



Akcija za ljudska prava

War Crime Trials in Montenegro

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Legislation

Montenegro is bound by all international humanitarian law conventions that were binding on the SFRY, FRY and the State Union of Serbia and Montenegro.¹ Much of the humanitarian international law had been incorporated in the SFRY and FRY laws, which incriminated War crimes against the civilian population, War crimes against prisoners of war, etc, even before the armed conflicts broke out in the former Yugoslavia.

The Criminal Code (CC) of Montenegro was amended in 2003² in order to fulfil all the obligations in the ratified conventions and two new offences were introduced: crimes against humanity (Art. 427) and the failure to take measures to prevent crimes against humanity and other values protected under international law (Art. 440). The latter offence incriminates command responsibility as a separate offence. Given that both crimes were prohibited pursuant to ratified international treaties during the conflicts in the 1990s, the exemption from the rule *nulla crimen sine lege, nulla poena sine lege* under Art. 15(2) of the ICCPR and Art. 7(2) of the ECHR applies; the Bijelo Polje Superior Court, for instance, applied it in its trials for crimes against humanity in the Bukovica Case (see below). No-one has, however, been indicted for this crime, for the failure to prevent or punish the commission of crimes of his subordinates.³

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 has rendered a final decision establishing that such a crime had been committed.

The Department for the Suppression of Organised Crime, Corruption, Terrorism and War Crimes was established within the Supreme State Prosecution Office in 2008. It is headed by a Special Prosecutor.⁴ The Special Prosecutor (Đurđina Nina Ivanović) has five deputies.⁵ She

1 "Bearing in mind the nature and types of the crimes committed, the international legal basis for the punishment of these crimes perpetrated in the territory of the former Yugoslavia, which are mostly the Geneva Conventions for the Protection of War Victims (1949) and the Protocols I and II Additional to the Geneva Conventions (1977), should be supplemented by 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 for the Protection of Cultural Property in the Event of Armed Conflict (1954). All these Conventions have been ratified by the former SFR of Yugoslavia." (Federal Government of the Federal Republic of Yugoslavia, Report Submitted to the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), Belgrade, 1992 (<http://www.ess.uwe.ac.uk/documents/repyug1.htm>).

2 *Sl. list RCG*, 70/2003

3 See more on the institute of command responsibility in international law and SFRY and FRY criminal law in: Command Responsibility – Towards Clear Answers and Precise Positions., Siniša Vazić, judge, Justice in Transition, <http://www.pravdautranziciji.com/pages/article.php?pf=1&id=1477>, "Command Responsibility: Contemporary Law," Iavor Rangelov and Jovan Nicić, Humanitarian Law Centre, 2004 (<http://www.hlc-rdc.org/uploads/editor/Command%20Responsibility.pdf>); "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.

4 Article 66, State Prosecution Office Act (*Sl. list RCG* 69/2003, *Sl. list CG* 40/2008).

accounts for her work and the work of the Department to the Supreme State Prosecutor.⁶

Specialised departments for the suppression of organised crime, corruption, terrorism and war crimes – comprising eight specialised judges and three investigation judges – were established within the Podgorica and Bijelo Polje Superior Courts in 2008.⁷ Both the special prosecutor and her deputies and the judges in the specialised departments are stimulated by additional remuneration.⁸

General Overview of War Crime Trials

Four war crime trials were under way in Montenegro in 2010., 2011. and until mid September 2012: 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-Herzegovina, the so-called Deportation of Refugees case, in May 1992; 3) the trial for war crimes against the civilian population in the Bukovica region in 1992 and 1993⁹; and 4) the trial for war crimes against the civilian population at Kaluđerškilaz in 1999.¹⁰

In 2010., 2012 and by mid September 2012 three first instance verdicts have been passed - conviction in the Morinj case, and two acquittals for all defendants in cases Bukovica and Deportation of Refugees. On 25 November 2011 the Court of Appeal quashed the first instance verdict in the Morinj case and referred the case back for retrial. Also, the verdict in the Bukovica case was revoked in June 2011, and the case was returned for retrial, again followed by a judgment of acquittal in early October 2011. In the Morinj case, the High Court ruled on 26 January 2012 (four defendants were convicted, two acquitted), and the case is currently pending before the Appellate Court. In the Deportation case, on 17 February 2012 the Appellate Court overturned the acquittal of the High Court and returned the case to the first instance court for a new trial¹¹, which is currently pending. The main trial in the Kaluđerškilaz case has not yet ended, the continuation is expected in mid-September 2012.

In all these cases, only the immediate perpetrators of the war crimes have been indicted, while those who had ordered them have as a rule remained unindicted. Furthermore, the state prosecution office has not applied the institute of command responsibility, under which superiors, who were or should have been aware of a crime committed by their subordinates but did nothing to

5 The official website of the State Prosecution Office of Montenegro (accessed on 12 June 2011): <http://www.tuzilastvocg.co.me/tuzilacka%20organizacija/drzavni%20tuzioci.htm>

6 Article 70, State Prosecution Office Act (*Sl. list RCG* 69/2003, *Sl. list CG* 40/2008).

7 Act Amending the Act on Courts (*Sl. list CG* 22/08); Montenegrin Government Answers to the EC Questionnaire, Chapter 23, Judiciary and Fundamental Rights, 10 November 2009.

8 Montenegrin Government Answers to the EC Questionnaire, Chapter 23, Judiciary and Fundamental Rights, 10 November 2009 (http://www.esiweb.org/pdf/montenegro_answers-to-the-ec-questionnaire/Chapters%2022-33/Chapter%2023%20%20Judiciary%20and%20fundamental%20rights/Answers%201.pdf).

⁹ Final decision was rendered in the case, details below.

¹⁰ In the Supreme State Prosecutor's report on the work of the State Prosecution Office in 2010, Supreme State Prosecutor Ranka Čarapić stated that not one criminal report for crimes against humanity and values guaranteed under international law was filed in 2010. Twenty three people had earlier been indicted for this crime: the appellate court overturned acquittals of six of them in the first instance, while the proceedings against the other 17 were under way in 2010. (<http://www.tuzilastvocg.co.me/lzvjestaj%20za%202010.%20godinu.pdf>).

¹¹ Decision available at: http://sudovi.me/odluka_prikaz.php?id=3760.

prevent or punish it, are held liable for the crime (commission of a crime by the failure to act).¹²

The Montenegrin State Prosecution Office does not publish integral texts of the war crime indictments on its website¹³. The Podgorica Superior Court (Specialised Department for the Crimes of Organised Crime, Corruption, Terrorism and War Crimes) published some war crime judgments on its website, notably the first-instance judgment in the Deportation of Refugees case¹⁴, as well as the judgment in the Morinj case. The Bijelo Polje Superior Court had not filed the first instance judgment in the Bukovica case by mid-September 2012.

State prosecutors practice seeking pre-trial detention when they submit motions for the investigation of people suspected of committing even much lighter criminal offences than war crimes. However, in all the war crimes proceedings, they sought detention for the defendants only after the investigations were completed, when they filed the indictments. In result, half of the defendants in the Deportation of Refugees case, the main defendant in the Kaluđerskilaz case and one of the Morinj co-defendants have been tried *in absentio*.

The defendants in the Bukovica case spent around 8 months in detention. The indictees in the Morinj case spent a total of 21 months in detention, while the four defendants in the Deportation of Refugees case, who had been arrested in Montenegro, spent 27 months in detention. The other four indictees in the latter case, who were subsequently arrested in Belgrade, spent around four months in extradition detention. The indictees in the Kaluđerskilaz case spent the most time in detention, 36 months, 8 of which pending trial.

No one was indicted for war crimes during the siege of Dubrovnik (from 1 October 1991 until end June 1992) by mid-September 2012¹⁵ although, if nothing less, the state officials accepted responsibility for the organised plundering in the territory of the Republic of Croatia which the Montenegrin nationals had taken part in.¹⁶ Only former General of the Yugoslav People's Army Pavle Strugar¹⁷ and his subordinate Miodrag Jokić¹⁸ had been indicted by the ICTY for war crimes

12 More on this institute in international humanitarian law and the SFRY and FRY Criminal Codes above, in footnote 7.

13 In the chapter on Transparency, the Supreme State Prosecutor reported that the public was informed about the work of the Prosecution Office (including the work of the Special Prosecutor – Department for the Suppression of Organised Crime, Corruption, Terrorism and War Crimes) through press releases, participation in TV shows, and through one interview to a newspaper and one news conference in 2010 (<http://www.tuzilastvocg.co.me/Izvjestaj%20za%202010.%20godinu.pdf>).

14 Ks.br.3/09:http://www.visisudpg.gov.me/LinkClick.aspx?fileticket=uvaX_Hzrllo%3d&tabid=86.

15 On 29 December 2009, the Montenegrin Supreme State Prosecution Office said that, apart from the Morinj camp case, no other case had been opened about the events in the Dubrovnik region in 1991 and 1992, because no criminal reports against Montenegrin nationals had been filed by that date (Reply to a request for access to information, HRA archives).

16 Montenegrin Agriculture Minister Milutin Simović said in 2005 that Montenegro would pay 375,000 Euros to the Konavle municipality to compensate for the 268 milk cows and a number of calves and bullocks taken from a farm in Gruda in 1991. The Presidents of Croatia and Montenegro confirmed that talks were under way about returning the assets of the Dubrovnik airport that was seized and moved to Tivat Airport during the war. According to the data of the Croatian state authorities, in the Dubrovnik area alone, 336 larger and smaller sea vessels were destroyed, damaged or stolen during the war, in the 1991–1992 period (“No-One is Guilty”, *Monitor*, 20 August 2010).

