

# HELSINKI Bulletin



Helsinki Committee for Human Rights in Serbia

Zmaj Jova str. #7, 11000 Belgrade, Serbia  
tel. +381 11 30 32 408; fax +381 11 26 36 429  
e-mail: biserkos@eunet.yu; www.helsinki.org.yu

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Attorney of family Đinđić, Srđa Popović, before the Trial Chamber conducting the proceedings against indictees for assassination of Prime Minister Zoran Đinđić (12 March 2003) on 23 February 2007 submitted two important proposals: the proposal for expansion of indictment and the proposal for supplementing of evidence presentation proceedings.

Nata Mesarevic, the judge presiding the Trial Chamber, turned down those proposals in late March. Regardless of the foregoing, the Helsinki Charter is running them in their entirety, deeming both initiatives to be of a broader social importance for they are highly indicative of the political ambience in which the assassination had taken place.

After finalisation of the first-degree trial conducted by the Special Department of the Belgrade District Court, Helsinki Committee for Human Rights in Serbia, for the same reason shall run the complete documentation including documentary evidence and final ruling of the prosecutor on those proposals.

## PROPOSAL FOR SUPPLEMENTING OF EVIDENCE PRESENTATION PROCEEDINGS

By Srdja Popovic, attorney of plaintiff Ruzica Đinđić

### **Insurgency**

I suggest :

1. That evidence be produced by reading of the report of the Commission of the Government of Serbia of 13 August 2003 DT 72 No. 00-002/2003/86, page 24,

### **With the focus on the following circumstance :**

according to the findings of this Commission, the first defendant, as the ringleader, together with other persons in November 2001 staged an insurgency with a view to jeopardizing the constitutional order and security.

2. to produce evidence by reading the statement of Inspector General of the Interior Ministry of Serbia, Vladimir Božović, from the

article headlined "BOŽOVIĆ: I just cited the Law", ran by daily "Danas" of 30 May 2005, and

3. to produce evidence by reading the statement of Vladimir Božović from the article "Lupus in fabula" ran by weekly "Vreme" of 2 June 2005,

### **with the focus on the following circumstance:**

that Inspector General of the Interior Ministry of Serbia, Božović on 18 May 2005 declared invalid an arms procurement licence granted by Municipality Savski Venac to Agency "Lupus", deeming it unlawful since that the Agency employed persons, onetime members of the Special Operations Unit, who had taken part in an **armed insurgency** in November 2001, which by itself stripped them of the right to obtain and hold arms.

And they have not been prosecuted for that offence, "for **the authorities were weak then**", while "no investigation has been launched... unless the prosecutor orders it".

#### **Justification:**

The first defendant in his defense **denies** having taken part in November 2001 SOU action threatening the constitutional order and security of the country .

Suggested evidence, notably when **viewed within the framework of other, already produced evidence**, refutes such defense.

#### **Objective elements of action**

Namely the first defendant fully **recognizes the facts** which constitute **objective** element of armed insurgency, namely that in November 2001 he **took part** in Special Operations Unit action in which that Unit:

expressly **disobeyed** its superiors, voluntarily **withdrew** all its members to Kula barracks, and cut off all telephone lines thereof with immediate superiors and external world,

o **withdrew** its members from escorts of protected personalities,

o **withdrew** its members from security service of Airport Belgrade,

o fully armed and with military vehicles voluntarily **occupied** part of highway near "Sava Centre" in Belgrade,

o **demanding from the government** and national parliament to pass a law on co-operation with the Hague Tribunal.

o **demanding from the government** to replace a cabinet member, the Interior Secretary.

o Likewise demanded **replacement** of immediate superiors of the Unit, head of State Security and his deputy.

However, the defense team of the first defendant **denies** that the described action in which the first defendant took part was **aimed at threatening constitutional order and security of the country**.

Such a stand of the first defendant is based on an irrefutable fact that against participants in the insurgency, which constituted a grave criminal offense, proceedings have never been instituted.

The evidence proposed would prove that non-investigation into the criminal offense of armed insurgency was not due de facto due to an alleged **absence of legal conditions for prosecution**.

That said, today proposed Report of the **Commission of the Government of the Republic of Serbia** DT 72 no. 00-002/2003/86 of 13 August 2003 clearly indicates that the November 2001 SOU action was **appraised as an armed insurgency**.

(**confirmed** at the main hearing by testimonies of qualified, in view of their capacities, **witnesses**, notably the then Interior Minister, the then head of State Security, and other witnesses like RODOLJUB MILOVIĆ, ZORAN JANJUŠEVIĆ, VLADIMIR POPOVIĆ, ČEDOMIR JOVANOVIĆ, ZORAN MIJATOVIĆ, witness-collaborator ZORAN VUKOJEVIĆ and the accused SAŠA PEJAKOVIĆ.)

Today attached statements of Inspector General of the Interior Ministry of Serbia, VLADIMIR BOŽOVIĆ from 2005, indicate that Inspector General of the Interior Ministry of Serbia **confirms** allegations of quoted witnesses, namely that non-prosecution of ringleaders and participants in the armed insurgency was not **due to the absence of legal conditions**, but rather because "**the authorities were weak then**", therefore on political grounds, and that **today** "launching of relevant investigation still hinges on **the prosecutor's decision**."

In other words, though it was an armed insurgency, that offence has not been prosecuted **because the insurgency itself has been successful**.

#### **Indictment**

Proposed evidence would corroborate the stand and assessment of indictment KT's no. 2/03 of 21 August 2003, in which , on page 32 , the following is stated:

1. *that at the top "of that pyramid (criminal organization – remark by S.P.) were defendants Luković-Legija and Dušan Spasojević";*

2. *that "the entire organization was so designed ..to gear its activities towards the conquest of power.";*

3. *that in "carrying out of that action ....SOU was subsumed as a well-trained armed formation and obedient to Luković-Legija";*

4. *that "the first test of those ambitions was the SOU insurgency which had a **political background**, as evidenced by their demands for replacement of the Interior Secretary and of other high officials";*

5. *and finally that "**the impact of the insurgency ...encouraged** Spasojević and Legija to pursue the **principal idea-the conquest of power**, but, from then on, in other way, and **by other means**."*

However, if the special prosecutor quite accurately qualified the actions of the first defendant as an armed insurgency, he failed, on unclear grounds, to *charge* the defendants with that offence. The only reason thereof may be that at the **time of indictment filing**, according to the assement of the special prosecutor, **there wasn't enough evidence** for such a charge.

#### **Proposal for expansion of indictment**

On the other hand, in view of the fact that **the evidence produced only at the main hearing**, that is testimonies of witnesses, RODOLJUB MILOVIĆ, ZORAN JANJUŠEVIĆ, VLADIMIR POPOVIĆ, ČEDOMIR JOVANOVIĆ, ZORAN MIJATOVIĆ, GORAN PETROVIĆ, witness collaborator ZORAN VUKOJEVIĆA and partial admission of the first defendant proper, Ulemek, with all certainty **proved all those facts which constituted a criminal offence of an armed insurgency**.

I, on behalf of my client on 13 July this year, in accordance with article 342, paragrph 1 of the Act on Criminal Proceedings, put forward a befitting proposal to the special prosecutor to **expand the indictment** against the defendant to include the offence from article 124, paragraph 2, of that Basic Penal Code, the proposal which was backed on behalf of their clients by my colleagues PAUNOVIĆ and DANILOVIĆ.

