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REPORT

War Crime Trials in Montenegro

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Legal principles and competent judicial bodies

Legal principles

Montenegro is bound by all international humanitarian law conventions that were binding on the Socialist Federal Republic of Yugoslavia (SFRY) and the Federal Republic of Yugoslavia (FRY), as well as the State Union of Serbia and Montenegro.¹ Even before the armed conflicts broke out in the former Yugoslavia, provisions of these conventions, including those on the criminal offenses War crime against civilian population, War crime against prisoners of war, etc., were, to a large extent, part of the laws of SFRY and FRY.

In order to fulfil the obligations from ratified conventions, the Criminal Code (CC) of Montenegro was amended in 2003² with the inclusion of criminal offences Crime against humanity (Article 427) and Failure to take measures to prevent the commission of criminal offenses against humanity and other values protected by international law (Art. 440). The provision of this Article 440 prescribes the so-called command responsibility as a separate criminal offense.

However, command responsibility and the prohibition of crimes against humanity were part of the internal legal order during the armed conflict in the nineties, based on the ratified international treaties (command responsibility) and international customary law (command responsibility and crimes against humanity). The applicability of international criminal law in this manner is specifically prescribed by the rule, contained in Article 15, paragraph 2 of the International Covenant on Civil and Political Rights³ and Article 7, paragraph 2 of the European Convention on Human Rights⁴, that trial or punishment of a person who is guilty of any act or omission is not considered as the violation of the principle *nulla crimen sine lege, nulla poena sine lege*, if such act or omission at the time of the commission did not constitute a criminal offence *under the general legal principles recognized by civilized nations, i.e. general legal principles recognized by international community.*

¹ With the decision on the declaration of independence, Montenegro agreed to apply and implement international treaties and agreements it signed as an independent state, as well as those signed by the State Union of Serbia and Montenegro relating to Montenegro, that are in compliance with its legal order (Decision on Declaration of Independence of the Republic of Montenegro, June 3 2006, Official Gazette of Montenegro, no. 36/2006).

“The international legal basis for the punishment of war criminals in former Yugoslavia, mostly found in the Geneva Conventions on the Protection of War Victims (1949) and the Additional Protocols I and II (1977) to the Convention, it is necessary to amend the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the International Convention Against the Taking of Hostages (1979) and the Convention on the Protection of Cultural Property in the Event of Armed Conflict (1954), bearing in mind the nature and types of crimes committed. All these conventions have been ratified by former Yugoslavia” (Report of the Commission of Experts established on the basis of the Security Council Resolution 780 (1992), Federal Government of the Federal Republic of Yugoslavia, ZU/SG-780/92/DOC-1/S, Belgrade, 1992).

² Official Gazette of Montenegro, no. 70/2003.

³ “1. No one shall be held guilty of any act or omission which did not constitute a criminal offense, under domestic or international law, at the time when it was committed. Also, a more severe sentence shall not be imposed than the one that was applicable at the time when the criminal offense was committed. If later, after the commission of the offense, a provision prescribes a lighter sentence, perpetrator shall benefit thereby.”

2. “Nothing in this article shall prejudice the trial and punishment of any person for any act or omission, which at the time when it was committed constituted a criminal offence according to the general principles of law recognized by international community.”

⁴ “No punishment without law” (Article 7 of the European Convention on Human Rights).

On this basis, the High Court in Bijelo Polje in 2010 held trials on charges for crimes against humanity in the Bukovica case (for details, see below), although later the Appellate Court and the Supreme Court of Montenegro found that the indictment for the crime was without legal basis, because it cannot be considered that the crime against humanity, at the time of the events in Bukovica, was prohibited by a ratified international treaty that obliged Montenegro. This attitude (see the analysis of the Bukovica case in this Report) is wrong and unfounded in international law and the applicable Constitution of the Federal Republic of Yugoslavia. **The State Prosecutor's Office did not indict anyone on the basis of command responsibility for failing to prevent and/or punish committed crimes, nor is it known to the public whether any such investigation has been initiated.**⁵

The April 2010 amendment to Art. 370 of the Criminal Code (Incitement of National, Racial and Religious Hate, Dissension or Intolerance) envisages imprisonment ranging from six months to five years even for condoning, denying or considerably diminishing the gravity of the crimes of genocide, crimes against humanity and war crimes committed against a group of people or a member of a group distinguished by its race, colour, religion, origin, citizenship or nationality, in a manner which may lead to violence or incite hatred of the group of people or a member of such a group in the event a Montenegrin or an international criminal tribunal rendered a final decision establishing that such a crime had been committed.

Competent judicial bodies

The Department for the Suppression of Organised Crime, Corruption, Terrorism and War Crimes was established within the Supreme State Prosecutor's Office in 2008. It is headed by a Special Prosecutor.⁶ The Special Prosecutor has seven deputies.⁷ He/she accounts for her work and the work of the Department to the Supreme State Prosecutor.⁸

Specialised departments for the suppression of organised crime, corruption, terrorism and war crimes – comprising eight specialised judges and three investigation judges⁹ – were established within the Podgorica and Bijelo Polje High Courts in 2008. Both the special prosecutor and

⁵ On the institute of command responsibility in international law and criminal law of the SFRY and FRY, for more details see: "Command responsibility - clear answers and accurate attitude", Siniša Važić, judge, Justice in Transition, <http://www.pravdautranziciji.com/pages/article.php?pf=1&id=1477>; "Command Responsibility and contemporary law", Iavor Rangelov and Jovan Nicic, Humanitarian Law Centre, 2004 (<http://www.b92.net/feedback/misljenja/fhp/komandna.php>), "Justice at Risk: War Crimes Trials in Bosnia and Herzegovina, Croatia and Serbia and Montenegro", Human Rights Watch, vol 16, no. 7, October 2004, p. 24.

⁶ Article 66, Law on the State Prosecutor of Montenegro (Official Gazette of Montenegro, 69/2003 and 40/2008).

⁷ Official website of the State Prosecutor's Office of Montenegro (on 9 May 2013):

<http://www.tuzilastvocg.co.me/tuzilacka%20organizacija/drzavni%20tuzioci.htm>.

⁸ Article 70, Law on the State Prosecutor of Montenegro (Official Gazette of Montenegro, 69/2003 and 40/2008).

⁹ Law on Amendments to the Law on Courts (Official Gazette of Montenegro, 22/08); Response of the Government of Montenegro to the Questionnaire of the European Commission, Chapter 23 - Judiciary and fundamental rights, 10 November 2009, p. 56 i 118.

his/her deputies and the judges in the specialised departments are stimulated by additional remuneration.¹⁰

Montenegrin judges and prosecutors participated in the regional project “War Crime Justice”, funded by the European Union with 4 million euros, conducted from 2010 to 2011 in partnership with OSCE - ODIHR (Office for Democratic Institutions and Human Rights - OSCE) ICTY (International Criminal Tribunal for the former Yugoslavia) and UNICRI (United Nations Interregional Crime and Justice Research Institute), aiming to “strengthen the capacity of judicial systems in the region for processing very complex war crime cases in a manner that is in accordance with international standards”.¹¹

General Overview of War Crime Trials and Conclusions

During the period from 2011 to May 2013, four trials for war crimes or crimes against humanity were in process in Montenegro:

- 1) the trial for war crimes against POWs and civilians in the **Morinj camp** in 1991;
- 2) the trial for war crimes against the civilian population - refugees from Bosnia and Herzegovina, the so-called **Deportation of Refugees** case, in May 1992;
- 3) the trial for crimes against the civilian population in **Bukovica** region in 1992 and 1993; and
- 4) the trial for war crimes against the civilian population, refugees from Kosovo, at Kaluđerski laz in 1999.

Out of these four cases, only the trial for crimes committed in Bukovica area ended with a final judgment on 22 March 2012. The judgement acquitted all seven persons indicted for the crime.

By May 2013, i.e. four years after the beginning of the trial for crimes in Kaluđerski laz on 19 March 2009, the trial has not reached a stage at which a first-instance judgement would be rendered.

In the Morinj case, first-instance judgement was overturned two times and, at the time of the publication of this report, the trial before the first-instance court (the High Court in Podgorica) was under way for the third time.

In the case Deportation of Refugees, the first-instance judgement was overturned, the retrial ended and a new acquitting judgement was rendered, against which the Supreme State Prosecutor and families of victims filed appeals.

¹⁰ Response of the Government of Montenegro to the Questionnaire of the EC, Chapter 23 Judiciary and fundamental rights, 10 November 2009, p. 117.

¹¹ From website “Courts of Montenegro” (<http://sudovi.me/vrhs/aktuelnosti/pravda-i-ratni-zlocini-157>). For more details on the project, see: <http://www.osce.org/bs/odihr/84407>

In Morinj case, four out of six defendants have been found guilty by a non-final judgement of the first-instance court, while two have been acquitted by a final judgement. In the Deportation of Refugees case, the court acquitted the defendants in both first-instance judgments.

In other words, **not a single person in these cases has been convicted so far for a war crime by final judgment. Out of these four cases, one enforceable judgment has been rendered – in the Bukovica case, acquitting all the defendants, while in the Morinj case, only a part of the judgement became enforceable and acquitted the two defendants.**

Therefore, the only persons who have ever been found guilty for a war crime committed on Montenegrin territory remain the five members of the Army of the Republic of Srpska, who were convicted for the murder of three members of the Klapuh family in Plužine, in July 1992.¹² The judgment in this case was rendered in 1994¹³, and enforced only on one defendant, while the other four were tried *in absentia* and in regard to them the judgement has not been enforced.¹⁴

Out of the total of twenty two persons accused for war crimes in Montenegro in the last couple of years, four were found guilty by first-instance non-final judgements (in the Morinj case). The remaining 18 defendants have been acquitted, nine of which by final judgements, as stated - seven in the Bukovica case and two in the Morinj case.

The reasons why no one has been convicted for war crimes in Montenegro in recent years lie in failures of the State Prosecutor's Office and competent courts to fully implement international humanitarian law that obliged and still obliges Montenegro.

Specifically, the reasons include the following:

1) **The defendants are directly accused for the commission of crimes.** The State Prosecutor's Office **did not use in any indictment the institute of co-perpetration or aiding and abetting**, as a form of responsibility of persons at middle to higher positions in the military, police or political hierarchy, nor did it treat such persons as organizers of criminal associations, although there were grounds for the use of these modes of responsibility. The failure of the Prosecutor's Office is also in **not implementing the institute of command responsibility**, which involves a form of responsibility of the superiors, who knew or had reason to know about

¹² This excludes the crime in Štrpci, for which one person was tried in Montenegro, because it was committed outside Montenegrin territory and by persons who are not citizens of Montenegro (for a war crime against civilian population, the Higher Court in Bijelo Polje convicted to 15 years of prison Nebojša Ranisavljević, a citizen of the Republic of Serbia, who, along with other members of the group under the command of Milan Lukić, in Štrpci station, on the territory of Republic of Srpska in Bosnia and Herzegovina, kidnapped and then killed 19 people from a train on the railroad Belgrade-Bar, mostly Bosnians, Muslims, ten of which were from Montenegro, on 27 February 1993).

¹³ Judgement of the Supreme Court Kz. no. 114/94.

¹⁴ The trial was attended in 1993 by Vidoje Golubić, who was sentenced to eight months in prison for failing to report a crime. The other four were sentenced to twenty years in prison for brutal murder, but the Supreme Court later reversed this qualification of the lower court into the conviction for war crimes against the civilian population.

the crime and did nothing to prevent or punish it (a criminal offense by omission).¹⁵ The result of this approach of the Prosecutor's Office is that no person who ranked high in the military, police or political hierarchy has been accused so far, and therefore none has been convicted for war crimes.

2) The High Court in Podgorica, as first-instance court, and the Appellate Court of Montenegro, as second-instance court, do not use their authority to examine potential forms of responsibility that are not present in the indictment. The court is not bound by the prosecutor's proposals regarding modes of responsibility¹⁶, and therefore it has the right to, for example, convict as an aider and abettor the person who has been indicted as a perpetrator. This kind of passivity of the High Court and the Appellate Court came to the forefront in the Morinj case. Also, the court refrains from legally classifying the facts it itself established, that clearly indicate the acts of committing an offense additional to the acts highlighted in the indictment (Deportation of Refugees case), or indicate the need for a different legal classification of the crime (Bukovica case, where the Appellate Court, having found no reason for a conviction of a crime against humanity, could have examined whether the defendants had committed a war crime against the civilian population, but it did not address the issue).¹⁷

3) In relation to crimes committed within the armed conflict in Bosnia and Herzegovina, the High Court in Podgorica took a position (in the case Deportation) that a war crime may exist only if executed by members of armed forces of parties to the conflict or who were "in service" of such parties, and that, therefore, if the defendants in the case do not belong to any of these categories, they cannot be held responsible. This legal standard is arbitrary and not grounded in domestic or international law.

