

THE SUPREME STATE PROSECUTOR

Mr Ivica Stanković

Podgorica, 18 January 2016

Subject: Termination of investigation of attempted murder of journalist Tufik Softić

Dear Mr Stanković,

We are writing to you regarding the decision of Ms Nada Bugarin, Deputy Head of the High State Prosecutor's Office in Bijelo Polje, to terminate the investigation against two persons for attempted murder and one for incitement to attempted murder of journalist Tufik Softić on 1 November 2007.

Please be informed that Tufik Softić has not used his legal right to undertake prosecution of the aforementioned three persons, and allow the court to check whether the prosecution acted properly and legally, as you recently publicly proposed, for the following reasons:

- 1. The High State Prosecutor in Bijelo Polje has denied Softić, the injured party, timely copying of the investigation case files** - preliminary investigation Ktn. 132/07 (these case files were not excluded from the case according to the decision of the investigating judge), making it impossible to effectively and efficiently exercise the right to undertake prosecution by filing a direct indictment or request the investigating judge to initiate evidentiary actions (Article 287 of the Criminal Procedure Code, Official Gazette of Montenegro 49/10).

- 1.1. Acting upon the request for copying case files from 5 November 2015, the Deputy Head of the High State Prosecutor's Office in Bijelo Polje Nada Bugarin first allowed on 25 November 2015, and then on 27 November 2015 denied, contrary to the Criminal Procedure Code, Softić's attorney on the spot insight into the case files and their copying. Only after our letter to you, the Supreme State Prosecutor, and following your intervention Softić's attorney has been allowed access to case files (circa 150 pages) on 30 November 2015, which was the date of expiry of the deadline for undertaking prosecution or filing a direct indictment (2 December 2015). The High State Prosecutor's Office in Bijelo Polje has by preventing inspection and copying of the case files from the investigation suspended the right of the injured party to effectively undertake prosecution under Article 287 of the Criminal Procedure Code, disabling him to verify the prosecutor's decision before the court, thus violating his right of access to court (Article 32 of the Constitution, Article 6 paragraph 1 of the European Convention on Human Rights). Due to this failure as well, Tufik Softić filed a constitutional complaint with the Constitutional Court of Montenegro on 31 December 2015.

1.2. Please inform us why such failure occurred, as well as whether and who will bear consequences of such actions, in order to prevent them from repeating in the future.

2. Upon the analysis of the entire case file, we concluded that at this point there really had not been enough evidence for the indictment. However, in the best interest of Tufik Softić and the rule of law in Montenegro, it is necessary to determine the responsibility of persons who contributed to such a situation in this case.

Eight years have passed since the attack on Tufik Softić, and we believe that it is necessary to determine who is responsible for the investigation being terminated without any indication that it could be reinitiated against the same or other persons responsible for the attack.

This letter is to inform you of the reasons why it must be considered that the investigation did not meet the European standard of effectiveness of investigation, which means that the investigation must be conducted in a manner that allows for discovering perpetrators as well as masterminds of the attack. We expect you to determine which persons have been responsible for failures in the investigation listed below and provide that they bear the consequences for contributing that no one will be punished for ordering and committing attacks on Softić. Otherwise, this case, which already confirms the criticism of Montenegro as a state that promotes impunity for attacks on journalists, will become an example of impunity of civil servants for professional failures that caused damage to Softić, his family, the Montenegrin society and reputation of Montenegro in the international community.

We expect you to investigate whether and which civil servants have committed criminal offences Assistance to Perpetrator after Commission of Criminal Offence (Article 387), and/ or Omission to Report Criminal Offences and Perpetrators (Article 386), and/or Misuse of Office (Article 416), Malpractice in Office (Article 417) or Trading in Influence (Article 422).

The investigation has been initiated against three persons based on testimony of witness Draško Vuković, who withdrew his testimony in the meantime. Please inform us whether Vuković will now be charged with a criminal offense of Fraudulent Crime Reporting and/ or False Testimony.

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The investigation of attempted murder of journalist Tufik Softić has been initiated seven years after the attack (the criminal offence was committed on 1 November 2007 and the investigation was initiated on 18 July 2014).

The state prosecutors from Berane and Bijelo Polje failed to conduct an efficient investigation (the investigation in the preliminary procedure and investigation in the criminal procedure) for the reasons listed below.

