



HUMAN RIGHTS ACTION | AKCIJA ZA LJUDSKA PRAVA

Unsolved Murder of Duško Jovanović, the Director and Editor-in-Chief of the Daily Dan – Questions without Answers

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INTRODUCTION

Social Context

The unsolved assassination of Duško Jovanović, the founder, Director and Editor-in-Chief of the Podgorica daily *Dan*, has been weighing down on the Montenegrin public for 12 years now. This case has been highlighted in all reports on the state of human rights in Montenegro since 2004, in the context of violations of the right to life and freedom of expression.

Jovanović's newspaper has openly criticised the (still intact) Montenegrin regime ever since it was launched in 1999. Before Jovanović was assassinated, *Dan* had been sued, inter alia, by the Montenegrin Prime Minister, President, his Security Adviser, the Head of the State Security Service (SDB), and by businessmen close to the Government and the Prime Minister. Nearly all these people are still among the country's top political and economic power-wielders.

Jovanović had received numerous threats shortly before he was killed. He was also physically assaulted in 2000. Neither those who had assaulted him nor those who had threatened him have ever been identified. His wife claims that Jovanović had also been threatened by the then Chief of the State Security Service, now the Deputy Prime Minister of Montenegro, who has denied these allegations. Jovanović received an anonymous tip that he had been assaulted by members of the Special Anti-Terrorist Unit (SAJ) of the police. The only person charged with and convicted of involvement in his assassination is a man, who claims he was a collaborator of the Montenegrin police. The context in which Jovanović, who bore the typical features of the so-called enemy of the state, was assassinated, coupled with the deficiencies in the investigation of his assassination, which have not been explained or investigated to this day, lead to the conclusion that there is no political will to shed light on and solve this case once and for all.

In this Report on the investigation of and prosecution for Duško Jovanović's assassination, the NGO Human Rights Action (HRA) has endeavoured to present – in the interest of the respect for human rights and the rule of law – the course of the hitherto investigation and the dilemmas which the State Prosecutor's Office and police have not answered to this day. We have also presented our view of the trial of the only co-assassin prosecuted so far. Our Report does not disclose any new facts. It asks questions that are based on known facts, which beg to be answered in the spirit of human rights and the state's obligations arising therefrom.

Under the minimal European standard of the right to life, the state must ensure an *effective* official investigation of a murder, which means that:

- 1) Such an investigation is carried out by public officials independent from the persons involved in the murder;
- 2) They have to act promptly and with expedition;¹
- 3) They take all reasonable measures to secure the evidence;² and that
- 4) There is an adequate level of transparency of the investigation or at least its results, to ensure accountability and public confidence in their maintenance of the rule of law.

However, the undertaken actions have been lacking in urgency and seriousness required by international standards and cases involving the assassination of journalists. For example, the DNA of persons initially suspected of assassinating Jovanović was sent for analysis four years after the crime. A man, who told the State Prosecutor's Office that he had information about the case over a year ago, has not been questioned yet. *Dan* got hold of an official police memo, whose importance might steer the investigation in the right direction, of which there is no trace in the official case file.

In view of these and other circumstances mentioned in the Report, the twelfth anniversary of the unsolved assassination of Duško Jovanović is burdened by doubts in the seriousness and sincerity of the relevant authorities' efforts to solve the case and by the impression that they are in collusion with the perpetrators and those who ordered the assassination.

Herewith a detailed overview of information on which this impression is based.

Hitherto Investigation Results

The Director and Editor-in-Chief of the daily *Dan*, Duško Jovanović, was shot outside the paper's offices in Podgorica just before midnight on 27 May 2004. He was gunned down right after he got into his car, from a vehicle with tinted windows. Shots were also fired at his bodyguard, who was close by. Jovanović succumbed to his wounds in hospital several hours later.

Only one person, Damir Mandić, was charged with and sentenced for involvement in the assassination, after a marathon, 11-year-long trial, during which the case was retried twice. The court ruled that Mandić had been in the vehicle from which the shots were fired, but that he had not fired them. The assassin, the co-perpetrators and the person(s) who ordered the hit have not been identified. The motive for the assassination remains unknown. It is unclear why Mandić was accused of and convicted for the crime of attempted aggravated murder of more than one person under Article 144(1(8)) of the Criminal Code.

¹ A prompt response by the authorities in investigating the use of lethal force [...] may generally be regarded as essential in ensuring public confidence in their maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (*Gongadze v. Ukraine*, 2005, paragraph 177; *Dudnyk v. Ukraine*, 2009, paragraph 33).

² Any deficiency in the investigation which undermines its ability to establish [...] the persons responsible, whether the direct offenders or those who ordered or organised the crime, will risk falling foul of this standard. (*Gongadze v. Ukraine*, 2005, paragraph 176).

The manner in which the investigation was conducted has never been thoroughly reviewed, despite its insufficient results and complaints about its deficiencies. No one really examined whether the state had done everything it could to protect Duško Jovanović, in light of the threats he had received and reported. It remains unknown whether the criminal report he had filed against Ljubiša Buha-Čume³ was acted upon or whether any consideration had been given to extending him police protection, in spite of the threats which he reported.

In August 2013, the then Acting Supreme State Prosecutor, Veselin Vučković, required of the Higher State Prosecutor's Office to look into the preliminary inquiry case file because *Dan* had in the meantime reported on the existence of an official police memo on Damir Mandić's interrogation on 2 June 2004, containing his alleged confession and a description of the assassination; this memo was not signed, registered or included in the case file. To this day, nearly three years later, the Higher State Prosecutor's Office has not finished working on the case, which it opened in response to the said request. None of the actions undertaken since have led to any progress in the investigation or a comprehensive analysis of actions taken until then.

The Higher State Prosecutor's Office said that a "comprehensive analysis has not been conducted because work on cases investigated by the Higher Prosecutor's Office has not been completed."⁴ HRA, however, **believes it necessary to conduct an urgent and comprehensive review of the investigation, which has not made any progress for 12 years now**, because even the Commission for Monitoring Investigations into Attacks on Journalists has failed to perform such an analysis.⁵

It was not until April 2016 that the Podgorica Basic State Prosecutor's Office launched a preliminary inquiry into the criminal report challenging the deficiencies of the investigation, which was filed by Jovanović's widow and son 14 months earlier, in February 2015. However, the criminal report per se did not reveal any facts that had been unknown to the Prosecutor's Office. It was merely an attempt to force the relevant authorities to declare themselves about the known facts.

Assault on and Threats against Jovanović Preceding His Assassination

There has been no conclusive probe into whether the state had done everything it could to protect Duško Jovanović in light of the threats he had received and reported. It remains unknown whether Jovanović's criminal report against Ljubiša Buha-Čume⁶ has ever been acted upon or whether Jovanović had been extended police protection, despite the threats

³ The leader of the so-called Surčin criminal clan in Belgrade, who was convicted several times and was later granted the status of protected witness in a trial against members of the so-called Zemun clan and in the trial for the assassination of Serbian Prime Minister Zoran Đinđić in 2003.

⁴ Higher Prosecutor's Office letter Tu No. 443/16 of 25 May 2016.

⁵ More about the Commission in the report "From the Citizens' Perspective – Report on the Work of the Commission for Monitoring Investigations into Attacks on Journalists," Human Rights Action, 2016, the summary of which is available in English at: <http://www.hraction.org/?p=10803>.

⁶ The leader of the so-called Surčin criminal clan in Belgrade, who has been convicted several times and was later granted the status of protected witness in a trial against members of the so-called Zemun clan and in the trial for the 2003 assassination of Serbian Prime Minister Zoran Đinđić. He had been issued an official Montenegrin police ID and a gun licence in Montenegro.

he had received and reported. He had hired a bodyguard, who also came under fire during the assassination.

Duško Jovanović was assaulted in the lobby of the building in Podgorica where he lived four years before the assassination, in 2000. The perpetrators of the assault have never been identified. Jovanović received an anonymous tip that members of the Special Anti-Terrorist Unit (SAJ) of the Montenegrin Ministry of Interior Affairs (MIA)⁷ were involved in the attack. The Montenegrin Interior Minister in the 2001-2003 period, Andrija Jovičević, informed Jovanović that the investigation established that this was not true.⁸ However, a SAJ member mentioned in the anonymous letter, Brajuško Brajušković, told the State Prosecutor's Office in September 2013 that Jovanović was beaten up in 2000 by his former SAJ colleague, Slavko Đurović, and two other members of the Unit, on the order of former Police Chief Veselin Veljović⁹. Đurović and Veljović denied the allegations. The Prosecutor's Office did not initiate criminal proceedings against any of the alleged offenders, quoting lack of evidence.

Jovanović constantly received threats.¹⁰ In March 2002, he filed a criminal report against Ljubiša Buha-Čume, the head of the Surčin criminal clan in Serbia, who was dissatisfied with the articles *Dan* published about him and threatened to plant a bomb in its offices.¹¹ In December 2002, Jovanović received a letter warning him that the “top MIA circles were plotting his liquidation.”¹² The aforementioned Interior Minister of the Republic of Montenegro, Andrija Jovičević, testified that Ljubiša Buha had been armed by the Montenegrin MIA and issued a gun licence, but that he did not know whether he also had an official MIA ID card.¹³ It has not been established why Buha had been armed by the MIA; it also remains unknown whether he has been questioned about Jovanović's assassination.

Numerous libel suits were filed against *Dan* because of its articles on the human trafficking scandal (the Moldovan girl S.Č.) and pick-ups of Zagreb weekly *Nacional* reports accusing the

⁷ Andrija Jovičević, the Minister of the Interior in the 2001-2003 period, said that Jovanović had sent him a letter specifying the first and last names of the SAJ members, who had taken part in beating him up (“Investigation into Assault Dropped,” *Dan*, 17 December 2003). *Dan* also quoted Jovanović as saying: “I remember he mentioned the following last names in the letter: Brajušković, Lazović, Đurović or Đuretić...” (“Duško was Safe when I was Interior Minister,” *Dan*, 28 January 2014). Duško Jovanović's brother, Miodrag, also said that Duško Jovanović had received an anonymous letter signed by a “member of the special unit” specifying that SAJ members were involved in the assault on him. (“Đurović, Lazović and Kalezić, the “Strike Troika” of the Bully Platoon,” *Vijesti*, 28 September 2013). It needs to be noted in this context that two SAJ members are currently on trial before the Podgorica Basic Court for brutally beating up a Milorad Martinović after a protest in Podgorica on 24 October 2015. Only the two of them were charged by the Prosecutor's Office, although the broadcast video footage shows that many more men in uniform were involved in the incident. For more details, see: <http://www.hraction.org/?p=10430>.