17 Pavle Strugar, former JNA General, who commanded the attack on Dubrovnik (Commander of the JNA 2nd Operational Group), and residing in Montenegro, turned himself in to the ICTY in October 2001. On 31 January 2005, Strugar was found guilty on 2 of 6 counts of violations of the laws and customs of war under the 1949

during the attack on Dubrovnik. Retired Admiral Milan Zec had also been indicted by the ICTY, but he was acquitted in 2002¹⁹, while JNA First Class Captain Vladimir Kovačević – Rambo was granted provisional release for medical treatment.²⁰ One issue that has frequently been raised regards the command responsibility of Momir Bulatović, former Montenegrin Presidency President (December 1990 – December 1992), who was legally vested with the power to render decisions on the use of the Montenegrin Territorial Defence – the largest component of the JNA 2nd Operational Group made up of mobilised Montenegrin reservists in the attack on Dubrovnik. Another issue regards the involvement of Montenegrin police officers in the Dubrovnik operations.²¹

The Dubrovnik county state prosecutor in late 2009 filed indictments (Ref. No. 46/09) against 9 former JNA officers²² accused of “not even trying to prevent conduct in contravention of the

Geneva Convention and the 1977 Additional Protocols and common law, and punishable under the articles of the International Tribunal’s Statute, for attacks on civilians and destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science. He was initially sentenced to eight years’ imprisonment and the Appeals Chamber partly upheld the prosecutor’s appeal and convicted him to seven and a half years imprisonment due to his impaired health. Strugar was released earlier, on 20 February 2009, because of his age and poor health after having served over two-thirds of his sentence (Dubrovnik Case, No IT–01–42, “Prosecutor v. Pavle Strugar”, <http://www.un.org/icty/bhs/cases/strugar/judgements/050131/str-tj050131b.pdf>).

- 18 Miodrag Jokić, the commander of the JNA 9th Military Naval Sector (VPS) and subordinate to Pavle Strugar, reached a plea agreement with the ICTY Prosecutor on 27 August 2003 and pled guilty to 6 counts of the indictment for murder, cruel treatment, attack on civilians, devastation, unlawful attacks on civilian objects and destruction or wilful damage done to civilian institutions. He was convicted to 7 years imprisonment on 18 March 2004, and the judgment was upheld on 30 August 2005. He served his sentence in Denmark until 3 September, when he was released after having served two-thirds of the sentence (http://www.icty.org/x/cases/miodrag_jokic/cis/en/cis_jokic_en.pdf).
- 19 “Milan Zec Acquitted”, *B92*, 26 July 2002. (http://www.b92.net/info/vesti/index.php?yyyy=2002&mm=07&dd=26&nav_category=16&nav_id=6127)
- 20 The Belgrade Special Court in December 2007 rejected the indictment against Vladimir Kovačević for war crimes against the civilian population of Dubrovnik, under the explanation that the indictee was seriously ill and unable to follow the trial (“Belgrade Court Dismisses Indictment against Rambo”, *Radio Free Europe*, 5 December 2007, <http://www.slobodnaevropa.org/content/article/765255.html>).
- 21 The documentary “Attack on Dubrovnik: War for Peace” by Kočo Pavlović, Obala Productions, 2004. The film carries a TV statement made in 1991 by Montenegrin Assistant Minister of Internal Affairs Milisav Marković about the armed campaigns by the Montenegrin police on the Dubrovnik battlefield. The MIA was part of the Government of Prime Minister Milo Đukanović. Montenegrin MIA forces were mobilised to the Dubrovnik battlefield pursuant to a *Strictly Confidential Order of Presidency President Momir Bulatović Ref No. 01–14 of 1 October 1991 on the mobilisation of the Special Militia Unit the size of an enhanced infantry company, Titograd, 1 October 1991*.
- 22 General Jevrem Cokić (Commander of the JNA 2nd Operational Group until 5 October 1991), General Mile Ružinovski (Commander of the JNA 2nd Operational Group on 7–12 October 1991), General Pavle Strugar (Commander of the JNA 2nd Operational Group as of 13 October 1991), Vice Admiral Miodrag Jokić (Commander of the JNA 9th Military Navy Sector JNA), battleship Captain, Navy Colonel Milan Zec (Head of the JNA 9th Military Navy Sector Headquarters), General Branko Stanković (Commander of the 2nd Tactical Group within the JNA 2nd Operational Group), Colonel Obrad Vičić (Commander of the JNA 472nd Motorised Brigade) and Colonel Radovan Komar (Head of the JNA 472nd Motorised Brigade Headquarters). Two other JNA officers, 1st Class Captain Vladimir Kovačević (Commander of the JNA 472nd Brigade 3rd Battalion) and battleship Lieutenant Captain Zoran Gvozdenović (Commander of JNA Navy Gunboat 403), were also charged with issuing direct orders for the shelling of the “historic nucleus of the Dubrovnik Old City, which has been under UNESCO protection since 1979 and has been classified as a zero category heritage site” and for shelling the settlements of “Cavtat, Župa Dubrovačka, Zaton, Trsteno, Hotels Croatia, Belvedere, Plakir, Tirena and Minčeta”, which resulted “in the deaths of a number of civilians”.

Geneva Conventions by their subordinate units during JNA's aggression on the Dubrovnik area in 1991 and 1992".²³ The indictment says that the units they commanded randomly shelled settlements; killed the civilian population, imprisoned, abused it and forced it to flee. According to the indictment, JNA units under their command entered the settlements, demolished civilian, cultural, religious buildings and industrial facilities, plundered them and set them on fire, "killing 116 and wounding hundreds of civilians, destroying cultural and historic monuments and incurring damage of major proportions".²⁴ The accused were not available to the Croatian judiciary, so a trial on this indictment has not even started.²⁵ If it transpires that three of the indictees, Strugar, Jokić and Zec, have already been tried for these crimes before the ICTY, prosecuting them for the same crimes would constitute a violation of the *nebis in idem* principle. Two of the indictees, Pavle Strugar and Radovan Komar, are living in Montenegro. Given that the extradition agreement Montenegro and Croatia signed on 1 October 2010 does not extend to war crime indictees²⁶ (as opposed to the extradition agreement with Serbia)²⁷, Strugar and Komar may be tried for these crimes only in Montenegro.²⁸

Although it is common knowledge that "weekend warriors" from Montenegro, particularly from Nikšić, participated in the plundering of civilian facilities and the commission of other war crimes in the territory of Foča and other towns in eastern Bosnia-Herzegovina (BiH) near the border with Montenegro in the 1992–1993 period²⁹, no one was prosecuted for these crimes in Montenegro until September 2012.³⁰

At the meeting "War for Peace - 20 years later" one of the victim witnesses in the Morinj case, Metodije Prkačin, accused the judge of the Appellate Court of Montenegro Milivoje Katnić, Lieutenant of the Counterintelligence Service during the attack on Dubrovnik in 1991-1992, for

23 "Dubrovnik Indictments", *Monitor*, 7 May 2010.

24 *Ibid.*

25 NVO press release available at:

http://www.documenta.hr/documenta/attachments/520_Priop%C4%87enje%20Dubrovnik.pdf.

26 Act Ratifying the Extradition Agreement between Montenegro and the Republic of Croatia (*Sl. list CG – Međunarodniugovori* 1/2011). A group of Montenegrin and Croatian human rights NGOs on 15 September 2010 called for the agreement also to extend to war crime indictees (<http://www.hraction.org/?p=397>).

27 Act Ratifying the Extradition Agreement between Montenegro and the Republic of Serbia, (*Sl. list CG – Međunarodniugovori*, 04/09 and 4/2011 – Agreement between Montenegro and the Republic of Serbia Amending the Extradition Agreement between Montenegro and the Republic of Serbia was concluded in Belgrade on 30 October 2010).

28 Information on the proceedings was last released in May 2010, when it was published that the Dubrovnik prosecutors called for the detention and issue of arrest warrants against all the indictees and the County Court appointed *ex officio* counsels to the defendants and forwarded them the indictments with instructions on the right of rejoinder. Four rejoinders have to date been filed by the legal counsels and one by one of the indictees himself ("Dubrovnik Indictments", *Monitor*, 7 May 2010).

29 For example, these crimes were last mentioned by Assistant Human Rights Minister Sabahudin Delić in the *TV Vijesti* show Prizma on 25 May 2011.

