Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions

REFERENCE:
AL OTH 40/2019

23 July 2019

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolution 35/15.

In this connection, I would like to bring to the attention of the European Union information I have received concerning the alleged extrajudicial killing of three American brothers of Albanian origins in Serbia, during the Kosovo war, and the lack of effective investigation and prosecution thereon. Please note that a letter expressing similar concerns, was sent to Serbia. A copy of the present allegation letter, as well as of the letter to Serbia, will be sent to the United States of America.

According to the information received:

Summary of alleged facts

On 23 June 1999, three USA citizens of Kosovar-Albanian origin, brothers, named Mr. Ylli Bytyqi, Mr. Agron Bytyqi and Mr. Mehmet Bytyqi, were apprehended by Serbian authorities after crossing a then unmarked border into Serbian Government controlled territory, while escorting Roma neighbours from Kosovo to safety. They were escorting a Roma family who had protected their mother during the conflict and which was now facing persecution from Kosovar-Albanian groups who believed that Romas had collaborated with Serbian authorities.

The three brothers lived in New York. When the Kosovo conflict began, they travelled to Kosovo to join the Kosovo Liberation Army (KLA) and formed what was called the KLA’s “Atlantic Brigade”. When the conflict ended they gave up their arms and KLA uniforms.

The brothers were convicted of illegally entering Serbia and sentenced to 15 days in jail in Prokupije. A decision to release them was later issued on 8 July 1999. Instead of being released, however, they were taken by a special operations unit of the Serbian Ministry of Internal Affairs to a training facility near Petrovo Selo (Serbia), where they were allegedly executed. At that time, Ylli was 25 years old, Agron was 23 years old, and Mehmet was 21 years old.

A witness who was waiting for the brothers outside the prison, never saw them coming out. He later testified that a prison guard told him that the brothers were taken out a back door of the jail by men in plain clothes and driving white cars
with no license plates. The Bytyqis brothers were handed over directly by the prison officials to the plain-clothed officers.

It was later confirmed that the plain-clothed officers were from a special operations unit of the Serbian Ministry of Internal Affairs. In his testimony before the War Crimes Chamber of the Belgrade District Court, Mr. Vlastimir Đorđević, Assistant Minister of Internal Affairs, said that the Minister of Internal Affairs, Mr. Vlastimir Stojilković, directed him to organize the transfer of the Bytyqis brothers from Prokuplje prison to a police training facility located in Petrovo Selo.

Mr. Vlastimir Đorđević called Mr. Sreten Popović, the company commander of an Operational Pursuit Group (OPG) unit and deputy commander of the Petrovo Selo facility, with the order to assign men “who would report to the District Prison in Prokuplje and take over the custody of [Petrovo Selo] the three American citizens.” A few days later, Mr. Sreten Popović confirmed to Mr. Vlastimir Đorđević that the order had been executed.

Mr. Popović ordered Mr. Milos Stojanović, a subordinate OPG officer, to assist in the transfer from Prokuplje. Mr. Aleksandar Nikolić and Mr. Dejan Stamenković (both members of the same OPG unit) also assisted in the transfer. The three OPG officers (and perhaps a fourth person) drove the Bytyqis brothers across the country and handed them over to Mr. Popović in Petrovo Selo. The brothers were then kept locked in an empty warehouse at the rear of the facility.

When asked why they did not have a written order from Mr. Đorđević, Mr. Popović and Mr. Stojanović said that in their unit an oral order had the same value as a written one. Similarly, no arrest warrant or subsequent judicial process was ever found that authorized the brothers’ continued detention.

The Petrovo Selo facility was run by Lieutenant Colonel Mr. Goran Radosavljević (aka Guri). In Petrovo Selo, Mr. Popović later testified to handing the three brothers over to unidentified officers of the Ministry of Internal Affairs between 8 to 10 July 1999. Despite commanders’ regular practices, no logs detail that either the Bytyqi brothers’ or the officials that Mr. Popović transferred the brothers to were ever at Petrovo Selo.

On June 14, 2001, reports first surfaced that the three brothers’ bodies were found on top of a mass grave at the rear of the Petrovo Selo facility. The brothers were found with their hands tied behind their backs and with gunshot wounds to the back of their heads. The mass grave contained the remains of seventy-five Kosovar-Albanians.

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**Investigatory History**

In the spring of 2002, Serbian and United States authorities opened separate criminal investigations into the murder of the Bytyqi brothers. After many years of investigation, Serbian prosecutors indicted two lower-ranking officers involved in the crimes, Mr. Sreten Popović and Mr. Milos Stojanović. Neither Mr. Goran Radosavljević, Mr. Vlastimir Đorđević nor others in the chain of command were questioned as suspects, in spite of witness testimonies.

During the investigation, Mr. Goran Radosavljević was allowed to flee the country and avoid scrutiny. Serbian investigators suspected that Mr. Radosavljević had not only paid for the defense costs of Mr. Popović and Mr. Stojanović, but was also behind threatening letters sent to prosecutors’ offices and other interferences with the trial and its witnesses.