4) The Appellate Court gave its contribution to impunity by promoting unfounded stance (in the Bukovica case) that the crimes committed during the nineties cannot be prosecuted as crimes against humanity, because at the time of the offense there were no international legal acts ratified by SR Yugoslavia which would prohibit crimes against humanity. This attitude of the Appellate Court, supported by the Supreme Court of Montenegro, is unfounded, because it is sufficient that the illegality of crimes against humanity and elements of those crimes are established by the rules of *customary* international law, and these rules do not need to be codified in an "international act", or "regulation", as wrongly claimed by the Appellate Court.¹⁸ Unlike the Court, a Special Department for War Crimes of Bosnia and Herzegovina, which is, due to the involvement of the international community in the establishment and operation of the court, resilient to local political influence and is led in its operation primarily by legal considerations, has for years conducted trials and rendered judgments of conviction in cases that relate to crimes against humanity.

¹⁵ Details about this institute in international humanitarian law and criminal codes of SFRY and FRY, see above, footnotes 2-4 and related text.

¹⁶ In this regard, see Tihomir Vasiljević & Momčilo Grubač, Commentary of the Criminal Procedure Code (Belgrade, 1999), p. 546 (citing judgements of the Supreme Court of the Republic of Croatia SCC Kz. 3477/65. and 2477/55, and the decision of the Supreme Court of Vojvodina VSAVP Kz. 807/56); also Goran P. Ilić and others, Commentary of the Criminal Procedure Code (Belgrade, 2012), p. 868 (citing the judgement of the Supreme Court of the Republic of Serbia SCS Kzz. 20/02 of 12 November 2003).

¹⁷ Article 369, p. 2, CPC MNE: "The court is not bound by the proposal of the prosecutor's legal qualification of the offense."

¹⁸ Detailed legal arguments on this conclusion see below in the analysis of case Bukovica.

As a whole, courts in Montenegro, instead of interpreting humanitarian and criminal law in a manner that provides extensive protection of victims of war crimes - the direction in which international humanitarian and international criminal law is headed – appear to be trying to find a restrictive interpretation of domestic and international legal norms, in order to reduce the possibility of punishing members of Montenegrin police and former Yugoslav Army for war crimes for which they are accused. For example, the conditions required by the High Court in Podgorica for a crime to be classified as a war crime, which relate to the status of the perpetrator, are not required by the International Criminal Tribunal for the former Yugoslavia (ICTY) or the International Criminal Court, nor by the legislation or court practice in the region. Similarly, while the Court of BiH allows prosecution of crimes against humanity, the Appellate Court of Montenegro prevents this prosecution by limiting the term "customary international law", which prohibits crimes against humanity, and was applicable in FR Yugoslavia, to "international *regulations*" and "international *acts*", although in actuality, the customary law may exist outside of this framework. In its latest pronouncement on war crimes up to this point, in the Morinj case, the Appellate Court went so far in protecting the defendants, as to request from the High Court in Podgorica to explain in its retrial (third) why it considers that prisoners of war in camp Morinj can generally be put under the category of "military personnel who does not participate actively in hostilities", although this is obvious from their status of disarmed, detained prisoners!¹⁹

Finally, none of the state participants involved in the prosecution of war crimes - the State Prosecution Office, the first-instance court, the second-instance court - resort to modes of responsibility on the side of defendants that would significantly increase the likelihood of their conviction (co-perpetration, aiding and abetting and criminal responsibility and punishment of the organizers of criminal associations and command responsibility).

Serious deficiencies on the part of the State Prosecutor's Office are: extremely slow pace of investigations, the failure to initiate investigation against persons who occupied a high position in military, police or political hierarchy, and, failure to precisely qualify the offense that the accused is charged with. All investigations in the cases analysed in the report have been coerced by pressure from victims and the public, or by the State Attorney's Office of the Republic of Croatia in the Morinj case. This unwillingness to prosecute on its own initiative marked the course of investigations, which as a rule then resulted in incomplete indictments.

Transparency of the judiciary - the availability of information on war crimes

The Montenegrin State Prosecutor's Office does not publish integral texts of war crime indictments on its website, in contrast to e.g. Office of the War Crimes Prosecutor of Serbia.²⁰

The High Court in Podgorica published some war crime judgments on its website, notably the first-instance judgment in the Deportation of Refugees case from March 2011.²¹ The first first-instance judgement in the Morinj case was originally available on the Court's website, but was

¹⁹ Judgement of the Appellate Court of Montenegro in case Kžs. br. 24/2012, 6 July 2012.

²⁰ See: http://www.tuzilastvorz.org.rs/html_trz/optuznice_lat.htm

²¹ Judgement available at: http://sudovi.me/odluka_prikaz.php?id=623

later removed. Other first-instance judgments in mentioned cases are not available on Court's website. The High Court in Bijelo Polje did not publish the first-instance judgement in the Bukovica case by the middle of May 2013.

Detention of defendants

Unlike the usual practice of state prosecutors to propose detention when filing a motion for investigation and for much less serious offenses than war crimes, the Prosecutor's Office has suggested detention in all trials for war crimes only after issuing the indictment – after the investigation is completed, because of the seriousness of the crime and the prescribed punishment. This led to trials *in absentia* for almost half of the accused for deportation, as well as the indicted in the case Kaluđerski laz and one of the defendants in the Morinj case.

In Bukovica case, the accused were detained for about eight months; in Morinj case total of 21 months; in the Deportation of Refugees case, four persons arrested in Montenegro were detained for 27 months, while four who were subsequently arrested in Belgrade spent about four months in extradition detention. One defendant was not arrested. In the Kaluđerski laz case, detention was the longest, total of 36 months, and eight months before the trial commenced.

Dubrovnik case

By the end of April 2013, criminal proceedings against any person for war crimes committed during the attack of Dubrovnik (from 1 October 1991 to the end of June 1992)²² were not initiated in Montenegro, although the state officials have accepted responsibility for the damage caused by organized looting in which the citizens of Montenegro participated on the territory of the Republic of Croatia during the war actions in Dubrovnik.²³

For war crimes committed during the attack on Dubrovnik, the Hague Tribunal convicted only the former General of the Yugoslav National Army (YNA) Pavle Strugar²⁴, and his subordinate

²² On 29 December 2009, the Supreme State Prosecutor's Office of Montenegro announced that in addition to cases related to camp Morinj, other cases had not been initiated that relate to events in Dubrovnik area during 1991 and 1992, because the Prosecutor's Office has not received criminal charges against Montenegrin citizens (response to request for information, Human Rights Action archive).

²³ Minister of Agriculture of the Republic of Montenegro, Milutin Simović, stated in 2005 that on the basis of the signed document, Montenegro will pay to the municipality Konavle 375,000 euros in compensation for 268 milking cows and a number of calves and bulls that were taken from a farm in Gruda during the war in 1991. The presidents of Croatia and Montenegro have confirmed that negotiations are underway about the property of the airport of Dubrovnik, which was looted during the war and taken to the airport of Tivat. According to the Croatian state authorities, during the war in 1991 - 1992 in actions of the YNA and Montenegrin reservists only in the narrow area of Dubrovnik, 336 large and small vessels were destroyed ("No one is to blame", Monitor, 20 August 2010).

²⁴ Pavle Strugar, a former general of YNA and Commander in Chief of the YNA attack on Dubrovnik (Commander of the 2nd operational group of the YNA), residing in Montenegro, surrendered to the ICTY in October 2001. Strugar was found guilty on 31 January 2005 on the basis of superior criminal responsibility for two of the six counts of violation of the rules or customs of war, sanctioned by the Geneva Convention in 1949, and Additional Protocols in

Commander Miodrag Jokić²⁵. The Tribunal found guilty the retired Admiral Milan Zec, but in 2002 he was acquitted²⁶, while the First Class Captain of YNA Vladimir Kovacević – Rambo, who was also found guilty, was temporarily acquitted by the Tribunal in 2004 for medical treatment.²⁷ The public often raises the question of command responsibility of Momir Bulatović, former President of the Presidency of Montenegro (December 1990 - December 1992), who had the competence by law to make decisions about the use of the Territorial Defence of Montenegro - the most massive component of the 2nd operational group of YNA made up of Montenegrin reservists mobilized in the attack on Dubrovnik. The question of possible criminal responsibility of some of Montenegrin police officers who took part in operations in Dubrovnik is also raised.²⁸

County State's Attorney's Office from Dubrovnik has filed indictment at the end of 2009 against 10 officers of the former Yugoslav National Army (YNA)²⁹, who are charged, as media reported,

1977, as well as by the customary law, and punishable under the Statute of the Tribunal, for attacks on the civilian population, destruction or wilful damage made to institutions dedicated to religion, charity, education, arts and sciences, historic monuments and works of art and science. In the first-instance he was sentenced to 8 years in prison. In the appeals procedure, on 17 July 2008, based on the appeal of the Prosecution Office, Strugar was sentenced to seven and a half years in prison, reduced sentence from the original due to his poor health. He was acquitted on 20 February 2009 because of his age and poor health, having served two thirds of his sentence. (Case "Dubrovnik" no. IT-01-42, "Prosecutor v. Pavle Strugar": <http://www.un.org/icty/bhs/cases/strugar/judgements/050131/str-tj050131b.pdf>).

²⁵ Miodrag Jokić, Commander of the 9th Military Naval Sector of YNA and subordinate to Pavle Strugar, on the basis of an agreement with the Prosecutor's Office of the Hague Tribunal, on 27 August 2003 he pleaded guilty to a violation of rules and customs of war on 6 counts of murder, cruel treatment, attacks on civilians, devastation, unlawful attacks on civilian objects and destruction or wilful damage done to civilian institutions. He was sentenced to 7 years in prison on 18 March 2004, and the judgment was confirmed on 30 August 2005. He served his sentence in Denmark until 3 September 2008 when he was released after serving two-thirds of the sentence (http://www.icty.org/x/cases/miodrag_Jokić/acjuq/bcs/050830.pdf).

²⁶ "Milan Zec released of charges", B92, 26 July 2002. (<http://www.b92.net>).

²⁷ Special Court in Belgrade in December 2007 dropped the charges against Vladimir Kovačević for war crimes against the civilian population of Dubrovnik, on the grounds that the defendant, due to illness, was unable to stand trial ("the Court in Belgrade rejected the charges against Rambo", Radio Free Europe, 5 December 2007 (<http://www.slobodnaevropa.org/content/article/765255.html>)).

²⁸ The documentary film "Attack on Dubrovnik: War for Peace" by Koča Pavlović, production company Obala 2004. The film shows the statement for TV by Milisav Marković, Deputy Minister of the Interior of the Government of Montenegro for the Office of Public Safety about military operations of Montenegrin police in Dubrovnik front, from October 1991. The Ministry of the Interior (MOI) was part of the government of the Prime Minister Milo Djukanović. MOI forces in Montenegro were mobilised to Dubrovnik upon the orders of the President of the Presidency, Momir Bulatović p. pov. no. 01-14 of 1 October 1991, on mobilization of a special police unit in strength of reinforced infantry unit, Titograd.

²⁹ General Jevrem Cokić (till 10 May 1992, Commander of the YNA 2nd operational group), General Mile Ružinovski (7-12 October 1991, Commander of the YNA 2nd operational group) General Pavle Strugar (from 13 October 1991, Commander of the YNA 2nd operational group) Vice Admiral Miodrag Jokić (Commander of the 9th military naval sector of YNA), Navy Captain/Navy Colonel Milan Zec (Chief of Staff of the 9th military naval sector of YNA), General Branko Stanković (Commander of the 2nd tactical group from the 2nd operational group of the YNA), Colonel Obrad Vičić (Commander of 472nd brigade of YNA) and Colonel Radovan Komar (Chief of Staff of the 472nd brigade of YNA). Two other YNA officers, 1 Class Captain Vladimir Kovacević (Commander of the 3rd battalion of the 472nd brigade of the YNA) and Lieutenant Commander/Naval Captain Zoran Gvozdenović (Commander of navy gunboats 403 of YNA Navy), are also accused by the indictment no. 46/09 for issuing direct orders for shelling "the historic old town of Dubrovnik, which as a whole is protected by UNESCO since 1979 and is a world heritage monument", then

for not trying to prevent the conduct of subordinate units, during the aggression on Dubrovnik in 1991 and 1992, which is against the Geneva Convention: shelling of residential areas; killing of civilians (116), imprisonment, torture and forcing civilians to flee; destruction of civil, cultural, religious and commercial properties, looting and burning.³⁰ Defendants in Montenegro are Pavle Strugar and Radovan Komar. As the agreement on extradition of nationals, concluded between Croatia and Montenegro on 1 October 2010, does not include those accused of war crimes³¹ (as opposed to the extradition treaty with Serbia³²), Strugar and Komar could possibly be tried for these crimes only in Montenegro.³³

Although it is well known that the so-called weekend warriors from Montenegro, especially from Nikšić, participated in the looting of civilian property and possibly other war crimes committed in Foča and elsewhere in eastern Bosnia and Herzegovina near the border with Montenegro in 1992-1993³⁴, until December 2011, no one was tried for these crimes in Montenegro.³⁵

At the meeting “War for Peace - 20 years later”, one of the injured witnesses in the Moring case Metodije Prkačin, accused the judge of the Appellate Court of Montenegro Milivoje Katnić that, as a KOS officer was the most responsible for looting and arson in Cavtat.³⁶ Also, Prkačin said that on the battlefield, as a military police member, he saw the person for whom others claimed to be Vesna Medenica (he believes she is the President of the Supreme Court of Montenegro), that Lieutenant Colonel Ljubo Knežević, as a transporter entered the battlefield in Cavtat, he used human shields made of local population, and the Captains Gojko Duračić, who lives in Bar and Nemanja Kordolija, who also lives in Montenegro, they all know about who did what.³⁷

the shelling of residential areas "bombing Cavtat, Župa Dubrovačka, Zaton, Trsteno, hotels Croatia, Belvedere, Plakir, Tirena and Minčeta", "killing a number of civilians".