⁸ Higher Court judgment, K. No. 127/14 of 22 October 2015, page 35: “Then he told Duško that an investigation into the incident had already been conducted and it showed that what Duško was saying was untrue and that another investigation would probably yield the same results, adding that it was more important for him to take measures and focus on staying alive. He does not know whether these measures were taken after he ceased to hold the post of Minister of the Interior.”

⁹ “Brajušković: Đurović Beat up Jovanović, It's a Lie I Didn't Tell the Prosecutor,” *Vijesti*, 28 September 2013; “Ordered by Veljović, Beaten up by Đurović,” *Dan*, 28 September 2013; “Prosecutor's Office: No Evidence Corroborating Brajušković's Story,” *Vijesti*, 27 September 2013; “Policemen Deny Beating up Duško Jovanović,” *Café del Montenegro*, 29 August 2013.

¹⁰ His family testified about this in court (“Testimony of Duško Jovanović's Family,” *Dan*, 15 December 2004; “My Bullet Will Kill You,” *Novosti*, 15 December 2004).

¹¹ Testimony of Andrija Jovičević, Minister of the Interior from 2001 to 2003, Higher Court judgment, K. No. 127/14 of 22 October 2015, p. 15.

¹² “Jovanović Accused the MIA of Plotting His Liquidation in Late 2002,” *PCNEN*, 28 May 2004; “In 2002, Jovanović Informed the MIA of Plans to Liquidate Him,” *Dan*, 9 March 2005.

¹³ Higher Court judgment, K. No. 127/14 of 22 October 2015, p. 35.

Montenegrin leadership of cigarette smuggling, etc.¹⁴ Immediately after the assassination, Jovanović's wife testified that, in 2003, her husband was gravely threatened also by the then Chief of the State Security Service, Duško Marković, now the Deputy Prime Minister of Montenegro.¹⁵ Marković has denied these allegations.¹⁶

During his testimony on Jovanović's assassination, former Interior Minister Jovičević said he had known about the threats against Jovanović, that they had discussed them, that he had ordered the Chief of the Podgorica Security Centre (CB) to deal with the problem, that operative measures had been taken, and that the threats stopped after that.¹⁷ Although the Chief of the Podgorica CB, Ilija Asanović, was also questioned in the recently reopened investigation of the murder,¹⁸ it is unknown whether he was asked who had threatened Jovanović and whether the threats were in any way connected to the assassination.¹⁹

However, Andrija Jovičević, who was the Minister of the Interior until January 2003, testified that he had taken measures to protect Jovanović's life. He said he was unaware whether the measures continued after he stepped down from office of Interior Minister.²⁰ No conclusion can be drawn about whether Jovanović was under police protection, i.e. surveillance before or at the time of the assassination, from the available information about the questioning of Dragan Đurović, who was the Interior Minister at the time of the assassination.²¹ Vesna Medenica, the Chief State Prosecutor in the 2003-2007 period, said at the time that Duško Marković, the Chief of the SDB (currently the Deputy Prime Minister), informed her that the Service did not have a file on Duško Jovanović, i.e. that he was not under surveillance.²² This is an important issue, especially in view of the fact that Slavko Ćuruvija, the Director and Editor-in-Chief of the Belgrade daily *Dnevni Telegraph*, also a fierce critic of the authorities, had been under the surveillance of the Serbian state security officers and was apparently killed by them in 1999. His assassins have been indicted and are currently on trial in Serbia.

¹⁴ Dan was, inter alia, sued by Milo Đukanović, the then and the current Prime Minister of Montenegro, Vukašin Maraš, the (then) Assistant Minister of Defence of Serbia and Montenegro, Duško Marković, the then Chief of the SDB, Vuk Bošković, the then Security Adviser to Montenegrin President Filip Vujanović, as well as by several businessmen close to the Prime Minister ("Day for News", *Vreme*, 3 June 2014).

¹⁵ She was at the Dan office, working, in April or May 2003, when her late husband Duško Jovanović received a telephone call, in her presence, after which he told her that the Chief of the State Security Service of the Montenegrin MIA, Duško Marković, literally said to him: "Jovanović, my bullet will kill you," and that the late Duško Jovanović told her nothing else about that conversation with Duško Marković." Higher Court judgment, K. No. 127/14 of 22 October 2015, p. 12.

¹⁶ "Božović: Marković's Testimony Scandalous," *PCNEN*, 15 September 2004. "SDB and Duško Marković Threatened Jovanović," *Dan*, 22 November 2013. "They Didn't Ask Me Whether Duško was in Danger," *Vijesti*, 26 January 2014.

¹⁷ Higher Court judgment, K. No. 127/14 of 22 October 2015, p. 35

¹⁸ On 20 March 2014, Ilija Asanović, who was the Chief of the Podgorica Security Centre from December 2000 to July 2002, was questioned in the capacity of witness about the circumstances in which measures and actions were undertaken at the order of the then Interior Minister, Andrija Jovičević," Higher State Prosecutor's Office Letter, Tu. No. 253/15 of 27 April 2015.

¹⁹ In response to our comment that the available information did not indicate whether the Chief of the Podgorica CB Ilija Asanović had been asked about the threats against Jovanović and what he had done to put an end to them, the Higher Prosecutor's Office replied: "However, the aforementioned witness spoke in detail about official steps taken in view of the threats made against Duško Jovanović, on the record of this Prosecutor's Office of 20 March 2014." (Letter of the Higher Prosecutor's Office, Ktr. No. 110/14 of 25 May 2016)

²⁰ *Ibid.*

²¹ Testimony of Dragan Đurović, Higher Court judgment, K. No. 127/14 of 22 October 2015, p. 35.

²² Archives of the Crime "Publish the Dan Editor-in-Chief's File", *Dan* online, available at: <http://www.dan.co.me/zlocin.php?nivo=3&rubrika=Zlocin&clanak=59075>.

Murder Investigation

Investigation until 2013

Vuk Vulević was arrested the night of the assassination and was questioned in connection with it. His DNA sample was taken and he was then released because there were no legal grounds to detain him any longer. Although the media reported that a paraffin test had been taken at the time to establish whether he had fired a gun, the Podgorica Police Chief did not mention this in his testimony.²³

Vuk Vulević's father stated that he was at home in Berane about ten days after the murder and that he fled when he was publicly designated as the assassin.²⁴ The then Interior Minister, Dragan Đurović, and his Assistant for Public Security, Mićo Orlandić, said in early September 2004 that the police were looking for Vulević and Armin Mušo Osmanagić, who were suspected of assassinating Jovanović and other crimes.²⁵ Vulević was arrested in Belgrade on 21 May 2005 and the police said a week later (on 28 May 2005) that criminal charges for complicity in the assassination would not be filed against him due to lack of evidence. **The public has never been informed which actions were undertaken in the investigation at the time, which would have allowed it to conclude whether the relevant authorities had done everything they could to shed light on Vulević's involvement in the crime.**

The public does not know how the police obtained information about Damir Mandić's involvement in the assassination. He was arrested on 2 June 2004 at the Belgrade airport on his way to Paris. He was questioned by a Podgorica Higher Court investigating judge on 7 June 2004, after which, on 9 June 2004, the Prosecutor's Office filed a request to open an investigation. He denied the charges at the questioning before the investigating judge. He was later indicted and found guilty of the criminal offence of complicity in attempted aggravated murder (more below).

Who are Damir Mandić and Vuk Vulević?

The general public knows Mandić as an accomplished karate athlete – he was the European junior champion, the runner-up European Champion and two-time Balkan karate champion. He himself confessed he collaborated with the police and distributed the weapons they gave him to “whoever needed them” in the late 1990s. He is rumoured to have collaborated with the State Security Service. Before he was indicted for complicity in Jovanović's assassination, Mandić was convicted for the crime of grievous bodily harm in 1999,²⁶ but, pursuant to a decision of the then President of Montenegro, Milo Đukanović, his prison sentence was commuted to a suspended sentence in 2001.²⁷ During the trial for the assassination of Editor-in-Chief Jovanović, Mandić was also found guilty of abduction and sentenced to two years' imprisonment.²⁸

²³ Testimony of Milan Vujanović, Podgorica Police Chief, Higher Court judgment, K. No. 127/14 of 22 October 2015, p. 33.

²⁴ “Who Killed Duško Jovanović,” BETA, B92, 12 February 2005

²⁵ “Who Killed Duško Jovanović,” BETA, B92, 12 February 2005

²⁶ K. No. 114/99 of 25 October 1999.

²⁷ Decision No. 01-2961/2.

²⁸ K. No. 152/04 of 27 December 2006.

Vulević first made the limelight in 2002, when *Dan* ran a story about a protest in Berane against Montenegrin Orthodox Church believers lighting Yule logs, during which he chanted insults and nationalist slogans; the report specified he was armed with two revolvers and threatening to use them and was voicing threats against the CB Chief. It said that Vulević was rumoured to be an “infiltrated element” of the State Security Service.²⁹ He was charged with attacking an officer and unauthorised possession of a weapon and sentenced to two years’ imprisonment by the Berane Basic Court. The judgment was overturned three times and the statute of limitations for the crime expired after ten years, as established by the Supreme Court. Vulević was consequently released.

Due to lack of evidence, Vulević was in 2005 acquitted of charges that he had smuggled cocaine from Venezuela via Monteplus Company, which he co-owned.³⁰ He was later accused of evading payment of taxes and contributions in Monteplus, but he was acquitted of these charges in 2011. Under the same explanation (lack of evidence), Vulević was in 2012 acquitted of complicity in the murder of Faiz Kadrić and wounding of five young men in Zurich. Vulević, now a free man, has sued the state of Montenegro, demanding 120,000 EUR in compensation for the mental anguish he sustained because he was illegally deprived of liberty and kept in pre-trial detention for two and a half years (re Kadrić’s murder).³¹

The Jovanović family’s legal counsels claimed back in 2004 that the conduct of the investigation was “disastrous”, that the on-site inquiry immediately after the assassination was unprofessional, that there were unjustifiable delays in sealing off the city, and that the video recording made by the camera located on the building across from the murder scene had been doctored.³² They complained that they had not been adequately included in the investigation, that they had not attended the questioning of the witnesses and that their motions - to open the State Security Service’s file on Duško Jovanović to check whether he had been under surveillance at the time he was killed; to investigate the origins of the weapon used in the assassination; to investigate defendant Mandić’s alleged confession to the investigating judge, that he was working for the MIA, which had armed him; to investigate the origins of the court records from Croatia found in Mandić’s car, as well as the notebook with the names of people who allegedly owed him 900,000 EUR; to question everyone who had sued Jovanović and *Dan*, etc. – had been dismissed.³³ **There is no information indicating that any of these issues have been reviewed.**

As it turned out later, a facial composite was not made of the person who bought and later had the windows of the Golf 3, the car used in Duško Jovanović’s assassination, tinted although two witnesses gave a description of this person: V.V., the seller of the vehicle, and M.U., to whom the buyer of the Golf 3 went to have the windows tinted. Also, according to the legal counsel of the widow and son of the late Jovanović, the case file does not show whether Đ.I., the neighbour of witness V.V. (who sold the Golf 3), had been questioned, since he, too, had talked with the buyer of the car.³⁴

²⁹ “Nebojša Medojević Announces Investigation into Expiry of the Statute of Limitations in Case of Well-Known Berane Resident,” *Dan*, 30 April 2012.