Despite our repeated urging we got the following reply from the special prosecutor on 1 December 2006, namely that in his opinion, I quote: it was **a grave offence which should be prosecuted, for there are legal conditions for such a prosecution, all evidence been already contained in the case-related documentation** and that such a case shall "**take shape**" in the special prosecution office,

But that: indictment shall not however **be expanded** on two grounds: **firstly**, because the trial has entered its final stage, and **secondly**, because the charge for the armed insurgency would have to encompass other persons from the then SOU command.

#### **Relevance of proposed evidence**

The foregoing obviously raises the issue of importance of proposed evidence for these proceedings (Let me briefly explain that importance).

Facts and circumstances concerning the insurgency are of decisive importance for

establishing the design or intention as a constituent characteristic of the nature of the offence from article 122 of the Basic Penal Code with which the first defendant is charged in these proceedings. **Protective object** of this offence and of the one from article 124 of the Basic Penal Code are **identical** – constitutional order and security. Different are only means of assault, but the **incriminated subjective relation of perpetrator is identical in both offences**.

By the proposed evidence the Court would **check the defense of** the first defendant in part thereof in which the first defendant tried to prove **that he had no motive whatsoever** to commit the criminal offence from article 122 of the Basic Penal Code, with which he is charged.

#### ***Continuous criminal offence***

It could be even maintained that at play was a CONTINUOUS attack on the constitutional order and security. Insurgency and assassination are the two steps leading to the same goal, the **two steps leading to fulfillment of the same design**- the forcible overthrowing of government of the late Zoran Đinđić and forcible removal of the late Zoran Đinđić from the position of Prime Minister, in order to place someone else in that position. Insurgency and assassination represent **one unique life event, and one unique political event**.

From the criminal law standpoint both the insurgency and assassination belong to the **same kind** of criminal offence committed by the **same** offender (the first defendant) within the framework of a **unique design**, all of which meets conditions for filing a charge of continuous criminal offence (as spelled out by article 61, paragraph 1 of Penal Code).

#### ***Important facts (offence circumstances)***

But regardless of the foregoing, it is at least certain that all the facts related to the insurgency, its ringleaders and allies-though the first defendant is currently not charged with that offence –belong to what the lawmaker calls IMPORTANT FACTS in article 326, paragraph 2 of the Act on Criminal Proceedings.

Let me reiterate: by their insurgency, even if one calls it a protest, a strike, an action, as you wish, the first defendant and his accessories **by anti-constitutional means gained control over Security Services, whose members, then as the indictment spells out, "encouraged by that success" wound up the job by killing the Prime Minister**.

## Preparations

By that action, as already established in these proceedings, the desired changover in the Services leadership was effected by the first defendant and his accessories. As by the foregoing **the biggest obstacle to assassination had been removed**, it may be inferred that laid down were at least **preparations for an act against the constitutional order and security, deemed as such under article 320, alongside an ideal coincidence with assassination of Prime Minister.**

All the aforementioned serves to underscore the criminal law ties between the insurgency and assassination,

## Meeting in the Military Security Services Directorate

I propose production of evidence via witnesses testifying :

- ACA TOMIĆ, from Belgrade, Kumanovska street no. 14
- RADE BULATOVIĆ, from Belgrade, Zmaj Jovina 39, and
- BORISLAV MIKELIĆ, from Belgrade, Molerova 3

And by reading of the following documents in writing:

- Interview of Aca Tomić to daily "Večernje novosti" of 3 June 2004
- An official, marked as Strictly Confidential, note of the Military Security Services Directorate, no. 1-31 of 22 June 2003, to the Anti-Organized Crime Directorate;

## With the focus on the following circumstance:

defense of the first defendant should be checked in regard to the following: whether he used to meet alone or together with the late Dušan Spasojević during the November 2001 armed insurgency General ACA TOMIĆ, the then head of the Military Security Services Directorate, and RADE BULATOVIĆ, the then security counselor of Democratic Party of Serbia president, Vojislav Koštunica,- and if he did - how did those meetings come about, what were their topics, and notably whether the first defendant during those meetings inquired about the possibility of deployment of "Kobra" in stopping the insurgency and decommissioning the rebelled Special Operations Unit.

4. I suggest that evidence be produced by reading a statement of proposed witness Aca Tomić from the article "Tomić: They wanted to liquidate me" from daily "Večernje novosti" of 2 June 2005,

## With the focus on the following circumstance:

whether General Aca Tomić knew that the late Spasojević was a professional drug-trafficker, and whether during their meeting the late Spasojević gave him as a present, a mobile phone with camera.

## Justification:

At the main hearing of 6 September 2004, when asked by lawyer Paunović, whether in the meeting with General Tomić, the question of "Kobras" getting involved into the "protest" of Red Berets, was discussed, the first defendant Ulemek replied : "No, it was not." (pages 71-72).

When asked by the same lawyer whether during the insurgency he met Aca Tomić, the first defendant Ulemek replied: "No" (6 September 2004, page 72).

"During the meeting with General Tomić we did not discuss anything, in view of the fact that this was our first-time meeting. It was just an ordinary conversation. ..." (17 June 2004, page 49).

Aca Tomić in his interview to daily "Večernje novosti" of 3 June 2004. godine also downplayed his meetings with the first defendant during the insurgency and maintained that meetings with Ulemek and Spasojević took place during the summer of 2002 ("twice, in July and August").

None of them spoke the truth, for in the proposed, STRICTLY CONFIDENTIAL note of the Military Security Services Directorate, no. 1-31 of 22 June 2003 it was stated that **the meeting took place during the insurgency.**

"In November 2001, on the day when General Tomić and Pavković were about to leave for an official trip to Moscow, and **during the insurgency** of Red Berets, Mikelic and Legija paid a visit to General Tomić. Legija was in possession of information indicating an imminent conflict between the SOU and "Kobras", and wanted **to check with Tomić whether "Kobras" were subordinated to the Security Directorate of Chief of Staff. Tomić then gave him his word that the army would not interfere in that conflict.**"

The proposed Report would clearly help establish that the first defendant (and rightly so) was concerned about the possibility of the Army's intervention against the SPU **in keeping with its**

**constitutional duties** (article 133 of the then FRY Constitution in force), -because

he was fully **aware** that he was taking part in an armed insurgency (protest, action, whatever) **threatening the constitutional order.**

By producing this piece of evidence we could not only establish that as early as in November 2001 the first defendant was **aware that he was hreatening the constitutional order and possessed the will to do that**, but we could also check testimonies of witnesses, namely of the then Interior Secretary DUŠAN MIHAJLOVIĆ and the then head of Security Services GORAN PETROVIĆ, who spoke in this courtroom about the **role of the Army of Yugoslavia**, that is of parts of security services in threats posed to the constitutional order in November 2001 by the SOU.

I am referring in particular to the following testimonies:

o For example, witness Goran Petrović (GP, 18 May 2005, page .34) with respect to the insurgency spoke about existence of operative data, of which some were related to intercepted conversations... which indicate, I quote, "that in the whole story **was involved the Army of Yugoslavia, that is its security services.**"

o Or, the same witness, "according to the collected data we concluded that the Unit in its actions **enjoyed the backing of the Army of Yugoslavia, or of some of its members or of some parts of its security services**" (page .35).

o Or, witness Duško Mihajlović saying the following: "I understood that **someone behind our back was preparing the insurgency**". (Minutes on GP, 15 March 2005, page 19)

"...we understood that we **could not count on the backing of the army**, which was the only institution with the right units and means with capability to counter the SOU", and also many public statements of many others were indicative of their political support for the Unit's insurgency". (Dušan Mihajlović, GP, 15 March 2005, page 21).