³⁰ „Dubrovnik indictments“, *Monitor*, 7 May 2010.

³¹ Law on Ratification of the Agreement between Montenegro and Croatia on Extradition (Official Gazette of Montenegro - International Treaties, no. 1/2011). A group of Montenegrin and Croatian non-governmental human rights organizations demanded on 15 September 2010 that the agreement between Montenegro and Croatia included persons accused of war crimes (see <http://www.hraction.org/?p=394>).

³² Law on Ratification of the Agreement between Montenegro and Serbia on Extradition (Official Gazette of Montenegro - International Treaties no. 4/09, no. 4/2011 - Agreement between Montenegro and Serbia on amendments to the Agreement between Montenegro and the Republic of Serbia on extradition signed in Belgrade on 30 October 2010).

³³ The last news about the process available to general public are from May 2010, when it was announced that the Prosecutor's Office in Dubrovnik proposed detention and arrest warrants for all the defendants, and the County Court appointed lawyers to defendants *ex officio* and sent them the indictments with a note on the right to appeal. So far, four appeals were received against the charges brought by lawyers, one appeal filed by a defendant ("Dubrovnik indictments" *Monitor*, 7 May 2010).

³⁴ For example, the crimes mentioned by Deputy Minister of Human Rights, Sabahudin Delić in TV show Prism, TV Vijesti, 25 May 2011.

³⁵ President of the "Women Victims of War" association from Bosnia, Bakira Hasečić, on 11 March 2008 sent an open letter to the President of the Parliament of Montenegro Ranko Krivokapić, in which she expressed a willingness of "delegation of violated women and men, camp prisoners, tortured and beaten citizens and families of those killed to witness in the Parliament about the conduct and actions of Montenegrin reservists and very particularly about certain names i.e. perpetrators and acknowledgements where some of them are hiding in Montenegro (see "Official Montenegro must apologize", *Republika*, 12 March 2008). The public is not aware if the President of the Parliament replied to this letter, and whether the Prosecutor's Office has taken any actions on this occasion.

³⁶ "Vesna Medenica as an officer at the Dubrovnik front?" portal Vijesti, 2 December 2011. Information available at: <http://www.vijesti.me/vijesti/vesna-medenica-kao-oficir-dubrovackom-ratistu-clanak-49849>.

³⁷ *Ibid.*

Vesna Medenica, President of the Supreme Court of Montenegro has denied these claims, saying that at the time she worked as the basic state prosecutor, while the judge Milivoje Katnić denied that he is responsible for any crimes. According to information that Human Rights Action received from NGO Documenta from Croatia, Metodije Prkačin had a conversation with the Inspector of the Ministry of the Interior of Croatia, after the event. In the conversation, he presented his findings on the beatings in Cavtat, as well as the relevant documents and indicated to other witnesses.

Morinj case

Between October 1991 and August 1992, over 160 Croats, half of them civilians from the Dubrovnik area, were held and ill-treated in the Morinj camp (called Collection Centre Morinj in the indictment) near Kotor, established and operated by the Yugoslav National Army (YNA)O.

In late March 2007, the Croatian State Prosecutor's Office (DORH) forwarded to the Montenegrin Supreme State Prosecutor evidence against ten Montenegrin nationals suspected for war crimes against the civilian population and POWs in Morinj in the period 3 October 1991–2 July 1992.³⁸

Superior State Prosecutor Ranka Čarapić on 7 July 2007 filed a motion with the Podgorica High Court for the investigation of six people on the reasonable suspicion of having committed war crimes against the civilian population and against prisoners of war in the Morinj Collection Centre.³⁹ Čarapić said that year that the list of suspects was not final, that one of the other four people DORH sent evidence about had died and that the Montenegrin authorities could not assess whether reasonable suspicion existed with respect to the other three people.⁴⁰ The following six former reservists of the YNA were indicted on 15 August 2008: Head of the Security Unit of the Navy Base Administrative Command and interrogator Mladen Govedarica, interrogator Zlatko Tarle, reserve officer charged with administrative and quartermaster duties Ivo Gojnić, MP Špiro Lučić, cook Ivo Menzalin and guard Bora Gligić.⁴¹ All of them were detained in custody, except for Menzalin, who was at large and tried *in absentia*.

The trial opened before the High Court in Podgorica on 12 March 2010. On 15 May 2010, the Court found all the defendants guilty and sentenced them for criminal offence War crime against prisoners of war: Govedarica to two years, Tarle to a year and a half, Gojnić to two and a half years, Lučić to three and a half years, Gligić to three years, and Ivo Menzalin to four years in prison.

The State Prosecutor and five of the six defendants filed appeals to the judgement. On 25 November 2010, the Appellate Court accepted the appeals of the defendants and returned the procedure for retrial. The part of the judgment in which the High Court found two indicted, Mladen Govedarica and Zlatko Tarle, responsible for ordering physical abuse of prisoners, was

³⁸ "Ten citizens of Montenegro under suspicion", *Vijesti*, 29.3.2007.

³⁹ "Morinj worries the six", *Dan*, 08.07.2007. "Persons accused in the Morinj case", *Vijesti*, 08.07.2007.

⁴⁰ "The Morinj list is not final", *Dan*, 16 November 2007.

⁴¹ "Raised charges for Morinj", *Pobjeda*, 16 August 2008.

overturned.⁴² In regard to other defendants, the Appellate Court held that the first-instance court had exceeded the charges that accused the defendants for actions taken against some of the injured persons, because the indictment did not accuse the defendants of actions taken against those particular individuals.⁴³

The Appellate Court did not accept the appeal of the prosecutor. The prosecutor appealed because the High Court found the defendants guilty only of war crimes against prisoners of war, and not of war crimes against the civilian population. The prosecutor considered that the judgement of the High Court in this part was “incomprehensible, contradictory to itself or to reasons of the judgement or that the judgment did not have any reasons or it did not state reasons concerning the decisive facts”, and that the Court thus substantially violated the provisions of the Criminal Procedure Code under Art. 376, para. 1, item 11 of the Criminal Procedure Code (Official Gazette of Montenegro, no. 71/03). However, the Appellate Court considered that if the High Court made a substantial violation of the provision of the Criminal Procedure Code, the violated provision is item 7 (rather than item 11) in Art. 376, para. 1 of CPC: namely, “the court in its judgment did not entirely resolve the charges”. Since the Prosecutor’s Office did not appeal on the violation of item 7, and since the violation of item 7 is not under the competence of the Appellate Court, the Court ruled that, in the part of first-instance judgment in which the High Court had failed to determine the possible commission of war crimes against the civilian population, the case cannot be returned for retrial.⁴⁴

After the retrial, the High Court rendered the judgment on 25 January 2012, which acquitted Govedarica and Tarle. Prison sentences were reduced for two defendants, Gojnić to two years (from two and a half), and Lučić to three (from three and a half). Gligić and Menzalin were sentenced to the same prison sentence as after the first trial.

The State Prosecutor and the three defendants (Gojnić, Gligić and Menzalin) appealed on the judgement. The Appellate Court rejected the appeal of the State Prosecutor as unfounded in the judgment from 6 July 2012, thus making the acquitting judgement for Govedarica and Tarle enforceable. At the same time, the Appellate Court accepted the appeal of the defendants and overturned the judgement of the High Court in the sentencing part, as well as in the official duty in relation to defendant Lučić, who did not appeal. The case, in relation to Gojnić, Lučić, Gligić and Menzalin, was returned to the first-instance court for retrial.⁴⁵

Analysis:

The prosecution failed to treat the crimes in the camp Morinj as an organized system of ill-treatment of prisoners and to charge persons who were superior to direct perpetrators of the abuse, although the case file shows that a basis for charges existed. Numerous testimonies given during the trial indicate that the Morinj camp represented a place of systematic torture, inhumane treatment, and infliction of great suffering or serious physical injuries to prisoners, by guards, military police officers, and, to a lesser extent, by investigators from the military security service. The High Court in its judgment concluded that “in the

⁴² Judgement of the Appellate Court of Montenegro in case KSŽ 20/10, 25 November 2011, p. 8-16.

⁴³ Ibid, p. 18.

⁴⁴ Ibid, p. 6-7.

⁴⁵ Judgement of the Appellate Court of Montenegro in case KSŽ 24/2012, 6 July 2012.

Collection Centre Morinj reigned an atmosphere of terror and fear for life that the victims were constantly exposed to".⁴⁶ It is reasonable to conclude that persons who had the authority and influence in the camp, or were on higher positions that included authority and responsibility in relation to the functioning of the camp, knew, or should have known about the situation in the camp. Despite this, these persons allowed the perpetration of the system of ill-treatment, by contributing to its daily functioning and/or by failing to prevent the commission of crimes or punish the direct perpetrators. Considering such acts and omissions, applicable legal provisions on modes of responsibility such as aiding and abetting, co-perpetration, responsibility of organizers of a criminal association, or command responsibility, could be applied to persons with the authority and influence in the camp. However, no one was charged or convicted on the basis on any of the above mentioned modes of responsibility.

The circle of people with authority and influence in relation to direct perpetrators of crimes in camp Morinj potentially includes: commanders of the guards and military police in the camp; the first defendant Mladen Govedarica; Director of special counter-intelligence group for interrogations in Morinj, Military Security Officer Mirsad Krjuč; Camp Commander Ljubomir Knežević; heads of the Security of the Federal Secretariat for National Defence - YNA who were in position at the time of the operation of the camp: generals Marko Negovanović, Aleksandar Vasiljević and Nedeljko Bošković; Commander of the 2nd Operational Group Colonel General Pavle Strugar; commanders of the 9th Military Naval Sector (9. MNS) Navy Lieutenant Krsto Đurović (died on 5 October 1991) and his successor, Vice Admiral Miodrag Jokić; Chief of Staff of 9. MNS Navy Colonel Milan Zec and YNA Navy Commander, Admiral Mile Kandić.⁴⁷

Of all these persons, the Prosecutor's Office only filed charges against Mladen Govedarica, for whom there were indications that he had *de facto* authority and influence in the camp, but he was only charged for the direct commission and ordering of few crimes, and not for the operation of the system of ill-treatment. The Prosecutor's Office did not file charges against other individuals who held top positions in in the hierarchy Prosecutor's Office .

In this manner, **the judicial system of Montenegro approached the prosecution of crimes committed in camp Morinj very differently from the ICTY and the specialized War Crimes Chamber of the Court of Bosnia and Herzegovina in similar cases.** Those courts have held trials for a great number of persons who were not direct perpetrators, but who were nonetheless accused and/or convicted as participants or assistants of the so-called joint criminal enterprise.⁴⁸

The Criminal Code of the Federal Republic of Yugoslavia from 1993, applied in this proceedings, includes modes of responsibility that are suitable for covering the acts or omissions of persons from the top of the hierarchical structure in the camp: the responsibility of the organizer of a criminal association, co-perpetration, and aiding and abetting.

The first of these institutes is criminal responsibility and punishment of the organizers of criminal associations (under Art. 26 of the Law). Three requirements for the existence of responsibility on this basis are: (1) the person established a new or used an existing organization, group, or

⁴⁶ Judgement of the High Court in Podgorica in case Ks. br. 33/10, 25 January 2012, p. 174.

⁴⁷ See "Who established Morinj?", *Monitor*, 20 March 2009, "Justice is distant", *Monitor*, 28 May 2010.

⁴⁸ For example, see the judgement of the ICTY Appeals Chamber in the case *Prosecutor vs. Milorad Krnojelac*, IT-97-25-A, 17 September 2003, and the judgement of the Appellate Division of the War Crimes Chamber in Bosnia-Herzegovina in the case *Rašević and Todović*, X-KRŽ -06/275, 6 November 2008.

other association with the aim of committing criminal offences, (2) there is a criminal plan, and (3) at least one criminal offence was committed by members of the organization or association. Criminal responsibility of the organizer of a criminal association is in its content very similar to the responsibility on the basis of the so-called participation in a joint criminal enterprise, institute applied in numerous cases before the ICTY, relating to the crimes committed in camps. Considering the widespread nature of, and impunity for, crimes committed in the camp, it may be reasonably assumed that persons who were on the top of the hierarchical structure, i.e. with authority and influence in the camp Morinj, used the structure of guards, military police and interrogators to commit criminal offences against prisoners.

For the existence of *co-perpetration* (Article 22 of the applied CC of FR Yugoslavia) there must be a prohibited aim that a number of persons wish to achieve by expressed or implied consent, the participation of the accused person in the attainment of the common aim, and decisive contribution of the person to the achievement of the joint aim (it is required that the accused has control over the act). These requirements can be met in relation to the activities of persons with authority and influence on the functioning of an organized system of ill-treatment at the camp.