³⁰ K. No. 123/05 of 30 May 2005.

³¹ “Vuk Vulević Demanding Nearly 120,000 EUR in Compensation for Time in Prison,” *Vijesti*, 15 February 2016.

³² “There are many Damir Mandićs Walking around Montenegro,” *Dan*, 5 September 2004; “More and More Odd Details in the Investigation – Killers Passed Undetected by 15 Cameras,” *Dan*, 7 September 2004; “Orlandić Receives New Tapes,” *Dan*, 16 September 2004.

³³ “Božović: Indictment was Meant to Fall Through,” *Dan*, 6 October 2004; “Prosecutor Forgot about Mandić’s Debtors,” “Vesna Medenica to Testify,” *Dan*, 30 November 2004; “Investigation did not Deal with Organisers of the Crime,” *Dan*, 1 June 2005; “Attorneys: We Would not be Isolated if We were Defending the Killer,” *Dan*, 1 November 2005, “Secret File on Jovanović’s Surveillance May Reveal Assassins,” *Dan*, 13 January 2005.

³⁴ During Mandić’s last (third) first-instance trial, the Higher Court rejected the defence counsel’s proposal to question Đ.I., under the explanation that “the questioning of the proposed witness 11 years after the crime certainly would not contribute to a better resolution of the crime in question...,” Higher Court judgment, K. No. 127/14, p. 105-106.

No one today questions the existence of the first police memo on the statement Damir Mandić gave to the police several days after the assassination, according to which Vuk Vulević killed Jovanović, ordered him to set the car on fire, but that he did not do this (the memo was not registered or signed; nor has it been established whether it was submitted to the Prosecutor's Office. It was not used in the trial later on – more below). The second memo regarded a registered statement of a witness, who had allegedly seen Mandić and Vulević run out of the car used in the assassination. The authenticity of this memo has not been confirmed by the witness, whose statement it allegedly contains, or by the SDB officials, who were supposedly informed about it. Proceedings have never been launched against former SDB agent Vasilije Mijović, although the Higher Prosecutor's Office contested the authenticity of the memo, which Mijović had drawn up himself. According to information published by *Dan*, the third memo also allegedly dealt with Mandić's statement, but the Higher Prosecutor's Office said it had no information about the existence of the third memo (More about the memos below.)

Although the DNA of several persons, including Mandić, was compared to traces of evidence taken from the vehicle several days after the assassination and the results came back already in June 2004, the DNA samples of Vuk Vulević and Armin Mušo Osmanagić, who were publicly named as suspects by senior police officials, were sent for analysis only in 2008, as many as four years after the assassination.³⁵ Both had been on the run since the assassination, until 2005, when they were arrested and when Osmanagić's DNA sample was probably taken, but it is unclear why three years had to pass before it was sent for analysis. The result was negative, but the fact that the authorised investigators were in no hurry to have the DNA analysed indicate that either there was no will to investigate the two at all, or that the result was known in advance. Thus, there has never been sufficient evidence to link Vulević and Osmanagić to Jovanović's assassination.

Although there were public speculations that Mandić, Vulević and Osmanagić were working for the SDB, the available information does not indicate whether their cooperation with the SDB and their alleged contacts with specific policemen had been investigated and whether it had really been established that Mandić talked with senior drug enforcement inspector

³⁵ In its reply to HRA's request for access to information (of May 2010) that arrived in March 2012, two years after the request was filed, the Supreme State Prosecutor's Office said that "on 10 January 2008, the Higher State Prosecutor's Office in Podgorica opened a separate case file with the aim of identifying Duško Jovanović's assassins. The Higher State Prosecutor in Podgorica proposed to the Podgorica Higher Court investigating judge that DNA samples be taken from Vuk Vulević and Armin Osmanagić, who had in the meantime come within reach of the relevant authorities, and that they be forwarded to the Federal Criminal Police Office in Wiesbaden to establish the DNA profile and compare the undisputed profile with the DNA profiles established by forensics using material evidence taken from the vehicle, from which shots were fired at Duško Jovanović. The Federal Criminal Police Office in Wiesbaden completed the requested forensic analysis, which did not prove the existence of biological traces of Vuk Vulević and Armin Osmanagić, after which the prosecutor assessed that there were no grounds to launch criminal proceedings against them." (Reply of the Supreme State Prosecutor's Office to HRA's request for access to information, point 6: available in Montenegrin at http://www.hracion.org/wp-content/uploads/Odgovori_VDT-a.pdf). However, Vuk Vulević was within reach of the relevant authorities both on the night after the assassination, when he was brought in by the police and then released, and upon his arrest in May 2005, wherefore it remains unclear why the Supreme State Prosecutor's Office claims that he only became accessible to have his biological traces analysed "in the meantime", in 2008.

Dušan Raspopović several times right after the assassination.³⁶ To reiterate, the police officials' statements from that period basically boil down to claims that they were unaware that these men were associates of the SDB (an integral part of the MIA), i.e. that their names were not in the registers of employees and associates; furthermore, no other investigating actions have been taken to ascertain beyond doubt whether or not Mandić, Vulević and Osmanagić were in fact in the service of the SDB.

In early April 2011, the Montenegrin press carried reports by the Belgrade daily *Blic*, which published a series of articles describing the organised involvement of criminals from Serbia in hiding Duško Jovanović's assassins and the persons who killed police inspector Slavoljub Šćekić in 2005 and alleging that both assassinations had been ordered by the Montenegrin SDB.³⁷ The late inspector Šćekić was in charge of the investigation of Duško Jovanović's assassination.³⁸ *Blic* reiterated that, apart from Damir Mandić, Vuk Vulević, Armin-Muša Osmanagić and Milan-Čila Šćekić had also been allegedly involved in Jovanović's assassination.³⁹ In late 2015, the Supreme Court upheld Milan-Čila Šćekić's 30-year prison sentence for the murder of police inspector Slavoljub Šćekić. Osmanagić was killed in Bar in 2014. Vulević is free.

Right after the assassination, Ivan Delić and Leon Drešaj were also brought in for questioning. An analysis of Delić's and Drešaj's DNA did not show that they were involved in the assassination. The media published that Delić, like Mandić, was a member of the Security Service and that they were both under the protection of the topmost officials, presenting this as a link between the two.⁴⁰ Mandić was said to have been in touch with the secret services since 1997 and that they had ordered him to distribute weapons among the followers of the then Montenegrin President Đukanović.⁴¹ (During his testimony, Mandić said that he had received automatic weapons – rifles from the MIA in the past, for which there was no record of receipt, and told by the police whom to give them to, but that he did not remember anything of specific importance in connection with those weapons.⁴²). Retired General Aleksandar Đorđević, the former Chief of the Military Intelligence Service, claimed that Delić had enjoyed the protection of Beli Raspopović, a senior official of the Montenegrin secret service, who was killed in 2001.⁴³

In early 2014, *Dan* reported that the parliamentary Security and Defence Committee received a report from the National Security Agency stating that everyone suspected of Jovanović's assassination was still under covert surveillance.⁴⁴ The names of the suspects were not disclosed.

³⁶ "Mandić, Vulević and Osmanagić Frequently in Touch with Policemen," PCNEN, 6 July 2004, available at: <http://www.pcnen.com/portal/2004/07/06/mandic-vulevic-i-osmanagic-cesto-na-vezi-sa-policajcima/>

³⁷ "The SDB Picked the Men, Aided and Abetted and Financed Duško Jovanović's Assassination," *Vijesti*, 4 April 2011; "Vuk and Čila were in the Golf," *Dan*, 5 April 2011.

³⁸ "Vuk and Čila were in the Golf," *Dan*, 5 April 2011.

³⁹ *Ibid.*

⁴⁰ "Montenegro: Authorities Face Murder Cover-up Claims," IWPR Balkans, 21 February 2005

⁴¹ *Ibid.*

⁴² Higher Court judgment, K. No. 127/14, of 22 October 2015, p. 5

⁴³ *Ibid.*

⁴⁴ "Duško's Assassination Case Reopened," *Dan*, 14 January 2014.

Acting Supreme State Prosecutor Announces Reopening of Investigation in 2013

The Acting Supreme State Prosecutor (SSP) Veselin Vučković said in July 2013 that he would reopen the investigation into Duško Jovanović's assassination and that he would question everyone in the police involved in the investigation.⁴⁵

Although *Vijesti* wrote that Vučković promised at the session of the Montenegrin Assembly Security and Defence Committee that the Prosecutor's Office would take the following steps to find new information about the identity of the perpetrators, organisers, motives and those who ordered the assassination:

- Investigate whether anyone in the security structures was involved in plotting or covering up the assassination;
- Question the then Chief of the Podgorica Security Centre (CB) Milan Vujanović, his Assistant Tihomir Gačević, Violent Crime Department Chief Milan Tomić, the then Minister of the Interior Dragan Đurović, his Deputy Mićo Orlandić and members of the team working on the case: Sreten Radonjić, Živko Šipčić, Milan Paunović and Miodrag Đelević;
- Investigate "which senior government officials sued Jovanović prior to his assassination, why the MIA failed to protect the *Dan* Editor-in-Chief although he had asked for protection, why there were unjustifiable delays in sealing off the city that night and why the sketch of the crime scene was inaccurate. The Prosecutor's Office must also establish ... what happened to the police memo"⁴⁶,

it turned out that Vučković asked the Higher State Prosecutor's Office (only) to: "perform an analysis of the preliminary inquiry case file on the assassination of journalist Duško Jovanović and check whether there was an official memo in the case file ..." ⁴⁷

Actions Undertaken by the Higher State Prosecutor's Office in the 2013-2015 Period

The Higher Prosecutor's Office has not completed the analysis of the preliminary inquiry case file (including verifying the existence of the memo) or informed the public about its final findings although nearly three years have passed since the Supreme State Prosecutor's Office required of it to do so. Available information does not indicate that the Higher State Prosecutor's Office has taken a pro-active approach, made any progress in the investigation or investigated whether anyone was liable for the suspected deficiencies in the investigation.

