

In response to a letter, dated 23 July 2019, in which Mrs. Agnes Callamard, Special UN Rapporteur on extrajudicial, summary or arbitrary executions requested information from the authorities of the Republic of Serbia concerning the alleged extrajudicial execution of U.S. nationals, the Bytyqi brothers, the Ministry of Justice of the Republic of Serbia has provided the following information.

1. *Please provide any additional information and any comment you may have on the above mentioned allegations.*

In section of the letter *Summary of alleged facts*, it is stated that “When the Kosovo conflict began, they (the three Bytyqi brothers) travelled to Kosovo to join the Kosovo Liberation Army (KLA)”. This assertion is untrue. Making a reference to the “liberation” army of Kosovo while failing to mention that this was a terrorist organization, which even figured on the U.S. list of terrorist organizations at the time, because of its responsibility for large-scale war crimes and mass killings in this Serbian province of not only Serbs but Albanians and persons belonging to other peoples, who were unwilling to cooperate with terrorists, paints a suggestive and inaccurate picture of the separatist insurgency in Kosovo.

The statement that “the Bytyqi brothers were apprehended by Serbian authorities after crossing a then unmarked border into the Serbian Government controlled territory, while escorting Roma neighbors from Kosovo to safety”, is a falsehood. Neither at that time nor today, has there ever been a border inside the Republic of Serbia, whether marked or unmarked. Until 9 June 1999 and the signing of the Kumanovo Military Technical Agreement, the Republic of Serbia exercised effective control over its entire territory. Its territory came under attacks launched from the territory of Albania by the terrorists from Albania, insurgents and by NATO forces.

The allegations that “they were escorting a Roma family who had protected their mother during the conflict”, have never been substantiated in any way. The proceedings are ongoing to establish the facts. Anyone responsible for the alleged crime will be punished. It is inadmissible to change the context in which these events occurred in order to implicate the Republic of Serbia, aside from those responsible, in the committing of this crime.

In 1999, the Republic of Serbia was bombed for 78 days without the authorization of the UN Security Council. Therefore, the Annex attached to Mrs. Callamard’s letter on international human rights law is a cynical reminder of the alleged humanitarian NATO bombing campaign against the FR of Yugoslavia, which resulted in 3000 deaths in a territory hundreds of kilometers away from Kosovo for which no-one has been held accountable so far.

2. *Please provide detailed information on the investigations that have been conducted into these allegations. In particular, please explain whether and how these investigations have addressed the question of the command authority and responsibility that has led to the killing of the Bytyqi brothers.*

A request to launch an investigation against nine suspects in Serbia has been issued.

All indicted persons were high-ranking officers of the Ministry of Internal Affairs of the Republic of Serbia at that time.

According to the Criminal Code in force then, there was no command responsibility which was not introduced to the Criminal Code of the Republic of Serbia before 2006. One of the fundamental principles of criminal law is to apply the law valid at the time of the commission of a criminal act and not retroactively or retrospectively. It may be retroactively applied only in case its provisions are more lenient for the perpetrator. Consequently, the investigations into this case have been and are still carried out against the persons suspected on reasonable grounds of being direct perpetrators of the criminal act of a war crime against PoWs.

3. *As promised to the Bytyqi family and the USA Government in 2015, have state intelligence files been exhaustively searched with respect to evidence in the Bytyqi murders? What has been found?*

No international court, including ICTY and the IRMICT have cooperated with Serbia in a manner referred to by Mrs. Callamard. The responses and documents from the state files of the Republic of Serbia submitted to these institutions have to be identified first and then undergo special procedures on the part of the Government of the Republic of Serbia to have them declassified before they may be used for the above indicated purposes. In such circumstances tons of documents in connection with 2,200 requests were made available to the ICTY. There is no request that the Republic of Serbia failed to respond to.

4. *Please provide detailed information on any effort towards securing evidence and ensuring witness protection in connection with these three murders.*

The High Court in Belgrade has heard more than 120 witnesses, most of them repeatedly.

None of the witnesses asked for any protection measures.