It should be noted that the ICTY judges who considered that the institute of joint criminal enterprise is not applicable (because, according to them, it did not constitute a part of the customary international law at the time of the commission of crimes in the former Yugoslavia), still believed that the institute of co-perpetration could be applied to the acts of the defendants, since it “approaches th[e definition] of the aforementioned joint criminal enterprise and even overlaps in part”.⁴⁹ By applying the concept of co-perpetration, these judges found the political leader of Bosnian Serbs in Prijedor, Milomir Stakić, guilty and sentenced him to life imprisonment, with explanation that Stakić had decisive authority to influence the events in the municipality, and that the political authorities, led by Stakić, could have prevented crimes against non-Serbs if they had withheld their involvement in the criminal conduct.⁵⁰ The Appeals Chamber of the ICTY later sentenced Stakić on the basis of participation in a joint criminal enterprise, rather than on the basis of co-perpetration, with explanation that joint criminal enterprise (not co-perpetration, which is similar to it) is a part of international customary law applied by the ICTY. However, the general stance of the ICTY on what law that court may apply does not affect the fact that where national law undoubtedly recognizes the concept of co-perpetration, this concept allows the punishment of persons who are not direct perpetrators, but share the common criminal aim with direct perpetrators and give substantial contribution to its realization. It would be a matter of evidence whether the persons with authority and influence vis-a-vis the direct perpetrators in camp Morinj shared with the latter the goal to abuse the prisoners, and to what extent did the persons with authority and influence give contribution to the achievement of that unlawful aim.

When it comes to *aiding and abetting* (under Art. 24 of the applied CC of FRY), aider and abettor - as opposed to a co-perpetrator – does not have to share *mens rea* with the main perpetrator. Additional feature that differentiates aiding and abetting from co-perpetration is that the contribution of aider and abettor is lesser than that of the main perpetrator. It is possible that the application of the institute of aiding and abetting would have lead to a conviction in relation to some persons with authority and influence in relation to the functioning of an organized system of ill-treatment in camp Morinj.

⁴⁹ Judgement of the Trial Chamber of ICTY in case *Prosecutor vs Milomir Stakić*, IT-97-24-T, 31 July 2003, para 441.

⁵⁰ *Ibid*, para. 490.

Bearing in mind that, in criminal proceedings for war crimes, the Prosecutor's Office and the courts in Montenegro have at their disposal the institutes of co-perpetration, aiding and abetting and responsibility of the organizer of a criminal association, it is not necessary to apply the institute of command responsibility in order to indict and obtain conviction of those at the top of the hierarchical structure in the camp. However, this concept is available to the Prosecutor's Office and the court, as part of international customary and treaty law (Protocol I, from 1977, with the Geneva Convention), which obliged FR Yugoslavia at the time when the crime was committed in the camp Morinj.

In relation to defendants Mladen Govedarica and Zlatko Tarle, the Prosecution Office, the High Court and the Appellate Court unduly limited the possible form of their criminal responsibility only to direct commission and ordering. In its decision from 25 November 2010, the Appellate Court found that there was no evidence for the allegations in the indictment that the Govedarica and Tarle ordered the beating of prisoners, and thus the High Court released the two from all charges in retrial. However, the Appellate Court and the High Court did not consider whether the actions of Govedarica and Tarle, in relation to particular cases of beating of prisoners, constituted co-perpetration or aiding and abetting. Although the prosecutor did not qualify the actions of defendants as such, the Court is not bound by the prosecutor's proposal in regard to modes of responsibility, so there were no obstacles in examining potential responsibility of Govedarice and Tarle on this basis.

It should be borne in mind that in the judgment of the Appellate Chamber of the Court of Bosnia and Herzegovina in case of *Sreten Lazarević and others* from 22 September 2010, the factual basis was very similar to that from the relevant part of the indictment against Govedarica and Tarle, inasmuch that other persons beat the prisoners in presence of the defendant (former Deputy Commander of the Zvornik camp). By failing to do anything to prevent or stop the beating of Bosnian prisoners, Lazarević made a significant contribution to the commission of the crime, because as a person of authority he failed to protect the prisoners from illegal treatment, which was his obligation. The Appellate Court thus convicted Lazarević as a co-perpetrator.⁵¹ The Chamber also declared Lazarević a co-perpetrator because he handed over a prisoner to third persons knowing that they will treat him inhumanely.⁵² The described forms of acts and omissions are essentially identical to those of Govedarica and Tarle.

If in specific instances of beatings, that the High Court or the Appellate Court did not dispute occurred, in the course of or during a break of interrogation by Govedarica or Tarle, the Court could not have reached the conclusion that Govedarica and Tarle were co-perpetrators - because, for example, there is no evidence that they shared *mens rea* with the guards and military police in relation to the beating - the court would still have the possibility to find them guilty as aiders and abettors on the basis that they encouraged and gave moral support to direct perpetrators. Govedarica and Tarle did this – as persons with formal and/or factual authority – by allowing the guards or military police officers to beat prisoners, instead of preventing them from doing so.

The High Court, due to the misapplication of the principle of aggravating and mitigating circumstances, contrary to the practice of the ICTY, rendered inappropriately light

⁵¹ Judgement of the Appellate war crimes chamber of the Court of Bosnia and Herzegovina in the case of *Sreten Lazarević and others*, X-KRŽ-06/243, 22 September 2010, paragraphs 131-32, 172-176, and 192.

⁵² *Ibid*, para. 146 and para. 151.

sentences to the four defendants (Ivo Gojnić, Boro Gligić, Špiro Lučić, and Ivo Menzalin). The Court gave undue importance to mitigating circumstances and made an unfounded conclusion that there were no aggravating circumstances in cases of these defendants. Among the mitigating circumstances that the High Court has recognized, the most dominant are those that have little importance in the practice of the ICTY: absence of prior convictions, the fact that the defendants are married and have children, and poor health. The High Court even rated these circumstances as “especially mitigating”.⁵³ On the other hand, the mitigating circumstances did not include those of high importance in the practice of ICTY and the Court of Bosnia and Herzegovina: the admission of guilt, genuine remorse and efforts of the defendants to limit the suffering of prisoners.⁵⁴

The High Court did not find any aggravating circumstances on the part of the defendants, despite the fact that the commission of the crimes was accompanied by a series of such circumstances: vulnerability (helplessness) of the victim, because the prisoners in Morinj camp were deprived of any real opportunity to confront the abuse; a large number of victims; persistence in the commission of offences (expressed in great number of offences, i.e. commission of crimes over a long period of time); and the continuous suffering of survivors because of traumas.⁵⁵ In addition, Gligić and Gojnić, as commanders of guard shifts, abused their superior positions, which also constitutes an aggravating circumstance for the ICTY and the Court of BiH. Cruelty in the commission of the offense, another aggravating circumstance in the practice of the ICTY, was undoubtedly applicable to three of the four defendants in the case *Morinj*: Gligić, Lučić and Menzalin.

Bukovica case

Bukovica is a mountainous area in northern Montenegro, in the Pljevlja municipality, bordering with Bosnia-Herzegovina and comprising 37 villages, which had been populated predominantly by Muslims until 1993. During the war in BiH, a large number of Yugoslav Army reservists, paramilitaries and Montenegrin policemen were deployed in the Bukovica area. They tortured, searched, plundered, abused and ill-treated the Bukovica Bosnians under the pretext of looking

⁵³ Judgement of the High Court in Podgorica in the case Ks. br. 33/10, 25 January 2012, p. 267.

⁵⁴ Another judgement of the ICTY Trial Chamber in the case of *Dražen Erdemović* (IT-96-22-Tbis), 5 March 1998 para. 16 (ii); sentencing judgement of the ICTY Trial Chamber in the case of *Stevan Todorović* (IT-95-9/1-S), 31 July 2001 para. 80 and para. 81; sentencing judgement of the ICTY Trial Chamber in the case of *Duško Sikirica and others* (IT-95-8-S), 13 November 2001 para. 149; sentencing judgement of the ICTY Trial Chamber in the case of *Predrag Banović* (IT-02-65/1-S), 28 October 2003 para. 67; sentencing judgement of the ICTY Trial Chamber in the case of *Dragan Obrenović* (IT-02-60/2-S), 10 December 2003 para. 111 and para. 117; sentencing judgement of the ICTY Trial Chamber in the case of *Dragan Nikolić*, 18 December 2003 para. 233; sentencing judgement of the ICTY Trial Chamber in the case of *Momir Nikolić* (IT-02-60/1-S), 2 December 2003, para. 71, 72 and 150; sentencing judgement of the ICTY Trial Chamber in the case of *Miroslav Deronjić* (IT-02-61-S), 30 March 2004, para. 236 and para. 241; judgement of the Appellate Chamber of the Court of BiH in the case of *Mitar Rašević and Savo Todović*, 6 November 2008, p. 34; first-instance judgement in the case of *Željko Mejakić and others*, 30 May 2008, p. 214-215.

⁵⁵ A number of testimonies and documents presented before the Court shows that a large number of prisoners suffered physical injuries and other consequences of abuse at the camp, including: fracture of ribs of at least twelve prisoners; clavicle fracture; damage to the spinal cord; broken teeth; jaw injury; finger fracture; brain injury; paralysis of a body part; skin bruising and bleeding during urination. A significant number of witnesses-prisoners for years after the end of armed conflict in Croatia (1991-1995) suffered or continues to suffer from psychological problems, and it is reasonable to assume that the trauma is, in whole or in part, the result of the experience in Morinj camp.

for illegal weapons. According to the data of the Association of Exiled Bukovica Residents, six people were killed, two committed suicide after they were tortured, 11 were abducted and 70 or so people were subjected to physical torture in this area in the 1992–1995 period. At least eight homes and a mosque in the village of Planjsko were set on fire, while 90 families, around 270 people altogether, were driven out of their homes. Most of the homes were plundered. Only one murder committed in this period has been prosecuted by the judicial authorities, while the others, which the Association claims had happened as well, were not even mentioned in the indictment that initiated the trial in the High Court in Bijelo Polje.⁵⁶

In the period from June 1992 to February 1994, if not longer, Yugoslav Army forced shipped ammunition and fuel to the Bosnian Serb Army across the border crossing at Pljevlja, with the knowledge and/or consent of the Federal Republic of Yugoslavia (FRY) Supreme Defence Council, the supreme command comprising the Presidents of the FRY, Serbia and Montenegro.⁵⁷

The Belgrade-based Humanitarian Law Centre documented and in 2003 published the accounts of the persecution of the Muslim population from the Bukovica area.⁵⁸

It was only on 11 December 2007 that the Superior State Prosecutor filed a motion for the investigation of crimes committed in Bukovica to the Bijelo Polje High Court. The investigation was declared an official secret as soon as it opened.⁵⁹ It focused on seven former police and Yugoslav army reservists, suspected of crimes against humanity. The defendants were accused for criminal offence Crime against humanity (Art. 427 CC in relation to Art. 7, para. 2 of the European Convention on Human Rights).⁶⁰

Over 40 witnesses and injured parties testified during the investigation.⁶¹ The prosecutor did not seek the detention of the suspects during the investigation. Although the law states that witnesses must be served with a subpoena at least eight days in advance, the witnesses, most of whom live in BiH, were summoned to testify one day before the hearing. Some were even brought in although the authorities may bring in a person who failed to appear before the court as summoned only if there is confirmation that the witness had been duly served with the subpoena.⁶² The investigation was slowed down because of the difficulties in obtaining the testimonies of persons living in BiH. Their questioning began only in 2009.⁶³

The investigation was finally completed on 26 March 2010, and an indictment was filed on 21 April 2010 charging brothers Radmilo and Radiša Đuković, Slobodan Cvetković, Milorad Brković and Đorđije Gogić, Yugoslav Army reservists, and Slaviša Svrkota and Radoman Šubarić,

⁵⁶ "Golubović: Trials is a kind of Trade Off", *Vijesti*, 26 April 2010. "Mocking the Public", *Monitor*, 30 April 2010.

⁵⁷ See the transcripts of the Supreme Defence Council 5th session on 7 August 1992 and 18th session on 7 February 1994 (available at: http://www.sense-agency.com/naslovna/tribunal_%28mksj%29.58.html).

⁵⁸ "Bukovica", edited by Biljana Mitrović, Humanitarian Law Centre, Belgrade, 2003: <http://www.hlc-rdc.org/uploads/editor/Bukovica-engleski.pdf>

⁵⁹ Nansen Dialogue Centre, Watchdog Report IV, 25 November 2008.

⁶⁰ "The Prosecutor's Office accused seven persons", *Vijesti*, 12 December 2008. For legal qualification of the offence, see the explanation in the introduction of Legal principles ("Bukovica trial begins", 30 June 2010, <http://www.visisudbp.gov.me>).

⁶¹ Information of Humanitarian Law Centre from Belgrade, 23 March 2008.

⁶² *Ibid.*

⁶³ Nansen Dialogue Centre, Watchdog Report IV, 25 November 2008.

