

**REPUBLIC OF SERBIA
DISTRICT COURT IN BELGRADE
War Crimes Chamber
No. K.V. 3/2006**

IN THE NAME OF THE PEOPLE!

The War Crimes Department of the District Court in Belgrade, in the panel made up of Judge Vesko Krstajić as the president of the panel and Judges Vinka Beraha-Nikićević and Snežana Nikolić-Garotić, as members of the panel, with the court recorder Slavica Jevtić, in the criminal case against defendant Sreten Popović of Niš and defendant Miloš Stojanović of Kruševac, who are defended by court-appointed lawyer Božo Prelević of Belgrade, for the criminal offense of war crimes against prisoners of war referred to in Article 144 of the Criminal Code of Yugoslavia in connection with the Indictment No. KTRZ 5/06 of August 23, 2006 of the Serbian War Crimes Prosecutor's Office, amended in a September 3, 2009 document, after a trial which was held on several trial days, parts of which were closed to the public, between December 11, 2007 and September 18, 2009, in the presence of defendants and their counsel, lawyer Božo Prelević, and Deputy Serbian War Crimes Prosecutor Dragoljub Stanković, adopted and on September 22, 2009, in the presence of the listed parties, publicly pronounced the following

J U D G M E N T

Defendant:

1. **Sreten Popović**, a.k.a. Pop, personal identification number 1612962912035, from Niš, 20 Božidara Adžije Street, whose father is Stanimir and mother Dušanka nee Banović, who was born in Podujevo on December 16, 1962, who is a Serb, a Serbian citizen, who works at the Interior Ministry, is married, father of two, literate, graduated from

the School of Management, decorated by the medal for courage, who earns about 60,000 dinars per month, has no real estate, has never been convicted, there are no ongoing proceedings against him for another criminal offense, who is defending himself from liberty and

2. Miloš Stojanović, a.k.a. Šešelj, personal identification number 1501964912036, from Kruševac, 22 Kninska Street, whose father is Milan and mother Milosava nec Vlahović, who was born in the village of Hrtica, municipality of Podujevo on January 15, 1964, who is a Serb, a Serbian citizen, who works as a police officer, who is employed, married, father of two, one of whom is a minor, literate, who has completed the Internal Affairs High School, has no real estate, earns about 40,000 dinars per month, convicted by a judgment of the Municipal Court in Kladovo No. K. 38/02 on April 3, 2002 for the criminal offense referred to in Article 195 paragraph 3 item 1 of the Criminal Code of Serbia and fined 5,000 dinars and by a judgment of the Municipal Court in Veliko Gradište No. 70/02 of February 19, 2002 for the criminal offense referred to in Article 201, paragraph 3 in connection with Article 195/3-1 of the Criminal Code of Serbia and fined 3,000 dinars, there are no ongoing proceedings against him for any other criminal offense, and he is defending himself from liberty,

under Article 355 item 2 of the Criminal Procedure Code

ARE ACQUITTED

of charges that they:

In the first half of July 1999 in Prokuplje and at the special police training camp in Petrovo Selo near Kladovo, within the context and in close connection with the armed conflict in the Autonomous Province of Kosovo between the Federal Republic of Yugoslavia – the Yugoslav Army and police forces of the Republic of Serbia – on one side, and the NATO coalition and members of the armed military organization the Liberation Army of Kosovo (KLA or UCK) on the other, starting from