30 Chairwoman of the BiH Women Victims of War Association Bakira Hasečić sent an open letter to Montenegrin Assembly Speaker Ranko Krivokapić on 11 March 2011 in which she expressed the willingness of "a delegation of raped men and women, camp inmates, ill-treated and beaten citizens and the families of the deceased to testify in the Montenegrin Assembly about the conduct and actions of Montenegrin reservists and specifically about specific perpetrators and information on where some of them are hiding in Montenegro" (see "Official Montenegro Must Apologise", *Republika*, 12 March 2008). It remains unknown whether the Assembly Speaker has ever replied to the letter or whether the prosecutors acted on it.

being most responsible for the looting and arson in Cavtat.³¹Prkačin also said that on the battlefield, as a member of the military police, he saw a person for whom he had been told it was Vesna Medenica (President of the Supreme Court of Montenegro), that Lieutenant Colonel Ljubo Knežević used local population as human shield when transporters were entering Cavtat, and that commanders Gojko Đuračić, who lives in Bar, and Nemanja Kordolija, who also lives in Montenegro, know all about everyone's actions.³²Vesna Medenica, President of the Supreme Court of Montenegro, denied these allegations stating that at the time she held the office of the Basic State Prosecutor, while judge Milivoje Katnić denied being responsible for any crime. According to information Human Rights Action has received from NGO Documenta from Croatia, after the meeting Metodije Prkačin had a conversation with the inspector of the Republic of Croatia Ministry of the Interior. In conversation Prkačin shared his knowledge on beating in Cavtat, submitted the relevant documents and referred the inspector to other witnesses. The Supreme State Prosecutor's Officer refused to provide any information on action in this case, and in mid-September 2012 the appeal procedure for failure to act on the request for free access to information submitted by Human Rights Action was pending.

Morinj Case

Over 160 Croats, mostly civilians from the Dubrovnik area, were held and tortured in the Morinj camp (called Collection Centre Morinj in the indictment) near Kotor, which the JNA ran from October 1991 to August 1992. Two inmates died in the camp.³³

In late March 2007, the Croatian State Prosecution Office (DORH) forwarded to the Montenegrin Supreme State Prosecutor evidence against ten Montenegrin nationals suspected of war crimes against civilians and POWs in Morinj in the 3 October 1991–2 July 1992 period.³⁴

Superior State Prosecutor Ranka Čarapić on 7 July 2007 filed a motion with the Podgorica Superior 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.³⁵Čarapić 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.³⁶

The following six former reservists of the JNA 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 Gličić.³⁷All of them were detained in

³¹„Vesna Medenica an officer at the Dubrovnik battlefield?“, *Vijesti Portal*, 2 December 2011. Information available at: <http://www.vijesti.me/vijesti/vesna-medenica-kao-oficir-dubrovackom-ratistu-clanak-49849>.

³²*Ibid.*

³³ One prisoner died of a heart attack and the other committed suicide (“No One Was Killed in Morinj”, *Dan*, 2 March 2007).

³⁴ “Ten Montenegrin Nationals under Suspicion”, *Vijesti*, 29 March 2007.

³⁵ “Morinj Troubling Sixsome”, *Dan*, 08 July 2007. “Suspected of Crime in Morinj”, *Vijesti*, 08 July 2007.

³⁶ “Morinj List Not Final”, *Dan*, 16 November 2007.

³⁷ “Indictment for Morinj Filed”, *Pobjeda*, 16 August 2008.

custody, except for Menzalin, who was at large and tried *in absentio*.

The following superior army commanders were mentioned as responsible for the Morinj camp in that period: JNA Naval Commander Admiral Mile Kandić; Commanders of the 9th VPS Navy Colonel KrstoĐurović (killed on 5 October 1991) and his successor Vice Admiral MiodragJokić; head of the 9th VPS Navy Colonel Milan Zec; commander of the 2ndoperational group Lieutenant Colonel PavleStrugar; heads of the Security Directorate of the Federal National Defence Secretariat – JNA at the time the camp existed: Generals Marko Negovanović, AleksandarVasiljević and NeđeljkoBošković; MirsadKrluč was said to have headed the special military counter-intelligence interrogation group in Morinj.³⁸ Supreme State Prosecutor RankaČarapić said that the prosecutors did not have evidence incriminating the persons in the command echelons.³⁹Zec, Jokić and Strugar were accused and Jokić and Strugar were convicted by the ICTY for war crimes during the siege of Dubrovnik, but this indictment had not covered the events in Morinj as well.

The trial opened before the Superior Court in Podgorica on 12 March 2010. A total of 58 witnesses were heard. Retired JNA Colonel RadomirGoranović from Nikšić, who appeared only as a witness, said he had interrogated as many as 49 prisoners in Morinj and that it was “definitely one of the most humane camps in the former Yugoslavia”.⁴⁰The injured parties, former inmates, whose testimonies mostly coincided, described the physical and psychological ill-treatment they had been subjected to. They named three other men, who had ill-treated them but had not been indicted.⁴¹

The Podgorica Superior Court rendered its judgment on 15 May 2010. The following were found guilty and sentenced for war crimes against prisoners of war: MladenGovedarica to two years’ imprisonment, ZlatkoTarle to 18 months’ imprisonment, Ivo Gojnić to two and a half years’ imprisonment and Ivo Menzalin to four years’ imprisonment and released them from detention. The Podgorica Superior Court chamber upheld the judgment on 28 May 2010.⁴²The court ordered the detention of Menzalin, who had been at large, as soon as he was arrested.⁴³

In the explanation of the verdict, judge MilenkaŽižić emphasised that this criminal trial was specific inasmuch as it dealt with crimes committed 18 years ago and that the testimonies of the victims were one of the main means of evidence. “It is impossible to expect that the testimonies of

38 “Who Set up ‘Morinj?’” *Monitor*, 20 March 2009, “Long Way to Go to Obtain Justice”, *Monitor*, 28 May 2010.

39 “Medenica: We are not Sparing People Close to Government”, *Vijesti*, 16 November 2007. On the other hand, the Montenegrin prosecutors did not go into how the JNA set the camp up in the first place and on what grounds and why the Montenegrin authorities tolerated its existence. “A state of war was not declared under the SFRY Constitution and laws in 1991, nor did the SFRY or Montenegro officially declare a war against Croatia. Croatian prisoners in Morinj were still SFRY nationals from 3 October 1991 onwards. Lawful courts, prosecution offices, prisons and detention units existed in the territory of Montenegro at the time. Pursuant to the then state legal order, the JNA had the powers to enforce army regulations and state laws in war-torn territories, but Morinj at Kotor was not a ‘war-torn territory’” (“Who Set up ‘Morinj?’”, *Monitor*, 20 March 2009).

40 “Disheartening Indictment”, *Dan*, 9 July 2007.

41 “Imprisoned in Camp when He was only 16”, *Pobjeda*, 1 July 2009; “‘Hungarian’ Truncheoned Them”, *Dan*, 27 June 2009; “Conditions in Camp were Horrible”, *Dan*, 25 June 2009.

42 “Convicts Remain at Liberty”, *Dan*, 29 May 2010.

43 “Sixsome Convicted to 16.5 Years in Jail Altogether”, *Vijesti*, 16 May 2010; “Menzalin Turns Himself in”, *Vijesti*, 4 March 2011.

all witnesses would coincide fully given that they are 18 years later talking about all the people who made them suffer, obviously a lot and much of that suffering has not been prosecuted in court. In the court's view, identicalness of their statements would have indicated that they had agreed on what to say. This is not the case. They clearly cannot give the same accounts and the same details, given the time that has elapsed since the events and the strong emotional reactions provoked by the horrible scenes they were exposed to day in and day out. It would be impossible to expect of the witnesses to remember the height of the person who had beaten them up as they were dealt blows, overwhelmed with panic terror after 18 years. They recognised the voices of some of those who had done them evil..."⁴⁴

The defence counsels were dissatisfied with the judgment, saying it had been rendered in advance, that it was a political verdict, a farce designed to appease the EU. Attorney Goran Rodić said that the convictions were a compromise to cover the time the defendants had spent in detention, while lawyer Vesna Gačević-Rogova claimed that not one piece of evidence corroborated the judgment.⁴⁵

The judgment met with bitterness in Dubrovnik, because the defendants were sentenced to mild penalties "as if they had been tried for traffic offences, not for crimes committed during the defence of the SFRY".⁴⁶ The injured parties perceived the judgment as shameless ridicule of the POWs and civilians, who had been beaten, ill-treated and humiliated by the six former JNA members on a daily basis.⁴⁷ HRA asked why the prosecutors have not yet charged all the people, whom the former prisoners claimed had participated in their systematic ill-treatment and the superiors of the torturers, who had been under the obligation to prevent and punish their crimes.⁴⁸

The Appellate Court overturned the first-instance verdict due to a series of errors of law or fact in late November 2010⁴⁹, and ordered a retrial. It found that the verdict was wrongfully based on uncertified copies of witness testimonies during the investigation before the Croatian courts and uncertified copies of the injured parties' medical documentation and ordered that all these documents be excluded from the evidence at the retrial. The court found the defendants guilty only of war crimes against POWs but not for war crimes against the civilian population, for which they were also charged, because it upheld the argument that the defendants considered all the injured parties prisoners of war. The state prosecutor failed to appeal the verdict on these grounds, too, wherefore the defendants will be retried only for war crimes against prisoners of war. The retrial opened on 12 April 2011.

Apart from Menzalin, who has been detained since his arrest on 2 March 2011⁵⁰, the other defendants have been released from detention.⁵¹ At the beginning of the main hearing, the

44 "Sixsome Convicted to 16.5 Years in Jail Altogether", *Vijesti*, 16 May 2010.

45 "Penalties Set in Advance", *Dan*, 16 May 2010.

46 "War Crime Warranting Same Penalty as Traffic Offence", *Vijesti*, 17 May 2010.

47 *Ibid.*

48 The HRA statement is available at: [http://www.hraction.org/?p=356](http://www.hrraction.org/?p=356).

⁴⁹Decision of the Appellate Court available at: <http://www.apelacionisudcg.gov.me/LinkClick.aspx?fileticket=elinxaQLKk%3d&tabid=79>.