Montenegrin police reservists, of war crimes against humanity.⁶⁴ The representatives of the Bosnian Party, the NGO sector and victims association said that the persons who had ordered the crime had not been indicted.⁶⁵ The Bijelo Polje High Court ordered the detention of the defendants on 22 April 2010.⁶⁶ Their trial opened on 28 June 2010, two and a half years after the initiation of investigation.

As the Special Prosecutor for Organised Crime, Corruption and War Crimes Đurđina Ivanović explained in the indictment, which even misquotes the names of some of the defendants, they are suspected of “having committed systematic ill-treatment of the Muslim population in Bukovica, thus forcing them to leave their homes”.⁶⁷ The defendants are charged with ill-treating the Muslim population, subjecting them to grave suffering, jeopardising their health and physical integrity, applying measures of intimidation and creating a psychosis to force them to move out from the villages gravitating towards Bukovica, which resulted in the migration of the Muslim population.⁶⁸

Osman Tahirbegović testified on 26 October 2010 in the capacity of an injured party. He accused Milovan Soković and Bane Borović, who are not even indicted, as the main perpetrators of the crime.⁶⁹

The testimony of head of the Montenegrin Police Directorate Veselin Veljović, who was the chief of the Pljevlja militia station at the time covered by the indictment and, according to some witnesses, led the search of the homes in Bukovica, attracted particular interest.⁷⁰ One of those who testified of his involvement was Jakub Durgut, who in his book entitled Bukovica quoted a witness as saying that Veljović had threatened to tear his ears out.⁷¹ Defendant reserve policeman Slaviša Svrkota said in court that “nearly 100 of his colleagues, headed by Veselin Veljović and Vuk Bošković” took part in the search of three homes in the Bukovica area.⁷²

Veljović testified at the main hearing on 7 December 2010 and said that no war crimes had been committed in the Bukovica region during the war and that everything was done by the

⁶⁴ “They Intimidated Muslims to Drive Them out of Bukovica”, Vijesti, 22 April 2010.

⁶⁵ “Bukovica Indictees Detained”, Vijesti 23 April 2010.

⁶⁶ Ibid.

⁶⁷ “Only the Accused Are Suspected”, Vijesti, 17 April 2010.

⁶⁸ “All of Them Denied Guilt”, Dan, 20 September 2010.

⁶⁹ “Svrkota Did No Evil”, Dan, 27 October 2010, “Citizens Harassed by Reservists”, Vijesti, 27 October 2010.

⁷⁰ Veselin Veljović has been running the Police Directorate since 2005. He began his career as a YNA officer and joined the Montenegrin police in October 1992, when he was appointed chief of the militia station in Pljevlja. From December 1995 to October 2005, he commanded the Special Anti-Terrorist Unit of the Montenegrin MIA (official CV, available at <http://www.upravapolicije.com/navigacija.php?IDSP=43>).

⁷¹ “Durgut: I Kept a Gun out of Fear”, Vijesti, 22 September 2010. “Victims not Blaming Defendants”, Dan, 22 September 2010.

⁷² “Denied Crime Had Been Committed in Bukovica”, Dan, 29 June 2010. Vuk Bošković was Assistant Minister of Internal Affairs charged with the police in the late 1990s and the Montenegrin President’s national security adviser in the 2002–2011 period. He was relieved of duty in early 2011 “to assume another office” (“Vuk Bošković Dismissed”, Dan, 11 January 2011).

book. He said he knew policemen Svrkota and Šubarić and that he never heard any complaints about their work at the time of the events.⁷³

The main hearing ended with the closing arguments on 25 December 2010. The Bijelo Polje High Court acquitted the defendants due to lack of evidence and released them from detention on 31 December 2010. The Court stated that no evidence was presented to corroborate the allegation from the indictment that the defendants committed crimes against humanity. In the reasoning explanation of the verdict, the judge wrote that the injured parties' testimonies had not corroborated the charges and that the testimonies of others in court differed from the statements they made during investigation.

In June 2011 the judgment was overturned by the Appellate Court for procedural reasons and the case had been returned for a retrial. After re-trial, the High Court in Bijelo Polje on 3 October 2011 rendered a judgement acquitting the defendants of crimes against humanity. The first-instance court, contrary to the indictment, determined that Muslims from the Bukovica area had not moved out because of ill-treatment of the defendants, but voluntarily, and that Serbs and Montenegrins had also moved out of this area.⁷⁴ Everything that the military did in the Bukovica area was, according to the High Court, in accordance with the Rules and Regulations of the Army of Yugoslavia and Rules and Regulations of the Border Units.⁷⁵ Defendants who belonged to the police during the period specified in the indictment, also acted in accordance with the rules of duty.⁷⁶ The search of houses was justified because there were reports that a few houses of injured parties had hidden weapons, which was confirmed by the discovery of weapons.⁷⁷ The High Court also concluded that there was no evidence of a widespread or systematic attack against the civilian population, which is a prerequisite for the existence of crimes against humanity.⁷⁸

The Appellate Court on 22 March 2012 rendered a judgment dismissing the allegations from the appeal of the Prosecutor's Office and confirmed the first-instance judgement. The Appellate Court did not address the factual and legal issues that take central place in the indictment and the judgment of the High Court in Bijelo Polje, because, according to the Appellate Court, the offence that the defendants are charged with does not constitute a criminal offense, i.e. "does not have all the essential elements of the Crime against humanity in Art. 427 of the Criminal Code or other criminal offense prosecuted *ex officio*".⁷⁹

According to the Appellate Court, a crime against humanity under Art. 427 of CC of Montenegro "as most of the criminal offences against humanity and other values protected by international law... has a blanket provision, which means that the legal description of these offences refers to another regulation which completes the content of the criminal offense".⁸⁰ When Art. 427 CC refers to the rules of international law that criminalize crimes against humanity, "what is meant under such rules are the rules laid down by international acts that have been ratified at the time

⁷³ "Veljović: No Crime Was Committed in Bukovica", Dan, 8 December 2010; "Montenegrin Police Director Veselin Veljović Heard in Bijelo Polje High Court", Vijesti, 07 December 2010.

⁷⁴ Judgement of the High Court in Bijelo Polje, 27 September 2011, p. 50.

⁷⁵ Ibid, p. 55.

⁷⁶ Ibid, p. 57.

⁷⁷ Ibid, p. 58.

⁷⁸ Ibid, p. 54 and p. 57.

⁷⁹ Judgement of the Appellate Court, 22 March 2012, p. 7-8.

⁸⁰ Ibid, p. 7.

specified in the indictment as the time of commission. It is an axiom that cannot be questioned".⁸¹ According to the Appellate Court, criminal offence from the indictment in the Bukovica case misses "an essential element - an international regulation contrary to which the defendants undertook activities for which they are charged".⁸² The court found that the Rome Statute of the International Criminal Court, which the prosecutor referred to in the indictment, is not such a regulation because the offences from the indictment were committed in 1992 and 1993, before the Rome Statute entered into force (2002).⁸³

Supreme State Prosecutor's Office filed a motion for protection of legality against the final judgment of the Appellate Court. The Supreme Court on 21 January 2013 rejected this motion, of the Supreme Prosecutor's Office as ungrounded.

Analysis

The stance of the Appellate Court and the Supreme Court that the acts committed at the time specified in the indictment may not constitute a crime against humanity, because this act was not stipulated by an international regulation ratified and, as such, binding on the territory of Montenegro, is unfounded. The Appellate Court and the Supreme Court wrongly concluded that when the legal description of a crime against humanity from Art. 427 of Montenegrin Criminal Code refers to the rules of international law, these rules must take the form of "international *regulation*", i.e. "International *act*" ratified at the time of the offence. In fact, the binding rules of international law may exist in the form of customary international law, as was recognized in the Constitution of the Federal Republic of Yugoslavia, and this customary law does not need to be codified in an international regulation/act.

The Constitution of the Federal Republic of Yugoslavia, in force at the time of the crime in Bukovica, prescribed that "international treaties that have been ratified and published in accordance with the Constitution and the *generally recognized rules of international law* are an integral part of the internal legal order".⁸⁴ Therefore, the constitutional provision obviously differentiated between international agreements, on one side, and customary international law ("generally recognized rules of international law") on the other. Some customary rules of international law are not codified in treaties, but only manifested through official announcements by the state, decisions of international and national courts, military manuals, national legislation, and official statements of ICRC or resolutions in international organizations adopted with major support.⁸⁵ If a custom rule is expressed in a convention, it obliges - as a rule of customary international law - even those countries that have not acceded to the convention and have not ratified it.

⁸¹ Ibid, p. 7.

⁸² Ibid, p. 8.

⁸³ Ibid, p. 8.

⁸⁴ Constitution of FR Yugoslavia (1992), Art. 16, para. 2.

⁸⁵ Jean-Marie Henckaerts & Louise Doswald-Beck, *Customary International Humanitarian Law, Vol. I, Rules* (in Serbian) (Cambridge University Press, 2005), Introduction, p. xxx–xxxiii.

Therefore, a part of international law - customary law - obliges states regardless of whether it is codified in ratified international treaties, contrary to what the Appellate Court concluded. Crimes against humanity, as also stated by the Appellate Court, constituted a criminal offence under *customary* international law at the time of the events in Bukovica.⁸⁶ Rules of customary international law also included the elements of crimes against humanity, and the International Criminal Tribunal for the former Yugoslavia, relying itself on the customary law, articulated those elements in a series of judgments.⁸⁷ Thus, **the rules of international law to which the Constitution of Yugoslavia referred to, included the customary rules on prohibition and elements of crimes against humanity.**

Therefore, the reductionist claim of the Appellate Court that what is meant under the rules of international law, referred to in the provision of Art. 427 of the Criminal Code, “are the rules laid down by international acts that have been ratified at the time specified in the indictment” is ungrounded. With this statement the Appellate Court actually reduced the provision of the Constitution of FR Yugoslavia on international law that is an integral part of the internal legal order to only one part of the provision that refers to international treaties. This is contrary to what the aforementioned constitutional provision expressly states: that customary rules are constitutes a part of the internal legal order. The customary rules also include those that were not embodied in an international act ratified in FR Yugoslavia at the time specified in the indictment in this case.

By a way of comparison, the War Crimes Chamber of the Court of BiH, acting within the legal framework and relevant legal tradition identical to that of Montenegro, rendered a number of convicting judgements against perpetrators of crimes against humanity. The position of the Court of BiH is that at the time of the commission the crimes against humanity were an integral part of customary international law, and that if a conduct constituted a criminal offence at the time of its commission under customary international law, the principle of legality (*nullum crimen, nulla poena sine lege*) does not prejudice the trial or the punishment of the responsible person.⁸⁸

Even if the Appellate Court was right in its claim that the act, for which the defendants are charged, “does not have all the essential elements of the criminal offense Crime against humanity from Art. 427 of the Criminal Code”, it is incorrect, contrary to what the Court stated in the continuation of the same sentence from the judgment of 22 March 2012, that the offense the defendants are charged with does not have all the essential elements of a “another criminal offense prosecuted *ex officio*”.⁸⁹ **The Appellate Court did not explain why the offence for which the accused are charged did not constitute a war crime against the civilian population, which was undoubtedly prescribed by the Criminal Code at the time of commission.** The Appellate Court should have ventured into examining whether the defendants, based on the evidence, should be convicted for that crime. The identity between the

⁸⁶ Judgement of the Appellate Court of Montenegro, 22 March 2012, p. 5-6.

⁸⁷ Particularly important, in this regard, is the judgement of the ICTY Appeals Chamber in case of *Tadić*, 15 July 1999, para. 238-272 and judgment of the ICTY Appeals Chamber in case of *Kunarac and others*, 12 June 2002, para. 71-105. Also see materials for practical training - Crimes against humanity - part of the “War Crimes Justice” project, funded by the European Union, page 47 (http://wcjp.unicri.it/deliverables/docs/Module_7_Crimes_against_humanity_BCS.pdf).

⁸⁸ For example, see the judgement of the Appellate War Crimes Chamber of the Court of BiH in case of *Bundalo and others*, X-KRŽ-07/419, 28 January 2011, p. 214-230. The Court referred to Art. 7, para. 2, of the European Convention of Human Rights and Art. 15, p. 1, of the International Covenant on Civil and Political Rights.

⁸⁹ Judgement of the Appellate Court of the Republic of Montenegro, 22 March 2012, p. 8.

charges and the judgement would have been preserved because the judgement would have still referred to the defendants, the same offence would have constituted the subject of the indictment as well as the judgment, and the protected value (humanity and international law) would have been identical in both the indictment and the judgment. Therefore, the Appellate Court should have examined whether the first-instance court was right when it determined that the actions of defendants did not contain criminal elements, i.e. that the Muslims voluntarily moved out of the Bukovica area, and that the defendants acted by the rules of the Army of Yugoslavia, rules of border units, and rules of the police.

The Supreme Court, in its decision rejecting the request for protection of legality of the Prosecution Office, joined the Appellate Court in what in our assessment is a wrong stance that the provision of Article 427 of the Criminal Code “can only be complemented with rules of international law, set forth in international acts which have been ratified at the time determined in the indictment as the time of the commission of the criminal offense referred to”. In doing so, the Supreme Court did not spend a word examining the option that the provision of Article 427 of the CC may be complemented with norms of customary law that had not been codified in any “international act”.