In line with such interpretations of meetings between General Tomic and the defendants, during the insurgency, is the fact that General TOMIĆ, in his interview, contrary to the official Report of the Government of Serbia of 13 August 2003 DT 72 no. 00-002/2003/86, obviously **denied such a meeting and such contents of conversation** with the first defendant.

#### **Possible confidentiality**

I consider that the proposed report, in view of its repeated media disclosure, lost its strictly

confidential character and thus became a matter of the public domain, but if the court does not share this opinion I suggest that from a competent body be previously obtained a decision on striking off the mark of strict confidentiality from this document.

#### **Unlawful conversation**

We suggest the testimony of the following witness:

- General MIROSLAV MILOŠEVIĆ, former head of Public Security

#### **With the focus on the following circumstance:**

Surrender of the first defendant, and especially his whereabouts after his arrest, on whose orders, whether the first defendant before his arrival in the Central Prison without the consent of president of this trial chamber had any conversations with other persons, notably with the Interior Secretary DRAGAN JOČIĆ and SECURITY AND INFORMATION AGENCY director, RADE BULATOVIĆ, under which conditions and to what purpose.

We suggest that the evidence in writing be produced by reading:

5. transcript of a statement made by Goran Radosavljević in the radio program "The Forefinger" on Radio B92, on 18 May 2005 godine, and posted on B92.net

6. transcript of a statement made by Goran Radosavljević in the TV program "Insider" titled "Manuscripts Don't Burn, IV part", aired on 27 December 2004, on TV B92, posted on B92.net

7. statements made by Goran Radosavljević to "Večernje novosti" of 19 May 2005

#### **with the focus on the following circumstance:**

General Radosavljević was **ordered** by the Interior Secretary DRAGAN JOČIĆ to take the first defendant to the Interior Ministry of Serbia building and **hold him there** until his return from Zlatibor, that the witness acted as he was told, and that the first defendant first sat in the office of Milosevic and **and had a conversation with Milosevic**, until arrival of the Interior Secretary, JOČIĆ and Director of the Security-Informative Agency, RADE BULATOVIĆ,

And **especially let us focus on the following circumstance:**

Whether he **personally knew** the indictee on 2 May 2004, or during the meeting, that is after the surrender, or he **positively identified him** as a

person from wanted warrant, that is, as the first defendant, Milorad Ulemek.

We suggest that a testimony be given by witness

- Interior Secretary, DRAGAN JOČIĆ, who should be summoned via the government of Serbia

#### **With the focus on the circumstance:**

Whether on his **order** the first defendant, after his apprehension on 2 May 2004, between 20.00 and 21.00 p.m. was taken to the **Interior Ministry of Serbia**, to the office of head of Public Security Department, Milošević, whether his **original order to RADOŠAVLJEVIĆ** was "to take the defendant to the judicial bodies", and if it was, why he then **changed it**, whether in the office of head of Public Security Department, MIROSLAV MILOŠEVIĆ, **he had a conversation** with the first defendant, and if he had,

Was **anyone else present** during that conversation,

Has he previously ordered General Goran Radosavljević and head of PSD Miroslav Milošević to **leave the premises**,

What was the **purpose** of that conversation,

Was he aware that such a conversation was **contrary to provisions from article 150, paragraph 4** of the Act on Criminal Proceedings, **why he hid that meeting** from general public,

Whether on that occasion he **exerted influence** on the first defendant in terms of the nature of the defendant's testimony during the preliminary hearing.

#### **Cover-up**

I suggest that a piece of evidence be produced by reading

8. statements of the Interior Minister Dragan Jočić ran under the headline "Election Campaign or Covert Helpers" ran by daily "Danas" of 1 June 2004, page3,

#### **with the focus on the circumstance:**

that the Interior Secretary Dragan Jočić **misinformed** the public that "**the legal procedure was respected to the letter**", as well as, that he downplayed **the importance** of conversation which he had on the night of 2 May 2004 with the first defendant, contrary to article 150, paragraph 4 of the Act on Criminal

Proceedings ("**His whereabouts and interlocutors are totally irrelevant**");

#### **"Explanations"**

We suggest that evidence in writing be produced by reading:

9. statement of head of Public Security Department, Miroslav Milošević "He asked both Jovic and Bulatovic to guarantee his safety" from daily "Danas" of 21-22 May 2005;

10. statement of the Interior Minister Dragan Jočić ran as news under the headline "Conversation with a very dangerous man" posted on B92.net, since 15 June 2005;

statement of Minister DRAGAN JOČIĆ ran in the article headline "In six months period police arrested 100,000 people", daily "Danas" of 18-19 June 2005, page 3;

11. transcript of interview with the Justice Minister, Zoran Stojković in a radio broadcast "The Forefinger " on Radio B92, on 30 June 2005, posted on B92.net,

#### **with the focus on the circumstance:**

that the Interior Secretary proper, DRAGAN JOČIĆ, and also other members of Democratic Party of Serbia, as well as head of the PSD, MIROSLAV MILOŠEVIĆ and Justice Minister, ZORAN STOJKOVIĆ, tried in vain to explicate to the general public the purpose of this conversation of the first defendant and Minister Jovic and director of the Security-Information Agency, Bulatović, by asserting that :

○ the first defendant was taken to the Interior Ministry "because the **Centralni Prison does not admit new inmates at night**" (Jočić);

○ that the first defendant was brought to the Interior Ministry, for "**that building is the safest place** " (Milošević),

○ that Minister Jočić's speedy return from Zlatibor was due to "**a speedier transfer of Ulemek to the Central Prison**" (Jočić);

○ that the meeting was occasioned "because in question was not **an ordinary man**" (Jočić);

○ that the first defendant was taken to the Interior Ministry building so that Dragan Jočić and Rade Bulatović could there talk with the first defendant "**on his and his family's safety** " (Jočić, Milošević),

○ the first defendant had to wait in the Interior Ministry building because "**a procedure is**

**needed to collect valid documents", to establish his identity, "to collect data"** (Zoran Stojković).

#### **Official note**

12. to produce a piece of evidence by reading a **faximile** of the official note of Minister Jočić

01 no. 2875-04 dated 3 May 2004, ran by the weekly "Vreme" of 6 April 2006;

- to produce a piece of evidence by reading the **original** Official Note of Minister Jočića 01 no. 2875-04 dated 3 May 2004, which the court would obtain in an official mode from the Interior Ministry of the Republic of Serbia.

- To effect **the expert vetting** of the original of that very official note with a view to possibly establishing when that note was written,

#### **with the focus on the circumstance:**

that Minister Jočić tried to cover up the meeting with the first defendant during the night of 2 May 2004, as well as circumstances thereof.

16. I suggest that a piece of evidence be produced by reading of transcript of a statement of Vladimir Bozovic, Deputy Minister, Inspector General of the Interior Ministry, in the program "Poligraph" TV B92, 7 April 2006;

#### **with the focus on the circumstance:**

that Minister Jovic, who paid a visit to Zlatibor with the Inspector General Bozovic on 2 May 2004, hushed up the fact that he was given a chopper from the latter to fly out to Belgrade to meet the first defendant,

that the top leadership of the Interior Ministry of Serbia decided not to inform him of the foregoing,

that the proposed witness at the first staff meeting took to task the Interior Minister for failing to inform him, and subsequently **launched a pertinent probe**

and that only **three months later he got the Official Note**, whose reading we suggested.

17. I suggest that a piece of evidence be produced by reading the transcript of statement of Dragan Šutanovac, member of parliamentary Committee for Security, made in the program "Insider" , on TV B92, 31 March 2006,

#### **with the focus on the circumstance:**

that the parliamentary Security Committee before the Official Note was issued, questioned the purpose of the meeting, whereupon the Interior Minister Jovic explained that "they (Minister Jočić and the first defendant) spent few hours in an intimate conversation" and that the committee **"did not receive any officially recorded information"**.