Following Acting SSP Veselin Vučković's announcement, the Higher State Prosecutor's Office started investigating Jovanović's assassination. In her April 2015 note to Supreme State

⁴⁵ "Vučković Vows to Reopen Investigation into Duško Jovanović's Assassination," *Vijesti*, 23 July 2013, "Vulević and Osmanagić Questioned Again," *Analitika* portal, 23 July 2013.

⁴⁶ "Vučković Vows to Reopen Investigation into Duško Jovanović's Assassination," *Vijesti*, 23 July 2013, available at: <http://www.vijesti.me/vijesti/vuckovic-obecao-da-ce-opet-otvoriti-istragu-o-ubistvu-duska-jovanovica-140333>.

⁴⁷ Supreme State Prosecutor's Office, TU. No. 615/2013 of 2 August 2013.

Prosecutor Ivica Stanković, head of the Higher State Prosecutor's Office Vesna Jovičević concluded that "for the time being, there are no grounds whatsoever to launch *ex officio* criminal proceedings against anyone."⁴⁸

Eleven witnesses were questioned between 17 February and 1 August 2014, including Andrija Jovičević, the Interior Minister until 2003, and others in charge of the investigation. Nevertheless, what strikes the eye is the fact that the following were not questioned again: Dragan Đurović, who was the Interior Minister at the time of the assassination, and the operative staff working on the case: Sreten Radonjić, Živko Šipčić, Milan Paunović and Miodrag Đelević, although, it would be reasonable to assume they might be able to provide some new information which might break the deadlock given their jobs at the time.

The note does not specify whether Andrija Jovičević, the Interior Minister (2001-2003), and Duško Marković, the Assistant Interior Minister in charge of state security at the time, had taken all reasonable measures to protect Jovanović, in view of the fact that they knew about the threats he was exposed to.⁴⁹

When he was questioned on 19 February 2014, Andrija Jovičević said that Duško Marković had told him that Jovanović's safety was threatened and that he advised Marković to contact the SDB 5th Department, which was in charge of counter-intelligence protection. When he was questioned on 2 June 2014, Marković confirmed that Jovičević had told him about the risks to Jovanović's safety.⁵⁰ However, there is no mention of whether the Higher Prosecutor's Office checked if Marković had contacted the SDB 5th Department, as Jovičević had advised him, and if he had, what he was told.⁵¹

As noted, it remains unknown whether Ilija Asanović (the Chief of the Podgorica CB at the time Jovanović was assaulted in the lobby of the building he lived in and received threats) was questioned about who had threatened Jovanović and if those threats were linked to his subsequent assassination. Details from the investigation into the assault and the threats prior to Jovanović's assassination might have been relevant to resolving the case.

The information disclosed by the Higher State Prosecutor's Office in 2015 and 2016 leads to the conclusion that it has not investigated the injured party's complaints about the deficiencies of the investigation, which it must have been aware of.⁵² These complaints

⁴⁸ The Higher State Prosecutor's Office opened a new case file on Duško Jovanović's assassination, registered under Ktr. No. 110/14. The information on actions taken in connection with the case is included in the note of the head of the Higher State Prosecutor's Office Vesna Jovičević, Tu. No. 253/15 of 27 April 2015.

⁴⁹ Although, as it turned out later, Prosecutor Jovičević had already dismissed the criminal report against Duško Marković in connection with this information and had more information in her possession – more below.

⁵⁰ As per Duško Marković's statement of 2 June 2014, it says: "given the office he was holding, he received certain information about threats to Duško Jovanović's personal safety, which he discussed with the then Minister of the Interior, Andrija Jovičević"... As regards his appearance in the *Načisto* show 2 January 2014, Marković said that he gave the following reply to the journalist's question "at the time, we pointed out specific risks and dangers regarding Mr. Jovanović's safety. I wrote the relevant letters to Mr. Jovičević that more should be done regarding the matter."

⁵¹ Andrija Jovičević, who was questioned as a witness on 19 February 2014, said: "... in that matter, there was also official communication regarding the threats to Duško Jovanović's personal safety with Duško Marković, who was the Assistant Interior Minister charged with the SDB. It may be inferred from his statement about the official communication that he, as the Interior Minister, advised Duško Marković to contact the SDB 5th Department, which was in charge of counter-intelligence protection."

⁵² Notably, that the on-site inquiry immediately after the assassination had been unprofessional, that there were delays in sealing off the city, that the video recording made by the camera located on the building across the murder scene had been doctored; that the DNA of persons initially suspected of assassinating Jovanović – Vuk Vulević and Armin Mušo Osmanagić (whom the senior police officials publicly suspected of committing the crime in the first few days of the investigation) - was sent for analysis four years after the crime; that the Montenegrin SDB ordered the assassination of Duško Jovanović (and

were also mentioned in HRA's January 2014 report entitled *Prosecution of Attacks on Journalists in Montenegro*,⁵³ which was forwarded to the State Prosecutor's Office as well.⁵⁴ Furthermore, in February 2015, two months before Jovičević's note was forwarded to the SSP, Duško Jovanović's widow and son filed a criminal complaint with the Prosecutor's Office alleging deficiencies in the investigation, in which they again listed all the claims made in 2004 and presented them to the Prosecutor's Office.

It has been established that the Podgorica CB officers had drafted but had not registered the official memo (as confirmed by the CB chief and two officers, more below). There are discrepancies between the testimonies of the officers, who had drafted the memo, and the prosecutor assigned the case. The officers claimed they had forwarded the memo also to prosecutor Ljiljana Klikovac, while she testified that she had neither received the memo nor been informed about its content. The Higher State Prosecutor's Office has not yet taken a stand on the issue. As per the second memo, which former SDB employee Vasilije Mijović claims he himself had drafted, the relevant officials have not checked whether his superiors in the SDB were informed about it, as Mijović alleges (nor have proceedings been launched against him for falsely reporting its existence).

In mid-May 2015, Chairman of the Commission for Monitoring Investigations of Violence against Journalists Nikola Marković said an individual, who might be granted the status of protected witness in the Jovanović case, had been questioned twice in another country and that the Montenegrin Prosecutor's Office was informed about that. He said that the potential protected witness had been questioned the first time before the relevant authorities of that state and that he and Mihailo Jovović, the Deputy Chairman of the Commission and *Vijesti* Editor-in-Chief, attended the second questioning.⁵⁵ Marković also said that he had established contact with the potential witness through a go-between and that they met in the country where the potential witness had applied for asylum since he did not want to return to Montenegro fearing for his safety. Some media had already disclosed his identity, claiming Zoran Vlaović Bohum, a former protected witness in proceedings re the murder of police inspector Šćekić, was at issue. According to the latest information from the Higher Prosecutor's Office (over a year later), the Prosecutor's Office "drafted an enactment on the provision of international legal aid, since the individual in question is not in Montenegro."⁵⁶

police inspector Slavoljub Šćekić) and that the persons suspected of Jovanović's assassination were under covert surveillance.

⁵³ HRA Report of January 2014, available at: <http://www.hracion.org/wp-content/uploads/Report-Prosecution-of-Attacks-on-Journalists-in-Montenegro.pdf>

⁵⁴ By applying the analogy with the prosecution of war crimes in Montenegro (particularly in view of the gravity of the crimes and deadlocked investigations, in which every new trace of evidence is precious, as well as the fact that passage of time reduces the likelihood of effective prosecution), it needs to be noted that the Supreme State Prosecutor's Office said in the Strategy for the Investigation of War Crimes that it would collect information about events and potential perpetrators by perusing open sources, including reports of non-governmental organisations.

⁵⁵ "Stanković: I Expect Concrete Results in the Investigation of Jovanović's Assassination Soon," Café del Montenegro, 26 May 2015, available at: <http://www.cdm.me/drustvo/hronika/stankovic-ocekujem-da-cemo-uskoro-imati-konretne-rezultate-u-istrazi-ubistva-jovanovica>

⁵⁶ Letter received from the Higher Prosecutor's Office, 25 May 2016.

Who is Bohum?

Zoran Vlaović-Bohum is the first protected witness in the history of Montenegro's judiciary, who testified in the police inspector Slavoljub Šćekić murder case. In 2005, Vlaović shared a prison cell with Saša Boreta, one of the co-defendants in the Šćekić case. Vlaović testified that Boreta had confessed to him that Goran Čila Šćekić had committed the murder, which he had organised with Ljubo Bigović. The defence team claimed that Vlaović had been planted by the police and that he had agreed to falsely testify in the Šćekić case in exchange for early release.⁵⁷ The Montenegrin Supreme Court overturned the first-instance judgment against the defendant, under the explanation that the statements Vlaović and Žarko Radulović had given Special Prosecutor Stojanka Radović during the preliminary inquiry and criminal proceedings were not to have been used during the trial.⁵⁸ In its reasoning, the Supreme Court said that the trials ending with the first-instance and second-instance judgments had not concerned organised crime, which is why the information the two men gave the Special Prosecutor during the preliminary inquiry and criminal proceedings could not be used as evidence.⁵⁹

Chairman of the Commission for Monitoring Investigations of Violence against Journalists Nikola Marović Files Criminal Complaint against Deputy Prime Minister Duško Marković

In January 2014, the Chairman of the Commission for Monitoring Investigations of Violence against Journalists, Nikola Marović, filed a criminal complaint against Duško Marković, the current Deputy Prime Minister and Minister of the Interior, accusing him of aiding and abetting Duško Jovanović's assassin(s) after the fact.⁶⁰ Marović claims that Marković had known that Jovanović's safety was under threat prior to his assassination⁶¹ (he was the Assistant Interior Minister charged with state security at the time) and that he had warned the then Minister of the Interior about this, but that he did not share this information with the prosecutor or investigating judge assigned the case after Jovanović's assassination. The criminal report also includes a statement by the investigating judge at the time, Radomir Ivanović, who told *Dan*⁶² that Marković had been advised before the questioning of his obligation to disclose everything he knew about the aggravated murder of Duško Jovanović, but that he nevertheless failed to disclose information that Jovanović had been in danger.⁶³

The criminal complaint was dismissed by state prosecutor and Commission member Vesna Jovičević on 5 September 2014 as ill-founded because Marković was not questioned in 2004 by the investigating judge about his professional activities and the SDB's activities regarding Duško Jovanović's assassination.⁶⁴ She also said in her reasoning that Marković and the then Minister of the Interior Jovičević disclosed the same information when they were questioned by the Higher Prosecutor's Office (on 19 February 2014 and 2 June 2014), i.e. that they named persons already checked by the Prosecutor's Office, but against whom criminal proceedings had not been launched, and "assuming that, at the time, he spoke about the facts and circumstances he spoke about at the Higher Prosecutor's Office in Podgorica, in the above matter, this obviously would not have helped solve the crime in question, i.e. identify all the perpetrators."