March 23, 1999, when a state of war was declared, until June 20, 1999, as members of a side in the conflict, specifically the operative search groups (OPG), which, according to their formation, belonged to the 124th emergency brigade of the PJP, defendants Sreten Popović as the commander of the OPG platoon, and Miloš Stojanović as the commander of a section of the same platoon, in violation of Article 3 paragraph 1 items a) and d) of the Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention) and Article 44 paragraphs 1 and 5 and Article 45 paragraphs 1 and 2 of the Additional Protocol to Geneva Conventions of August 12, 1949 on the protection of victims of international armed conflicts (Protocol I), ratified by the FRNY National Assembly in 1950, deprived victims Ili, Argon and Mehmet Bytyqi, who were members of a volunteer unit called the Atlantic Brigade, which was established in New York, United States, in late March 1999 and which consisted of about 400 Albanian Americans, which illegally crossed from the Republic of Albania in the territory of Kosovo and in April 1999 placed itself in the service of the KLA, as one of the sides in the conflict, of the right to regular and fair trial, and tortured them in such a way that defendant Sreten Popović, after receiving the order from his superior, a chief in the Interior Ministry Vlastimir Đorđević, ordered his subordinate, defendant Miloš Stojanović, who was the platoon section head and his subordinate, to deprive the victims of liberty at the District Prison in Prokuplje, once they were released after serving the prison sentence to which they were sentenced in misdemeanor proceedings and to take them to the Training Center in Petrovo Selo near Kladovo, which he did. On July 8, 1999, together with members of his police department Aleksandar Nikolić and Dejan Stamenković, he came to the District Prison, arrested and handcuffed the victims, and drove them to the Training Center in Petrovo Selo. There, they were handed over to defendant Sreten Popović, who, together with defendant Miloš Stojanović, locked them in a room with a metal door, which is situated in an unfinished facility, part of which is situated below the ground, which was used as a warehouse for storing equipment and ammunition, which they had previously emptied. This room was inappropriate, because it lacked the basic

hygienic and health conditions, as well as the basic prerequisites for personal hygiene, drinking water, toilet or beds, and the victims were locked there for several days. They were aware that they had undertaken the official actions of arrest and placing in custody without a written order of the competent authority and without the competent court decision on imposing detention, which is in violation of the Law, and that by arresting and tying up the victims in Prokuplje, taking them to the Petrovo Selo Training Center, about 300 km away, by locking them in a facility that does not have basic conditions, by failing to inform them about the reasons for the arrest, transfer and keeping in custody, they treated the victims in an inhumane and degrading way and mentally tortured them, because in this way they made them fear for their lives and bodily integrity seriously and unbearably. This fear grew and became serious and excessive for a human being on the night when defendant Sreten Popović took them out and handed them over to currently unidentified members of the Interior Ministry of the Republic of Serbia and the Special Anti-terrorist Unit (SAJ), who tied the victims with wire, put them into an official vehicle and drove them to a garbage disposal pit, about 500 meters away, where there was also a mass grave of Albanian civilians, whose bodies had previously been brought from Kosovo. Defendant Sreten Popović, who was deputy commander of the training center, could have known according to the circumstances under which the victims were taken out and handed over that the unidentified persons were going to kill them without a relevant decision or a trial, which was indeed what happened. On June 14, 2001, the remains of Mehmed, Agron and Ili Bytyqi were exhumed from the mass grave in Petrovo Selo marked as PS 1 and situated at about 500 meters from the training center, and identified. The victims' hands were tied with wire and they had bullet wounds in the backs of their heads.

- in which way they would have committed the criminal offense of **war crimes against prisoners of war referred to in Article 144 of the Criminal Code of Yugoslavia.**

The costs of criminal proceedings are to be borne by the budget of the court.

Under Article 206 paragraph 3 of the CPC, the victims **ARE REFERRED** to civil litigation in order to realize their restitution claim.

S u b s t a n t i a t i o n

1. CHARGING DOCUMENT

The August 23, 2006 Indictment No. KTRZ 5/06 of the Office of the War Crimes Prosecutor of the Republic of Serbia in Belgrade, amended by a document filed on September 3, 2009, charges Sreten Popović and Miloš Stojanović for the criminal offense of war crimes against prisoners of war referred to in Article 144 of the Criminal Code of Yugoslavia, which in essence charges the defendants with the following: that in the first half of July 1999, in the context and close connection with the armed conflict which took place from March 23, 1999, when a state of war was declared, to June 20, 1999, in the territory of the Autonomous Province of Kosovo between the Yugoslav Army and Serbian police forces on the one side, and a coalition of NATO forces and members of the armed military organization, the Liberation Army of Kosovo (KLA or UCK), on the other, as members of a side in the conflict, that is members of the OPG, which according to their formation belonged to the 124th emergency brigade of the Special Police Units (PJP), namely defendant Sreten Popović as the commander of the OPG platoon and defendant Miloš Stojanović as the commander of a section of the same platoon, in violation of the Third Geneva Convention on the treatment of prisoners of war of 1949 and Protocol I to... (text is missing)...