- **The state prosecutor in Berane** failed to order the police to block the city exit roads immediately after the attack, in order to prevent the perpetrators and aiders from escaping (Article 243 in connection with Article 230 of the Criminal Procedure Code, Official Gazette of the Republic of Montenegro 47/06);
- **The state prosecutor in Berane** and the investigating judge failed to come to the crime scene after they were informed by the police, which was their duty especially bearing in mind the seriousness of the attack (Article 246 of the Criminal Procedure Code, Official Gazette of the Republic of Montenegro 47/06);
- **The state prosecutor in Berane failed to promptly interrogate the persons whom Softić named to the police as suspects**, i.e. as persons who might have been connected

with the attack (Nikola Božović was never interrogated, Draško Vuković was interrogated by the police and the prosecutor in Berane for the first time upon his own initiative on 1 July 2014, Dragan Labudović was interrogated for the first time on 17 September 2014, after the High State Prosecutor's Office in Bijelo Polje initiated the investigation);

- **The state prosecutor in Berane** failed to order the investigating judge to search apartments, facilities, vehicles and persons that Softić marked as suspicious: Dragan Labudović, Draško Vuković, Nikola Božović, as well as interrogation of these persons (this is obligatory in case of an NN perpetrator according to Articles 247 and 248 of the Criminal Procedure Code, Official Gazette of the Republic of Montenegro 47/06);
- **The state prosecutor in Berane** interrogated the injured party, Tufik Softić, for the first time only seven years after the attack, in 2014, although the prosecutor had the right and professional obligation to do so immediately (Article 243 of the Criminal Procedure Code, Official Gazette of the Republic of Montenegro 47/06);
- **Vuka Babović from village Budimlja, owner of facilities in which the bats which were allegedly used for beating Tufik Softić have been discovered has never been interrogated as a witness** with regard to how the bats came into his possession and who had left them in his facilities back in 2007;
- **The DNA analysis of the baseball bats** which were allegedly used in beating Softić, as well as matching the DNA with Softić's profile, has been carried out in 2013, although the bats were found back in 2007 (they were recognised on 12 December 2007);
- **The attacker's DNA material was not immediately collected from Softić**, bearing in mind that the attacker hit Softić with his hand in the area of his arm (Articles 230 and 243 of the Criminal Procedure Code, Official Gazette of the Republic of Montenegro 47/06);
- **The DNA profile of Dragan Labudović was not made** or matched to the DNA profile of the discovered baseball bats, although Softić named Labudović as suspicious;
- **The state prosecutor in Berane and the police failed to take photographs of Tufik Softić's injuries immediately after they were caused** (appearance of injuries, accurate localization, spacing, shape), as stated in the report of doctor Čukić in 2007, which contributed to the precise determination of means by which the injuries were caused;
- **After initiating the investigation and qualifying the offence as Attempted Murder in 2014**, the prosecutor in Bijelo Polje failed to request from the investigating judge to determine secret surveillance measures over the defendants, in order to enable the possibility for collecting any new evidence (Article 159 of the Criminal Procedure Code, Official Gazette of the Republic of Montenegro 47/06);
- **It remains unclear why the police and the prosecution in Berane and Bijelo Polje failed to undertake any actions during the investigation phase for 5 years and 6 months** (from 3 March 2008 to 15 August 2013);
- **It remains unclear why no relevant activities have been undertaken during the following periods from initiating the investigation:** from 20 October 2014 to 1 April 2015, and from 1 April 2015 to 28 October 2015, when the investigation was suspended.

During the period when Tufik Softić was attacked, back in 2007, the Criminal Procedure Code, Official Gazette of the Republic of Montenegro 71/03 and 47/06) was in force, by which the prosecutor gave binding instructions to the police.

Therefore, according to Article 243 of the Criminal Procedure Code, if the state prosecutor could not assess from the charge whether the allegations stated in it were likely, or if the data from the charge contained insufficient grounds for deciding whether to request conducting investigation, or

if the state prosecutor only heard that a criminal offence has been committed, **especially in case of an unknown perpetrator**, the state prosecutor had to, by himself or through other bodies, collect the necessary information. For this purpose, the state prosecutor could have invited the person who filed the charge, the registered person and other persons who have been assessed to have been able to provide information relevant for deciding on the charge. In case the prosecutor was not able to do so by himself, he could have requested from the police to collect the necessary information and take other steps in order to reveal the crime and the perpetrator (Articles 230, 231 and 236 of the Criminal Procedure Code).