#### **"The Truth"**

I suggest that a piece of evidence be produced by reading

18. the statement made by Vojislav Koštunica, and posted on 4 May 2004 on B92.net under the headline "There were no negotiations with Legija",

19. statement made by the Democratic Party of Serbia official, Dejan Mihajlov, to "Glas javnosti" on 11 May 2004.

#### **With the focus on the circumstance:**

That President Koštunica and Dejan Mihajlov, **after talks** which Jočić and Rade Bulatovic had with the first defendant, and **before** the preliminary hearing of the first defendant, and before the court was given an opportunity to assess his future statement, divulged to the public that **the defendant's testimony would unveil the full truth**,

#### **Attitude on the first defendant**

20. statement of the Interior Minister Jovic made to daily "Balkan" on 21 September 2003, headlined "How to survive a clash with Legija, the most wanted man"

#### **with the focus on the circumstance:**

that then Dragan Jočić, in his capacity of security councillor of President Kostunica and the Interior Secretary of co-called shadow cabinet, replied: **"Don't ask me that now"**.

#### **Justification:**

I want to especially explicate the facts that motivated me to suggest that the witness JOČIĆ be

questioned with regard to the following: whether he, during his meeting with the first defendant on the night of 2 May 2004, **tried to influence** the latter's future statement.

The proposed evidence in writing contains **numerous indications** justifying the conclusion that the foregoing could have happened and had probably happened. For example,

- **the order** that the first defendant **be taken to the office of head of the Public Security Department** and held there until arrival of JOČIĆ from Zlatibor, was contrary to the **provisions of articles 566-569 of the Act on Criminal Proceedings**, under which the first defendant had **immediately to be taken to the competent internal affairs body** (locally competent in line with the Court's seat), and that was the Belgrade police station, in 29 Novembra street, which had issued the arrest warrant, and there be **handed the decision on detention**, after which the arrest warrant was to be withdrawn and the accused was to be immediately taken to the investigating prison of the District Court, that is, to the Central Prison;

- General RADOSAVLJEVIĆ, to whom the first defendant surrendered, **knew him personally**, hence no other identification procedure was necessary;

- The fact that JOČIĆ ordered RADOSAVLJEVIĆ and MILOŠEVIĆ to leave the premises, so that he and BULATOVIĆ could have a **private** conversation with the defendant;

- the fact that the said conversation unfolded **in an unlawful manner**, that is contrary to the provision of Article 150, paragraph 4 of the Act on Criminal Proceedings;

- the fact that the said conversation was of a **covert nature, far from the public eye**, ("there were no negotiations, there were no talks", "the legal procedure was fully honored"), until it was divulged by General Radosavljević;

- the fact that afterwards Minister JOČIĆ, assisted by other persons from his party, tried publicly to **belittle the significance** of that conversation ("the interlocutor is of no importance...");

- the fact that Minister JOČIĆ **by inaccurate and contradictory assertions tried to explain that conversation.**

Proposed official note was disclosed under unusual circumstance, only in response to **a major public pressure, court threats and an order of the official in charge of information of public importance.**

And finally, **why would** Minister Jočić draw up that official note on 3 May 2004 at all, when according to daily "Danas", of 1 June 2004, he had already exposed his opinion that, let me quote, **"Who the first defendant was with, and who he talked to, is totally irrelevant"**. If that is so, why did then Minister Jočić bother to draw up a note about something that is "totally irrelevant", for no notes are taken regarding "totally irrelevant things." Therefore it is clear that what was "totally irrelevant" in 2004 and did not merit an official note, became important only in May 2005, and moreover became **so important**, that it morphed into **a state secret** ! All this gives rise to a serious doubt tha the text of the official note was indeed written on 3 May, when the note was dated.

- The fact is that **after** that secret and unlawful night conversation, because of which JOCIC flew in from Zlatibor, after that conversation with the two high Democratic Party of Serbia and executive officials, the Interior Secretary and director of Security-Information Agency, the first defendant began his **defense in the midst of presidential campaign, by false self-accusations** for smuggling in 600 kg of heroine, the criminal offence carrying **maximum prison term** under article 245, paragraph. 2 of the Penal Code of the Republic of Serbia (the admission, that is self-accusation, **without any motivation, and irrelevant for his defence**);

- That fact that the future statement of the first defendant (which Dejan Mihajlov and Vojislav Koštunica, **both jurists, call a "testimony"**, while according to them the first defendant, is a "witness") was for days on end announced by Minister JOČIĆ and other members of Democratic Party of Serbia, as the **"final disclosure of truth"**, which makes us infer that (a) the Minister JOCIC **knew in advance** the content of that future statement, and that (b) the statement would not be a defense, but rather "a testimony" of **someone else's guilt** (for alleged heroine smuggling);

- The fact that the said false claim of the first defendant was **tirelessly reiterated during the presidential campaign** of DPS candidate Marsićanin, as a proof that Democratic Party was a **"drug-trafficking party"**;

### Relevance

What would be the relevance of a possible fact that Minister Jočić exerted influence on the first defendant?

Firstly, that fact would be relevant for **the assessment of statement** of the first defendant proper.

Secondly, it would be even more important-within the framework of all other proposals which we shall put forward, and which must be also considered in their entirety and their interconnectedness-for **checking the defence** of the first defendant in part in which he **denies existence of the political motive for the commission of the offence**,

Namely in his defence he depicts himself as a personal and political friend of the late Prime Minister, while it may be proved, and that is what is being done here, that the reality was quite inverse to his claims.

Our further evidence proposals shall prove that the closeness was reflected in:

1. support for the insurgency;
2. in akin political stands, which were publicly divulged, notably as regards the punishment of war crimes;
3. in mutually co-ordinated support between the first defendant and Democratic Party of Serbia ;
4. in endeavours of Democratic Party of Serbia, from the executive position, to impact these proceedings to the benefit of the first defendant.

#### **POLITICAL CLOSENESS BETWEEN THE FIRST DEFENDANT AND DPS**

##### **Insurgency**

I suggest that a piece of evidence be produced by reading

21. the statement of Vojislav Koštunica from the article headlined "Koštunica: I have no influence on the Special Operations Unit" posted on B92.net on 15 November 2001.

##### **With the focus on the circumstance:**

That during the November 2001 insurgency Vojislav Koštunica made a public statement to the effect that "the rebelled unit members in no way **threatened the country's security**" and likened the armed insurgency with the doctors' strike.

22. to produce a piece of evidence by reading the statement of Vojislav Kostunica from the interview titled "How Spasojević was released from jail", weekly "Vreme" of 5 July 2003.

##### **With the focus on the circumstance:**

That Vojislav Koštunica in his interview to weekly "Vreme" of 5 June 2003, tried to **justify the meeting** between the first defendant and Dušan Spasojević with head of the Security Directorate, Aca Tomic and Kostunica's Security Adviser, Rade Bulatović, by assertions that "Rade Bulatović was an **accidental** participant in that conversation", and that "head of Security Directorate **cannot choose his interlocutors** at will. "

23. To produce a piece of evidence by reading the text of letter written by Vojislav Koštunica, which was published under the headline "Koštunica's letter" by "Danas" of 7 June 2004;

##### **With the focus on the circumstance:**

That General Aca Tomić on 4 June 2003, at the time when he was in the investigating prison of the District Court in Belgrade, under suspicion of being involved in association to commit hostile activities, in keeping with the article 136, paragraph 2 of the Basic Penal Code, **received a letter from Vojislav Koštunica** advising him in a weakly covert way to "**keep mum and resist**".