The question remains whether the results of the inquiry would have been the same had it been performed

⁵⁷ "Boreta's Attorney: Witness Zoran Vlaović is Slightly Retarded," *Vijesti*, 19 June 2012, available at: <http://www.vijesti.me/vijesti/boretin-advokat-svjedok-zoran-vlaovic-je-bлаго-retardiran-78917>.

⁵⁸ "Arrest Warrant Issued, Police Looking for Protected Witness," *Vijesti*, 18 May 2015, available at: <http://www.vijesti.me/vijesti/raspisana-potjernica-policija-u-potrazi-za-zasticenim-svjedokom-834098>.

⁵⁹ "Has Enough Evidence Remained to Punish the Defendants," *Vijesti*, 21 February 2015, available at: <http://www.vijesti.me/vijesti/presuda-za-ubistvo-slavoljuba-scekica-27-februara-820150>.

⁶⁰ Criminal complaint of 28 January 2014

⁶¹ In the talk show *Načisto* on *Vijesti* TV, broadcast in January 2014.

⁶² "Marković Advised to Disclose Everything He Knew," *Dan*, 27 January 2014.

⁶³ "His Silence Contributed to Failure to Find the Killers," *Dan*, 29 January 2014.

⁶⁴ Higher State Prosecutor's Office, Kt. No. 105/14 of 5 September 2014

promptly, not ten years too late.⁶⁵

The Prosecutor's Office was obviously not interested in investigating why Duško Marković did not find it necessary to help identify Jovanović's assassins in 2004 by disclosing to the investigating judge or the prosecutor all he knew about anyone who had made any threats against Jovanović. The Prosecutor's Office note on the questioning of the then investigating judge Ivanović does not reveal whether he had been asked anything specific about the questioning of witness Duško Marković.⁶⁶ Furthermore, the April 2015 note to the SSP does not specify whether the Prosecutor's Office investigated the persons mentioned by Duško Marković and Andrija Jovičević, as stated in the ruling dismissing the criminal complaint against Marković. Given the conclusion that there are no grounds to launch criminal proceedings against anyone for any crime prosecuted *ex officio* in connection with the assassination, the Head of the Prosecutor's Office should have notified the SSP in her note that she herself had also dismissed the criminal complaint against Marković and reiterated the reasons for her decision. This additionally demonstrates the manifest lack of will in the Prosecutor's Office to deal with anything regarding Marković and even to disclose what it has already done – dismissed the specified grounds for investigating him.

Although the statute of limitations for perjury (as stated in the complaint) has expired, it would be important to hear the opinion of the State Prosecutor and ascertain whether the statute of limitations expired because no one had previously investigated whether Marković should be held liable for not disclosing all the information at his disposal, which was one of the duties of the Commission for Monitoring Investigations of Violence against Journalists, of which Jovičević was a member.

OFFICIAL MEMOS

First Memo on Damir Mandić's Statement Qualifying Vuk Vulević as Jovanović's Assassin

The Higher Prosecutor's Office has not yet completed an analysis of the preliminary inquiry case file (including an investigation into the existence of the memo), requested by the Supreme State Prosecutor's Office three years ago. Nor has the public been notified of its final conclusions. It later transpired that the officers testified that they had forwarded the memo to Ljiljana Klikovac, the prosecutor assigned the case, which she denied, testifying she had not even been notified of the memo. The Higher Prosecutor's Office has not taken a view on this issue or on the gravity of this deficiency or the liability of the civil servants assigned the case for it.

Dan was the first to publish that there was an official memo on the police interrogation of Damir Mandić several days after the assassination (2 June 2004). According to the memo, Mandić said that Vuk Vulević admitted to killing Jovanović and asked him to set on fire the Golf 3, from which he had fired the shots.⁶⁷ Although the Higher Prosecutor's Office (which

⁶⁵ In comparison, during Mandić's last (third) first-instance trial, the Higher Court rejected the defence counsel's proposal to question I. Đ., the neighbour of the seller of the Golf (from which shots were fired at Jovanović), who was present during the sale of the vehicle to the unidentified person, explaining that "questioning the proposed witness eleven years after the commission of the crime would certainly not contribute significantly to the better resolution of the criminal matter at issue ...," Higher Court judgment, K. No. 127/14 of 22 October 2015, pp. 105-106.

⁶⁶ The relevant section of the note says: "It follows from witness Radomir Ivanović's statement that during his investigation of the assassination, in the capacity of investigating judge of the Podgorica Higher Court, a large number of persons were questioned in the capacity of witness and that a DNA analysis was conducted outside the then FRY [Federal Republic of Yugoslavia] for the first time in the history of Montenegro's judiciary. He questioned both the witnesses proposed by the competent prosecutor and those proposed by the legal counsel of the injured party, the defence; he also questioned specific witnesses *ex officio*."

⁶⁷ "Police Covering up State's Involvement by Hiding Memo," *Dan*, 22 August 2013.

questioned the officers who had drafted the official memo) never confirmed that the content of the memo corresponded to the published text (more precisely, did not specify any details regarding its content), the quoted statements by CB officers confirm that the memo had been drafted but not registered. Furthermore, it was confirmed that the official memo had never been forwarded to the prosecutor assigned the case, Ljiljana Klikovac, and that she had not been notified of it in any other way.

The police officers who drafted the memo - Tihomir Gačević and Branislav Živković – said that it was possible that the official memo had not been registered because it was to have served only for internal purposes and that they had not signed it because “the team had instructed them not to” since it could not serve as evidence in proceedings under procedural law.⁶⁸ The Higher Prosecutor’s Office also said that it “obtained information about an official memo ... drafted by police officers Tihomir Gačević and Branislav Živković in the Podgorica Security Centre, which, they say they submitted to Milan Vujanović, who later forwarded it to the prosecutor assigned the case, Ljiljana Klikovac.”⁶⁹

During her questioning on 18 February 2014, Ljiljana Klikovac said: ... Pursuant to the Criminal Procedure Code, the prosecutor was in charge of the preliminary inquiry and the police notified her of the information they collected. Since there were a lot of data and information about this case, the police designated an officer she, as the prosecutor assigned the case, communicated with – Milan Tomić... that the police never told her Damir Mandić had confessed to the crime or named any other potential co-perpetrators, and that she had never been forwarded an official memo with such content.⁷⁰

It needs to be noted that (the then Higher State Prosecutor) Novak Ražnatović also said that he “recalls there was mention of the police questioning suspect Damir Mandić, which Milan Vujanović informed him of.”⁷¹

Investigating judge Ivanović said nothing about this, i.e. the note does not specify whether he was asked any questions about the memo although the memo was at the heart of the analysis of the preliminary inquiry case file, as already noted.

It remains unknown whether or not the memo has been forwarded to prosecutor Klikovac.

Mandić has never been asked about whether the memo had been drafted and whether it was authentic (because it has never been officially registered), but he told the court that the Podgorica CB officers, who confirmed that the memo had been drafted, forced him to say that Vuk Vulević used his phone to arrange the purchase of the Golf 3.⁷²

⁶⁸ Higher State Prosecutor’s Office letter of 27 May 2015, quoting excerpts from statements by witnesses Branislav Živković and Tihomir Gačević, who were questioned on 18 March 2014.

⁶⁹ Higher State Prosecutor’s Office letter Ktr. No. 110/14 of 25 May 2016.

⁷⁰ Higher State Prosecutor’s Office letter of 27 May 2015, quoting excerpts from the statement by witness Ljiljana Klikovac.

⁷¹ Higher State Prosecutor’s Office letter of 27 May 2015, quoting excerpts from the statement by witness Novak Ražnatović.

⁷² “...that, after depriving him of liberty, the police ill-treated him in custody for six days and six nights, by not letting him sleep and that CB head Vujanović Milan, Tiho Gačević and a man called Živković took part in that, that they demanded he say that Vuk Vulević had used his phone to arrange the purchase of the Golf 3, threatening him that the Piper [tribe] was readying to assault his brother Almir, that Vujanović had told him in front of his defence counsel that he was incapable of complicity in something as big as this and demanded he name the people who took part in the event, which he knew nothing about, and that Vujanović insisted he sign the pre-written statement on the complicity of some people in Duško

To recall, it needs to be established whether the memo was forwarded to the prosecutors, because, if Mandić really said what was written in the memo and his statement was not obtained by torture, the information would be exceptionally valuable for steering the investigation and definitely warrant notification of at least the state prosecutor of it. All the more since the decision on whether it can be used as evidence is to be made by the state prosecutor or the investigating judge, rather than the police, although it is highly unlikely that the court can base its decision on it due to the conclusion that the statement was not obtained in compliance with the Criminal Procedure Code (which lays down in which cases a statement may be given in the absence of the defence counsel).⁷³ In any case, it is important to establish why the memo was not registered, who is liable and whether that civil servant can be prosecuted for aiding and abetting the perpetrator of the crime.

For the sake of comparison, the police on 30 May 2004 collected the bag with the Red Bull can and pistachios, which later served as evidence against Damir Mandić (more about that evidence below), despite the investigating judge's initial reaction: that he did "not consider the bag evidence because anyone could have thrown it". A member of the operational team - Milan Tomić (who headed the Violent Crimes Department at the time of Jovanović's assassination) then issued the order to collect the bag at the crime scene because it may serve operational purposes later.⁷⁴ This gives rise to the following question: why Tomić and other members of the team had not applied the same pro-active approach five days later, when the issue of the official memo indicating Vulević assassinated Jovanović arose (by forwarding it to the prosecutor assigned the case).

Jovanović's widow and son filed a criminal complaint on 18 February 2015 against the relevant police officers over their actions regarding the above-mentioned memo, charging them with aiding and abetting the perpetrator of a criminal or another offence prosecuted *ex officio* after the fact. The complaint is based on the testimony of the then head of the Podgorica CB, Milan Vujanović, before the Higher Court on 21 June 2005, during which he said that an official memo on Mandić's questioning was drafted on 5 June 2004 and that the unidentified men who had talked to Mandić failed to register the memo in accordance with the law and failed to forward it to the Higher Court at its explicit request but, rather, notified

Jovanović's assassination, promising they would let him go home if he did and, when he refused, Vujanović said they would "dump it all" on him, and that what they had was comprehensive and sufficed to indict him," Higher Court judgment K. No. 127/14, p. 6.

⁷³ Article 88 (8-10): (8) Force, threats, deceit, promises, extortion, attrition and other similar methods (Article 134(4)) may not be applied against a defendant to obtain his statement or confession or induce him to action that may be used as evidence against him.

(9) A defendant may be interrogated in the absence of his defence counsel in the event he explicitly waived that right, provided defence is not mandatory; in the event the counsel failed to appear although he has been notified of the interrogation (Article 259) and there is no possibility that the defendant engage another counsel; or in the event the defendant did not secure the presence of the counsel within 24 hours from the moment he was advised of this right (Article 13(3), except in case of mandatory defence.