50 "Menzalin Turns Himself in", *Vijesti*, 4 March 2011; "Menzalin Gives Himself up", *Dan*, 4 March 2011.

51 "New Trial for Morinj on 12 April", *Vijesti*, 11 March 2011.

accused pleaded not guilty. At the trial six statements of witnesses were read,⁵² and then four more.⁵³ In the retrial copies of the minutes of hearing of witnesses before judicial authorities of the Republic of Croatia, which date from before the Prosecution of Montenegro took over the prosecution, were excluded from the case file because they were uncertified and the court could not base its decisions on such evidence.⁵⁴ The hearing was resumed on 25 July 2011 by reading 147 testimonies of victims' witnesses. The prosecutor had no objection to the testimonies, while the defence filed the same objections as previously. In late October the Council of the Superior Court in Podgorica rejected as unfounded the defence attorneys' request to exclude the Presiding Judge in the process, Milenka Žižić, from further proceedings because allegedly she has not been assigned to the case under the rules of the random assignment of cases.⁵⁵ In closing arguments, Deputy Special Prosecutor, Lidija Vukčević, amended the indictment on 11 November 2011 accusing Mladen Govedarica, Bora Gligić, Špiro Lučić and Ivo Menzalin of committing the criminal offense of War Crimes against Civilians in concurrence with the criminal offence "War Crimes against Prisoners of War."⁵⁶ Next hearing, scheduled for 7 December 2011, was postponed because the defence attorneys requested an exemption of Deputy Special Prosecutor Vukčević, claiming that she had no right to amend the indictment, because the decision of the Appellate Court of Montenegro overturning the previous first instance judgement, stated that the accused shall not be tried for crimes against the civilian population in retrial, because the prosecutor did not appeal to that part of the first instance judgement.⁵⁷ The said request was rejected, and in the continuation trial. Deputy Vukčević stated: "I have both legal and moral obligation to look back, because, after the Appellate Court overturned the judgment and parts of the decision were made public, there was an impression that the judgment had been overturned because of the allegedly invalid evidence and the prosecutor's errors. Obviously, the Appellate Court did not carefully read all the minutes from the main trial. If it had, it would have been aware that on 19 and 30 March, and again on 19 April 2010, in the amended indictment and final words the prosecutor also included the injured parties, that the Appellate Court claimed were not in the indictment. Appellate Court stated that the special prosecutor had failed to file an appeal due to violation of the provisions of the Criminal Code, allegedly because the charges have not been specified. This allegation is also incorrect, because the prosecutor appealed against the first instance judgment on all legal grounds. Factual description of the judgment contained all the elements of both crimes: War crimes against prisoners of war and War crimes against the civilian population, as well factual description of actions. High Court has drawn the conclusion that all the injured parties had the status of prisoners of war, although there were also civilians among them. Prosecutor had no reason to file an appeal because allegedly the charges had not been specified, however, he had grounds to complain of erroneously established facts and violations of the Code."⁵⁸ On the occasion of Deputy Vukčević's

⁵²"Witnesses will not appear due to age and disease", *Pobjeda*, 22 April 2011.

⁵³"Witnesses did not appear", *Pobjeda*, 6 May 2011.

⁵⁴"Defence objects to the statements of witnesses", *Pobjeda*, 26 July 2011.

⁵⁵ "Still tried by Milenka Žižić", *Dnevne novine*, 29 October 2011.

⁵⁶"They abused civilians and prisoners of war," *Vijesti*, 12 November 2011.

⁵⁷"The defence disputed the new indictment", *Vijesti*, 8 December 2011. According to CPC, Retrial before the First Instance Court, Article 412:

(1) The first instance court to which the case was remanded for trial shall proceed on the basis of the previous indictment. If the first instance decision was partially vacated, the first instance court shall proceed on the basis of the part of the indictment to which the vacated part of the decision relates.

(3) The first instance court shall undertake all procedural actions and consider all disputed issues which were specified by the decision of the second instance court.

⁵⁸"Someone is to Blame for the Reversal of the Verdict," *Vijesti*, 20 December 2011.

statement, the Appellate Court issued the following statement: "In deciding in the second instance on appeals to the first instance court verdict, when reversing the first instance verdict, the Appellate Court shall indicate in its rationale the essential violations of the criminal procedure provisions for reversing the first instance judgment, as provided in Art. 410, para 2 of the CPC. In addition, the second instance court in its reversal may also point to the failure of the parties that have contributed to the adoption of the first instance court decision that is reversed, as provided in Art 410, para 3 of the CPC. In accordance with the above statutory powers the Appellate Court acted in the case known as Morinj, as well as in other cases, and will continue to do so. Therefore, judges of the Criminal Department of the Appellate Court found the statements in Deputy Special Prosecutor's closing argument addressed to this Court to be inappropriate."⁵⁹

Pursuant to the judgment of the High Court of 25 January 2012, Mladen Govedarica and Zlatko Tarle were acquitted of charges of committing the offence War crimes against prisoners of war, while the Court sentenced Boro Gligić to imprisonment for a term of three years, Ivo Gojnić - two years, Špiro Lučić - three years and Ivo Menzalin - four years.

In comparison, the first judgment of the High Court dated May 2010 convicted and sentenced Mladen Govedarica to two years in prison, Zlatko Tarle to year and a half, Ivo Gojnić - two and a half years, Špiro Lučić - three and a half years, Boro Gligić - three years, Ivo Menzalin - four years in prison.

So, the first judgment of the High Court convicted all the accused to a total of 16 and a half years in prison, while two defendants have been acquitted in the retrial, and the other four sentenced to a total of 12 years in prison.

Preliminary analysis of the procedure (detailed analysis of the procedure in the Morinj case HRA will publish by the end of 2012) indicates the following:

1. Failure of the Prosecution to treat the Morinj camp crimes as an expression of the functioning of organized system of abuse, in which the criminal liability for abusing of prisoners should be borne not only by direct perpetrators, but also by their superiors.
2. Limitation by the Prosecution, High Court and Appellate Court of the possible form of liability of indictees Mladen Govedarica and Zlatko Tarle for immediate execution and ordering.
3. Imposing of mild penalties due to improper application of the provisions on mitigating and aggravating circumstances.

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 Moslems until 1993. During the war in BiH, a large number of Yugoslav Army reservists,

⁵⁹."Sharp Words of the Prosecutor," Vijesti, 21 December 2011.

paramilitaries and Montenegrin policemen were deployed in the Bukovica area. They tortured, searched, plundered, abused and ill-treated the Bukovica Bosniaks under the pretext of looking 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.⁶⁰

In the period from June 1992 to February 1994, if not longer, Yugoslav Army forces 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.⁶¹

The Belgrade-based Humanitarian Law Centre documented and in 2003 published the accounts of the persecution of the Moslem population from the Bukovica area.⁶²

It was only on 11 December 2007 that the Superior State Prosecutor filed a motion for the investigation of the crimes committed in Bukovica to the Bijelo Polje Superior Court. The investigation was declared an official secret as soon as it was opened.⁶³ It focused on seven former police and Yugoslav army reservists, suspected of crimes against humanity.⁶⁴ The prosecutor did not seek the detention of the suspects during the investigation.

Over 40 witnesses and injured parties testified during the investigation.⁶⁵

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.⁶⁶

The investigation was slowed down because of the difficulties in obtaining the testimonies of persons living in BiH. Their questioning began only in 2009.⁶⁷

The investigation was finally completed on 26 March 2010, and an indictment was filed on 21

⁶⁰“Golubović: Trial is a Kind of Trade Off”, *Vijesti*, 26 April 2010, “Mocking the Public”, *Monitor*, 30 April 2010.

⁶¹ See the transcripts of the Supreme Defence Council 5th session on 7 August 1992 and 18th session on 7 February 1994 (http://www.bosniafacts.info/sessions_of_the_fry_supreme_defense_council/5th_Session_of_the_FRY_Supreme_Defense_Council_5.8.1992.pdf, and http://www.bosniafacts.info/sessions_of_the_fry_supreme_defense_council/18th_Session_of_the_FRY_Supreme_Defense_Council_7.2.1994.pdf).

⁶² Bukovica, edited by Biljana Mitrinović, Humanitarian Law Centre, Belgrade, 2003: <http://www.hlc-rc.org/uploads/editor/Bukovica-engleski.pdf>.

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

⁶⁴ “Prosecutor Charging Seven People”, *Vijesti*, 12 December 2008.

⁶⁵ Data of Belgrade-based HLC, 23 March 2008.

⁶⁶ *Ibid.*

⁶⁷ Nansen Dialogue Centre, Watchdog, Report IV, 25 November 2008.

April 2010 charging brothers Radmilo and Radiša Đuković, Slobodan Cvetković, Milorad Brković and Đorđije Gogić, Yugoslav Army (VJ) reservists, and Slaviša Svrkota and Radoman Šubarić, Montenegrin police reservists, of war crimes against humanity.⁶⁸ The representatives of the Bosniak Party, the NGO sector and victims' association said that the persons who had ordered the crime had not been indicted. Some political party representatives and journalists noted that it was filed ahead of local elections in a number of Montenegrin municipalities, including Pljevlja.⁶⁹ The Bijelo Polje Superior Court ordered the detention of the defendants on 22 April 2010⁷⁰ and their trial opened on 28 June 2010.

