reasons in the appealed verdict's Statement of Reasons, which are completely accepted by the Supreme Court.

In the process of evaluation of the first instance verdict in the part of the decision of the punishment conducted pursuant to Article 383 of the Crim-

inal Code Procedure, the Supreme Court correctly determined and evaluated all circumstances prescribed under Article 41 of the FRY Criminal Procedure Code, which could impact the more lenient or more severe punishment and properly convicted defendant Cvjetan Saša to twenty years of imprisonment because of the war crime committed against civilian population prescribed under Article 142 Para of the FRY Criminal Code. The time the defendant is spending in the pre-trial detention was calculated into this sentence. According to the Supreme Court's evaluation, the circumstances and the manner in which this crime was committed, as well as the extremely grave consequences, completely approve of the conviction prescribed as the most severe, according to the law applicable at the time the crime was committed, for the criminal act in question.

The first instance verdict stayed unchanged in the part where the charges are overruled because the authorized persons did not lodge any appeals against this part of the appealed verdict.

Because of the aforementioned reasons, pursuant to Article 388 of the Criminal Procedure Code it was decided as said in the enacting terms of this verdict.

Court Reporter
Dragana Jevrić

Presiding Judge
Dragomir Milojević

CHRONOLOGY OF TRIAL OF SAŠA CVJETAN FOR CRIME COMMITTED IN PODUJEVO ATTORNEY DRAGOLJUB TODOROVIĆ

The criminal trial of Saša Cvjetan, a member of the “Scorpions” unit, a reserve Republic of Serbia Ministry of Interior unit, for the act of war crime committed against civilian population on 28 March 1999 in Podujevo, Kosovo, when 14 Albanian civilians (women, children, and old people) were killed, is followed with rather unusual circumstances, particular characteristics, and specific things. It could be said that it represents a paradigm for all political, judicial, and other obstacles, which occur in all trials for war crimes initiated in Serbia and Montenegro.

Saša Cvjetan received a call up for military duty from the “Scorpions” unit Commander Slobodan Medić and joined the unit on 24 March 1999 when the NATO forces’ intervention in the Federal Republic of Yugoslavia began. 130 members of this unit were issued with weapons in the Serbian Ministry of Interior’s storage site in Belgrade and they arrived in Prolom Banja, which is close to Kosovo, on 25 March 1999 where the Commanders of the Republic of Serbia Special Counterterrorism units waited for them. There, the Scorpions unit was transferred into the Special Counterterrorism reserve units upon the order issued by Colonel General Vlastimir Đorđević, known as Rođa, who was the then Commander of the Republic of Serbia Ministry of Interior Public Security Department.

The Scorpions took off for Podujevo in the early morning hours on 28 March 1999 by the same buses that brought them to Prolom Banja. Right after they arrived, a group of 4 or 5 soldiers broke into one Albanian house and killed 14 Albanian civilians (women, children, and old people).

Opening of Case Against Two “Scorpions” Members

The Prokuplje District Public Prosecutor submitted an Investigation Opening Request against two “Scorpions” members Cvjetan Saša and Demirović Dejan because of the reasonable doubt that they committed the act of murder in a yard of one house in Podujevo on 28 March 1999. They alleg-

edly murdered several people and thus committed the act pursuant to Article 47 Para 2 Item 6 of the Socialist Republic of Serbia Criminal Code. Defendants Cvjetan and Demirović were arrested and interrogated on 24 May 1999 before the Investigative Judge from the Prokuplje District Court, Mijat Bajović. Because of the gravity of this case, the presence of a Defence Attorney was mandatory during the first interrogation. Because of this, Investigative Judge Mijat Bajović hired an ex officio Attorney Dragutin Stanković to defend Cvjetan Saša. In the record from the interrogation of defendant Cvjetan Saša, the presence of Attorney Dragutin Stanković was twice registered. The same day the interrogation took place, 24 May 1999, Attorney Stanković signed a note proving that he received the Investigation Order and Detention Order for defendant Cvjetan Saša. The second defendant, Dejan Demirović, was interrogated after Saša Cvjetan. Attorney Dragutin Stanković did not attend the interrogation of Dejan Demirović and he was not his Defence Counsellor because, as Judge Bajović said, he could not bear to listen anymore to the details of such a horrible crime. Because of this, Judge Bajović brought another Attorney, Živorad Šubaranović, who was the ex officio Defence Counsellor for Dejan Demirović and who signed a note on 24 March 1999 proving that he received the Investigation and Detention Order for his client. Both Attorneys received fees from the Court budget and it was registered in the Court documents.