5. *Mr. Vlastimir Djordjević may be released from the ICTY prison in June 2019. Has any step been taken by the government to open a criminal investigation against him for the Bytyqi brothers murders, a case that was not prosecuted by the ICTY?*

On 27 January 2014, the ICTY Appeals Chamber sentenced Vlastimir Djordjević to 18 years in prison. On 16 October 2014, Vlastimir Djordjević was transferred to Germany to serve his prison term. On 17 June 2019, Vlastimir Djordjević became eligible for an early release having served two-thirds of his term. The International Residual Mechanism for Criminal Tribunals will make a decision on his appeal, whose functions, among other things, include the supervision of the enforcement of sentences, deciding on requests for pardon, commuting of sentence, including requests by convicted persons already serving their prison terms.

The investigation against Vlastimir Djordjević may be continued only after he is released from prison. Before his extradition all possible actions of gathering evidence against him had been taken at that time

6. *What efforts are being made to create a safe political environment ensuring and to ensure the protection of witnesses to the execution of the Bytyqi brothers?*

The case of the Bytyqi brothers is a criminal act of murder. For the purpose of protecting any witnesses in this case, all legal provisions provided for in the legal system of the Republic of Serbia have been applied to the above and all other witnesses.

The Republic of Serbia has a developed system of witness protection both in terms of legislation and in terms of practice. That mechanism has been instrumental in bringing to justice many individuals responsible for the most serious crimes against humanity and international law. That system has been in place for many years and yielded good results. For example:

Regulations on witness protection

- a) The rights and obligations of witnesses in criminal proceedings in the Republic of Serbia have been regulated in Articles 91 to 112 of the Criminal Procedure Code (“Official Gazette of RS” Nos 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014, hereinafter referred to as the Criminal Procedure Code - CPC).

In terms of witness protection, CPC Article 102, *inter alia*, stipulates as follows:

“The authority conducting proceedings is required to protect an injured party or witness from an insult, threat and any other attack. The public prosecutor or the court will caution a participant in proceedings or other person who, before the authority conducting proceedings insults an injured party or a witness, threatens him or endangers his safety, and the court may also fine him up to 150,000 dinars. Upon receiving notification from the police or the court or upon learning about the existence of violence or a serious threat against an injured party or a witness, the public prosecutor will undertake criminal prosecution or notify the competent public prosecutor thereof. A public prosecutor or the court may request that the police undertake measures to protect the injured party or a witness in accordance with the law.”

In cases of especially vulnerable witness, CPC Article 103, *inter alia*, stipulates as follows:

“The authority conducting proceedings may *ex officio*, at the request of parties or the witness himself, designate as an especially vulnerable witness, one who is especially vulnerable on the basis of his age, experience, lifestyle, gender, health condition, nature, the manner or the consequences of the criminal offence committed, or other circumstances of the case. The ruling determining the status of an especially vulnerable witness is issued by the public prosecutor, president of the panel or individual judge”.

CPC Article 104 regulates in detail the rules applying to questioning of especially vulnerable witness, stating that “An especially vulnerable witness may be examined only through the authority conducting the proceedings, who will treat the witness with particular care, endeavoring to avoid possible detrimental consequences of the criminal proceedings to the personality, physical and mental state of the witness. Examination may be conducted with the assistance of a psychologist, social worker or other professional, which will be decided by the authority conducting proceedings. If the authority conducting proceedings decides to examine an especially vulnerable witness by using technical devices for transmitting images and sound, the examination is to be conducted without the presence of the parties and other participants in the proceedings in a room where the witness is located. An especially vulnerable witness may also be examined in his dwelling or other premises or in an authorized institution professionally qualified for examining

especially vulnerable persons. In such case the authority conducting proceedings may order application of the measures referred to in paragraph 2 of this Article. An especially vulnerable witness may not be confronted with the defendant, unless the defendant himself requests this and the authority conducting proceedings grants the request, taking into account the level of the witness's vulnerability and rights of defense".

With regard to witness protection, CPC Article 105, *inter alia*, stipulates as follows:

"If there exist circumstances indicating that by giving evidence or answering certain questions a witness would expose himself or persons close to him to a danger to life, health, freedom or property of substantial size, the court may authorize one or more measures of special protection by issuing a ruling determining a status of protected witness. The measures of special protection include questioning the protected witness under conditions and in a manner ensuring that his identity is not revealed to the general public, and exceptionally also to the defendant and his defense counsel, in accordance with this Code".