As the Special Prosecutor for Organised Crime, Corruption and War Crimes Đurđinalvanović 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 Moslem population in Bukovica, thus forcing them to leave their homes".⁷¹ The defendants are charged with ill-treating the Moslem 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 Moslem population.⁷²

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.⁷³

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.⁷⁴ 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.⁷⁵ 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.⁷⁶

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 book. He said he knew policemen Svrkota and Šubarić and that he never heard any complaints about

68 "He Intimidated Moslems to Drive Them out of Bukovica", *Vijesti*, 22 April 2010.

69 "Bukovica Indictees Detained", *Vijesti* 23 April 2010.

70 *Ibid.*

71 "Only the Accused Are Suspected", *Vijesti*, 27 April 2010.

72 "All of Them Denied Guilt", *Dan*, 20 September 2010.

73 "Svrkota Did No Evil", *Dan*, 27 October 2010, "Citizens Harassed by Reservists", *Vijesti*, 27 October 2010.

74 Veselin Veljović has been running the Police Directorate since 2005. He began his career as a JNA 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>).

75 "Durgut: I Kept a Gun out of Fear", *Vijesti*, 22 September 2010. "Victims not Blaming Defendants", *Dan*, 22 September 2010.

76 "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).

their work at the time of the events.⁷⁷

The main hearing ended with the closing arguments on 25 December 2010. Deputy Special Prosecutor reiterated the charges in the indictment and called for the conviction of the defendants in accordance with the law. The legal representatives of the injured parties agreed. The defendants' counsels asked for the acquittal of their clients, their immediate release from detention claiming that there was no evidence proving that they had committed the crime they were accused of. They said that the defendants were army and police members who had acted in accordance with the regulations and that there was no proof that they had harassed or ill-treated the Moslem population; rather, they protected them from the paramilitaries and helped preserve public peace and order in the area and the physical integrity of the citizens and their possessions.⁷⁸

The BijeloPolje Superior Court acquitted the defendants due to lack of evidence and released them from detention on 31 December 2010.⁷⁹ Presiding judge Đešević explained that the presented evidence proposed in the indictment and that the testimonies of the injured parties and other witnesses did not prove that the defendants committed crimes against humanity.⁸⁰ In the explanation of the verdict, the judge said 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.⁸¹

Chairman of the Bukovica association of deported victims Jakub Durgut qualified the acquittal as the "state's institutional cover-up of the crime", saying that his testimony had not been taken into account because he hadn't gotten a receipt that he was beaten up from the person who had beaten him.⁸² He, however, said the verdict could have been expected given that the proceedings took place eighteen years after the crime "when most of the victims are no longer alive" and that the defendants "could not have been responsible for all the events in the Bukovica area, maybe just for individual cases".⁸³ The representative of the NGO Behar from Pljevlja, Rifat Vesković, qualified the verdict as shameful, claiming that the defendants' arrests were part of the pre-election calculations, that the court based its verdict on a statement given by the then Pljevlja chief of police, Veselin Veljović, and that its publication several hours before the start of the New Year holidays was timed to avoid media attention.⁸⁴ Boris Raonić, the Programme Director of the Youth Initiative for Human Rights and one of the authors of the documentary on Bukovica, said that both the investigation and indictment were slapdash and did not cover command responsibility but that the trial was not problematic.⁸⁵

77 "Veljović: No Crime Was Committed in Bukovica", *Dan*, 8 December 2010; "Montenegrin Police Director Veselin Veljović Heard in BijeloPolje Superior Court", *Vijesti*, 07 December 2010.

78 "Judgment will be Rendered on 31 December", *Vijesti*, 26 December 2010; "Judgment on Friday"; *Dan*, 26 December 2010.

79 The judgment had not been published on the website of the BijeloPolje Superior Court by 1 June 2011.

80 "No Proof of Bukovica", *Vijesti*, 3 January 2011; "Freedom for All", *Dan*, 3 January 2011.

81 "Svrkota Did No Evil", *Dan*, 27 October 2010; "They Accepted a Lie for Truth for a Fistful of Drug Euros", *Vijesti*, 5 January 2011; "No Proof of Bukovica", *Vijesti*, 3 January 2011, "Henchmen Acquitted – Bosniak Victims Humiliated", Bošnjaci net: <http://www.bosnjaci.net/prilog.php?pid=40119>.

82 "Seed of a New Crime", *Monitor*, 14 January 2011.

83 "Court Unaware of what Everyone has been Aware of for Years", *Vijesti*, 4 January 2011.

84 "Collateral Damage", *Vijesti*, 3 January 2011.

85 "Jakub Durgut: Bukovica Verdict Unsurprising", www.portalanalitika.me, 11 January 2011.

In June 2011 the judgment was quashed by the Appellate court for procedural reasons and the case had been returned for a retrial. In its decision on reversal, the Appellate Court of Montenegro stated that the trial panel of the first instance court had been improperly constituted, given that the lay judges participated in passing of the first instance decision, despite the fact that the new Criminal Procedure Code, which applies exclusively to the crime a defendant has been accused of, provides that in this case a panel should be composed of three professional judges.

The main hearing took place on 28 September 2011, and on 3 October 2011 the Council of the Superior Court in Bijelo Polje rendered a verdict acquitting the defendants of charges of committing Crimes against Humanity. The verdict states the evidence presented during the main hearing was not sufficient to confirm the allegations of the Special State Prosecutor for the suppression of war crimes, so the accused were acquitted of the following charges "... committing of the criminal offense of Crimes against Humanity under Art. 427 of the Criminal Code in conjunction with Art. 7, para 2 of the European Convention on Human Rights." The judgment also states that "... until the very end of the criminal proceedings, Deputy Special Prosecutor Milosav Veličković stood by everything that has been listed in the indictment, and pointed out in his closing argument that during the presentation of evidence it has been established, beyond any doubt, that the defendants committed the criminal offense of Crimes against Humanity under Art. 427 of the Criminal Code in conjunction with Art. 7, para 2 of the European Convention on Human Rights ...".⁸⁶ Allegations in the indictment, i.e. the judgments seem odd, given that the then state union of Serbia and Montenegro ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms in December 2003⁸⁷, and that the events covered by the indictment occurred in the period from 1992 to 1995.⁸⁸

The Appellate Court upheld the acquittal, making the decision final.

On the occasion of the acquittal, a lawyer and president of the Montenegrin Committee for Human Rights, Velija Murić, stated that "the indictment was not satisfactory. People most responsible for this crime of ethnic cleansing were not accused. It is peculiar that there were no war operations in this area. This area was controlled by Montenegrin police and Yugoslav Army. There is virtually no answer to what was happening in Bukovica."⁸⁹

Compensation Claim Judgments

The first final verdict awarding damages to a resident of Bukovica was rendered in September 2008, when the Podgorica Basic Court ruled that Mušan Bungur be paid 8,133 Euros in compensation for the destruction of his log house. Bungur had initiated the proceedings more than

⁸⁶ Citations from the judgment of the Bijelo Polje High Court, no. Ks.br.6/11-10.

⁸⁷ In December 2003 Serbia and Montenegro ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and its fourteen protocols. After gaining independence, in July 2006 Montenegro submitted a declaration of succession to the Council of Europe conventions of which Serbia and Montenegro was a signatory or party.

⁸⁸ Announcement of the Superior Court available at:

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

⁸⁹ "Murić: Bukovica Case another Defeat of the Montenegrin Judiciary", Portal Analitika, 4 October 2011.

ten years earlier. The state of Montenegro paid the sum and interest rates in 2009.⁹⁰ In March 2010, the Podgorica Basic Court ruled that Montenegro pay 10,000 Euros to ŠabanRizvanović and the same amount to his wife ArifaRizvanović for the physical and mental anguish they suffered at the hands of the Yugoslav Army members in Bukovica in 1992. The Rizvanović couple left Bukovica and has been living in Sarajevo for years now.⁹¹ The Superior Court overturned the verdict and ordered a retrial.⁹² Apart from the Rizvanović couple, who were awarded 20,000 Euros for the torture and the fear they lived through, the Podgorica Basic Court in April 2010 awarded 1,500 Euros to ZlatijaStovrag, whose husband Himzo committed suicide by hanging in 1992 out of fear of the police.⁹³ This verdict, too, was overturned by the Superior Court, which ordered a retrial. The same fate befell the case of Osman Ramović. Zlatija, Alema and AmelaBungur in April 2010 sued the Ministries of Defence, Internal Affairs and the Police Directorate. Each of them sought 20,000 Euros for the mental anguish they sustained and unlawful imprisonment. This is one of the twenty or so lawsuits, which have been filed by the victims or the members of their families.⁹⁴

Deportation of Refugees Case

At least 66 Bosnian Moslem refugees⁹⁵ were unlawfully arrested in Montenegro and then handed over to the army of their enemy, the Bosnian Serbs, in May and June 1992. Most of them were executed; only twelve survived the concentration camps. The 33 Bosnian Serb refugees⁹⁶ 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 Moslem refugees, the deported Bosnian Serb refugees were not treated as hostages. It remains unknown whether any of them died due to deportation.⁹⁷

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 penitentiary,⁹⁸ or to unidentified locations in eastern BiH (Bosnian Serb Republic). All the Moslems deported on 27 May 1992 were probably killed the same or the

⁹⁰ *Ibid.*

⁹¹ "Only the Court Doesn't Know what Everyone Else has Known for Years", *Vijesti*, 4 January 2011.