In this interrogation, Cvjetan Saša completely admitted that he participated in the execution of 14 women, children, and one old man of Albanian ethnic background, which happened on 28 March 1999 in a yard of one house in Podujevo.

Suspension of Investigation

The Prokuplje District Court, through its Trial Panel presided by the Chairman of the Court, Judge Branislav Đ. Niketić, made a ruling (Kv. 35/99) on 16 June 1999 by which it suspended the investigation and terminated the detention against Cvjetan Saša and Demirović Dejan. On this day they were both released. Regardless of Cvjetan's admission of guilt, the Court stated that there was no evidence that he committed the crime since he was participating in the cleansing of area and on this occasion he ran into a group of people in which a person suspected to be a member of the ter-

rorist organization was; there was shooting and several people were killed on this occasion. On 18 June 1999 the Prokuplje District Public Prosecutor lodged an appeal against this scandalous ruling, in which the factual background was falsely presented. The Supreme Court made a ruling KŽ II – 456/99 on 13 July 1999 by which it upheld the appeal lodged by the Prokuplje District Public Prosecutor and dismissed the Prokuplje District Court's verdict, by which the investigation into this act was closed and detention against suspects Cvjetan Saša and Demirović Dejan was terminated.

More than two years this case spent in a drawer in the Prokuplje District Court, until 15 November 2001 when defendant Cvjetan Saša was arrested again and investigation against him regarding the execution of 14 Albanians, which was committed on 28 March 1999, was opened again, but this time it was because of the act of war crime against civilian persons pursuant to Article 142 Para 1 of the FRY Criminal Code.

The trial of Cvjetan Saša continued only after the Milošević's regime was overturned, the Prokuplje District Court Chairman Branislav Đ. Niketić was dismissed, and new Serbian Government was formed.

The Prokuplje District Public Prosecutor filed an indictment on 5 April 2002 against Saša Cvjetan and Demirović Dejan because of the war crime against civilian population pursuant to Article 142 Para 1 of the FRY Criminal Code. Since Demirović ran away to some foreign country in the meantime, his trial was separated from the trial of Cvjetan. The trial of Cvjetan Saša began on 9 October 2002 before the Prokuplje District Court Trial Panel presided by Judge Lapčević. In this trial, defendant Cvjetan Saša withdrew his admission given before Investigative Judge Mijat Bajović on 24 May 1999. Since the presence of a Defence Attorney was mandatory, the defendant and his Counsellors demanded that this record be extracted from the case file because pursuant to the Criminal Procedure Code provisions, it could not be used as evidence. The Presiding Judge of the Trial Panel Comprised of five members, Judge Lapčević, accepted the Defence Council's proposal to interrogate Investigative Judge Mijat Bajović, his Court Reporter Radica Marinković, and the Head of the Prokuplje District Prison Aleksandar Đorđević, regarding the question whether or not Attorney Dragutin Stanković was present in the interrogation of defendant Cvjetan Saša on 24 May 1999 as his ex officio Attorney. Investigative Judge

confirmed that the Attorney was present; his Court Reporter said the Attorney was not there when the defendant was giving his statement, and Aleksandar Đorđević, the Head of the Prison, gave a vague statement, which was, however, closer to the statement given by the Court Reporter Radica Marinković.

The Prokuplje District Acting Public Prosecutor, Višeslav Bukumirović, was receiving threatening letters in the course of this trial. During the trial, lines of former warriors, with flags and posters in their hands, were circling around the Court building. They were shouting slogans and protesting against this trial. The Humanitarian Law Center evaluated that the Prokuplje District Court could not provide conditions for this trial to be conducted in line with the law and addressed to the Republic of Serbia Supreme Court with a proposal that the further trial be conducted before the Belgrade District Court. At the same time, the HLC published a report titled “In the Name of the Victims” in which it presented information regarding this crime and the identity of victims which were unknown to the Prosecutor. The Republic of Serbia Supreme Court approved of the HLC’s requests and made a ruling to delegate this case to the Belgrade District Court.