Eventually, Mr. Popović and Mr. Stojanović were acquitted, retried and acquitted, with the acquittals being confirmed on appeal.

**Background Information**

It is submitted that, at the time of the alleged event, there was an international armed conflict between Serbia and the Member States of NATO and a non-international armed conflict between Serbia and the Kosovo Liberation Army (KLA).

According to the ICTY, following the start of the NATO bombing of Yugoslavia, a campaign of violence was launched against the Kosovo Albanian civilian population, during which many were forcibly displaced, incidents of killing and sexual assault took place, and mosques were intentionally destroyed. During the spring of 1999, in particular, forces of the FRY and Serbia deliberately and forcibly displaced Kosovo Albanian civilians both within and outside of Kosovo. During the forcible displacement of the Kosovo Albanian population, the FRY and Serbian forces killed hundreds of individuals, destroyed or damaged mosques, and sexually assaulted Kosovo Albanian women.

On 31 March 1998, the UN Security Council condemned the Serbian forces’ excessive use of force against civilians and peaceful demonstrations and imposed sanctions against the FRY. On 1 June 1998 Serbian forces launched the first major offensive of the conflict, which lasted until September.

On 24 March 1999, NATO began a bombing campaign against Yugoslavia aimed at preventing the ethnic cleansing of Kosovo. NATO bombings ended on 10 June 1999, one day after the signing of the Kumanovo agreement. The KLA and FRY negotiated a ceasefire agreement in March 1999, but failed to reach an accord.
Therefore, there was no formal document signifying a peaceful settlement to the non-international armed conflict. Significant violence occurred even after the signing of the ceasefire agreement. More than two hundred people were reportedly killed from that date until the end of July 1999. This included the murders of fourteen Kosovo Serbs in Lipljan on 23 July 1999.

Both the KLA and FRY were starting the process of demobilizing when the Bytyqi brothers were murdered. NATO secured an agreement for the KLA to begin demilitarization on 21 June 1999 and certified its demilitarization on 20 September 1999.

The FRY revoked its state of war and emergency effective 26 June 1999. The Serbian Court of Cassation has ruled that international humanitarian law applied through at least December 1999.

The Petrovo Selo Training Facility

Petrovo Selo was not an ad hoc facility. It was a tightly-secured and established training center that the government of Serbia continues to operate even today. During April and May 1999, the remains of seventy-five Kosovar Albanians were transported from Kosovo to Petrovo Selo for reburial in a mass grave.

At the time of the Bytyqi murders, at least seventy special operations trainees and several “Red Berets” were present in Petrovo Selo. The facility is a remote one. Only one road comes in and out of the facility. There is no other development in its immediate vicinity. It is largely surrounded by trees and forest.

Guards at Petrovo Selo were under an obligation to keep logs, noting any arrivals and departures from the facility. Commanders kept these logs in great detail, even writing down what food they ordered and what they spent on it.

At the time of the murders, Mr. Đorđević and Mr. Radosavljević were responsible for the facility in Petrovo Selo and all troops stationed therein.

The International Criminal Tribunal for the former Yugoslavia has determined that as Chief of the Public Security Department (RJB), Mr. Vlastimir Đorđević was responsible for the Petrovo Selo facility. Similarly, individuals present at the facility when the bodies arrived and who took part in the digging of the mass grave and reburial operation were Mr. Đorđević’s subordinates. Mr. Đorđević was convicted of crimes against humanity by the ICTY2. The trial court’s judgment went even further, finding that Mr. Đorđević actually “knew of the bodies transported from Kosovo to Petrovo Selo”. This finding was confirmed on appeal3. Mr. Đorđević is eligible for early release on 17 June from his ICTY-imposed sentence, currently being served in Germany.

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Evidence gathered before the ICTY and the Belgrade War Crimes Chamber shows that Mr. Goran Radosavljević operated as the head of the Petrovo Selo training facility and personally oversaw the training of the MUP forces at that facility after the withdrawal of Serbian forces from Kosovo on 20 June 1999. Mr. Radosavljević has admitted as much during his December 2008 testimony before the Belgrade War Crimes Chamber. At this time, Mr. Radosavljević had achieved the rank of Lieutenant Colonel and was also the Commander of the Petrovo Selo training facility.

Mr. Sreten Popović was a company commander within the OPG, a member of the 124th Intervention Brigade, and deputy commander of the Training Center in Petrovo Selo. As commander of a section of the same platoon, Mr. Milos Stojanović was Mr. Popović’s direct subordinate. Mr. Popović, Mr. Stojanović, and Mr. Radomir Deric were Mr. Radosavljević’s assistants and subordinates.

Reportedly, there are still at least 1,654 missing persons from the war, including 1,092 Albanians and 562 Serbs and Roma.

The EU Accession Process

On 27-28 June 2013, the European Council agreed to initiate accession negotiations with Serbia by January 2014.

On 21 January 2014, the first meeting of the Accession Conference with Serbia at ministerial level opened the negotiation process. Since then, nine Accession Conference meetings at ministerial level have been held in Brussels.

Within this context, it has been reported that as part of Serbia’s accession process, the European Union has worked with Serbia to document plans and strategies for improving its record in war crimes cases.