⁹² Information obtained from the lawyer of the Rizvanović family.

⁹³ "They Were Maintaining Peace, Not Intimidating", *Dan*, 14 May 2010.

⁹⁴ "Who Was in Command?", *Vijesti*, 9 April 2010.

⁹⁵ The trial in Montenegro concerns the deportation of 52 persons. The other deportees were listed by Interior Minister Nikola Pejaković in his reply to a parliamentary query in 1993, i.e. by the survivors, who mentioned people, who were not on the list, in their statements before the Podgorica Basic Court. Journalist ŠekiRadončić, who investigated this crime, established that 105 Moslems refugees were deported ("Ominous Freedom – Deportation of Bosnian Refugees from Montenegro", ŠekiRadončić, Humanitarian Law Centre, Belgrade, 2005, p. 145).

⁹⁶ This number is mentioned in Minister Nikola Pejaković's reply to a parliamentary query in 1993 and the indictment.

⁹⁷ See also ŠekiRadončić, in his book "Ominous Freedom – Deportation of Bosnian Refugees from Montenegro", ŠekiRadončić, Humanitarian Law Centre, Belgrade, 2005, p. 145.

⁹⁸ Apart from the Podgorica Basic Court, this fact was also established by the ICTY in its final judgement in the case of *Prosecutor v. MiloradKnojelec* IT-97-25-T.

following day and their bodies were thrown into the Drina River⁹⁹; the remains of all the victims have not been found to date. The other Moslem 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.

As of December 2004, 196 members of the families of most of the deported Moslems who had died and several survivors of the concentration camps in the Bosnian Serb Republic filed 42 civil lawsuits against the state of Montenegro and the Montenegrin MIA seeking reparations for damages. The Podgorica Basic Court rendered 28 decisions upholding the victims' claims in which it found that the statute of limitations does not apply to damages inflicted by the consequences of war crimes.¹⁰⁰ After contesting the legal and factual grounds for four years, the Montenegrin Government in December 2008 rendered a decision on court settlement and paid a total of 4.13 million Euros to the injured parties: 30,000 Euros to each child of the victims, 25,000 Euros to the parents and spouses of each victim, 10,000 Euros to the brothers and sisters of each victim, and 8,000 Euros per month of imprisonment to the surviving victims.¹⁰¹

State Prosecution Office

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"¹⁰², the state prosecution office did not initiate a criminal investigation until 19 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. 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.¹⁰³

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

99 Conclusion drawn after the autopsies of bodies found in June 1992 and buried at the cemetery in SremskaMitrovica, Serbia, where they were washed up by the Sava River (See: *Ominous Freedom, op. cit.*, p. 92).

¹⁰⁰Another 54 plaintiff subsequently filed 10 lawsuits. Five verdicts are final, first instance verdict was reached in three cases, while two proceedings are still ongoing. Total amount of damages awarded in final verdicts is 435,000 Euros. There were no deviations from the decision on court settlement in relation to the amount of damages awarded to parents and wives, while in one case the victims' children were awarded 30,000 Euros each, and in other two cases 25,000 Euros each. Lawsuits filed by brothers and sisters are generally rejected due to the absence of community life (source: legal representatives of plaintiffs, Prelević Law Office).

101 See more in the statement of the attorneys that represented the victims at:
http://www.prelevic.com/Documents/Deportation_Public_Announcement.pdf.

102 Reply to the parliamentary query by Montenegrin Minister of the Interior Nikola Pejaković, Ref No 278/2 of 8 April 1993. The scanned document is available at:
<http://www.prelevic.com/Documents/Odgovor%20na%20poslanicko%20pitanje.doc>.

103 At the time, the state prosecution office represented the state in all property proceedings. Therefore, this authority was obviously in conflict of interest given that it represented the state in reparation proceedings, while, in the criminal proceedings, it was to prosecute the authorities (on behalf of the victims) and insist on the accountability of (all) state agents and officials for this crime. The Council of Europe subsequently required of Montenegro to reform the system and ensure that state prosecutors are exclusively involved in criminal prosecution.

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.

The investigation did not open before February 2006 and not one action 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 BoškoBojović; former SDB Deputy Chief RadojeRadunović and senior official of the Ulcinj Security Centre SretenGlendža.

The following leading state officials also testified during the investigation: former Montenegrin Presidency President MomirBulatović, the then Montenegrin Prime Minister Milo Đukanović and the then Montenegrin Presidency member SvetozarMarović.¹⁰⁴ Nikola Pejaković, who was Deputy to the Minister of the Interior PavleBulatović 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, Deputy Special Prosecutor of the Department for the Suppression of Organised Crime, Corruption, Terrorism and War Crimes within the Montenegrin Supreme State Prosecution Office Lidija Vukčević filed an indictment with the Podgorica Superior Court¹⁰⁵ 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; Bujčić Branko – Bar Security Centre chief and Glendža Sreten – chief of the Ulcinj Security Centre.

They are charged with unlawfully transferring civilian population – BiH nationals, Moslem and Serb refugees with the status of refugees under the Convention Relating to the Status of Refugees and Protocol Relating to the Status of Refugees – whereby they violated the international law during and relating to armed conflicts in the territory of BiH laid down in the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War and Additional Protocol II, Article 5 of the ECHR amended pursuant to Protocol No. 11 (sic!)¹⁰⁶. They are 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

¹⁰⁴ The lawyer of one of the defendants, BranimirLutovac, said that Đukanović's and Marović's statements were 'monologues, because the investigating judge did not ask them a single question', "Đukanović and Marović Will Not Testify", *Vijesti*, 9 February 2011.

¹⁰⁵ KTS Ref No 17/08, of 19 January 2009.

¹⁰⁶ This Convention was not binding on the FRY at the time. It has been binding on Montenegro since the end of 2003, i.e. 3 March 2004, when the ratification instruments were submitted to the Council of Europe.

BiH territory.

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 Šušović appear as a witness¹⁰⁷, although an MIA 1993 document states that the arrest and deportation of refugees was conducted “with the consent of the competent prosecution office”.¹⁰⁸ 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.¹⁰⁹

The Prosecution Office *inter alia* presented the following evidence in the indictment: a) Interior Minister Nikola Pejaković’s reply to a parliamentary query in 1993, in which he says that the police arrested refugees, classified by their ethnicity, Moslems and Serbs, and handed them over to the Bosnian Serb MIA,¹¹⁰ and b) letter to Danijela Stupar in response to her query addressed to Prime Minister Milo Đukanović and also signed by MIA Nikola Pejaković, confirming that her husband Alenko Titorić was deported from Montenegro to the Serb Republic of BiH “to join the group of Moslems to be exchanged for the captured Serb territorial defence troops”.¹¹¹ However, notwithstanding this and other evidence corroborating that civilians – refugees were used as hostages to assist the war efforts of the enemy, the indictment charges the defendants only with “unlawful transfer”. Furthermore, the description of the facts and the evidence on which the indictment is based obviously corroborates that the refugees were also “unlawfully imprisoned”, that some of the Moslem refugees were “unlawfully taken to a concentration camp”, all of which constitute elements of a war crime. However, given that the court need not limit itself to the legal qualification in the indictment, just the factual description of the offence¹¹², this omission by the Special Prosecutor need not have prevented the Court from properly qualifying the crime.

107 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), *volens*, depends also on Šušović’s vote” (“Medenica Suing, Medenica Adjudicating”, *Monitor*, 25 February 2011).

108 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>.

109 “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).

110 Office of the Montenegrin Minister of Internal Affairs Nikola Pejaković, Ref No 278/2, of 8 April 1993, Reply to a parliamentary query, p. 2. The scanned document is available at: <http://www.prelevic.com/Documents/Odgovor%20na%20poslanicko%20pitanje.doc>;

111 The translation of the letter is available at: http://www.prelevic.com/deportation_ministry.htm

112 Article 359, Montenegrin: “(1) The verdict shall refer only to the accused and to the offence the accused is charged with as specified in the indictment that has been filed, amended or extended during the main hearing. (2) The court shall not be bound by the prosecutor’s legal qualification of the offence.”

At the very end of the trial, Prosecutor Vukčević changed the qualification of the conflict in BiH from international to internal¹¹³, and cut the number of injured parties, but retained the legal qualification of the criminal offence.¹¹⁴The amendment of the legal qualification of the conflict in the indictment was also not binding on the court.

Podgorica Superior Court

The trial before Podgorica Superior Court judge Milenka Žižić and two jurors opened on 26 November 2009.¹¹⁵

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 extradition detention not to exceed one year. Duško Bakrač was not arrested.¹¹⁶ 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.¹¹⁷

The defendants pleaded not guilty,¹¹⁸ 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

113 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.

114 "Waiting for the Indictment", *Dan*, 1 March 2011, "Gravity of Indictment under Question", *Dan*, 23 February 2011.

115 "Šljivčanin: I Don't Expect Absolution", *Pobjeda*, 27 November 2009.

116 "Men Arrested for Deportation to Spend up to One Year in Prison", *Vijesti*, 17 December 2010.

117 "Medenica Suing, Medenica Adjudicating", *Monitor*, 25 February 2011.