(10) A court decision may not be based on the defendant's statement in case of non-compliance with paragraphs 8 and 9 of this Article; in the event the defendant has not been notified of his rights referred to in paragraph 2 of this Article; or in the event the defendant's statements referred to in paragraph 9 of this Article on the presence of his counsel have not been entered on the record..

⁷⁴ Higher Court judgment K. No. 127/14, p. 31. The bag with the can and pistachio shells was nevertheless included in the evidence, because "the then Podgorica Higher Court investigating judge, who did not visit the scene of the crime, did not issue an order not to exempt those items, wherefore they were subsequently included in the evidence forwarded to Wiesbaden for analysis...", Higher Court judgment K No 127/14, p. 106.

that Court “that there is no document regarding an alleged questioning of Damir Mandić on what he knows about Duško Jovanović’s assassination and that no such document has been officially registered.”⁷⁵ In the view of the complainants, such conduct “gives rise to suspicions about the involvement of the state of Montenegro and its senior officials in the Duško Jovanović assassination case.”⁷⁶ The complainants supplemented the complaint on 16 July 2015, extending it to “authorised staff employed in the Podgorica Higher State Prosecutor’s Office and Higher Court, all of whom officially took part in the preliminary inquiry and preliminary proceedings in the Duško Jovanović case.” They also supplemented the complaint by specifying the deficiencies in the investigation regarding the failure of the police to make a facial composite and claimed that the case file did not indicate whether Đ.I. (the neighbour of witness V.V. (the seller of the Golf 3, who had also talked with the buyer of the vehicle) had been questioned at all.⁷⁷ Finally, the complaint stated that the Higher Prosecutor’s Office has not dealt with the content of the memo, why it had not been registered and who decided it could not be used as evidence in the proceedings (as noted above).

According to the official memo, Mandić said that:

- a) Vuk Vulević used his telephone with the SIM card 069-4xx-3xx (which was used to arrange the purchase of the vehicle from which shots were fired at Jovanović, as was proven during the trial). Vulević had earlier asked him whether he had a “safe” phone. Mandić also claimed Vulević used the phone and arranged the purchase of the vehicle in his presence;
- b) Vulević arranged to take the vehicle over via his friend Š.D, who was living in a university dorm, and whom he asked: “Do you have a friend who can take over a vehicle?”
- c) Vulević told him he had bought a blue Golf 3 (as proven subsequently, a blue Golf was used during Jovanović’s assassination);
- d) Vulević admitted to him he had committed the murder and sent him to set on fire the vehicle he had fired shots from, and issued him instructions (to go to Svetozar Marković Street, where the vehicle was found later), but that he had not set the car on fire, because he got scared when he heard someone opening a window or a door of a nearby building while he was trying to break into the car and he left;
- f) His traces would be found in the vehicle because he had ridden in it earlier and that he used a rifle (Mandić’s traces were found on one of the two rifles found in the vehicle) when they went to Čemovsko polje.

Second Memo Indicating Vuk Vulević Killed Jovanović

There is not enough information about whether the Higher Prosecutor’s Office investigated SDB agent Vasilije Mijović’s claim that he had notified his superiors of the content of the memo and, if he had, what the outcome was. It also remains unclear whether the prosecutors searched the MIA archives to establish whether the memo had been registered (as Mijović claims) or not (as the MIA claims). Furthermore, no proceedings have been initiated against Mijović for falsely reporting the existence of the memo. The prosecutors have obviously taken some actions leading them to conclude that no new facts or circumstances relevant to the assassination case have been established.

In April 2011, *Dan* published the second official memo allegedly drafted on 30 May 2004 by Vasilije Mijović, the former special adviser to Assistant Interior Minister and the then SDB chief Duško Marković. The memo quotes a statement by a witness, another former SDB agent, who said he was on his balcony the night of the assassination and saw Vuk Vulević and Damir Mandić getting out of the car.⁷⁸ According to the memo, the witness did not dare

⁷⁵ Police Directorate, Enactment No. 051/06-4797 of 9 February 2006.

⁷⁶ Criminal complaint of 18 February 2015.

⁷⁷ During Mandić’s last (third) first-instance trial, the Higher Court rejected the defence counsel’s proposal to question Đ.I., under the explanation that “the questioning of the proposed witness 11 years after the crime certainly would not contribute to a better resolution of the crime in question...,” Higher Court judgment, K. No. 127/14, p. 105-106.

⁷⁸ “Witness Saw Vulević Getting out of ‘Killer Golf,’” *Dan*, 16 April 2011.

report what he saw, fearing for his family's safety. "I am not crazy, they would kill my children, do you know who Vuk Vulević and Damir Mandić are? They are SDB's men, beasts. Do you know that Vuk killed Beli Raspopović in broad daylight on Sloboda Street in 2000⁷⁹ and that Ranko Krivokapić⁸⁰ saw that and did not report it? And then he killed Miško Krstović in the same place in 2001.⁸¹ Everyone knows that. They are untouchable. I don't need that."⁸² Mijović confirmed that the memo was authentic and said he had notified his superiors of it.⁸³

Who is Vasilije Mijović?

Vasilije Mijović was a member of the Serbian Special Operations Unit (JSO). He was Interior Minister Vukašin Maraš's adviser on Montenegrin reserve police officers training and, subsequently, Duško Marković's adviser in the SDB. He was sentenced to three years' imprisonment in 2003 for his involvement in a traffic accident. He made the limelight during the "Mašan Scandal", as the mastermind behind the recording and publication of footage showing two DPS activists trying to persuade Mašan Bušković that his electricity debts would be written off if he voted for Montenegro's independence at the 2006 referendum.⁸⁴ He was sentenced to three months in prison for covertly recording the DPS activists and Mašan Bušković.⁸⁵ Mijović had been dismissed from the Montenegrin MIA several months before the "Mašan Scandal". The then Police Director Veselin Veljović filed a criminal complaint against him, claiming he had forged his Law College diploma.⁸⁶ Mijović soon left Montenegro and moved to Belgrade. He again made the limelight in 2011, when the official memo he claims to have written was published. He is currently suing the National Security Agency (ANB, the erstwhile SDB) over his wrongful dismissal in 2006 and seeking reinstatement.⁸⁷

The then Justice Minister Duško Marković said he had never seen such a memo, that he had first received it from the *Dan* reporters and forwarded it to the prosecutors⁸⁸. He said that Vasilije Mijović's official memo did not exist in the SDB's documentation fund and that it had not been registered in the SDB's 2004 journal. The Ministry of Internal Affairs denied the possibility that an authentic document of the Minister's Cabinet was at issue, claiming that the memo, in the format in which it was published, had never been communicated to it.⁸⁹

The witness mentioned in the memo was questioned when the prosecutors initiated proceedings on this matter. He denied he had made any such statement to Vasilije Mijović, claiming he was in Belgrade on the day the memo was allegedly drawn up. The SSP said the

⁷⁹ Senior Montenegrin State Security official Darko Raspopović Beli was assassinated in January 2001. His killers have not been identified yet.

⁸⁰ Social Democratic Party leader and Montenegrin Assembly Speaker.

⁸¹ Private entrepreneur, killed in April 2001. His killers have not been identified yet.

⁸² "I Dare not Testify, the SDB Protected Vuk after He Killed Beli," 17 April 2015.

⁸³ "Witness Saw Vulević Getting out of 'Killer Golf'," *Dan*, 16 April 2011.

⁸⁴ "Zeta Big Brother," *Vreme*, 30 March 2006, available at <http://www.vreme.com/cms/view.php?id=448150>.

⁸⁵ "Mijović Released from Spuž Prison," *Blic*, 22 January 2012, available at <http://www.blic.rs/vesti/hronika/mijovic-pusten-iz-zatvora-u-spuzu/jfmb5qz>.

⁸⁶ "Mijović: I Was Recommended for the Job in the State Security," *Vijesti*, 30 May 2014, available at <http://www.vijesti.me/vijesti/mijovic-u-db-u-sam-radio-po-preporuci-213788>.

⁸⁷ "Trial re Lawsuit against ANB Adjourned till 25 May because Mijović Fails to Appear" 15 April 2016, available at: <http://www.vijesti.me/vijesti/sudenje-povodom-tuzbe-protiv-anb-mijovic-odsutan-nastavak-25-maja-883877>.

⁸⁸ "Marković Forwarded Memo to Prosecutor's Office," *Dan*, 30 April 2011.

⁸⁹ MIA's reply: "Neither the previous nor the current Ministries of Internal Affairs have registered any documents under such a three-digit number structured like this one, nor is this the MIA's reference number. Furthermore, the stamp on the scanned document published in your paper is absolutely not authentic and does not correspond to the stamp the Interior Minister's Cabinet used on all ministerial enactments from 2000 to 2007, all the more since the stamp visible in your article lacks two important details that would prove that the stamp of the Interior Minister's Cabinet was at issue. Third, the date on the rectangular stamp of the Cabinet is entirely different in structure from the one you published, as can be checked and verified by perusal of the book of records of stamps and seals used in that period and kept in our Archives." More in *Dan's* article "I Dare not Testify, the SDB Protected Vuk after He Killed Beli," 17 April 2015.

following in its reply to the HRA in March 2012: “This witness’ allegations are being checked, although the hitherto actions have shown that this witness’ statement is not confirmed by the people he said he had got the information from.”⁹⁰ It later transpired that no new facts or circumstances of relevance to resolving Duško Jovanović’s assassination were established during the verification of Mijović’s allegations.

During his interrogation, Mijović reiterated the claims in the memo and said Duško Marković was trying to kill him and that he sent killers to shut him up in early April 2010. Marković dismissed these allegations, qualifying them as fabrications.⁹¹ Shots were fired at a vehicle Mijović was driving in Belgrade in early August 2011, three months after *Dan* published the memo. Both the identity of the shooter and whether the shots were fired at Mijović’s vehicle by accident or on purpose remain unknown.⁹² The previous year, Mijović reported that no other than Vuk Vulević and another young man fired shots at him in Belgrade.⁹³ The state prosecutors were also interested in who gave the official memo Mijović drafted on Jovanović’s assassination to *Dan* Chief Editor Mladen Milutinović and journalist Mitar Rakčević and how.⁹⁴ In her note to the SSP in April 2015, prosecutor Vesna Jovičević said that Mijović, the witness he mentioned in the memo, as well as *Dan* Chief Editor Mladen Milutinović and journalist Mitar Rakčević, had been questioned and that the apartment of the witness Mijović had mentioned had been searched but that “no new facts or circumstances of relevance to clarifying the event at issue have been established.”

Interrogation of Vuk Vulević and Armin Muša Osmanagić in 2014 – Third Memo?