24. To produce a piece of evidence by reading the article by-lined Rade Bulatović, and ran under the headline "Victory of Patriotism" from weekly "NIN", of 28 March 2002.

##### **With the focus on the circumstance:**

That Rade Bulatović as a security advisor to Vojislav Koštunica, in weekly "NIN" no. 2674 of 28 March 2002, the **re-shuffle in the Security Services leadership**, attained by the armed insurgency, hailed as **victory of patriotism**.

##### **Closeness of stands**

I propose that a piece of evidence be produced by reading

25. the article "Youth branches of Democratic Party, Civic Alliance of Serbia, Democratic Centre and Social-Democratic Union interrupted promotion of the book "Zoran Đinđić in the Clutches of Mafia", ran by daily "Danas", 5-6 June 2004,

##### **with the focus on the circumstance:**

attempt of Democratic Party of Serbia to prove its thesis that Prime Minister Đinđić was

allegedly "**in the clutches of Mafia**". The same-titled book, was **edited and promoted by a prominent member of Democratic Party of Serbia, MP, academician, the late Nikola Milošević**.

26. Transcript of video recording of Vojislav Koštunica statement posted on TV B92 site, under the title "For the first time publicly: journalists about journalists"

**With the focus on the circumstance:**

Accusation voiced by Vojislav Koštunica against the late Prime Minister that the latter allegedly had "interesting and odd connections" and **was involved in smuggling**.

27. Statements made by President of Democratic Party of Serbia, Vojislav Koštunica from the article "Speedy and humiliating" ran by the daily "Glas" of 29 June 2001.

**With the focus on the circumstance:**

That according to President of Democratic Party of Serbia completion of the FRY international obligation by hand-over of Slobodan Milošević at the hands of the late Prime Minister dealt "a heavy blow to the rule of law " and "seriously **threatened the constitutional order**".

**Mutual backing**

28. Interview of Vojislav Koštunica to "Vreme", no. 648 of 5 July 2003,

**with the focus on the circumstance:**

that Vojislav Koštunica accused Djindjic-led government for assassination of Prime Minister. In his public statements President of DPS reiterated accusations of here heard witness MIHAJLOV (that Živković and Tadić "well know" who killed the late Prime Minister) and verbatim said:

"if members of "Red Berets" are involved in assassination of Zoran Đinđić, that the **government should be held accountable** for that, since they were its clerks." (under the command responsibility Zoran Đinđić himself is responsible for his own death!)

29. "Open letter of the former commander of Red Berets", "Blic", 28 January 2003

**with the focus on the circumstance:**

that the first defendant in his public addresses, two months before the assassination, thus spoke about the government of the late Prime Minister and the late Prime Minister himself:

○ "they are counting our last days, they play with our destinies, like with those of the whole people";

○ "they don't want to respect the former (him-remark by S.P.) and even the current commanders";

○ "they won't let me be what I am, "but they want me to be what I am not, they are trying to implicate me in something I have not done..." "they are demonizing the true patriots" (him – the remark by S.P.);

○ "they no longer need people or anyone else";

○ "they are exploiting the last ounces of popular will";

○ "they are trampling upon the last strongholds of national pride and dignity";

○ "nothing is sacred for them, and they only care about things non-Serb";

○ "they devalue and belittle their own state " "they are deceiving us";

○ **"they are doing what should not be done"**;

○ and then directly "**no-one shall forgive you**".

30. "Jočić: Legija's Analysis of Government's Performance", "BLIC", 29 January 2003

**with the focus on the following circumstance:**

that Democratic Party official, DRAGAN JOČIĆ, Minister in the DPS-led shadow cabinet **backed** those stands espoused in the first defendant's letter, which many then, and rightly so, perceived as an open threat to the government and the very late Prime Minister, with the following words:

that "he sees no ... call to rebellion, to take up arms in that letter of Milorad Lukovic Legija";

that "Legija's letter is serious";

that "the said letter represents a political analysis of the government's performance and results since 5 October 2000";

that "such a **letter could have been written by any citizen of Serbia**";

that "the letter is critical of the **current political moment** ";

that it is "a **threat to someone** who poorly works and poorly runs the government (that is, the

late Prime Minister Zoran Đinđić"), but "by **the people, and not by Legija**".

1. Transcript of statement of Vice President of DPS, DRAGAN MARŠIĆANIN, aired on Radio B92 and posted on the site of that radio on 16 March 2003 under the title "DPS shall not back the designate-Prime Minister or Council of Ministers",

**With the focus on the following circumstance:**

That Democratic Party of Serbia **held accountable the government proper** for the post-assassination crisis.

32. Article "Time to Rally", containing the statement of Vojislav Koštunica made at the DPS press conference, as ran by "Vecernje Novosti", 17 March 2003.

**With the focus on the circumstance:**

That Democratic Party of Serbia and its president Vojislav Koštunica, **3 days after assassination** of Prime Minister tried to replace the incumbent authorities, which still had the parliamentary majority, **by a new government inclusive of DPS representatives**, but also of representatives of the Radical Party and the Socialist Party of Serbia (for according to Vojislav Koštunica's words "they were elected by the people too").

**Piling pressure on the court**

33. Article "Jočić: Police Should Re-Investigate Djindjić's Assassination", Beta Agency news of 10 April 2004, posted on Radio B92 site,

**with the focus on the circumstance:**

that the Interior Minister, a member of DPS, 15 days before the surrender of the first defendant demanded that the police **re-launch investigation** into Djindjić's assassination, for, according to him, "the only thing that matters is **unveiling of the complete truth**" and lamented over "insufficient co-operation of the prosecution to that end".

34. Statement of head of the Public Security Department, Miroslav Milošević, carried by daily "Danas" of 14 June 2004 under the headline "Piling Pressure on the Court",

**with the focus on the circumstance:**

that Association of Prosecutors assessed as "continuation of law violation by the executive power" the statement of head of the Public Security Department, Miroslav Milošević, according to whom "trial for assassination of Prime Minister Đinđić is slowly being morphed into a **farce**", that "the **Interior Ministry** should deal with **clarification** of assassination of Prime Minister Đinđić",

and that "there are **many pertinent oversights, but also new knowledge and information absent from the indictment and other official acts**".

I suggest a testimony of the following witness

- MIROSLAV MILOŠEVIĆ, head of the Public Security Department, to be summoned via the Interior Ministry of the Republic of Serbia, Kneza Miloša no. 101, Beograd,

**With the focus on the circumstance:**

His **knowledge** of the facts related to the assassination of Zoran Djindjić "absent from the **indictment and other official acts**".

I propose that a piece of evidence be produced by reading

35. statement of DPS official, GRADIMIR NALIĆ, from the article "A bullet for Zoran, and jail for Voja, "Večernje novosti" of 20 April 2004,

**with the focus on the circumstance:**

that the DPS official, GRADIMIR NALIĆ, espoused the assertion

that the "**official version of indictment ...was repeatedly put to the test six months before the assassination**",

that we are facing the most classic case of **preparation of murder of witnesses and the guilty parties**" by the same persons,

that the **one who places faith in the official version of assassination "is getting increasingly farther from the truth** about assassination of Zoran Đinđić".