Under Article 106 of the CPC, i.e. Measures of Special Protection, it is provided that the identity of a protected witness is not revealed to the public. They are intended "to bar the public from the trial and prohibit the publication of data about the identity of the witness. The measure of special protection whereby data about the identity of a protected witness is withheld from the defendant and his defense counsel may be ordered by the court exceptionally if after taking statements from witnesses and the public prosecutor it determines that the life, health or freedom of the witness or a person close to him is threatened to such an extent that it justifies restricting the right to defense and that the witness is credible".

The Criminal Code regulates in detail the initiation of proceedings for determining the status of a protected witness (CPC Article 107) by "allowing the court to determine the status of a protected witness *ex officio* at the request of the Public Prosecutor or the witness himself. The request referred to in paragraph 1 of this Article shall contain: personal data about the witness, information about the criminal offense under examination, facts and evidence indicating that in the case of testimony there is a danger to the life, body, health, freedom or property of a larger scale for a witness or his close relatives and a description of the circumstances to which the testimony relates. The request shall be filed in a sealed envelope indicating "witness protection - strictly confidential" and shall be submitted during the investigation to the pre-trial judge and after confirmation of the indictment to the presiding judge."

Decision on the status of protected witness (CPC Article 108). "Determination of the status of protected witness shall be made by the pre-trial judge and upon confirmation of the indictment by the panel of judges. Decision on status of a protected witness should records pseudonym for the protected witness, duration of measure and the way of its implementation, modification or deletion of witness identification data, concealment of witness appearance, interrogation from a special room with the distorted witness's voice, interrogation by technical devices for transmission and alteration of sound and images."

Examination of a protected witness (CPC Article 109). "When the decision to determine the status of a protected witness becomes final, the court shall, by a special order, which is a classified document, inform the parties, defense counsel and witness in a confidential manner of the date, time and place of examination of the witness. Prior to the commencement of the interrogation, the protected witness shall be informed that his identity will not be disclosed to anyone other than the

court, parties and defense counsel, or only the court and the public prosecutor under the terms and conditions specified in Article 106, paragraphs 2 and 3, of the Code, and shall be informed of the method he is to be examined. The court shall warn all those present that they are obliged to keep confidential information about the protected witness and his/her loved ones and about other circumstances that may lead to their identity being revealed and that giving away a secret constitutes a criminal offense. The warning and the names of the persons present shall be reflected in the report. The court will prohibit any question that requires an answer that could reveal the identity of the protected witness. If the examination of a protected witness is carried out by way of technical means for changing sound and image, they shall be handled by a person having appropriate expertise. The protected witness shall sign the record of proceedings or report with his pseudonym."

Keeping of Protected Witness Information (CPC Article 110). "Information on the identity of the protected witness and those close to him and on other circumstances which may lead to their identification shall be enclosed in a special envelope marked with "protected witness - strictly confidential", sealed and handed over to the pre-trial judge. Only the court deciding on the remedy against the judgment shall indicate on the cover of the sealed envelope the reason, day and time of its opening and the names of the members of the panel who are familiar with the information referred to in paragraph 1 of this Article. Following that, the enveloped shall be sealed again with information on the date and time of its sealing and sent back to the pre-trial judge. Information referred to in paragraph 1 of this Article shall be treated as classified information. Apart from public officials, this information must also be kept secret by other persons who obtain the same in any capacity."

Duty to notify about special protection measures (CPC Article 111). "The police and the Public Prosecutor are obliged, when collecting information from citizens, to inform them of the special protection measures referred to in Article 106 of the Code.

b) Pursuant to a special Law on the Protection Program for Participants in Criminal Proceedings ("Official Gazette of the Republic of Serbia", No. 85/2005, hereinafter referred as "the Law"), which regulates the witness protection program, a person who concludes this type of agreement with the state is entitled to economic, psychological, social and legal assistance. The Protection Unit of the Ministry of Internal Affairs of the Republic of Serbia is in charge of physical protection of a witness, of his family and property.