Procedure before Belgrade District Court

The first main hearing in the trial of Cvjetan Saša before the Belgrade District Court Trial Panel comprised of five members presided by Judge Biljana Sinanović, was held on 12 March 2003, many pieces of evidence were aduced in the course of this trial based on which it was certainly determined that 14 Albanians were killed, while another five were seriously injured in Podujevo on 28 March 1999. Thanks to the confidence in the Humanitarian Law Center, five surviving children, who live outside Kosovo, and another six Albanian witnesses from Kosovo, gathered enough strength to come and testify before the Court about this crime, which was committed against their closest family members and themselves.

Based on the myriad of evidence, it is certain that the crime happened exactly as it was described in the indictment. None of the witnesses examined, including the members of the “Scorpions” unit did not deny or challenge in any way. The facts that on this occasion civilians, women and chil-

dren from the Bogujevci, Duriqi, and Llugaliu families were killed or murdered are also certain because they are confirmed in the statements given by the eyewitnesses, the children who survived the execution, the Special Counterterrorism units Commanders who appeared at the scene immediately after the event took place, the Doctor who provided first aid to the survivors, the witnesses who saw the Doctor, the injured, and the ambulance, the witnesses – injured parties Selatin Bogujevci, Safet Bogujevci, and Enver Duriqi, who testified about the way their family members were executed – material evidence regarding their execution, exhumation of bodies, identification, and burial.

In the course of the probative procedure, it was certainly determined that the “Scorpions” members committed this crime. It is based on the statements given by the Special Counterterrorism units’ members, Commanders and Officers, who were examined before the Court, but also on the fact that the “Scorpions” unit was sent back to the base camp immediately after this event took place.

The Court made an undoubted conclusion that Cvjetan Saša participated in the commission of this crime. The children, who survived the execution and testified before the Court, were called a day prior to their giving evidence to identify the defendant in the Belgrade District Prison. The identification process was carried out strictly in line with the Criminal Code provisions. Namely, five persons were lined in a special room and one of them was the defendant. Lirrie Bogujevci, Jehona Bogujevci, and Fatos Bogujevci recognized Saša Cvjetan as one of the police officers, who were in the yard when the execution happened. Some of them, however, did not see if he was shooting and others did see him shooting. Besides this, a witness statement given by Goran Stoparić, one of the “Scorpions” members, in the main hearing represents direct evidence that Cvjetan Saša participated in the execution of civilians. Stoparić stated before the Court that after he heard the automatic gunfire, Dragan Medić, Saša Cvjetan, Dragan Borojević, and Dejan Demirović came out of the yard where the civilians were executed and they were changing the clips of their rifles while they were walking, except for Dejan Demirović. For Demirović he said that he did not see if he was changing the clip or not because he was the last one who came out of this yard. Based in this relevant evidence, but also based on Saša Cvjetan’s admission given in the interrogation before the Investi-

gative Judge, which was determined to be given regularly and in line with the Criminal Procedure Code, Saša Cvjetan was found guilty of war crime against civilian population and he was sentenced to 20 years of imprisonment. This verdict was pronounced on 17 March 2004.

In view of this verdict, it is interesting that the first instance Court completely accepted Goran Stoparić's statement as true and valid. The first instance Court had no doubt about whether or not Goran Stoparić was telling the truth and it was one of the key evidence for convicting Cvjetan Saša. However, Stoparić accused another three "Scorpions" members, besides Cvjetan, for the murder of these civilians. These persons were: Dejan Demirović, Dragan Medić, and Dragan Borojević. Since Cvjetan was convicted and the trial of Dejan Demirović was separated, the Prosecutor had to submit another request for investigation against Dragan Medić and Dragan Borojević, which did not happen. By this act, the Prosecutor showed that the law applicable to Cvjetan is not applicable to Medić and Borojević. By this move, the Prosecutor practically abolished Medić and Borojević and prevented the opening of the criminal proceedings, which would only prove if they are guilty or innocent.