The Supreme Court in its judgment used another argument on the basis of which it rejected the request for protection of legality. According to the Supreme Court, when, as in this case, the defendants are indicted for a crime prescribed in the Criminal Code with a “blanket” provision, the norm to which the provision of the Criminal Code refers to (in this case, the rule of international law) must be correctly specified in the indictment. A court, in the opinion of the Supreme Court, “may not change or amend” the norm referred to in the indictment. In this case, the Prosecutor’s Office in the indictment wrongly referred to a norm from the (non-applicable) Rome Statute, and until the end of the main trial failed to modify the indictment; therefore, the courts that ruled in the case (High Court in Bijelo Polje, and then the Appellate Court of Montenegro), according to the Supreme Court, could not have corrected the Prosecutor’s Office by stating in the judgment what rule of international law had (possibly) been violated by the actions of the defendants.

The Supreme Court here referred to Article 369, paragraph 1 of the Criminal Procedure Code of Montenegro. This article of the Law is titled “Identity of the Judgment and Charges” and in the relevant part of paragraph 1 it prescribes that “the judgment may refer only to... an act which is the subject of the charges contained in the indictment that has been brought, or amended at the main hearing.” Referring to this provision, the Supreme Court held that by “changing” or “adding” an international norm to which Article 427 of the Criminal Code of Montenegro (“Crime against Humanity”) refers the court would violate the so-called objective identity of the judgments and charges.

This approach of the Supreme Court to the issue of objective identity of the judgment and charges is wholly formalistic and contrary to the rationale behind the rule of objective identity. Namely, the purpose of that rule is to prevent the court to deviate beyond the boundaries of factual description by burdening the defendant with essential facts that the prosecutor did not include in the description of the offence. In other words, by respecting the objective identity of the judgment and charges, the court decides on the event specified in the indictment and not on some other event. In this case, if the court held that the norm of international law referred to by Article 427 of the Criminal Code of Montenegro (“Crime against humanity”) is in fact to be found in Convention A, or in the customary law, and not in Convention B (the Rome Statute) as stated

in the indictment, the court would not deviate beyond the boundaries of the factual description of the offence, because it would still decide about the same events specified in the indictment, in which the defendants were allegedly involved.

Deportation of Refugees case

At least 66 Bosnian Moslem refugees were unlawfully arrested in Montenegro and then handed over to the army of their enemy, the Bosnian Serbs⁹⁰, in May and June 1992. Most of them were executed. Only twelve survived the concentration camps.

The 33 Bosnian Serb refugees⁹¹ arrested by the Montenegrin authorities were also deported back to the Bosnian Serb Republic to be mobilised into the army. As opposed to the Bosnian Muslim refugees, the deported Bosnian Serb refugees were not treated as hostages. It remains unknown whether any of them died due to deportation.⁹²

Most of the arrested refugees were taken to the Herceg Novi Security Centre which served as a collection centre; they were then transported on 25 and 27 May by buses to the concentration camp in the Foča penitentiary⁹³, or to unidentified locations in eastern BiH (Bosnian Serb Republic). All the Muslims deported on 27 May 1992 were probably killed the same or the following day and their bodies were thrown into the Drina River.⁹⁴ The remains of all the victims have not been found to date. The other Muslim refugees were arrested in Bar, Podgorica and near the border with BiH and were also deported in late May 1992 to the camp in Foča and other locations in the Bosnian Serb Republic, where they were handed over to Bosnian Serb agents and never seen again.

Although both the state authorities and the public were aware of the police campaign conducted in 1992 "with the consent of the competent prosecution office"⁹⁵, the State Prosecutor's Office did not initiate a criminal investigation until 18 October 2005, when it filed a motion for the investigation of five lower-ranked former MIA officers suspected of war crimes against the civilian population. This motion was filed only two days prior to the hearing on charges for

⁹⁰ In criminal proceedings before the High Court in Podgorica the defendants were tried for the deportation of 52 persons. Others deported to number 66 are listed on the list of Minister Nikola Pejaković in reply to a parliamentary query from 1993, or in the statements of the survivors, who mentioned persons who are not on the list in the proceedings for damages before the Basic Court in Podgorica. Journalist Šeki Radončić, researcher of the crime, based on his research, mentioned a number of 105 Muslim refugees ("Fatal Freedom - Deportation of Bosnian Refugees from Montenegro", Šeki Radončić, Humanitarian Law Centre, Belgrade, 2005, p. 145).

⁹¹ This number of persons is stated in the Reply to a parliamentary query of Minister Nikola Pejaković from 1993, and the same number is stated in the indictment.

⁹² Šeki Radončić, „Fatal Freedom - Kobna sloboda – Deportation of Bosnian Refugees from Montenegro“, Humanitarian Law Centre, Belgrade, 2005, p. 145.

⁹³ This fact, in addition to the Basic Court in Podgorica, was also determined by the ICTY in its judgement in case no. IT-97-25-T, *Prosecutor vs Milorad Krnojelac*.

⁹⁴ Conclusion after the autopsy of those who were found in June 1992, and buried at a cemetery in Sremska Mitrovica, where the bodies were brought ashore by Sava river. (see: "Fatal Freedom", p. 92).

⁹⁵ Office of the Montenegrin Minister of Internal Affairs Nikola Pejaković, Ref No 278/2, of 8 April 1993, Reply to a parliamentary query. The scanned document is available at:

<http://www.prelevic.com/Documents/Odgovor%20na%20poslanicko%20pitanje.doc>.

compensation of injured families of victims and the public learned about the motion when the state prosecutor mentioned it in court as an argument corroborating his motion that the court discontinue the reparations proceedings the families of the victims had initiated.

Although Montenegrin state prosecutors are in the habit of seeking the detention of the suspects when they submit motions for their investigation to prevent them from influencing the witnesses, tampering with the evidence or from absconding, even for much lighter crimes, the prosecutor proposed the detention of the suspects only when they were indicted and cited only the gravity of the crime and the penalty it warrants in support of his motion. This led to trials in absentia for the five defendants who were in Serbia. One of them was never arrested and extradited to Montenegro.

The investigation did not open before February 2006 and not one action⁹⁶ was undertaken during the first six months. Scores of witnesses were subsequently heard and the investigation was initially completed on 26 June 2008. It resumed on 3 November 2008, when the list of suspects was expanded to include the following three men: former State Security (SDB) Chief Boško Bojović; former SDB Deputy Chief Radoje Radunović and senior official of the Ulcinj Security Centre Sreten Glendža.

The following leading state officials also testified during the investigation: former Montenegrin Presidency President Momir Bulatović, the then Montenegrin Prime Minister Milo Đukanović and the then Montenegrin Presidency member Svetozar Marović.⁹⁷ Nikola Pejaković, who was Deputy to the Minister of the Interior Pavle Bulatović at the time of the deportation and subsequently became the Minister of the Interior, testified in Belgrade during the investigation. All of them denied they had known anything about the arrests of the refugees at the time.

In January 2009, Special Prosecutor's Office filed an indictment⁹⁸ with the Podgorica Superior Court and the motion for the detention of the following nine former and current MIA officers: Bojović Boško – Assistant MIA charged with the State Security Service (SDB); Marković Milisav – Assistant MIA charged with the police; Radunović Radoje, chief of the SDB Sector in Herceg Novi; Bakrač Duško – SDB operations agent in Herceg Novi; Stojović Božidar – head of the SDB Sector in Ulcinj; Ivanović Milorad – chief of the Herceg Novi Security Centre; Šljivančanin Milorad – commander of the Herceg Novi militia station; Bujić Branko – Bar Security Centre chief and Glendža Sreten – chief of the Ulcinj Security Centre.

They were charged with unlawfully transferring civilian population – BiH nationals, Muslims and Serbs with the status of refugees under the Convention Relating to the Status of Refugees. They were charged with war crimes against the civilian population, because they unlawfully deprived of liberty 79 nationals of BiH and turned them over to the Sokolac police, the Foča police and prison and Srebrenica police officers, at the order of the then Montenegrin Interior Minister Pavle Bulatović (now deceased) to act on the requests by the MIA of the Bosnian Serb Republic (then officially called the Serb Republic of BiH), to deprive of liberty and return to BiH persons who had come to Montenegro from BiH territory.

⁹⁶ For more details see: "Deportation of Bosnian refugees from Montenegro" the role of the State Prosecutor (May 1992 - February 2007)", Prelević Law Firm, 23 February 2007, available at: http://www.prelevic.com/Documents/DEP_studija_nova.pdf

⁹⁷ Lawyer of one of the defendants, Branimir Lutovac, said that the statements of Đukanovića and Marovića are 'monologues, because the judge did not ask them anything, „Đukanović and Marović will not testify“, *Vijesti*, 9 February 2011.

⁹⁸ KTS no. 17/08, 19 January 2009.

The questions – why none of the superior state officials were indicted and why none of them, apart from Momir Bulatović, were summoned to testify – have been publicly raised a number of times. At the time of the deportations, Momir Bulatović was the President of Montenegro, Milo Đukanović was its Prime Minister, Zoran Žižić was the Deputy Prime Minister charged with internal affairs and directly with overseeing the work of the MIA, while Nikola Pejaković was the Deputy to the then Minister of Internal Affairs Pavle Bulatović. Furthermore, the indictment did not even propose that the then Supreme State Prosecutor Vladimir Šušović⁹⁹ appear as a witness, although an MIA 1993 document states that the arrest and deportation of refugees was conducted “with the consent of the competent prosecution office”.¹⁰⁰ Notwithstanding this piece of evidence, prosecutor Vukčević in her closing words qualified as untrue Momir Bulatović’s allegation that the police continuously consulted with the Supreme State Prosecutor during the deportations.¹⁰¹

At the very end of the trial, Prosecutor Vukčević changed the qualification of the conflict in BiH from international to internal¹⁰², and cut the number of injured parties, but retained the legal qualification of the criminal offence.¹⁰³

The trial before Podgorica High Court judge Milenka Žižić and two jurors opened on 26 November 2009.¹⁰⁴ Duško Bakrač, Boško Bojović, Milorad Ivanović, Milisav Marković and Radoje Radunović, who were at large, in Serbia, were tried in absentio. After Serbia and Montenegro signed the Extradition Agreement on 29 October 2010, the Belgrade court ordered that Milorad Ivanović, Boško Bojović, Radoje Radunović and Milisav Mića Marković be placed in

⁹⁹ Vladimir Šušović is now a member of the Prosecutorial Council and thus nominates prosecutors and renders decisions on their accountability in disciplinary proceedings and on motions for their dismissals, wherefore “the career of prosecutor Vukčević (prosecuting the deportation case), nolens volens, depends also on Šušović’s vote” (“Medenica Suing, Medenica Adjudicating”, Monitor, 25 February 2011).

¹⁰⁰ Office of the Montenegrin Minister of Internal Affairs Nikola Pejaković, Ref No 278/2, of 8 April 1993, Reply to a parliamentary query. The scanned document is available at:

<http://www.prelevic.com/Documents/Odgovor%20na%20poslanicko%20pitanje.doc>.

¹⁰¹ “Prosecutor Says Guilt Proven without Doubt”, *Pobjeda*, 23 February 2011; (“Medenica

Suing, Medenica Adjudicating”, Monitor, 25 February 2011; “State to Blame”, *Dan*, 13 November 2010.

¹⁰² In the amended indictment, Prosecutor Vukčević claims that the rules of “international law were violated during and in relation to an armed conflict which did not have the character of an international conflict in the territory of Bosnia-Herzegovina” (Ref No Ks 3/09, <http://www.visisudpg.gov.me>). At the time of the deportations, FRY (Serbia and

Montenegro) and Bosnia-Herzegovina were two separate states. “Bosnia-Herzegovina’s independence was recognised by the European Community (now the EU) member states on 6 April and by the USA on 7 April 1992. BiH became a full member of the United Nations on 19 May 1992. In the meantime, Serbia and Montenegro proclaimed a new state on 27 April 1992 – the Federal Republic of Yugoslavia. UN Security Council Resolution 752 of 15 May 1992 called on the FRY and Croatia “to take swift action” to end interference and “respect the territorial integrity of Bosnia-Herzegovina (...)”. The FRY did not abide by the UN request in Resolution 752 and the UNSC adopted a new Resolution 757 on 30 May by which it introduced economic, cultural and sports sanctions against the FRY. UNSC Resolutions are international legal documents, under which an “international conflict” was waged in BiH in 1992 and the Montenegrin authorities actively participated in it”, “Medenica Suing, Medenica Adjudicating”, Monitor, 25 February 2011.

¹⁰³ “Waiting for the Indictment”, *Dan*, 1 March 2011, “Gravity of Indictment under Question”, *Dan*, 23 February 2011.

¹⁰⁴ “Šljivčanin: I Don’t Expect Absolution”, *Pobjeda*, 27 November 2009.

extradition detention not to exceed one year. Duško Bakrač was not arrested.¹⁰⁵ All the defendants were released from detention after their acquittal in the first instance.