If the witness's concern about his safety is justified or if his involvement in the criminal proceedings as a witness is particularly difficult for him for obvious reasons, the Prosecutor may request that he be provided basic protection during the criminal proceedings, be granted the status of a protected witness or the status of a particularly vulnerable witness. Both the Organized Crime Prosecutor's Office in Belgrade as well as the War Crimes Prosecutor's Office of the Republic of Serbia comprise Information Department for Injured Parties and Witnesses.

The above-mentioned departments serve as a support to injured parties and witnesses in the proceedings conducted by the Public Prosecutor's Office of the Republic. These departments provide information and support to injured/aggrieved parties and witnesses, which, in the form of a notice are referred to along with the call to undertake procedural steps to examine a witness, stating that he or she may be granted protection available through the status of a protected witness or of an especially vulnerable witness if there are justifiable security concerns and only after an assessment based on the available information is made. The primary task of the Department is to

provide psychological and logistical assistance and support to witnesses, as well as to enable witness access to the court or any other body in the proceedings as easily and as efficiently as possible. Such witness treatment was introduced in 2005 and has been perfected several times based on an analysis of experiences and best practices.

Witness protection practice

Since the special witness protection program has been made available in the Republic of Serbia, general protective measures have been applied to a total of 88 persons who enjoyed the status of protected witnesses in some war crime trials. Protection measures pursuant to the Law on the Protection Program for the Participants in Criminal Proceedings were applied for 55 persons (of whom 19 protected witnesses themselves and 36 persons in a close relationship with them). The measures were implemented with success, in all cases.

7. Please provide detailed information on measures taken to address the rights of victims' families, especially with regard to being informed and participating in investigations and receiving proper reparations.

Victims' families are informed of the status and course of proceedings in the case in accordance with the Criminal Procedure Code. In pre-investigative and investigative proceedings, notification i.e. familiarization with case files is restrictive, given that the proceedings are not public at this stage.

The War Crimes Prosecutor's Office set up a Department for Information and Support for the injured and witnesses in 2017. The Department provides information and support to injured parties and witnesses, which is sent in the form of a notice along with the call to undertake procedural actions of examining witnesses, stating that he/she may be accorded protection by way of being granted the status of a protected witness or of a particularly vulnerable witness if there are justified security concerns.

8. Please provide information on all efforts undertaken to locate mass graves in the territory of Serbia and elsewhere

Immediately after the end of war operations in Kosovo and Metohija the Republic of Serbia has located mass graves on its territory. Other Republics of the former SFRY created following the dissolution of that State have not done so. The Republic of Serbia has continuously been working on tracing and locating missing persons. The Commission on Missing Persons of the Government of the Republic of Serbia (hereinafter referred to as the Commission) was formed on 8 June 2006 under the Decision of the Government of the Republic of Serbia ("Official Gazette of the Republic of Serbia", Nos. 49/06, 73/06, 116/06, 53/10 and 108/12) with the mandate to address the issue of persons missing as a consequence of armed conflicts in the territory of the former SFRY and the Autonomous Province of Kosovo and Metohija.

The Commission has taken over all activities and commitments from the Commission for Missing Persons of the Council of Ministers of the State Union of Serbia and Montenegro, set up in 2003,

which has maintained the continuity of previous government body activities, formed since 1991 to address the problems of the missing, the captured and the dead as a result of armed conflicts in the territory of the former SFRY.

The Commission monitors, examines and puts forward proposals for the resolution of the issues related to the missing persons; collects data and provides information about the persons missing as a result of armed conflicts and in relation to the armed conflicts in the territory of the former SFRY and the Autonomous Province of Kosovo and Metohija; executes the commitments stemming from international treaties and agreements pertaining to the resolution of the issues of missing persons; coordinates the work of relevant bodies and organizations in the process of accounting for the missing persons, in exhumations and identifications; cooperates with the relevant authorities and families of the missing and the relevant associations in order to resolve the status issues of the missing persons and the humanitarian issues of their families.