... (text is missing) ...name »Terrorism« and copies of pages 181, 182 and 183 of the book and after assessing the presented evidence, each individually and all of them together and after assessing the defense of

the defendants within the sense of provisions of Article 352 of the CPC has determined the following

5. FINDING OF FACT:

Defendant Sreten Popović a.k.a. Pop, is 47 years old, married, father of two, has no real estate, police officer, graduated from the Megatrend University School of Management at the Department for Management in Banking, was decorated by the medal for courage, currently deployed as lieutenant-colonel at the Gendarmerie. Does not use alcohol and drugs, has no serious or long-term disease and has not been convicted. He was in detention from March 1, 2006 to April 13, 2007. During 1999 and during and after the armed conflict in the territory of the FR Yugoslavia, including on July 8 and 9, 1999, he was the commander of a reconnaissance and commando platoon of the Operative Search Groups at the 124th Intervention Brigade of the PJP and deputy commander of the Training Center in Petrovo Selo.

Defendant Miloš Stojanović a.k.a. Šešelj is 45 years old, married, father of two, one of whom is a minor, has no real estate, he is a police officer by profession, completed High School of Internal Affairs, works as senior sergeant at the Gendarmerie. He does not use alcohol or drugs, nor does he have any serious illnesses and has so far been convicted of criminal offenses in traffic and fined. He was in detention from March 1, 2006 to April 13, 2007. During 1999, during and after the armed conflict in the territory of the FR Yugoslavia, including on July 8 and 9, 1999, he was a section commander of the reconnaissance-sabotage platoon of the Operative Search Groups at the 124th Intervention Brigade of the PJP .

The court has found the above mentioned facts in essence on the basis of defense of the defendants who in that sense provide detailed and acceptable explanations and since evidence presented in the proceedings did not bring this into doubt, the court has found these facts doubtless. Data on the defendants' detention are contained in the case file – court

ruling on imposing, extending and revoking detention, and the facts on previous convictions or lack thereof also on the basis of excerpts from the criminal records, and this has been indisputable in the proceedings.

The conflict between the military forces of the then FRY Army and police forces of the Republic of Serbia, on one side, and representatives of the armed military organization – Liberation Army of Kosovo, on the other, started and intensified in the territory of the Autonomous Province of Kosovo and Metohija in January 1998. On March 23, 1999, the FRY Assembly issued a decree declaring an immediate danger of war and on March 24, 1999, NATO forces started a bombing campaign, i.e. air strikes against targets in the Federal Republic of Yugoslavia, after which a state of war was declared and this conflict gained the characteristics of an international conflict. After the signing of the Military and Technical Agreement, i.e. so-called Kumanovo Agreement, between representatives of the FRY Government and the North Atlantic Alliance on June 9, 1999, NATO bombing was suspended on June 10, 1999 for the purpose of letting FRY Army and Serbian police forces withdraw and international forces enter the territory, which actually marked the ending of the armed conflict. Factually, on June 20, 1999 at 6 PM, all FRY forces completed their withdrawal from the Autonomous Province of Kosovo to the narrow territory of Serbia and outside the Ground Safety Zone, and there were no longer any members of FRY Army and Serbian Interior Ministry in Kosovo after that date. The bombing officially ceased on June 21, 1999, after which the FRY Parliament on June 24, 1999 issued a decision revoking the declaration of the state of war, which took effect on June 26, 1999.

The facts in this part are also practically indisputable. The examined witnesses testified to that effect, primarily witness **Obrad Stevanović**, the then Assistant Minister of Internal Affairs in charge of Police Administration affairs and one of the signatories to the so-called Kumanovo Agreement on behalf of the FRY Government, who certainly

knows a lot of details from different sources⁸. He testified about this convincingly and providing a lot of detail. Also, it is generally known in this region that the armed conflict broke out in the territory of AP Kosovo and that NATO bombed the then Federal Republic of Yugoslavia with the aim of weakening the combat power and completely disabling and beating FRY forces, at which moment this conflict turned from internal into international, and the court determined these facts as indisputable. The decision on the declaration of the state of war and Decision on the Cessation of the State of War are the legal acts of the then Federal Government and Federal Assembly.⁹

On the basis of everything said above, this court has no doubts that this was an international armed conflict. The task of the court in these proceedings was not (nor was it objectively possible) to determine the causes of the outbreak and course of the conflict and this is also not important for the purpose of discussion on the specific criminal offense.