Although *Dan* on 25 April 2014 reported that Vuk Vulević and Armin Muša Osmanagić were questioned after the prosecutors learned that another official memo mentioning the two of them existed and asked the MIA to forward that memo and explain why both memos on Mandić’s statement were not presented during the trial.⁹⁵ The Higher Prosecutor’s Office said it did not have information about the existence of a third official memo and that Vuk Vulević and Armin Osmanagić had not been interrogated about it.⁹⁶

⁹⁰ More in Montenegrin at: http://www.hracion.org/wp-content/uploads/Odgovori_VDT-a.pdf.

⁹¹ “Mijović: Duško Sending Killers to Shut Me up, Marković: Vaso Imagining Things Again,” *Dan*, 2 June 2011.

⁹² “Wedding Guests’ Fired Shots at Mijović,” *Dan*, 9 August 2011.

⁹³ “Vaso Mijović Fabricated ‘Brajušković Scandal’,” *Dnevne novine*, 2 October 2013.

⁹⁴ “Prosecutor Interested in Memo’s Origin, Not Content,” *Dan*, 8 July 2011.

⁹⁵ “The Prosecutor’s Office told *Dan* a comprehensive investigation was under way, focusing both on the evidence presented at the trial and some new information. – We learned during the questioning of the investigators that there were two official memos on the interrogation of convict Damir Mandić, which were not presented in court, so we asked the MIA to forward them to us, the Supreme State Prosecutor’s Office told *Dan*. They say that one was published by *Dan* last year and that they expect of the MIA to forward them the other memo and an explanation why this evidence was not presented during Mandić’s trial... - The Higher Prosecutor’s Office will not give up until it establishes the identity of all involved in Duško Jovanović’s assassination. Scores of witnesses have been questioned to date, including the police officers that performed the on-site inquiry, those who took part in the investigation, their superiors, the investigating judge, the trial judge, several state prosecutors and their deputies — the Prosecutor’s Office said. According to them, the members of the Security Committee played a crucial role in the recently opened preliminary inquiry proceedings, because they put stress on the investigation of Duško Jovanović’s assassination at their previous session, which dealt with cases regarding assaults on journalists.” (Excerpt from an article entitled “New Memo on Duško Jovanović’s Assassination Found,” *Dan*, 25 April 2014.

⁹⁶ Higher Prosecutor’s Office letter No. 110/14 of 25 May 2016.

DAMIR MANDIĆ'S TRIAL

Damir Mandić, the only person charged as co-perpetrator in the Jovanović assassination case, was tried three times during marathon court proceedings, which were launched in 2004 and ended with a second final judgment eleven years later, in March 2016.

Mandić was initially acquitted of involvement in the assassination as co-perpetrator by the Podgorica Higher Court on 27 December 2006 due to lack of evidence.⁹⁷ The prosecution appealed on 12 March 2007 and the Appellate Court of Montenegro overturned the first-instance judgment on 26 February 2008 and ordered a retrial. The new judge, who conducted the retrial, convicted Mandić to the maximum penalty, 30 years' imprisonment, on 27 April 2009.⁹⁸ The Appellate Court reduced the sentence to 18 years' imprisonment for this crime (i.e. 19 years altogether) and the judgment became legally binding.⁹⁹ The Constitutional Court overturned the judgment, having found a violation of Mandić's right to a fair trial. Mandić was tried for the third time. This retrial, too, ended with Mandić's conviction to 19 years' imprisonment, in 2016.¹⁰⁰

Mandić had from the start been criminally prosecuted, charged and convicted three times for the crime of attempted aggravated murder of more than one person under Article 144 (1(8)) of the Criminal Code,¹⁰¹ as an accomplice of unidentified perpetrators. The police (in their criminal complaint) and subsequently the state prosecutor opted for charging him with attempted aggravated murder of more than one person in order to cover both Jovanović's assassination and the wounding of his bodyguard, Milorad Mirović.¹⁰² Such a qualification, however, prompted sharp criticisms of the injured parties' attorneys, who were of the view that the milder qualification of the crime as "attempted" was a deliberate and unwarranted show of leniency towards Mandić, because Jovanović had been killed and the only attempted murder was that of his bodyguard.¹⁰³

It was precisely this qualification of the crime that forced the Appellate Court to reduce the maximum 30 years' imprisonment sentence initially pronounced against Mandić, because, under the law, the maximum penalty cannot be imposed for an attempt to commit that crime.¹⁰⁴

⁹⁷ Radovan Mandić was the presiding judge. He subsequently left the judiciary and now works as an attorney in Podgorica.

⁹⁸ Podgorica Higher Court judgment K. No.109/08. Lazar Aković, now an attorney in Podgorica, was the presiding judge.

⁹⁹ Appellate Court judgment Kž. 828/2009. Mandić was sentenced to a cumulative 19-year prison sentence, because in addition to 18 years' imprisonment for the aggravated murder of Jovanović and the attempted aggravated murder of his bodyguard, he had previously been sentenced to two years' imprisonment for abduction.

¹⁰⁰ Podgorica Higher Court judgment K. No 127/14 of 22 May 2015.

¹⁰¹ "8) Intentional deprivation of life of more than one person, wherein such an offence is not manslaughter, infanticide or compassionate homicide..."

¹⁰² The case was assigned to the then Deputy Higher State Prosecutor Ljiljana Klikovac. Vesna Medenica, the President of the Supreme Court of Montenegro since 2008, was the Supreme State Prosecutor at the time.

¹⁰³ See Dan's 2004 and 2005 articles: "Božović: Investigation Mum on Perpetrators," "Attorneys Demand Amendment of Indictment against Damir Mandić," "Mandić Should be Tried for Murder, not Attempted Murder," "Indictment is Regime's Trade off with Mandić – Prosecutor's Office Trying to Tone Down the Crime," "Knežević: Indictment Yet Another in a Series of Farces".

¹⁰⁴ Appellate Court judgment, p. 10: "As per the fact that the defendant had committed and was convicted for attempted aggravated murder, incriminated by Article 144(1(8)) read together with Article 20 of the Criminal Code, and pursuant to Article 35(2(3)) of the Criminal Code, under which the penalty pronounced against the defendant in the impugned

It remains unclear why the prosecutor decided to qualify the crime as attempted aggravated murder of more than one person under Article 144(1(8)) rather than as murder under paragraph 1(3) of that article, dealing with “deprivation of life and intentional endangerment of another’s life”, given that, according to the text of the final judgment, Mandić was charged and convicted precisely for depriving Jovanović of his life intentionally, and in complicity with others, and shooting his bodyguard with the intention of depriving him of life as well.¹⁰⁵

It has never been established that Mandić himself shot and killed Duško Jovanović, but as opposed to the first trial, both the Higher and Appellate Courts held during the first retrial that evidence showed he had taken part in the purchase of the vehicle and procurement of the weapons by which Jovanović was shot, and that he and other unidentified persons were in the Golf 3, from which the shots were fired, on the night of the assassination.¹⁰⁶ They concluded that Mandić had “considerably and decisively” contributed to the commission of the crime by his involvement in the purchase of the vehicle, procurement of the weapons, and presence in the vehicle that critical evening.¹⁰⁷

Mandić filed his constitutional appeal in November 2010. Nearly four years later, on 23 July 2014, the Constitutional Court found a violation of his right to a fair trial, rescinded the final judgment and ordered a retrial. The Constitutional Court ruled that Mandić had not been provided with procedural equality during the evidentiary proceedings, because he had not been forwarded the entire report of the Wiesbaden Federal Criminal Police Office, just the opinions, i.e. conclusions.¹⁰⁸ It found that Mandić had not been provided with the opportunity to check the court expert’s opinion of the circumstances he had commented or question the expert, despite his explicit request. Finally, the Court concluded that Mandić had not been provided with the opportunity to influence the way in which the court expertise would be performed, which might have been in his favour, because he was not forwarded the orders to perform and supplement the analysis.

The third trial before the Higher Court opened on 20 October 2014 and ended on 22 October 2015, with the Court finding Mandić guilty of aggravated attempted murder and convicting him to 19 years’ imprisonment. The Appellate Court dismissed Mandić’s appeal and upheld the Higher Court’s judgment on 2 March 2016.¹⁰⁹

judgment cannot be imposed for an attempted crime, this Court has upheld the appeal filed by the defendant and his counsel and has modified the first-instance judgment *ex officio*, only the part on the penalty, imposing upon the defendant an 18-year prison sentence, whilst respecting all the circumstances established and assessed by the first-instance court as being of relevance to the severity of the penalty, and deems that its penalty is proportional to the degree of social danger of the criminal offence at issue and the criminal liability of the defendant as the co-perpetrator (the one-year sentence for the abduction Mandić committed in 2002 was added to the 18-year sentence)..

¹⁰⁵ Podgorica Higher Court judgment K.No 127/14 of 22 October 2015, pp. 1-2: “... a number of cartridges were fired from the same gun at the injured party, Milorad Mirović, who was inside his parked vehicle ... and who they knew was safeguarding the injured party, Jovanović...”

¹⁰⁶ Judgments of the Podgorica Higher Court K. No 109/08 and the Appellate Court Kž 828/2009. In the first judgment of 27 December 2006, Podgorica Higher Court judge Radovan Mandić concluded that the evidence did not suffice to establish beyond doubt that defendant Mandić had taken part in the purchase of the vehicle or had been in the Golf 3 at the time of the assassination.

¹⁰⁷ Appellate Court judgment Kž 828/2009, p. 9.

¹⁰⁸ Už-III, No. 387-10 of 23 July 2014.

¹⁰⁹ Appellate Court judgment Kž 8/2016.

The Appellate Court upheld the Higher Court's findings that Mandić's cell phone had been used to arrange the purchase of the Golf 3, from which Jovanović and his bodyguard were shot; that Mandić's biological traces had been found on the weapons found in that vehicle; that defendant Mandić's biological traces were also found on the Red Bull can found near the vehicle used in the assassination; that the defendant did not have receive or make any phone calls from around 11 pm on 27 May 2004 until after midnight, i.e. at the time of the assassination; that the defendant had not been in the places where he claimed he had frequented on the night of the assassination; that he was at the site, where the Golf 3 and the can with his traces were subsequently found, about an hour after the shooting; that gunpowder particles identical to those found on the cartridges at the crime scene were found on the hems of his sweatshirt sleeves; and that his alibi was refuted by witness B.M.'s statement during the preliminary proceedings.¹¹⁰

The second and third convictions are based on the same (described) evidence, while the first sentence acquitting Mandić specified that no reliable evidence proving he was in the car from which Jovanović was shot had been presented and that the eyewitnesses at the trial claimed he had been at a disco at the time of the crime.