Resolution of the issue of persons missing in the territory of the former SFRY, including cases of disappearances and abductions in the territory of Kosovo and Metohija, is not only an important humanitarian but also a political issue, as its resolution hinges in large measure on the reconciliation process and creation of multi-ethnic societies based on democracy, rule of law and tolerance in the region. This is an obligation of the authorities towards the missing persons' families who have the right to find out the truth about the fate of their loved ones. Withholding information on the missing persons is a gross violation of the human rights of their families, whereas abductions and other acts of violence are crimes for which all perpetrators must be held responsible in accordance with all international norms and the national legislation in force.

The Commission carries out its activities in line with its mandate and the work plan, as well as the obligations undertaken in international and other documents signed relating to the problem of missing persons and agreements made with other participants of the process.

According to the estimates, around 40,000 persons disappeared in armed conflicts in the territory of the former Yugoslavia. 34,984 cases have been reported to the International Committee of the Red Cross, and according to the ICRC data from July 2017, **10,416** persons are still unaccounted-for in the region, and **1,658** out of the said number in AP Kosovo and Metohija, **2,057** in the Republic of Croatia and **6,701** in Bosnia and Herzegovina.

The number of missing persons in the records of the Commission as at 31 December 2018 is as follows: 1,746 in the Republic of Croatia; 97 in Bosnia and Herzegovina and 570 in AP Kosovo and Metohija.

The list of missing persons sought by the Republic of Serbia (nationals of the Republic of Serbia and persons whose disappearance was reported by families via Yugoslav Red Cross) in the Republic of Croatia contains 371 persons. The Republic of Serbia has been constantly asking for information on the fate of missing persons of Serbian ethnicity, nationals of the Republic of Croatia, including those who went missing in the operations of the Croatian army and police "Flash" and "Storm", in accordance with the signed Agreement and the Protocol of Cooperation. Around 680 missing person cases have been reported to the ICRC, while the number of the missing in the records available to the Commission is much higher than that. Verification procedure is now ongoing in these cases according to ICRC criteria (695).

The list of missing persons of the Republic of Serbia sought in Bosnia and Herzegovina includes 97 persons. The largest number of them are former JNA members who went missing during the withdrawals from Tuzla and Sarajevo in 1992 as well as several individual cases of disappearance mostly in the area of Posavina and Kupres. Over 350 families of missing persons who were nationals of Bosnia and Herzegovina and whose families fled to the Republic of Serbia during the armed conflict and permanently settled in the territory of Serbia and who submitted their requests for tracing missing persons through the Red Cross of Serbia, have been registered in the Republic of Serbia.

In the conflict that raged in the territory of AP Kosovo and Metohija following 1998, around **5,800** persons went missing and the fate of **1,658** persons, around **540** persons of Serbian and non-Albanian nationalities, is yet to be clarified. The Commission of the Republic of Serbia also possesses information on another 30 persons who went missing in AP Kosovo and Metohija. All these cases are at the stage of verification. Abductions in Kosovo and Metohija began in 1998 but after the signing of the Military and Technical Agreement of Kumanovo (9 June 1999), abductions and disappearances even intensified there. The victims were civilians of Serbian and other non-Albanian nationalities. UNMIK, which was responsible for the security of inhabitants in Kosovo and Metohija, has not done much to protect them.

The settlement of the problem of missing persons, although a humanitarian one, from the very beginning was accompanied by a high level of politicization. This resulted in the deceleration of searches and in prioritizing activities based on ethnic instead of humanitarian principle. The level of cooperation and openness in exchanging information between participants that was necessary for planning and synchronization of activity and identification of the dynamic of excavations and identification of missing persons has not been at the level required to do the job in the most efficient possible manner.

In addition to these answers provided to Mrs. Kalamar's questions, we would like to draw attention to the first part of her letter, with headings *Summary of alleged facts, Investigatory History, Background Information and The Petrovo Selo Training Facility*. These headings contain, to a large extent, unverified facts, presented as being indisputable, or as if they were established facts. This is not true. The fundamental principle in the judicial system of the Republic of Serbia is the presumption of innocence. It is up to the court to determine facts and possible responsibility. Therefore, they are unacceptable parts of an introduction that are only mentioned in the heading as "alleged facts" and are further on treated as truth. They are used for manipulation and to make constructions that are, consequently, untenable.