A large number of witnesses, including the injured parties who had survived the deportations, the relatives of the killed victims, and Montenegrin police officers, testified at the trial. Nikola Pejaković, the then Deputy Interior Minister, was subsequently summoned to testify but did not appear in court because he was ill. Pejaković himself asked to be heard in court after Momir Bulatović's testimony, but the judge no longer thought it necessary to question him. The judge also dismissed the defence motions to call to the stand Milo Đukanović, Zoran Žižić and Vladimir Šušović, as well as Svetozar Marović and Milica Pejanović – Đurišić, who were members of the Montenegrin Presidency headed by Bulatović at the time of the deportations.¹⁰⁶ In the meantime Zoran Žižić passed away.

The defendants pleaded not guilty,¹⁰⁷ saying they had only been following orders and acting in accordance with the order in telegram No. 14–101 of 23 May 1992, to act in accordance with the Bosnian Serb MIA request and bring in all BiH nationals aged 18–65 and have them returned to BiH. The defence is of the view that those who had ordered the deportation and not those who had carried it out should be held accountable for this crime.

Momir Bulatović, the then President of Montenegro, asked the High Court to request of the competent institutions to relieve him from the obligation to preserve the confidentiality of official documents so that he could present the key evidence in this case.¹⁰⁸ Given that Bulatović did not specify which document was at issue, it was impossible to establish which state authority was to relieve him of the obligation to preserve its confidentiality. The Montenegrin Assembly¹⁰⁹ and the Government of Montenegro relieved Bulatović from the obligation to preserve the confidentiality of the documents within their remits.¹¹⁰ Bulatović testified on 12 November 2010 and said that the deportation was not a one-off action, but a regular activity of the police. He handed over to the court ten or so documents, including an original cable ordering the arrest of 161 people from BiH suspected of terrorism.¹¹¹ He said that the “extradition of the refugees was the mistake of the state, not of an individual” and confirmed that the police and Supreme State Prosecutor were “non-stop” in touch at the time.¹¹²

¹⁰⁵ “Men Arrested for Deportation to Spend up to One Year in Prison”, *Vijesti*, 17 December 2010.

¹⁰⁶ “Medenica Suing, Medenica Adjudicating”, *Monitor*, 25 February 2011

¹⁰⁷ “SDB Operating without Leaving Written Traces”, *Vijesti*, 4 December 2010; “They Feel Sorry for the Victims but Claim They are not Responsible”; *Vijesti*, 27 November 2009; “Šljivančanin: I Don't Expect Absolution”, *Pobjeda*, 27 November 2009.

¹⁰⁸ “Momir Bulatović: I Asked Milo What Was at Issue”; 27 September 2010.; *Vijesti*; “Assembly or Government to Draw the Next Move”; 28 September 2010.; *Dan*; “State Secrets Puts off Testimony”; 28 September 2010.

¹⁰⁹ “Momir Relieved of Preserving Non-Existent Secret”, *Dan*; 15 October 2010; “Bulatović Relieved of Keeping Secrets within Assembly's Remit”, *Dan*, 15 October 2010.; “Court to Submit a Precise Request”, *Dan*, 12 October 2010

¹¹⁰ “Momir May Testify”, *Dan*, 05 November 2010; “Government, Too, Relieves Momir of Preserving Confidentiality”; *Vijesti*, 05 November 2010.

¹¹¹ “Deportations Were the State's Task and the State's Mistake”, *Vijesti*, 13 November 2010; “Deportations Were the State's Mistake”, *Pobjeda*, 13 November 2010; “State to Blame”, *Dan*, 13 November 2010.

¹¹² *Ibid.*

The State Prosecutor's Office has not taken any action regarding the testimony of Momir Bulatović. Professor of the Faculty of Law of the University of Montenegro, Milan Popović, Editor in Chief of weekly "Monitor", Esad Kočan, and member of the Movement for Changes Koča Pavlović filed charges to the Supreme Public Prosecutor's Office on 3 May 2012 against the President of the Democratic Party of Socialists Milo Đukanović, who at the time of the deportation was the President of the Government, and the "then and for the most part, today's top of Montenegrin authority" for the war crime of deportation, as well as against the Supreme State Prosecutor Ranka Čarapić and her associates in the Supreme State Prosecutor's Office "for co-perpetration by helping the perpetrators of this crime to escape justice".¹¹³ In these charges, the "self-incriminating testimony" of the former president of the Republic of Montenegro Momir Bulatović, before the High Court in Podgorica on 12 November 2010, is referred to as a "direct evidence of high importance". The State Prosecutor's Office did not announced that it has undertaken actions in regard to these charges in the last year since its filing.

On 29 March 2011 the High Court rendered the judgement to acquit all nine defendants because "there is no evidence that the defendants as members of the MOI belonged to the armed forces of the FRY nor that they were in service of any of the parties in conflict and thus actively participated in the armed conflict. In that case the rules of international law would be binding to them, and therefore their activities cannot be considered and evaluated in terms of the commission of actions referred to in Article 142 of the CC of FRY that violate the rules of international law, because it does not appertain to a certain capacity - membership in the armed forces or acting in service of one of the parties in conflict".¹¹⁴ In addition, the judgment contained contradictory findings according to which, on one hand, at the time of the commission of crime the FRY was in armed conflict with forces of the Government of BiH, and on the other hand, the armed conflict in Bosnia and Herzegovina was allegedly not international.¹¹⁵

On 17 February 2012 the Appellate Court overturned this judgement finding it vague and contradictory, especially regarding the nature of the conflict in Bosnia.¹¹⁶ The Appellate Court particularly questioned the conclusion of the High Court that the FRY was in armed conflict with forces of the government of BiH, i.e. that the conflict on BiH territory was an international armed conflict.¹¹⁷ After retrials, the High Court in Podgorica on 22 November 2012 rendered an identical decision as after the first trial, but removed the sentence from the overturned judgment, which stated that the FRY was in armed conflict with forces of the Government of BiH.

The text of the judgment of the High Court from 22 November 2012 undoubtedly implies that the defendants conducted illegal deportation or transfer of civilians from the territory of Montenegro to the territory of the so-called Republic of Srpska in Bosnia and Herzegovina, that they took hostages in order to exchange prisoners of war, and that they illegally detained them and deprived them of the right to trial. However, according to the first-instance court, all of these actions did not have the character of war crimes, and in that context the defendants cannot be charged with them, because as members of the Ministry of the Interior (MOI) of the Republic of Montenegro in the Federal Republic of Yugoslavia, they apparently did not have the *necessary capacity* to be legally responsible for the crime. Namely, the first-instance court claimed that membership in the military, political, or administrative organization of a party in conflict or acting

¹¹³ "Filed charges against Đukanović and Čarapić for deportation", *Vijesti*, 3 May 2012.

¹¹⁴ Judgement of the High Court in Podgorica in case Ks.no. 3/09, 29 March 2011, p. 94.

¹¹⁵ *Ibid.*, p. 90 -91.

¹¹⁶ Ksž.no. 25/2011

¹¹⁷ *Ibid.*

in the service of a party in conflict constitutes the capacity that the defendants must have had in order to be responsible for the war crime.¹¹⁸

Analysis

The legal standard that the High Court in Podgorica applied in the case of “Deportation” in order to conclude that a war crime had not been committed is arbitrary and legally unfounded. The first-instance court did not refer to any source of law to support its attitude that the accused must have belonged to a military, political, or administrative organization of a party to the conflict or acted in the service of such a party, in order to be held responsible for a war crime. Likewise, the court did not explain the meaning of the term “in service of a party to the conflict”, and therefore this crucially important part of the judgment lacks an elementary explanation.

Article 142, para. 1 of CC of FRY (War crimes against the civilian population), as a provision whose violation is attributed to the defendants in the indictment, does not condition the responsibility of the perpetrator of the war crime by his/her membership in the armed forces or his/her acting in the service of one of the parties to a conflict. Instead, this Article of the Law uses a broad formulation “Who... orders... or commits”, that does not limit the capacity of the person who may commit a war crime against civilians to membership in the armed forces or acting in service of a party to the conflict. Such a requirement does not exist in the authoritative sources of international law. According to these sources, whether an offense has been committed as a war crime or an “ordinary” crime is determined by entirely different factors, and not by those arbitrarily employed by the first-instance court in the case of “Deportation”.

According to the practice of ICTY, an offence constitutes a war crime if the existence of an armed conflict “played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed”.¹¹⁹ On the basis of the Statute of the International Criminal Court, even a milder standard than that in the practice of the ICTY Appeals Chamber to constitute a war crime: the only requirement is that the war crime was committed in the context of and in connection with the armed conflict.¹²⁰

¹¹⁸ Judgement of the High Court in Podgorica in case Ks.no.6/12, 22 November 2012, p. 214.

¹¹⁹ Judgement of the ICTY Appeals Chamber in the case of *Kunarac and others*, 12 June 2002, para. 58: “What ultimately distinguishes a war crime from a purely domestic offence is that a war crime is shaped by or dependent upon the environment – the armed conflict – in which it is committed. It need not have been planned or supported by some form of policy. The armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed. Hence, if it can be established, as in the present case, that the perpetrator acted in furtherance of or under the guise of the armed conflict, it would be sufficient to conclude that his acts were closely related to the armed conflict.”

¹²⁰ See Article 8 (2)(a)-1 Document Elements of Crimes (*Elements of Crimes*), to the Rome Statute of the International Criminal Court. The Elements of Crimes was adopted by the Assembly of States Parties to the Statute, on the basis of Art. 9, para. 2 of the Statute (Law on the Ratification of the Rome Statute of the International Criminal Court, “Official Gazette of FRY - International Treaties”, no. 5/2001 from 27 June 2001), Elements of Crime, available at: <http://www.unhcr.org/refworld/docid/4ff5dd7d2.html>.

In the case of “Deportation”, the basis for the existence of a war crime in laws applied by international courts is undoubtedly present. The *ability* of the Ministry of the Interior of Montenegro to carry out unlawful imprisonment stemmed from the existence of an armed conflict. The *decision* to illegally detain, deport (“transfer by force”) the refugees, and to hand them over to be abused as hostages, was also directly related to the existence of an armed conflict – if there had been no conflict, the imprisonment and deportation of refugees, particularly Muslims, to Serbian forces from the area would not have happened. The *aim* of the commission of prohibited actions was directly related to the armed conflict, because the civilians were taken hostage and subsequently deported to BiH to exchange them for captured Serbian soldiers, the fact that the court established from the presented evidence.¹²¹

Even if the High Court, by arbitrarily introducing a higher requirement for the existence of a war crime than the one that exists in international and comparative law, was right, i.e. and if acting “in service of a party to the conflict” - in whichever meaning of the phrase - indeed constituted a prerequisite for the commission of a war crime, in this case the prerequisite would have been met. Namely, the defendants apparently were “in service of a party to the conflict” in BiH.

If the term “in service of a party to the conflict”, which the High Court in Podgorica has not explained, refers to actions *preceding* the criminal conduct, the defendants were in service of a party to the conflict (Republic of Srpska in BiH). **The notorious fact, following the judgments of the ICTY and the International Court of Justice, is that the Federal Republic of Yugoslavia significantly and in various ways aided the military efforts of Bosnian Serbs, especially in the early months of the conflict in Bosnia and Herzegovina, when the crime of the case “Deportation” was committed.**¹²² The International Court of Justice in its judgment in the case *Bosnia and Herzegovina v. Serbia and Montenegro* (2007) determined that the FR Yugoslavia “provided substantial military and financial support to the Republic of Srpska, and the denial of this support would greatly limit the options that were available to the authorities of the Republic of Srpska”.¹²³ The defendants in the case of “Deportation” represented a part of the state apparatus that decisively helped the military efforts of Bosnian Serbs.

If the term “in service of a party to the conflict” is interpreted as assistance, service and support to a party to the conflict by virtue of *the very criminal act* at issue in the trial, then the police and the State Security Service of the Republic of Montenegro (within FR Yugoslavia), evidently acted in service of a party to the conflict (Republic of Srpska in Bosnia and Herzegovina), by handing back its deserters so it would force them to mobilize and by delivering the civilians-Muslims so that they could be exchanged as hostages for captured Serbian soldiers.

In its judgment of 22 November 2012, the High Court improperly applied the international law in other ways as well. For example, the Court stated that Article 17 of the Additional Protocol to the Geneva Conventions of 12 August 1949, on the Protection of Victims of

¹²¹ Judgment of the High Court in Podgorica in the case Ks.no. 6/12, 22 November 2012, p. 179-80 (“Therefore, in this case, it is undoubtedly confirmed that the victims were civilians, that they were illegally detained and returned to BiH, persons of Serbian nationality to avoid military service, and Muslims to be exchanged for captured Serbian soldiers”). Page 211-12 of the judgement states more testimonies and documents of the Ministry of the Interior of Montenegro, which show that Muslims were detained to be exchanged.

¹²² Judgement of the ICTY Appeals Chamber in the case of Tadić (15 July 1999), paragraphs 150-160;

¹²³ *Case concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina vs. Serbia and Montenegro)*, judgement from 26 February 2007, para. 241.