In its ruling upholding the third first-instance judgment, the Appellate Court specified that “during the retrial, the first-instance court provided the defendant, M.D., and his defence counsel, with insight in all the findings and opinions and the opportunity to directly examine the court experts about the circumstances they issued their opinions on, as specified in the Decision of the Constitutional Court of Montenegro.”¹¹¹

In their appeal, Mandić's attorneys claimed, inter alia, that the Court had based its conviction on insufficient evidence, notably that:

1. Mandić had bought the Golf 3,
2. He had obtained the rifle,
3. He had left a biological trace on the Red Bull can (found near the parked vehicle from which Jovanović was shot),
4. His alibi had been refuted.

Purchase of the Vehicle

Mandić did not deny that he owned the cell phone card used to arrange the purchase of the Golf 3, from which Jovanović was shot, but he claimed during the proceedings that a number of people had access to that card. The Court examined his allegation but dismissed it, because it did not find a link between the people Mandić had mentioned (as the users of the card) and the action – the purchase of the vehicle.

According to the police memo, Mandić said that he lent the card to Vuk Vulević in early February 2004 and that Vulević used it when he arranged the purchase of the Golf 3. He also

¹¹⁰ Appellate Court judgment Kž 8/2016.

¹¹¹ *Ibid.*

allegedly said at the time that his traces would be found in the Golf 3 because he had earlier ridden in that car and that he had used the rifle when they were shooting at Čemovsko polje.

Biological Traces on One of the Two Rifles Found in the Vehicle

Two rifles were found in the Golf 3. Jovanović was shot from one of them. It was ascertained during the trial that the other rifle bore “contact traces of at least two persons and that it cannot be ruled out that the defendant was one of them.” Mandić’s defence team claimed that the traces had been planted, but the court ruled out that possibility.

Red Bull Can

A can of Red Bull was one of the pieces of circumstantial evidence on which Mandić was convicted. Namely, the then member of the Violent and Sex Crimes Department Mijomir Bulatović found the can (together with the pistachio shells) near the Golf 3 used in the assassination. Bulatović was on his way to interview two citizens about Jovanović’s assassination on 30 May 2004, on the orders of his superior, Milan Tomić. He decided to visit the site where the vehicle was found to prepare for the interviews, and, while “slowly driving his vehicle towards Nemanjina obala Boulevard, he saw something white on the grass, realised it was a plastic white bag, stopped the vehicle and approached the place where the tied bag was lying.”¹¹² In his defence, Mandić claimed that “he had left the pistachios and the Red Bull can in his brother’s vehicle (which he was driving north), because he and Leon Drešaj stopped at a gas station on their way, where they bought the can and pistachios and that the police collected those items and planted them on him later.”¹¹³

Despite the investigating judge’s initial reaction that he did not consider the bag evidence because “anyone could have thrown it”, note needs to be taken of Milan Tomić’s order to “collect the bag at the scene because it may serve operational purposes later.”¹¹⁴

It needs to be noted that the investigation judge came to the scene when the vehicle was found (on 29 May 2004) at 8:30 pm and conducted his inquiry until 11:45 pm¹¹⁵ (i.e. for over three hours), but that the can (and pistachio shells) were not found at the time. To recall, these items were found the following day (on 30 May 2004) “near the place where [the vehicle] was found.”¹¹⁶ The judgment said that photographs taken when the vehicle was found included those showing “the place where the said vehicle was found from a more remote perspective and close up,”¹¹⁷ but failed to specify that the can and pistachios were shown on those photographs (which would be logical given they were found in the vicinity of the vehicle).

¹¹² Higher Court judgment K No 127/14, p. 30.

¹¹³ Higher Court judgment K No 127/14, p. 6.

¹¹⁴ Higher Court judgment K No 127/14, p. 31. The bag with the can and pistachio shells was nevertheless included in the evidence, because “the then Podgorica Higher Court investigating judge, who did not visit the scene of the crime, did not issue an order not to exempt those items, wherefore they were subsequently included in the evidence forwarded to Wiesbaden for analysis...”, Higher Court judgment K No 127/14, p. 106.

¹¹⁵ Higher State Prosecutor’s Office letter Tu. No. 253/15 of 27 April 2015.

¹¹⁶ Higher Court judgment K No 127/14, p. 82.

¹¹⁷ Higher Court judgment K No 127/14, p. 59.

Mandić's Presence in Golf 3 that Critical Evening

Circumstantial evidence was adduced to prove Mandić's presence in the Golf 3 that critical evening as well.

The court experts analysed the fibres taken from the interior of the Golf 3 and 838 fibres taken from Damir Mandić's clothing. Their "comparison showed that only five samples of the fibres coincided with the defendant's clothing, a red T shirt and a red and white sweater."¹¹⁸ The Court further noted that "although, in the court expert's opinion, direct contact between the analysed textile and the seat of the vehicle at issue must be ruled out, this fact per se does not mean that the defendant was not in the Golf 3 at the critical time, because those five fibres could have been transferred by another piece of clothing the defendant was wearing... the indisputable fact that the clothing was seized during the search of his house, wherefore it is per se logical that the fibres from one piece of his clothing transferred to his other clothes when he changed them."¹¹⁹

The findings of the court expert, that two gunpowder particles found on the hem of the sleeves of his sweatshirt seized in his home were identical to those on the bullet cartridge and the few particles isolated on the part of the Golf 3 door underneath the window, was the key evidence on which the court based its conclusion that Mandić was in the vehicle at the time of the assassination. The Higher Court explained the small number of isolated particles given that 16 bullets were fired from the vehicle, a point raised by the defence, by stating that "most of the gunpowder particles had most probably remained on the person, who had fired the shots and who had been sitting next to the driver, wherefore he had limited their dispersion with his body; furthermore, such a small number of gunpowder particles can be explained by the fact that the weapon was held outside the vehicle, as the Wiesbaden experts said in their findings, as regards cartridges found outside the vehicle."¹²⁰

Refuted Alibi

The reasons that prompted the Higher and Appellate Courts to draw their conclusions on Mandić's movements and alibi on the critical night appear more plausible. The Courts, *inter alia*, did not believe the saleslady, who changed her testimony at the main hearing, claiming she did not know whether the defendant had entered the store she was working in just before the assassination, because she had refuted Mandić's claim that he was in the store at the time during the preliminary proceedings (when her memory was fresher). Furthermore, the court expert's analysis of Mandić's cell phone records led to the conclusion that he had not been at the places he claimed he had frequented that night.¹²¹

¹¹⁸ Higher Court judgment K No 127/14, p. 86.

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.* p. 82.

¹²¹ Appellate Court judgment KŽ 8/2016: "The defendant's statements about his movements on the night at issue are disputed by the court expert's analysis of his cell phone records. The analysis of the defendant's cell phone records and D.L.'s and M.N.'s phone numbers undoubtedly demonstrates that the defendant had not been at the places he claimed he had frequented. There are manifest inconsistencies in the statements by the defendant and witness M.N. about the critical fact regarding their meeting. Namely, the defendant did not mention in his defence that he met M. in Jola Piletića Str. on 27 May 2004, at around 11:30 pm, while this witness persistently claimed the meeting had occurred, which brings into question

RECOMMENDATIONS

We propose the engagement of a foreign criminal investigation expert to independently review all the actions undertaken in the investigation of Duško Jovanović's assassination and issue recommendations on how it should proceed.

Such a comprehensive analysis of the investigation should, inter alia, ascertain:

1. Whether an adequate investigation into all those who had threatened Duško Jovanović has been carried out.
2. What had been done to protect him from threats and any assaults, e.g. whether he was under surveillance at the time he was killed as well.
3. What measures have been undertaken to provide a credible answer to the question whether the State Security Service had a file on Jovanović and kept him under surveillance.
4. Whether Ljubiša Buha-Čume was questioned in connection with Jovanović's assassination, given that Jovanović reported he had threatened him. Why was Buha armed by the MIA (as established subsequently, during the trial)?
5. What measures have been undertaken to credibly check whether Mandić, Vuk Vulević and Armin Muša Osmanagić (the police publicly suspected the latter two of the crime right after the assassination but did not find evidence confirming their suspicions) were collaborating with the State Security Service at the time.
6. Whether all the suspects were subjected to paraffin testing when they were brought in immediately after the assassination and what were the results of such tests.
7. The reason for the delay in performing the necessary analysis (of Vulević's and Osmanagić's) DNA.

the authenticity of the latter's statement, because why would the defendant fail to mention a fact critical to his alibi – the meeting at 11:30 pm and, instead, mention a disputable fact, that he was in the "L." store at around 11:15 pm. When she was questioned during the preliminary proceedings, when her memory was naturally fresher, witness B. M. refuted the defendant's statement that he was in the "L." store, where she works, on 27 May 2004, at around 23:15 pm. True, she changed her statement at the main hearing, claiming she did not know whether the defendant had come to the store, wherefore, in the opinion of this Court, the first-instance court had rightly dismissed her statement at the main hearing, saying she gave it to help the defendant. The first-instance court also rightly ascertained that the telecommunication expert's findings and opinion indicated that no calls were registered on the defendant's cell phone on 27 May 2004, from 22:54:07 to 00:07:42 hours the next day. The expert was unable to conclude decisively whether the defendant's phone had been turned off at the time. However, when the fact that the defendant had no registered calls in the specified period is linked to the time the crime was committed and the fact that his phone records show a total of 75 outgoing and incoming calls from 09:53:44 to 22:54:07 hours, i.e. over a 13-hour period that day, and another 19 calls after midnight, from 00:07:42 to 01:18:40 hours, the logical conclusion is that his phone was turned off during the critical period for reasons known only to him.

8. The reason for the hesitation to question the witness who said he had information about the assassination a year ago.
9. Why there are no official police memos in the official case file (although the existence of at least one such document has been established). How grave are these deficiencies and who is accountable for them?
10. Why a facial composite was not made of the buyer of the vehicle used in Jovanović's assassination.
11. Why the police have not questioned the neighbour of the tinter of the windows on the vehicle used during Jovanović's assassination, because that neighbour had spoken to the buyer of the vehicle.
12. Whether all the complaints about the way the investigation was conducted made by the injured party, Jovanović's family, have been reviewed. Back in 2004, the family claimed that the on-site inquiry immediately after the assassination had been unprofessional, that there were unjustifiable delays in sealing off the city, that the video recording made by the camera located on the building across the murder scene had been doctored and that their legal counsel had not attended the questioning of the witnesses. The family also complained that the relevant authorities had dismissed their motions: to open the State Security Service's file on Duško Jovanović to check whether he had been under surveillance at the time he was killed; to investigate defendant Mandić's alleged confession to the investigating judge, that he was working for the MIA; to investigate the origins of court records from Croatia found in Mandić's car, as well as the notebook with the names of people who allegedly owed him large amounts of money; to question everyone who had sued Jovanović and *Dan*, etc.