The state prosecutor could have requested the police to inform him on the measures they have undertaken. The police was obliged to reply without delay.

The state prosecutor could have, **in case of an unknown perpetrator** and in accordance with Article 247 of the Criminal Procedure Code, suggested the investigating judge to undertake certain investigatory actions if, given the circumstances of the case, this was necessary or expedient to be undertaken before the investigation. In case the investigating judge disagreed with such proposal, he could have requested from the Panel to decide on the issue (Article 24, paragraph 6 of the Criminal Procedure Code). Following adoption of the Criminal Procedure Code (Official Gazette of the Republic of Montenegro 57/09), which fully entered into force on 1 September 2011, the concept of prosecutorial investigation has been adopted, in which the investigation was entirely handed over to the prosecutor's office.

It is indicative that NGO Human Rights Action has posed a clear question in its request for free access to information submitted back in 2010 to the Supreme State Prosecutor Ranka Čarapić: "Has the state prosecutor undertaken preliminary investigation in relation to persons who had previously threatened Mr Softić, i.e. the persons whom he had named as probable perpetrators of the attack?" Therefore, the Supreme State Prosecutor's Office has been drawn attention back in 2010 to the need for interrogating persons whom Softić named as suspicious, i.e. to interview him and check whether these persons have been interviewed. However, the public prosecutor decided to interrogate Softić only four years later, in 2014, when the pressure of the national community and international public became relentless.

Softić and the suspicious persons he pointed to were interrogated for the first time two years after the meeting held on 13 March 2012, upon initiative of the then Prime Minister Lukšić, and at which the then Police Directorate Director Božidar Vuksanović, the Deputy Prime Minister and Minister of Justice Duško Marković, the Supreme State Prosecutor Ranka Čarapić, the Minister of Interior Ivan Brajović and the Special Prosecutor Đurđina Ivanović, decided that the solving and prosecuting of all cases of attacks on journalists and media would be a priority of the police and the prosecution.

Tufik Softić filed a constitutional complaint with the Constitutional Court due to the fact that he has been denied access to the court, as well as inefficient investigation of attempted murder, in which he requested from the Court to determine violation of human rights and freedoms, particularly the right to a fair and public trial and the right of access to court (Article 32 of the Constitution of Montenegro and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms), the right to life (Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms), the prohibition of torture (Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms), the right to an effective remedy (Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms).

We expect you to initiate relevant procedures for establishing the responsibility of state prosecutors in this case, or other civil servants who failed to provide an effective investigation. State prosecutors who acted in the Tufik Softić's case are:

1. Jadranka Mićović, Deputy State Prosecutor in Berane (prosecutor on duty at the time Tufik Softić was attacked in 2007);
2. Gorica Golubović, Head of the Basic State Prosecutor's Office in Berane;
3. Vladan Đalović, Deputy State Prosecutor in Berane (held a hearing of Draško Vuković on 1 July 2014);
4. Nada Bugarin, Deputy State Prosecutor in Bijelo Polje (took over the case in 2014);
5. Rifat Hadrović, Head of the High State Prosecutor's Office in Bijelo Polje;
6. The function of the Supreme State Prosecutor at the time of commission of the criminal offence was discharged by Ranka Čarapić and Veselin Vučković (who acted in his capacity of Deputy Supreme State Prosecutor as acting Supreme State Prosecutor in 2007 before Čarapić was elected to this function, and after she left the post in 2013).

Please be reminded that NGO Human Rights Action has informed the Prosecutorial Council, chaired by the then Supreme State Prosecutor Ranka Čarapić, of the inefficient investigation in its letter from 2012 (available in Montenegrin at HRA webpage: <http://www.hracion.org/wp-content/uploads/pismo-TS-15-5-2012-.pdf>) requesting determining of responsibility. However, the Prosecutorial Council never replied to this letter, nor has it initiated any proceedings. HRA informed you of this in its letter from 21 October 2014.

We urge you once again to determine the responsibility of civil servants for all failures during the investigation in this case, which violated the basic human rights of journalist Tufik Softić to life, i.e. efficient investigation of attempted murder, and which marked Montenegro as a state incapable of establishing the rule of law and deterring similar attacks on journalists.

Best regards,

Dalibor Tomović, Attorney at Law
Tufik Softić's legal representative

Tea Gorjanc Prelević
HRA Executive Director