In 2018, the European Commission’s Progress Report stated that, “there have been no indictments against senior level military or senior level police officials for war crimes”. It also stated that senior Serbian politicians have made statements about ICTY rulings and convicts that are “not helpful [in] creating an environment in which war crimes cases can be processed, calmly and effectively.”

It is further alleged that two years earlier, in 2016, the EU’s Common Position on Chapter 23 negotiations with Serbia stated that the EU: “urges Serbia to deliver on

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4 ICTY Trial Chamber Judgement in Đorđević, 23 Feb. 2011, para 1353; FN 5208: Vlastimir Đorđević. T 9973-9975; see also Exhibit P1508 (Testimony of the Accused before the War Crimes Chamber of the Belgrade District Court on 26 June 2009), pp 3-7, 15.

5 European Commission Working Group, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Serbia 2018 Report

6 Pag. 18
intensifying and improving the quality of investigations leading to better results of investigative bodies, including in high level cases based on command responsibility. The EU will pay particular attention to the effects the above mentioned strategies/action plans generate.  

It is also reported that perpetrators of extrajudicial killings, including those responsible for war crimes, use the lack of judicial cooperation between Serbia and Kosovo, caused in part by the closing of the EULEX mission, to shield themselves from investigations.

In connection with the above alleged facts and concerns, please refer to the Annex on Reference to international human rights law attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

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

2. Please provide information on measures taken by the European Union in order to ensure that Serbia effectively investigate the above mentioned allegations and ensure accountability of those responsible, including senior level officials, as appropriate, before closing Chapter 23. Please provide information on how the EU will monitor and ensure concrete results by the Serbian war crimes judiciary.

3. Please provide information regarding the steps taken by the European Union to ensure cooperation between Serbia and Kosovo in investigating and prosecuting violations of international human rights and humanitarian law – like extradition and mutual legal assistance agreements – before closing accession chapters? How will such agreements prevent and respond to extrajudicial killings?

4. Please provide information regarding the steps taken by the European Union to ensure that Serbia identifies and locates the remaining mass graves in the country, many of which have not been discovered yet.

This communication and any response received from the European Union will be made public via the communications reporting website within 60 days. They will also

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subsequently be made available in the usual report to be presented to the Human Rights Council.

I wish to thank you for taking the time to consider this letter. I stand ready to further engage in dialogue with relevant bodies of the European Union to address any concern arising in connection with the issues mentioned above.

I am considering to publicly express my concerns in the near future as, in my view, the information in my possession appears to be sufficiently reliable to indicate a matter warranting serious attention. I also believe that the wider public should be alerted to the potential human rights implications of these allegations. Any public statement on my part will indicate that I have been in contact with the European Union to clarify the issue/s in question.

Please accept, Excellency, the assurances of my highest consideration.

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions
Annex
Reference to international human rights law

Article 3 of the Universal Declaration of Human Rights guarantees the protection of the right to life without distinction or discrimination of any kind, and provides that all persons shall be guaranteed equal and effective access to remedies for the violation of that right. Furthermore, the right not to be arbitrarily deprived of one’s life is recognized as part of customary international law and the general principles of law, and is also recognized as a jus cogens norm, a fundamental principle of international law that is universally binding at all times. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual’s rights.

The obligations to protect civilians are also contained under Common Article 3 of the Geneva Convention relating to non-international armed conflicts, which provides that “persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.” This includes the prohibition of the violence to life and person, in particular murder of all kinds, taking of hostages, and outrages upon dignity.

In this regard, I wish to recall that Article 6 of the International Covenant on Civil and Political Rights continues to apply also in situations of armed conflict to which the rules of international humanitarian law are applicable, including to the conduct of hostilities. While rules of international humanitarian law may be relevant for the interpretation and application of Article 6 when the situation calls for their application, both spheres of law are complementary, not mutually exclusive. Use of lethal force consistent with international humanitarian law and other applicable international law norms is, in general, not arbitrary. By contrast, practices inconsistent with international humanitarian law, entailing a risk to the lives of civilians and other persons protected by international humanitarian law, would also violate Article 6 of the Covenant. States must investigate alleged or suspected violations of Article 6 in situations of armed conflict in accordance with the relevant international standards (CCPR/C/GC/36).

Furthermore, everyone should have the right to liberty and security and to be free from arbitrary arrest, detention, or exile, guaranteed by Articles 3 and 9 of the Universal Declaration of Human Rights. Furthermore, I would like to refer to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances which establishes that no State shall practise, permit or tolerate enforced disappearances (Art 2(1)). Furthermore, victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependents shall also be entitled to compensation (art. 19).
Finally, States are under an obligation to conduct thorough, prompt and impartial investigations of all suspected cases of extrajudicial, arbitrary or summary executions and the obligation to bring to justice all persons identified by the investigation as having participated in those executions as laid down in the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989. Moreover, according to principle 4 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, States have an obligation to investigate all allegations of prohibited murders of civilians committed by their armed forces or nationals. Where there is sufficient evidence of the commission of an offence, States have a duty to prosecute those responsible.