36. Statement of DEJAN MIHAJLOV, a DPS official, ran in the article "Dejan Mihajlov: Legija's surrender is the government's success", daily "Danas" of 11 May 2004,

**with the focus on the circumstance:**

his claims that during investigation into the case "the two indictees were killed, and some material

evidence was destroyed", and that it is important to hear the **"testimony"** (!?) of the first defendant, "so that the public could **learn the full truth**" and that responses of officials from the former government "may lead us to conclude that apparently some of them have dirty conscience";

37. statement of DPS President, Vojislav Kostunica, posted on the news site of Radio B92 on 4 May 2004, under the headline "Koštunica: There were no negotiations with Legija",

**with the focus on the circumstance:**

his assertions that "the surrender of Milorad Luković (that is the first defendant – S.P.) ensured "a larger number of **witnesses** (!?) and more material evidence" and "foiled **the destruction of material evidence.**"

38. Statement of ALEKSANDAR TIJANIĆ, former councillor of Vojislav Koštunica, disclosed in the Transcript of the video recording of TV B92 program "The Impression of the Week" of 5 June 2005.

**With the focus on the circumstance:**

his alleged knowledge of **"who paid 50,000 Euro to the unit which killed Kum and Šiptar"**, in view of the fact that he maintains **"that it is a well-known fact"**,

I suggest the hearing of

- Witness ALEKSANDAR TIJANIĆ, to be summoned via Radio Television of Serbia, Takovska 10, Beograd,

**With the focus on the circumstance:**

Who allegedly paid 50,000 Euro to the unit which killed D. Spasojević and M. Luković.

I suggest that evidence be produced by reading

39. An abstract from the Report of the European Commission on Progress of Serbia and Montenegro in the Year 2005, ran by daily "Danas" of 14 November 2005.

**With the focus on the circumstance:**

That the European Commission establishes in its report that in the year 2005 "were perceived **obvious attempts of some government members to meddle in the judiciary work.**"

**Justification:**

All the afore quoted evidence, likewise the ensuing one, have only one purpose, namely to establish the facts important for the scrutiny of the part of defence of the first accused which relates to the existence of motives and incriminated intention to commit the offence from article 124 of the Basic Penal Code.

To explicate the given evidence proposals I must briefly cover the gist of that defence

**DEFENCE OF THE FIRST ACCUSED**

Throughout his defence the accused Ulemek, in an attempt to deny the existence of any, and notably political motive for assassination of the Prime Minister, stubbornly and consistently tried to paint a contrived picture of (a) his loyalty to the late Prime Minister (b) and of affection which the late Prime Minister had for him. According to his assessment such an idyllic relationship established on the occasion of their first meeting, 4 October 2000, lasted until 12 March 2003.

Thus, for example, at the principal hearing, on 7 September 2004. godine (pages 2-3) the defence (defence counsel Milivojević) began his questioning of the first defendant by asking him about that very topic, I quote:

Defence Counsel Milivojević: "After the expiry of your term of office as the commander of the special operations unit office has the first defendant had contacts with the late Prime Minister ...?"

First defendant Milorad Ulemek: "I my defence I have already talked about a **series of meetings** which I had with the late Prime Minister, ..(more in terms of ) **pleading**, or, how to put it, **our counselling what to do in certain situations.** In this courtroom I intentionally avoided to talk about several meeting between me and the Prime Ministers, private meetings...for it would seem that I was just spinning a yarn ....All other meetings were public of semi-public, and we mostly discussed some topics about which the **Prime Minister wanted to know my opinion** or possibly to get me **engaged in some developments....**, for he probably thought that I could **help with some advice** or even more with **my presence.**

In an identical way defence counsels of the accused Ulemek wound up their questioning of the first defendant, I quote parts from pages 19 and 20 of the transcript dated 7 September 2004:

Lawyer Momčilo Bulatović: **"Were your relations with the late Prime Minister Dr. Zoran Đinđić bad?"**

Defendant Ulemek: "No. **On the contrary.** "  
Lawyer Momčilo Bulatović: "Thank you. I have no more questions."

This is the very **gist of defence** of the first defendant.

## SUPPLEMENTARY DEFENSE

### Ouster

Of course such a defence is **called into question** by the two indisputable events,

**Firstly**, the fact that the accused Ulemek, after those two incidents which he had caused in Kula and "Stupica Club", was practically fired from the Services,

And **secondly**, and more seriously, in November 2001 he staged the armed insurgency against the government led by Zoran Đinđić.

**Hence** the first defendant supplemented his defence by assertion that **after** being relieved of his duties of the commander of the Special Operations Unit, he was allegedly **awarded by the sum of \$ 30.000** by the Prime Minister's close associate.

### Insurgency

As regards the insurgency aimed against the government, the first defendant defended himself by saying that **the late Prime Minister in that insurgency in fact sided with the Special Operations Unit and the indictee Ulemek** ! (though one of the demands of the insurgents was a replacement of a member of that government).

The first defendant then explained that the Special Operations Unit was placed under the government control, **not because** the late Prime Minister and the government **lost faith** in that Unit, but because the Prime Minister, I quote the defence of the indictee (Transcript of 7 September 2004, pages 13-14):

**"Wanted to protect the Unit** because he ... (after and despite the insurgency) had some **affection for that Unit**, for he probably saw and informed himself of the value and power of that Unit...and thus he wanted to **protect that Unit** from manipulations..."

And while, according to the indictee Ulemek, the Prime Minister out of affection for the SOU, placed that Unit under its protection, he, in parallel, I quote:

"...was **very angry** because the **Ministry** (of internal affairs)... could not establish proper relations with that Unit. "

\*\*\*

Contrary to what the first defendant spoke in his defence, the proposed evidence would prove **political closeness between the first defendant and the most vicious political opponents of the Prime Minister** and his government, namely, Democratic Party of Serbia.

By presentation of the proposed evidence the existence of a long-standing political closeness, or of the one originating **at least since the armed insurgency**, between the first defendant and Democratic Party of Serbia would be proved. That closeness was manifested by

- (a) **akin political stands and objectives**,
- (b) objectively **fine-tuned political action-taking** on various occasions,
- (c) recent systematic efforts of members of that party to **pile unlawful and anti-constitutional pressure on independence of this Court to the benefit of the first defendant, from the party's top position in the executive authorities.**

### Close stands

Proposed evidence relating to statements of the highest Democratic Party of Serbia officials would prove, contrary to the first defendant's assertions, great and total closeness of political stands of the first defendant and officials of that party, who at the time were the most virulent political opponents of the Prime Minister and his government.

Let us only mention some of those political stands, notably those on:

- the hand-over of Slobodan Milošević;
- on the Act on Co-operation with the ICTY;
- resignation of Mihajlović;
- resignation of Petrović and Mijatović;
- on the Hague Tribunal and "treacherous line" toed by Djindjić-led government (whereby one may easily recognize identical rhetoric and vocabulary, notably "lay the sacrifices to the Hague", "treason", "pride and dignity " etc. )

All the aforementioned is most clearly demonstrated in the open letter of the first defendant and Dragan Jocić's expressions of public support to Ulemek's stands.

### *Fine-tuned actions, the first defendant's awareness of the joint actions*

Aside from identical political stands and the common political objective to overthrow the

"treacherous government" of Zoran Đinđić, at play were also fine-tuned actions and clear awareness of the first defendant of that co-ordinated and joint action-taking.

Let us look more closely into that matter:

The first defendant stages the insurgency by placing **the very same demands** placed on the political scene by Democratic Party of Serbia (resignation of the Interior Secretary, re-shuffle in the top leadership of the Security Services, passing of the Act on Co-operation with the Hague Tribunal, suspension of hand-overs);

And, of course, Vojislav Koštunica, President of DPS and the then army commander (article 135 of the FRY Constitution) openly **backs the insurgency**;

In their meeting with Democratic Party of Serbia official, Rade Bulatovic and head of Security Directorate Aca Tomic, the first defendant and the late Dušan Spasojević asked and got **guarantees that the Army in that case would not defend the constitutional order**, (despite the provision of article 133, paragraph 1. of the then FRY Constitution in force).