118 "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; "Šljivčanin: I Don't Expect Absolution", *Pobjeda*, 27 November 2009.

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 Superior 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.¹¹⁹ 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 Assembly¹²⁰ and the Government of Montenegro relieved Bulatović from the obligation to preserve the confidentiality of the documents within their remits.¹²¹

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.¹²² 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.¹²³

The proceedings closed on 2 March with the closing remarks of the defendants. They said they were not guilty and that they were merely the victims in this trial.¹²⁴ The defendants also underlined that they made the arrests under orders from the prosecution office, not at their own discretion.¹²⁵

The verdict was rendered on 29 March 2011. All nine defendants were acquitted because, as the judgment explained, they could not have committed a war crime against the civilian population given the conflict in BiH was not international in character.¹²⁶ The acquittal prompted an avalanche of public criticism by the representatives of some political parties and NGOs.¹²⁷

The judgment¹²⁸ is contradictory, its legal qualification confusing and not based on international law or relevant interpretations of it. For instance, the finding on page 72, where the court establishes that “an armed conflict between nations living in BiH, Serbs, Croats and Moslems, was at issue wherefore the conflict did not have the character of an international armed

119 *Vijesti*; “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.

120 “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.

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

122 “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.

123 *Ibid.*

124 “Defendants Claim that They are Innocent Victims”, *Pobjeda*, 2 March 2011.

125 “Arrests Ordered by Prosecution Office”, *Dan*, 2 March 2011.

126 “Acquitted due to Lack of Evidence”, *Pobjeda*, 30 March 2011, “Refugee Deportation Defendants Acquitted”, *Vijesti*, 30 March 2011.

127 “Recurrent Crime of Those Advocating War for Peace”, *Vijesti*, 30 March 2011.

128 Judgment Ref No 3/09 is available on the website of the Podgorica Superior Court: <http://www.visisudpg.gov.me>.

conflict,” is in contravention with its view on page 90: “In the period after 19 May 1992, when the FRY forces as such withdrew from the territory of BiH, the Bosnian Serb Republic armed forces operated under the general control of and on behalf of the FRY, the facts established also in the judgments of the ICTY, wherefore the FRY, too, was *in an armed conflict with the BiH Government forces, in contravention of the defence counsels’ view.*” Namely, if the Bosnian Serb armed forces “operated under the general control and on behalf of the FRY”, the conflict in BiH was international per se, although the court ultimately concluded the opposite.

The judgment improperly applies international law on several points. It, for instance, incorrectly states that Article 17 of the Protocol Additional to the Geneva Conventions of 12 August 1949 on the Protection of Victims of Non-International Armed Conflicts (Protocol II) does not prohibit deportation beyond state borders – on the contrary, paragraph 2 refers exactly to such situations.¹²⁹ Furthermore, the court stated that “the perpetrator (of forced transfer and deportation) had to have had the intent ... to conduct the transfer on discriminatory grounds”. Actually, international law, including ICTY case law, does not require discriminatory intent for an act to be punishable.¹³⁰

The most problematic is the conclusion which the acquittal is based on – that there was no war crime because the defendants did not have the necessary capacity to commit it – *they were not members of the armed formations or in the service of a party to the conflict.*¹³¹ Although it was established that the accused police and state security officers unlawfully arrested the refugees and turned them over to the Bosnian Serb Republic agents to use them as hostages and exchange them for POWs, the court found that this did not mean that they acted “in the service of a party to the conflict”, because the FRY, which comprised Montenegro, had not declared a state of war.¹³² The judicial panel thus demonstrated a fundamental lack of understanding of the essence of international humanitarian law – the protection of victims of armed conflicts, not the protection of states. States would never declare a state of war if the non-declaration of a state of war could protect them or their agents from responsibility for crimes committed during war conflicts.

129 See p. 92 of the judgment: “The FRY was created on 27 April 1992. The injured parties were thus returned to the territory of another state which is why the provisions of Article 17 of Additional Protocol II, the violation of which the defendants are charged with, cannot apply to displacement beyond the valid state borders (which is the case in deportation), but to displacement within the valid state borders (which is the case in forcible transfer).” What is not taken into account here is that paragraph 2 of Article 17 of Protocol II precisely refers to forcible transfer beyond state boundaries (see the ICRC comment of this provision at: <http://www.icrc.org/ihl.nsf/COM/475-760023?OpenDocument>).

130 “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.” ICTY, Appeals Judgement in the case of *Prosecutor v. ZlatkoAleksovski*, 24 March 2000, para 20.

131 “The defendants’ actions, as well as the order itself, were unlawful from the viewpoint of international law. However, given that it has not been proven that the defendants, who were police officers, were part of the FRY armed forces or in the service of any party to the conflict and thus active participants in an armed conflict, in which case they would have been bound by international law, their actions thus cannot be perceived or assessed in terms of the commission of the offences incriminated by Article 142 of the FRY in violation of international law, because they did not have the specific capacity for that – they were not members of the armed forces or in the service of a party to the conflict” (p. 94 of the judgment Ref No Ks. 3/09).

132 The court appears not to have even considered the possibility that the obvious support Montenegrin state agents extended to the military efforts of the Bosnian Serb agents meant that the Montenegrin agents were “in the service” of Bosnian Serbs, clearly a party to the conflict in BiH.

HRA is of the view that a war crime against the civilian population regarding the armed conflict in BiH was undoubtedly committed in this case and recalls that this legal position – that a war crime against civilians regarding the armed conflict in BiH had been committed in Montenegro – was taken also by the Montenegrin Supreme Court in its judgment in the case of the Bosnian Moslem Klapuh family (that fled BiH to Montenegro, where it was killed in July 1992).¹³³

The appeals were filed in June 2011 by the state prosecutor and Sejda Krdžalija and Hikmeta Prelo, mothers who lost their sons Sanin (21) and Amer (18) to this crime.

The Appellate Court allowed the appeal of the Supreme State Prosecutor's Office and damaged Sejda Krdžalija and Hikmeta Prelo and over turned the judgment and ordered a retrial. Decision of the Appellate Court stated that the impugned judgment contained essential violations of the criminal procedure provisions, as the reasoning for the decisive facts were unclear and contradictory to the content of presented evidence, which is why the impugned judgment could not have been examined.

The decision also stated that "there is an obvious contradiction in the reasoning in terms of the decisive fact - character of the armed conflict that took place on the territory of Bosnia and Herzegovina, because the first instance Court in its reasoning first found that, according to the established facts, it was an armed conflict which does not have international character, and then concluded that the armed forces of the Serb Republic, even after withdrawal of the Yugoslav People's Army forces from the territory of Bosnia and Herzegovina, acted under the overall control of and on behalf of the Federal Republic of Yugoslavia, and that the FRY was in armed conflict with the forces of the Government of the Bosnia and Herzegovina, which gave the armed conflict in the territory of Bosnia and Herzegovina the character of an international armed conflict."

Also, the decision states that "the conclusion of the first instance court that Art. 3 of the Geneva Convention is common to all the conventions and applicable to armed conflicts in general – those of international and non-international character -is obscure and in conflict with the reasons provided by the first instance Court immediately after, which actually represent a part of the content of Art. 3 of the Convention, and which imply that this provision applies to armed conflicts of non-international character."

It was also stated that in a retrial the court of first instance should present the already presented evidence, as well as other it might find necessary, and remedy the violations of the procedure indicated in this decision. First-instance retrial began on 6 September 2012 in Podgorica by examining of the defendants, all of whom pleaded not guilty, and representatives of six families of injured victims, who stressed the need for the punishment of persons who had ordered the crimes.¹³⁴

Although delivering of closing arguments was originally scheduled for 14 September 2012, the

¹³³ The judgment is filed under the reference number Kž. 141/94. HRA's statement on the judgment is available at: <http://www.hraction.org/wp-content/uploads/DEPORTATION-FIRST-INSTANCE-RULING-1.pdf>

¹³⁴ "They Laid the Blame on the Dead; Telegram was Misplaced Somewhere," *Vijesti*, 7 September 2012

prosecutor amended the indictment at the main trial. At the request of the defense, the trial was postponed for 24 October 2012.

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.¹³⁵ 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 Superior Court at the end of the reporting period. The charges do not include the deaths of four victims of the crime.¹³⁶

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 1999.¹³⁷

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.¹³⁸ 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.¹³⁹ Lawyer Velija Murić, CKP chairman and legal representative of the injured parties, who had filed the criminal report, tried to take an active part in the investigation by offering and obtaining the evidence. He claims that both the state prosecutor and investigating judge lacked the will to conduct an effective investigation and that this was why the prosecutor's indictment did not include all the perpetrators of the crime. The prosecutor also failed to seek the detention of the suspects until after they were indicted. In result, the main defendant Predrag Strugar fled and the other defendants have been detained since May 2008; furthermore, the investigation was conducted simultaneously with the marathon trial, which was not completed by mid-September

On 1 August 2008 the Supreme State Prosecutor's Office filed an indictment with the motion for custody against Predrag Strugar, Commander of the 1st Battalion 3rd Motorized Brigade of the Podgorica Corps of the Yugoslav Army's 2nd Army; Momčilo Barjaktarović, Commander of the 3rd

135 "What Are the Army Archives Concealing", *Monitor*, 16 February 2007; *Ibid*, information obtained from the attorney of the injured parties, Velija Murić.