International Armed Conflicts (Protocol II), referred to by the Prosecutor's Office in the indictment, refers only to displacements within a state, i.e. prohibits only that activity but not the relocation (deportation) outside the state borders.¹²⁴ This is incorrect, as the Art. 17, para. 2 of Protocol II refers precisely to relocation outside of the state borders. This is clear from the text of this provision: "Civilians shall not be compelled to leave their own territory for reasons connected with the conflict," and from the comments of the Article by the International Committee of the Red Cross (ICRC): "Forced movement beyond the national boundaries is dealt within paragraph 2".¹²⁵

The High Court also claims that "the perpetrators must have an intent... that the relocation should be conducted on discriminatory grounds".¹²⁶ In fact, in international law, including the practice of the ICTY, there is no requirement for the action, including deportation and forcible relocation, to be conducted with discriminatory intent in order for it to be punishable. For example, in the *Aleksovski* case, the ICTY Appeals Chamber stated that "there is nothing in the undoubtedly grave nature of the crimes falling within Article 3 of the Statute, nor in the Statute generally, which leads to a conclusion that those offences are punishable only if they are committed with discriminatory intent".¹²⁷

Despite the fact that the State Prosecutor charged the defendants only with the "illegal relocation of the civilian citizens of Bosnia and Herzegovina of Muslim and Serbian nationality who had the 'refugee' status," during the first trial and the retrial the court unambiguously concluded that the defendants committed some other offences falling under the War crime against the civilian population (Art. 142, p. 1, CC of FRY): illegal detention¹²⁸, hostage-taking¹²⁹, and deprivation of the right to a fair and impartial trial.¹³⁰ The Court did nothing with these conclusions, even though the CPC expressly states that the Court is not bound by the prosecutor's proposals regarding the legal qualification of the offense.¹³¹ The rule of the identity of the judgment and charges (Art. 369 para. 2, CPC) does not bind the Court with legal qualification of determined facts of the prosecutor. The Court was required to ensure justice through correct and complete qualification in accordance with *maximo iura novit curia* (the court knows the law).¹³²

Finally, the High Court applied the wrong criteria for the assessment of the character of the armed conflict in Bosnia and Herzegovina. The Court found that this conflict did not have an international character, because the parties that participated in the conflict were representatives of people and/or political-territorial units within the state. However, this standard is wrong, because the conflict in such a situation could also be international if a particular form or intensity of involvement of other countries is present. The fact that the Republic of Srpska BiH was established on a part of the territory of Bosnia and Herzegovina

¹²⁴ p. 211 and p. 213 of the judgement.

¹²⁵ Para. 4852 of the Comment in original in English says: "Forced movement beyond the national boundaries is dealt within paragraph 2". Comment on this Article is available at: <http://www.icrc.org/ihl.nsf/COM/475-760023?OpenDocument>.

¹²⁶ Judgement of the High Court in Podgorica in the case Ks.no.6/12, 22 November 2012, p. 211 and p. 213.

¹²⁷ Judgement of the ICTY Appeals Chamber in case *Prosecutor vs Zlatko Aleksovski*, 24 March 2000, para. 20.

¹²⁸ Judgement of the High Court in Podgorica in case Ks.no.6/12, 22 November 2012, p. 179 and p. 184.

¹²⁹ Ibid, p. 179-80 and 211-12.

¹³⁰ Ibid, p. 184.

¹³¹ Art. 369 (2) of CPC.

¹³² The Supreme Court of Montenegro in the case of Klapuh from 1994 determined on the basis of the facts established in this case, that brutal murder had not been committed, as the first-instance court qualified it in its judgement, but as a War crime against the civilian population.

that had its armed forces, does not mean that the conflict was not international, because foreign troops may also participate in an armed conflict within one state, or a “domestic” party to the conflict may be so closely connected with another state that it turns a seemingly non-inter

In this sense, the judgment of the ICTY Appeals Chamber in the *Tadić* case (1999) concluded, using a number of arguments, that the FR Yugoslavia, particularly intensively in the early months of the conflict in Bosnia and Herzegovina, in many ways significantly helped the military efforts of the forces of Bosnian Serbs. In addition, the judgment of the International Court of Justice in the case *Bosnia and Herzegovina v. Serbia and Montenegro* (2007), concluded that the FR Yugoslavia “provided substantial military and financial support to the Republic of Srpska, and the denial of this support would greatly limit the options that were available to the authorities of the Republic of Srpska”. The first-instance court did not state anything concerning these facts determined by the ICTY and the International Court of Justice, but the character of the armed conflict in Bosnia and Herzegovina cannot be credibly determined without that.

The Prosecutor’s Office should also be criticised, because it failed to specify in the indictment the illegal relocation to concentration camps and other illegal detention, hostage-taking, and the deprivation of the right to a fair and impartial trial, as criminal acts through which the War crime against the civilian population of BiH was committed. Furthermore, the investigation, as well as the indictment, were selective in personal terms, because they were reduced to a narrow circle of people that, although included former heads of state security and public security sectors of the police, did not include the Deputy Minister of the Internal Affairs, the Supreme State Prosecutor, who, according to documented evidence and testimony of witnesses approved the actions of the police, and the President and the Prime Minister of the Republic of Montenegro who received ex officio daily newsletters from the police and had legal authority to issue binding orders. After the testimony of the then President of the Republic of Montenegro, Momir Bulatović, who told the court that the case was a “State error” for which the defendants are not individually responsible, the Prosecutor’s Office remained passive. It has not been published in the media whether any action was initiated in relation to criminal charges filed in May 2012 by a group of citizens against members of the former State leadership and the Supreme State Prosecutor.

Kaluđerski laz case

Kaluđerski laz is a village in the Montenegrin municipality of Rožaje near Kosovo. During the NATO air strikes on the FRY in 1999, provoked by the escalation of violations of human rights and rules of war and threat to civilians in Kosovo, Yugoslav Army (VJ) members killed 21 ethnic Albanians, who had fled to Montenegro from Kosovo, in Kaluđerski laz and the nearby villages, where there were no clashes.¹³³ This crime is publicly known as Kaluđerski laz, although it was only one of the villages in which crimes were committed. A trial for the murder of 18 civilians, six of whom were killed in Kaluđerski laz and the others at other locations, was under way at the Bijelo Polje High Court at the end of the reporting period. Although the charges include all victims, the Prosecutor’s Office did not explain as to why individual victims were not included in

¹³³ “What Are the Army Archives Concealing”, Monitor, 16 February 2007; Ibid, information obtained from the attorney of the injured parties, Velija Murić.

the investigation and charges.¹³⁴

It took the Bijelo Polje Superior Prosecutor eighteen months to act on the criminal report the Montenegrin Committee of Lawyers for the Protection of Human Rights (CKP) submitted in June 2005 and file a motion for the investigation of 12 persons suspected of war crimes against the civilian population in Kaluđerski laz and the nearby villages from mid-April to early June 1999.¹³⁵

The investigation opened in early March 2007 against active Belgrade-born VJ officer Predrag Strugar residing in Podgorica and 10 members of the VJ Podgorica Corps reservists from the Berane municipality. The investigation unnecessarily dragged on. It was immediately clear that there were no grounds for suspecting four of the men the prosecutor named in the motion for investigation of such a grave crime and the prosecutor subsequently abandoned their prosecution.¹³⁶ Lawyer Velija Murić, who had filed the criminal report, claims that the State Prosecutor did not include all the perpetrators of the crime and all the victims. The prosecutor also failed to seek detention of the suspects until after they were indicted, when it was determined. The consequences of inertia of the Prosecutor's Office included the unavailability of the main indictee Predrag Strugar, prolonged keeping of defendants in detention (maximum three years) and the practical leading of investigation in the first-instance trial, which was not concluded even four years later.

The Supreme State Prosecutor's Office filed the indictment on 1 August 2008 against Predrag Strugar, Commander of I Battalion III Brigade of Podgorica Corps II Army of Yugoslavia, Momčilo Barjaktarović, Commander of III Troop I Battallion, Petar Labudović, Commander of I Line III Troop I Battallion, Aco Knežević, Deputy Commander of III Troop I Battalion, and Branislav Radnić, Bora Novaković, Miro Bojović and Radomir Đurašković, members of the Reserve III Troop I Battalion, for the criminal offense War crime against the civilian population. Defendants were charged with inhumane treatment of ethnic Albanian civilians on 18 April 1999, in Kaluđerski laz, thus violating international law, and the indicted Predrag Strugar, that in the same capacity, from 18 April to 21 May 1999, in the municipality of Rožaje, that was his area of responsibility, he ordered the murder of Albanian civilians, who came to Montenegro fleeing from the conflict in Kosovo.

The indicted Predrag Strugar is the only defendant who was an active officer of the Yugoslav Army.¹³⁷ The territory where the crimes occurred is borne by the command of the Second Army of the Yugoslav Army, headed by Milorad Obradović. Command responsibility was directed from him to the Commander of the Podgorica Corps Savo Obradović, and then to the defendant Commander of Battalion Predrag Strugar, whose area of responsibility included Kaluđerski laz.¹³⁸ Milorad Obradović and Savo Obradović are only referred to in the investigation as witnesses, and to date they have not been heard, because they all reside in the Republic of Serbia.¹³⁹ In this case, criminal proceedings are directed at the ultimate perpetrators. The injured parties claim that only seven, out of thirty officers who obliged the orders to open gunfire

¹³⁴ Lawyer Velija Murić is the chairman of the Montenegrin Committee of Lawyers for the Protection of Human Rights.

¹³⁵ "Stojanka Taking over War Crime Cases", Dan, 23 May 2007.

¹³⁶ Ranko Radnić, Veselin Čukić, Vesko Lončar and Zoran Knežević.

¹³⁷ "What Are the Army Archives Concealing", Monitor, 16 February 2007

¹³⁸ *Ibid.*

¹³⁹ Data provided by Sead Sadiković, journalist and author of a number of articles on war crimes in Montenegro, 14 March 2008, and the attorney of the injured parties Velija Murić, May 2011.

at civilians, are accused. In addition, under command line no one except Strugar was included in the investigation.

The military authorities, charged with the investigation of the crime scene in Kaludjerski laz, admitted they went to the scene of the crime with a day's delay, while the Montenegrin police were prohibited from accessing it, according to the then police chief Šemso Dedeić.¹⁴⁰ Zahit Camić, President of the Rožaje Basic Court, and his colleagues Milosav Zekić and Rafet Suljević, investigated the scenes of ten murders in the Rožaje municipality on the border with Kosovo. The army let him access the scene of the crime at Kaludjerski laz only three days after it occurred, when it found the body of Selim Kelmendi from the village of Čuška (Qyshk) at Peć on the road to Gornji Bukelj.

The injured parties' attorney claims that the bodies of the six civilians killed at Kaluđerski laz were taken to Andrijevića (Montenegro) the next day for an autopsy, and then transported to Novo Selo at Peć, where they were buried naked in a mass grave. Their bodies were exhumed after the war in Kosovo ended and UNMIK was deployed. Immediately after the incident at Kaluđerski laz, the then military prosecutor Miroslav Samardžić abandoned the criminal prosecution of the VJ troops suspected of crimes against civilians and archived the case.¹⁴¹ Investigation or criminal proceeding of the then military prosecutor, or persons who allegedly covered up and relocated the victims' bodies have not been initiated to date.

The trial opened on 19 March 2009.¹⁴²

The Judicial Panel of the High Court in Bijelo Polje, on 1 August 2011 released from detention the defendants Barjaktarović, Labudović, Novaković, Bojović and Đurašković, because the first-instance judgement had not been rendered after three years of detention.¹⁴³ The indicted Predrag Strugar was extradited from Serbia at the end of July 2012, and on 15 November 2012 acquitted with a bail of 570,280 euros.

During the procedure to date about 108 witnesses were heard and more than 80 trials held. The duration of the procedure is justified by the fact that for nine months the indictment could not be delivered to the indicted Predrag Strugar, and that documents from the military archives in Belgrade were late for month, even though they had been addressed several times with the request.¹⁴⁴ Lawyer of injured parties, in addition to submitting evidence from Serbia, justifies the duration of the proceedings with the fact that the investigation was not carried out in due time, in high-quality and comprehensively.¹⁴⁵

¹⁴⁰ "What Are the Army Archives Concealing", Monitor, 16 February 2007

¹⁴¹ *Ibid.*

¹⁴² "Summons to Strugar Sent to Serbia", Vijesti, 3 February 2009; "Strugar Summons Sent to Serbia", Vijesti, 4 February 2009.

¹⁴³ Release of the High Court is available at:

<http://www.visisudbp.gov.me/Aktuelnosti/Saop%C5%A1tenjazajavnost/tabid/59/Default.aspx>.

¹⁴⁴ "Prime Minister rendered a judgement before the court", *Dan*, 23 July 2011.

¹⁴⁵ "Trial for Kaluđerski laz is too long", Radio Free Europe, 26 July 2011, available at: http://www.slobodnaevropa.org/content/sudjenje_za_kaludjerski_laz_predugo_trajе/24277322.html.

In the meantime the judge has been changed, and the retrial that commenced on 26 December 2012 is still in process.

Legal analysis of this case is limited until a judgement is rendered. For now it is evident that this procedure has been inefficient, because following a year and a half of the pre-trial procedure, two years of investigation and four years of trial, the first-instance judgement has not yet been rendered.