Rade Bulatovic, official of Democratic Party of Serbia, publicly **hailed the success** of insurgency by penning the article "Victory of Patriotism".

The first defendant divulged his **political manifesto, an Open letter, in which he attacked the government** of the late Zoran Đinđić, above all because of its co-operation with the Hague Tribunal (which according to DPS President, Vojislav Koštunica should be "a minor issue on the political agenda"), for its alleged "trampling upon national pride and dignity" (that was at the time also a frequent argument of DPS President, Vojislav Koštunica), because that government "taints the true patriots", and threatened the government that "no-one would ever forgive it such conduct" (like the defendant "never forgave such conduct of the late Đinđić").

And then the DPS official **publicly backed that political manifesto, such stands**, proclaimed the first defendant's letter "**vox populi**" and alleged that his threats to the government, were threats of the people proper, on whose behalf DPS official, DRAGAN JOČIĆ was now speaking out;

On 12 March 2003 the threat was translated into reality, that is, the assassination took place.

Immediately after assassination DPS **exploited the mood** created by assassination committed by the first defendant and his accomplices, by resorting to a public demand, as it

was then put, that DPS "**should assume responsibility**" by formation of a **concentration government** comprising "all parliamentary parties" and headed by the Prime Minister from the DPS ranks.

### **Pressures on the court**

The fact that the first defendant was unusually close to the principal political opponents of the late Prime Minister would be proved by those proposals relating to obvious attempts of Democratic Party of Serbia to impact the proceedings, from its executive position conquered after the assassination, to the benefit of the first defendant.

(But let us follow the sequence of events.)

**These are the facts which** which would be established by proposed evidence:

- Around 21 p.m. on 2 May 2004, the first defendant surrendered;

- The very same moment a DPS official, DRAGAN JOČIĆ, the then Interior Minister, left for Belgrade to conduct **an unlawful and secret conversation** with the first defendant in the office of head of the Public Security Department in the Interior Ministry Building, together with the second DPS official, head of the Security-Information Agency, RADE BULATOVIĆ;

- After that conversation, as it would be demonstrated by the proposed evidence, the stream of DPS statements, full of **inexplicable faith** in the first defendant's sincerity began, though the first defendant is not legally duty-bound to speak the truth nor the indictees usually do that. All those statements contrived to suggest that "Mr. Legija" **would unveil the TRUTH** about assassination, in a stark contrast to the one presented by the lawful, by the court confirmed indictment;

- The first defendant's gratitude for such a marked DPS confidence in him was demonstrated immediately: at the main hearing he stated that he surrendered after fourteen months, for in contrast to the former government (formed by Zoran Đinđić), **he had total faith in the new Government**;

- On 13 June 2004 the first defendant began his defence by **false**, for defence **irrelevant and unmotivated self-accusations** relating to commission of a grave criminal offence, by spinning a story about smuggling 600 kg of heroine in an alleged collusion with closest Zoran Djindjic's aides, **thus getting involved in the pre-election campaign of** DPS candidate, MARŠIĆANIN;

- Of course, that fabrication about drug-smuggling, was tirelessly **reiterated, for days on end**, as a proved fact, by all DPS members and

notably the electoral headquarters of the DPS candidate;

- A DPS official, here examined witness Mihajlov, then voiced that assertion that (Boris) Tadić and (Zoran) Živković knew the identity of "**true killers**", in contrast to the ones in the dock, and then admitted to this very court that he was only joking;

- And then the other DPS official, DRAGAN JOČIĆ, demanded "**a new investigation**", and the third, the Justice Minister, also a DPS member, demanded, that **the shutdown of the Special Court**, while the fourth, head of the Public Security Directorate, publicly divulged that "**the indictment has clay feet**", while "true murderers – are at large";

- The third DPS official then dared maintain that the **entire case was a frame-up put in place by "those who prepared the assassination"** ("at play is the most classic example of priming of assassination, witnesses, the guilty parties" by the same person, GRADIMIR NALIĆ said);

- In line with this "frame-up" theory, DPS president asserted that during investigation **material evidence was destroyed**, while DRAGAN JOČIĆ and DEJAN MIHAJLOV maintained that **the two indictees were liquidated**.

- And former adviser to Vojislav Koštunica, ALEKSANDAR TIJANIĆ, even maintained that he **knew the name of the man who paid 50,000 Euro to members of SAU** to kill Spasojević and Luković, without **corroborating never proved claims from the first defendant's defence**;

In view of such abundance of allegations and fabrications, the European Commission in its Report for the year 2005 made it clear that "**there were obvious attempts of some government members to meddle in the judiciary work**". (Obviously, contrary to the constitutional principle of division of power, article 12 of our Constitution.)

I propose the questioning of a witness:

- **Dr. Vojislav Koštunica**, to be summoned via Democratic Party of Serbia, Pariska 13, Beograd

**With the focus on the circumstance:**

**As DPS President**, with a view to all the aforementioned circumstances,

Both those concerning political statements and moves of the very witness,

As much as those concerning political statements and moves of his closest party collaborators, in view of their near-total coordination indicative of the policy of the party headed by the witness,

And especially as regards the circumstance of the **support for the November 2001 insurgency**, which he publicly rendered in his capacity of the FRY President.

### ***Justification:***

#### **Support for the insurgency**

Many witnesses have here already spoken about the role of the proposed witness in events linked to the November 2001 armed insurgency. For example:

- The accused Pejaković, during investigation, testified that in November 2001, in the course of insurgency, either Ulemek or the late Spasojević, after their meeting with A.Tomić, Mikelić, and Bulatović, uttered "We shall not tell Šešelj that **we have established contacts with Koštunica**, let us first see what Šešelj thinks about that" (in the investigating magistrate office, 23 May 2003, page 11).

- "In one of those conversations (during the insurgency – S.P.) which I disclosed, a member of the Unit, perhaps Gumar, anyway someone who had talked with Čume or Spasojević, was literally told by one of them " **we must continue, until Kostunica tells us to stop**"...

- "You may draw a clear conclusion that the **insurgency organizers had a lot of faith in Vojislav Koštunica**, perceived him as **the only authority who could influence them, if he so desired**, to end the insurgency" (Goran Petrović, GP 18 May 2005, page 50).

- When I asked the witness **why no-one contacted Kostunica to make them end the insurgency, since he was in power to do that, the witness replied that such a move was deemed "counter-productive"**, and explained: between the government and Kostunica and DPS "there was a conflict, they waged a media war, they were engaged in a political struggle...the two sides were directly confronted" (Goran Petrović, GP, 18 May 2005, page 51).

- "What is noteworthy, in speaking about that political backdrop, aside from the already known facts, is therefore, that the **FRY President backed that armed insurgency, and DPS did that too...**

... there are also some other things, operational things, indicative of that involvement" (Goran Petrović, GP, 18 May 2005, page 34).

○ For example, in his book, "Povlen Fogs and Sights", here questioned witness DUŠAN MIHAJLOVIĆ published a facsimile of the 13 November 2001 official note in which a collaborator quotes ZORAN ŠAMI's bodyguard speaking about several meetings between **Šami and Legija** and Frenki, about **"DPS's open support of Red Berets"**, of "their foreknowledge of the Army's non-intervention, and the Interior Ministry.....impotence in the whole matter".