136 Information obtained from the attorney of the injured parties, Velija Murić, chairman of the Montenegrin Committee of Lawyers for the Protection of Human Rights.

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

138 Momčilo Barjaktarović, Petar Labudović, Aco Knežević, Branislav Radnić, Ranko Radnić, Veselin Čukić, Vesko Lončar, Zoran Knežević, Boro Novaković, Miro Bojović and Radomir Đurašković.

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

Squad 1st Battalion; Petar Labudović, Commander of the 1st Line 3rd Squad 1st Battalion; Aco Knežević, Deputy Commander of the 3rd Squad 1st Battalion; Branislav Radnić, Boro Novaković, Miro Bojović and Radomir Đurašković, members of the Reserve 3rd Squad 1st Battalion, for a criminal offense War crimes against civilians. The accused were charged with inhumane treatment of the civilian population of Albanian ethnicity in Kaluđerski laz on 18 April 1999, in violation of international law, while defendant Predrag Strugar was indicted in the same capacity for ordering the killing from 18 April to 21 May 1999 of ethnic Albanian civilians who came to Montenegro fleeing the conflict in Kosovo, in the municipality of Rožaje, which was the area of his responsibility. The investigation determined that war crimes had been committed against 23 ethnic Albanian civilians, who did not directly participate in hostilities.¹⁴⁰

The accused Predrag Strugar, son of General Pavle Strugar, who was sentenced by the Hague tribunal for the siege of Dubrovnik, was at the time the only active officer of the Army of Yugoslavia. The territory in which the crimes were committed was in the jurisdiction of the VJ Second Army, headed by Milorad Obradović at the time. The command responsibility involved him, Podgorica Corps commander Savo Obradović, down to Battalion commander Predrag Strugar, who was charged with Kaluđerski laz area.¹⁴¹ Milorad Obradović and Savo Obradović were mentioned only as witnesses in the investigation, although they were Strugar's superiors. Their testimonies have not been obtained to this day, as the Bijelo Polje Superior Court claims that it is unable to establish the whereabouts of these two senior VJ officers because they are living in the Republic of Serbia.¹⁴²

The military authorities, charged with the investigation of the crime scene in Kaluđerski 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 Dedeić¹⁴³. 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 Kaluđerski 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.¹⁴⁴ None of the competent authorities either in Montenegro or

¹⁴⁰ Press release of the Supreme State Prosecutor's Office available at: <http://www.tuzilastvccg.co.me/aktuelnosti/saopstenja%20za%20javnost.htm>.

¹⁴¹ *Ibid.*

¹⁴² 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.

¹⁴³ "What Are the Army Archives Concealing", *Monitor*, 16 February 2007.

¹⁴⁴ *Ibid.*

Serbia have demonstrated the will to call him to account for doing so notwithstanding the obvious existence of grounds for his criminal prosecution.

The trial opened on 19 March 2009.¹⁴⁵ The defence counsels insist that their clients be acquitted given that the injured parties did not see them at the time of the shooting. The perpetrators shot at the column of civilians from a trench at the edge of the forest, at a distance of over 100 metres. They were uniformed and resembled each other at that distance and the victims and eyewitnesses in the column were unable to make out any details by which they could recognise them. Furthermore, there were no eyewitnesses to a number of other crimes. Moreover, the judicial authorities are neglecting the fact that the VJ was exclusively in charge of all the events in that area at the time and that it was the only one that could have committed these crimes.

On 1 August 2011 the Panel of Judges¹⁴⁶ of the Superior Court in Bijelo Polje revoked the detention of the accused Barjaktarović, Labudović, Novaković, Bojović and Đurašković, because the first instance verdict was not rendered within three years of the detention order.¹⁴⁷

There was no hearing of witnesses or presentation of evidence in this case by mid December 2011. Thus far in the course of the proceedings about 108 witnesses have been examined and over 75 hearings held. The length of the proceedings is explained by the fact that the indictment could not be delivered to the accused Predrag Strugar for nine months, and that the Military Archive in Belgrade, although five times addressed by the request, failed to provide requested documents for months.¹⁴⁸ However, victims' lawyer, Velija Murić, explains the length of the proceedings, in addition to obtaining evidence from Serbia, by interrogation of a large number of witnesses from Kosovo and by incomprehensive investigation.¹⁴⁹ Continuation of main hearing scheduled for 25 November 2011 was postponed for 26 December 2011 in order to provide additional time to present certain evidence obtained in Serbia.¹⁵⁰ Main trial continued on 26 December 2011 with the reading of written evidence, but was not attended by witness Slavoljub Stojanović, Major in the Yugoslav Army, former Commander of the 3rd Light Infantry Brigade of the Podgorica Corps.¹⁵¹ Continuation of the main hearing scheduled for the end of June 2012 was postponed due to the illness of a defense attorney.¹⁵² The accused Predrag Strugar was extradited from Serbia in late July 2012.¹⁵³ Continuation of the trial is expected to start by the end of September 2012.

Civil Compensation Proceedings

The families of the victims have to date filed 12 civil lawsuits seeking compensation for non-material damages with the Podgorica Basic Court. They qualified the VJ as the perpetrator of the

¹⁴⁵ "Summons to Strugar Sent to Serbia", *Vijesti*, 3 February 2009; "Strugar Summons Sent to Serbia", *Vijesti*, 4 February 2009.

¹⁴⁶ Panel of Judges appointed specifically to decide on appeals against decisions of that court.

¹⁴⁷ Announcement of the Superior Court available at:

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

¹⁴⁸ "Prime Minister has ruled before the Court," *Dan*, 23 July 2011.

¹⁴⁹ "Trial in case Kaluđerski laz taking too long", Radio Free Europe, 26 July 2011, information available at: http://www.slobodnaevropa.org/content/sudjenje_za_kaludjerski_laz_predugo_trajе/24277322.html.

¹⁵⁰ "Waiting for evidence from Serbia," *Dan*, 26 November 2011.

¹⁵¹ "Major did not Come", *Vijesti*, 27 December 2011.

¹⁵² "Attorney got Sick," *Dan*, 27 June 2012.

¹⁵³ "Strugar extradited to Montenegro", *Vijesti*, 26 July 2012.

crimes and the Montenegrin MIA as the state institution responsible for the protection of people and their possessions. The Court rendered the first verdict in December 2009, ordering Montenegro to pay 15,000 Euros to Hadži Ahmeti from Novo Selo at Peć for the mental anguish he suffered as a victim of a war crime committed near Rožaje in April 1999 (Ahmeti had sought 45,000 Euros in damages).¹⁵⁴ The verdict was overturned and Ahmeti was awarded 12,000 Euros at a retrial. In this case, the final judgment has been enforced and he was paid the amount of 12,000.00 Euros, with the costs of the proceedings.¹⁵⁵ Procedures in other law suits were stayed, pending completion of the criminal proceedings in the case Kaluđerski laz.¹⁵⁶

Compensation Claims for Deaths of Civilians during the 1999 NATO Air Strike on Murino

Six civilians, three of whom children, were killed and eight were wounded during the NATO air strikes on Murino, a town near Plav in north-east Montenegro, on 30 April 1999.¹⁵⁷

The Podgorica Basic Court on 8 May 2009 opened a trial based on four lawsuits for the compensation of non-material damages and the sustained mental anguish filed by the Murino families, whose members were killed during the air strikes.¹⁵⁸ One more lawsuit was filed in the meantime.¹⁵⁹ The Court rendered a first-instance verdict in September 2010 under which Montenegro is to pay 69,000 Euros in damages and the court expenses to the family of victim M.K.¹⁶⁰ The Court also rendered a first instance decision in November 2010 ordering Montenegro to pay the Vuletić family 82,000 Euros.¹⁶¹ Both verdicts were reversed by the High Court judgments and retrials in these cases are pending. It rejected one lawsuit due to lack of evidence in the first instance.¹⁶² Another two trials on claims for non-pecuniary damages are pending.

¹⁵⁴ "Ahmeti Awarded 15 Thousand Euros for Mental Anguish", *Vijesti*, 7 December 2009.

¹⁵⁵ Attorney Murić informed us that in deciding on the revision of the Protector of Property Interests of Montenegro, the Supreme Court quashed both the first and second instance verdict.

¹⁵⁶ Following the example of the legal position that the civil division of the Supreme Court of Montenegro took at the session held on 25 November 2011, according to which the proceedings for damages in the case Morinj were stayed until the completion of the criminal proceedings in the same case kojem su prekinuti postupci za nadoknadu štete u predmetu "Morinj" do okončanja krivičnog postupka u istom predmetu.

¹⁵⁷ Portal In4S: <http://in4s.net/stari/crna-gora/58-cg/6510-in4s-poeo-kampanju-ne-u-nato>.

¹⁵⁸ "Families of People Killed in NATO Strike Suing Montenegro", Radio Free Europe, 9 May 2009, <http://www.slobodnaevropa.org/content/article/1622034.html>.

¹⁵⁹ Information obtained from the plaintiffs' attorney Velija Murić, May 2011.

¹⁶⁰ "Montenegro Must Compensate Families of NATO Air Strike Victims", Radio Free Europe Radio 16 September 2010: <http://www.slobodnaevropa.org/content/article/2159720.html>.

¹⁶¹ "Family from Murino Awarded 82 Thousand", *Dan*, 25 November 2010.

¹⁶² Information obtained from the plaintiffs' attorney Velija Murić, May 2011.