In July 1999, defendants Sreten Popović and Miloš Stojanović were members of the Operative Search Groups, which according to their formation belonged to the 124th intervention brigade of the Special Police Units. Defendant Popović was the commander of the reconnaissance and sabotage platoon of the Operative Search Groups and Stojanović was a section commander of the same platoon. At the time, defendants Popović and Stojanović and Radomir Đerić were the assistants of lieutenant-colonel Goran Radosavljević a.k.a. Guri, who was the Petrovo Selo Police Training Centre head and training coordinator.

The court has determined these facts both on the basis of the defendants' defense and on the basis of testimonies to the same effect of witnesses **Goran Radosavljević and Radomir Đerić**, who confirmed the defendants' defense, as well as on the basis of a decision on deployment issued to the defendants and the two witnesses, which was

⁸ transcripts of April 12, 2007 – page 3 and thereafter, which the court read at the trial on December 11, 2007,

⁹ Official Gazette of FRY, No. 15/99 and 44/99

indisputable in the proceedings. So, as it has already been said, the defendants explained their functions of assistant and warehouse manager at this Training Center, while witness Radomir Đerić¹⁰ said that he had the same function as defendant Popović, although at the time of commission of this crime neither he nor Goran Radosavljević¹¹, who according to his and defendants' claims was the camp manager, were at the camp (which is also what the defendants themselves claim).

The victims in the proceedings are Ili, Mehmet and Agron Bytyqi, US citizens of Albanian nationality. In April 1999, they became members of a volunteer unit called the Atlantic Brigade, which was established in late March 1999 in New York, United States, which was made up of about 400 Albanian Americans and which illegally crossed to the territory of Kosovo-Metohija from the Republic of Albania in April 1999 and placed itself in the service of the Kosovo Liberation Army and actively participated in military operations against Serbian forces in the Paštrik territory.

Essentially, these facts have also been indisputable. The court has determined beyond doubt that members of the Atlantic Brigade came to Kosovo in order to join the Kosovo Liberation Army in the fight against Serbian forces (army and police) on the basis of statements of witnesses for the injured party **Fatos Bytyqi**, the brother of the three victims¹² and the statement of witness **Milan Petrović**, who headed the criminal police in Prizren at the time and who as of June 2001 worked on the so-called KIM file¹³, who all claim that the victims were members of the Atlantic Brigade, as well as on the basis of three March 6, 2000 documents¹⁴ in the names of Mehmet, Agron and Ili Bytyqi, entitled Letter of Appreciation and signed by KLA General Agim Ceku and the

¹⁰ transcripts of March 21, 2007 – page 21 and further, which the court read at the trial of December 11, 2007,

¹¹ transcripts of December 22, 2008 – page 13 and further

¹² transcripts of December 12, 2007 – page 13 in connection with the transcript of the record from the trial of February 12, 2007 – page 7

¹³ transcript of April 11, 2007 – page 43 and thereafter, which the court read at the trial on December 11, 2007,

¹⁴ pages 395-397/185 of this document

letters of appreciation of the KLA “military minister” No. 010/25 of July 26, 1999 for Ili Bytyqi, for Mehmet Bytyqi, for Agron Bytyqi¹⁵ and the biography of victims Ili, Mehmet and Agron Bytyqi, written by Imeraj Nexhat.¹⁶ Also, on the victims were found documents issued by the KLA with their photographs in KLA uniforms, three metal KLA identification plates, photographs in KLA uniforms, two travel documents issued by the Albanian Embassy to the United States with their photographs in KLA uniforms, and witnesses **Radoljub Došović**¹⁷, **Svetislav Protić**¹⁸ and **Zvonimir Kostić**¹⁹ testified to the same effect in their statements. Although the defendant’s defense practically denied possible existence and activities of the so-called Atlantic Brigade, the court, accepting the above mentioned evidence and facts found on the basis thereof, rejected the proposed evidence of the defense for the purpose of examining witness Božidar Delić (all the more so because even if witness Delić did not know about the existence and activities of a unit of this name, this could certainly not be used for concluding with certainty that this unit had never existed or operated in the territory of Kosovo and Metohija and that the victims were its members or not).