Saša Cvjetan and his Counsellors lodged appeals against the Belgrade District Court's verdict. The main reasons for the appeals and essential arguments against the verdict are concerned with the Cvjetan's admission of guilt given in the course of the investigation, which the Court accepted, compared to other pieces of evidence, and concluded it was valid because it was given in line with the Criminal Procedure Code.

Dismissal of Verdict and Retrial

The Supreme Court made a ruling Kž I 1687/04 on 22 December 2004 by which it dismissed the first instance verdict handed down by the Belgrade District Court and returned the case for retrial. In this ruling, the Supreme Court did not present legal arguments for dismissing this verdict. After the evaluation of this ruling, it is obvious that the Supreme Court relied on political instead of legal reasons when it was making the ruling in question. The Supreme Court found that the Criminal Procedure Code was violated because the Court did not obtain the parties' consent to read out the state-

ments given by certain witnesses (Investigative Judge, Court Reporter, and the Head of the Prison) given before the Prokuplje District Court. This is not true because the consent was obtained. The Supreme Court found another reason to dismiss the verdict in the fact that the ballistic examination of Cvjetan Saša's rifle was not conducted in order to prove if it was fired. However, from the documents in the case file it is obvious that the "Scorpions" were not issued with weapons according to the serial number and hence it is impossible to determine which rifle Cvjetan Saša fired from. The third Supreme Court's argument is that it was not ascertained who was killed in this yard on 28 March 1999 and in what way. There is a lot of evidence proving who was murdered, where, at what time, and in what way and most of this evidence was adduced before the first instance court. The last Supreme Court's argument for the dismissal of the first instance verdict is also arbitrary and it is not based on the documents from the case file. Namely, the Supreme Court is demanding that witness Goran Stoparić's statement be compared to the statements given by other witnesses. The Supreme Court failed to notice the fact that the first instance Court gave a detailed analysis of Goran Stoparić's statement in view of other evidence adduced. Therefore, the Supreme Court's ruling on the dismissal of the first instance verdict is based on the falsely determined factual background in the District Court's case.

Since the first instance Court was dismissed a new main hearing was held before the District Court Trial Panel comprised of five members and presided again by Judge Biljana Sinanović. A new verdict (K number 1823/04) was handed down on 17 June 2005 by which Cvjetan Saša was again found guilty for the act of war crime against civilian population pursuant to Article 142 Para 1 of the FRY Criminal Code and he was again sentenced to 20 years of imprisonment. The first instance Court paid special attention, during the retrial, to the evidence related to the presence of Attorney Dragutin Stanković during the interrogation of defendant Cvjetan Saša before the Investigative Judge on 24 May 1999. In view of this, the first instance Court re-examined Investigative Judge Mijat Bajović, his Court Reporter Radica Marinković, the Head of the Prokuplje District Prison Aleksandar Đorđević, and the then Public Prosecutor Miroslav Nikolić. They all stick to their earlier statements. However, the Court overruled the Defence Council's proposal for the extraction of Cvjetan Saša's statement given on 24 May 1999, because it was not given in line with the Criminal Procedure Code. The

Court made this decision based on the material evidence. Namely, the fact is that Attorney Dragutin Stanković's presence was noted twice in the record from the interrogation and that he personally signed that same day a note proving that he received the Investigation and Detention Orders against Cvjetan Saša (it is determined without any doubt since it was also confirmed by the Court Reporter's statement) and the Defence Attorney received a fee from the Court budget for being the ex officio Attorney for Cvjetan Saša, which was also registered in the documents.

After the Court overruled the proposal for the extraction of Cvjetan Saša's statement by which he admitted the commission of this crime, Cvjetan Saša made an incident, started insulting the Judge, kicking the Judge desk and the door in the courtroom. Because of this, the Trial Panel was forced to remove him from the main hearing session.

Verification of Verdict

The Republic of Serbia Supreme Court verified on 22 December 2005 the Belgrade District Court's verdict handed down on 17 March 2005, by which the trial of Cvjetan Saša ended, after numerous irregularities and omissions made by the judicial institutions, with a just verdict. It is important to underline that Judge Biljana Sinanović administered the trial in a highly professional, expert, and objective manner. The surviving children and other Albanian witnesses made a great, but very worthy, effort to help the Court determine the truth and assess the justice.

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