On June 26, 1999, victims Ili, Mehmet and Agron Bytyqi, together with Miroslav Mitrović, Minushi Vaxhit, his son, daughter-in-law and two children, crossed from the AP of Kosovo and Metohija to the so-called “narrow” territory of Serbia near the village of Rudare, municipality of Kuršumljaja, without personal documents, where they were deprived of liberty by Serbian police. After being examined at the Interior Ministry Secretariat in Prokuplje by... [missing text]...

... [missing text]... only supports the conclusion of the court that there is no evidence of inhumane treatment and torture of the victims.

¹⁵ pages 400-405/187 of the document

¹⁶ page 406-413/188 of this document

¹⁷ transcripts of audio recordings from the trial of June 9, 2008 – page 52 and further

¹⁸ transcripts of April 11, 2007 – page 13 and further, which the court read at the trial of December 11, 2007

¹⁹ transcripts of March 21, 2007 – page 3 and further which the court read at the trial of December 11, 2007

[handwritten text: order of the superior]

On the basis of everything presented above, the court holds that none of the presented pieces of evidence confirm the claim of the prosecution that these defendants deprived the victims of the right to a regular and fair trial or that they acted inhumanely towards them or tortured them, in view of the indisputably determined fact that they acted in accordance with the verbal order of their superior and held them at official premises until the arrival of members of the Interior Ministry to whom they were handed over by defendant Popović for further procedure, or that defendant Popović could have known that the victims would be killed. Namely, even the witnesses who spoke about the keeping in custody and handover of victims to unidentified members of the Serbian Interior Ministry had never spoken about the implementation of force, torture, inhumane treatment or any expression of animosity by defendant Popović against them, and none of them never even mentioned defendant Stojanović. It is evident that defendant Popović acted according to the order of the competent chief when he handed over these persons to Interior Ministry workers. Starting from the fact that ordinary people, let alone their colleagues, could never suspect that they might be killed after being handed over to police workers, and bearing in mind the fact that a large number of people, both from the Interior Ministry and from the Justice Ministry, at much higher positions than the defendant were informed about the actions taken with the victims, the court holds that it cannot be claimed that this defendant could have known that his colleagues – unidentified members of the Interior Ministry would really kill them, if they did it at all, in view of the fact that it was not determined in these proceedings who, when and where killed the victims (as it was explained earlier in the substantiation of this judgment). That is, for an evidently low-ranked member of the police, such as defendant Popović (of course, defendant Stojanović is at an even lower position in the hierarchy), the fact that he had received orders from somebody who was practically man No. 2 in the Interior Ministry hierarchy (namely, General Vlastimir Đorđević at the time), that they had contacted the Internal Affairs Secretariat chief (in Prokuplje, who was informed about everything) and that Justice Ministry representatives

(headed by Prokuplje prison warden and several prison employees) had also been informed about the takeover represented an even stronger guarantee that nothing unlawful was being undertaken. Actually, a higher position in the hierarchy provides a greater and stronger guarantee of lawfulness of procedure.

It should also be said that even if the prosecution's claim were accepted that the defendants had committed this criminal offense by carrying out the actions described in the amended indictment and that their actions to that effect were proven and determined in a reliable way, the presented evidence did not show that the defendants had had the necessary intent (either direct or indirect) for the commission of this criminal offense. This intent means that there is awareness that one's actions may result in prohibited consequences and that they [consequences] are wanted (or that one agrees to them). As it can be seen from the found facts, neither of the defendants was aware that they had acted unlawfully and that this would result (or might result) in some prohibited consequences. The defendants defended themselves by saying that they had acted in accordance with the lawful and regular orders of their superiors and the presented evidence indicated neither that the orders were unlawful, nor that the actions undertaken in accordance with them were unlawful. The deprivation of liberty, transportation and keeping in custody of an arrested person and the handover of such person to other members of the police are actions that are otherwise usually undertaken every day by the police and of course, this very frequently takes place without a written order of a competent authority and without a court ruling....[the rest of the text is missing]