○ "The story was circulated about the Unit coming to Belgrade to overthrow the incumbent authorities and ....replace them with those who, according to them, would toe a patriotic line, in contrast to the current, anational, treacherous line..." (Dušan Mihajlović, GP, 15 March 2005, page 20)

### **Obvious endangering of the constitutional order**

The question is whether Vojislav Koštunica, as a doctor of legal sciences, in giving his appraisal of the Special Operations Unit role, **was aware, could be aware, or had to be aware that** at play was endangering of the constitutional order of the country.

### **Political demands**

Proposed witness must have been aware that by its action the Special Operations Unit was placing political demands before the highest legislative and executive authorities, in view of the following facts

○ that possible dismissals of ministers are decided by the Prime Minister and National Parliament (article 93, paragraph 6 of the Constitution of the Republic of Serbia);

○ that the Government appoints and dismisses officials in ministries (article 90, point 5 of the Constitution of the Republic of Serbia);

○ that it is the Government's duty to fulfill international commitments of the country (article 90, point 1, of the Constitution of the Republic of Serbia);

○ and that the National Parliament, at the Government's proposal (article 90, point 4 of the Constitution of the Republic of Serbia), decides on promulgation of laws (article 73, point 2, of the Constitution of the Republic of Serbia).

Obviously the Special Operations Unit, or its current or former commander, or the late Dusan

Spasojevic are **not vested in such powers or authorizations**. And obviously doctor of legal sciences, the proposed witness, is perfectly aware of the foregoing. The attempt to **usurp those powers or authorizations by threats**, as it was done by the insurgency, are tantamount to the attack on the government, its Prime Minister, the policy pursued by the government of the Republic of Serbia in keeping with the Constitution, and sovereignty of the National Parliament, and in itself represent jeopardy to the constitutional order. And obviously the proposed witness is **aware of that, that is, must have been aware of that**.

### **Threat**

Threat manifestations were perfectly clear too:

○ demonstration of power of the Special Operations Unit;

○ disobedience and abandonment of the task;

○ practical imposition of the compulsion monopoly;

○ guarantees for the army non-intervention by the first defendant.

### **Legal significance of the support:**

#### **Removal of hurdles**

(yielding the compulsion monopoly)

On justifiable grounds could be posed the question of responsibility of President of Democratic Party of Serbia for the **assistance rendered in removal of hurdles by his non-action**, therefore for the offence from article 124, paragraph 2 in connection with article 30, paragraph 1 of the Basic Penal Code which was valid *tempore crimini* (that is article 310 in connection with article 35, paragraph 2, in connection with article 15, paragraph 2, of the Penal Code in force), in view of the fact that **the obligation of acting is prescribed by articles 133 and 135 of the Constitution** – By non-fulfilment of that obligation to which the Supreme Commander and the Army are duty-bound under the Constitution, at the critical moment of time, when the Unit practically started placing its demands and voicing its threats, the monopoly related to the use of compulsion means was practically yielded to the Unit. The foregoing **ensured the success of the insurgency**.

### **Relevance: Links to assassination**

Insurgency is an offence of jeopardy, whose consequence is **the state of danger** for the

protective object of constitutional order and security. On the other hand, the state of danger implies **an increased possibility for causing violations** of the constitutional order and security. Hence when that violation happens, the theory implies the **side-effect** of the offence of jeopardy (Bayer).

In our case, the insurgency produced the state of danger (control was lost over Security Services) which made easier, as it indeed turned out, the violation proper-assassination of the Prime Minister of the republican government (at the very hands of members of security services).

Therefore the **responsibility for the side-effect** is logically expanded to the **responsibility for the consequence proper**.

Such a stand is in fact taken in the very indictment, as spelled out on page 32:

"effects of insurgency **encouraged** Spasojević and Legija **pursue their key idea – the conquest of power**, but now in other way and with **other means**".

\* \* \*

Since I anticipate (one) certain objection to this proposal, I want to clarify that-though I request that the proposed evidence establishes **causal links between actions of this witness and forbidden consequences thereof**, with which those indictees are charged- presentation of proposed evidence **would not result in establishment of a possible existence of the criminal offence of assistance** by the proposed witness, which, obviously cannot be the subject-matter of these proceedings.

Criminal offence, in terms of article 14, paragraph 1, is only the offence for which there is **inculpation**. Paragraph 2 of the same article of the Penal Code expressly lays down that **there is no criminal offence** – despite the existence of all hallmarks thereof as determined by the law-**without culpability, that is a special subjective relation between the perpetrator and the offence**.

Therefore the Law does not spell out the absence of responsibility, but rather the absence of offence! What I propose is that questioning of witness VOJISLAV KOŠTUNICA establishes **the circumstances of the offence which is the subject-matter of these proceedings**, and not another offence by another person against whom these proceedings are not instituted.

## **Conclusion**

**Therefore**, it is perfectly clear that the defence of the first defendant, in part in which he speaks about his loyalty to the Service, the Interior Ministry, the government and Zoran Đinđić is totally false. The truth is totally inverse: namely that he in full awareness acted in line with the DPS policy, in line with the policy of the biggest opponent of Zoran Đinđić and his government, doing his utmost by dint of ~~insurgency, assassination and even his defence, to~~ politically help opponents of Zoran Đinđić.

Mind-set and will of those indicted for the attack on the constitutional order is shaped in a certain, concrete political ambience. They are shaped gradually, in response to concrete political developments, notably:

- hand-over of Slobodan Milošević to the Hague Tribunal ("an ignominious act"),
- dismissal of the first defendant from the position of the Special Operations Unit Commander,
- launching of investigation into the Ibar Highway assassination,
- Carla del Ponte's letter requesting data on the first defendant (about which the witness MIJATOVIĆ has already spoken),
- Armed insurgency ("Stop to the Hague")
- Passing of the Act on Organized Crime,
- Establishment of the institution of Special Prosecutor and of this court.

Such a mind-set was strengthened through awareness of the existence of political forces and state institutions or parts thereof, which also coveted the fall of government of Zoran Djindjic, and which publicly backed them throughout their continued attack on the the constitutional order.

Intention of the perpetrator of the offence committed in order to produce political consequences is not formed in a vacuum, but rather in the political arena. To fully understand such intention we must fully understand that political arena.

How the idea of attack on the constitutional order by dint of assassination is born in perpetrators' minds? Which pictures of political consequences motivate them?

What political consequences do they expect?

On what are such expectations based?

What do they want to prevent, and what do they want to achieve?

What is their understanding of that political arena?

How that arena impacts the formation of their will?

Who can they rely on?

Who are their opponents, and who are their allies?

All those developments unfolded in June 2001- 12 March 2003 period, in the political mood steeped in **a bitter and impassioned conflict** between the two distinctly opposed political camps, one **calling itself the "the pro-reform camp"**, embodied in Zoran Đinđić and his government, and the other, **calling itself "the patriotic camp"**, embodied in DPS and the then FRY President Kostunica.

**The purpose of today's proposals of ours**, is to prove, that **contrary to the defence** of the first defendant, during the aforementioned period existed a **clear and strong political closeness** between the first defendant and the most virulent political foes of the Prime Minister Đinđić, rallied among the ranks of Democratic Party of Serbia, and very frequently-and we also tried to prove that-even **co-ordination of their actions**, both **public** and **covert one**.

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TO THE DISTRICT PUBLIC PROSECUTION OFFICE  
SPECIAL PROSECUTION OFFICE  
Belgrade

KTs. No. 2/03

Subject-matter: Proposal of Srdja Popovic, lawyer of the damaged party, RUŽICA DJINJDIĆ, for the expansion of indictment KTs. No. 2/03 of 21 August 2003, against MILORAD ULEMEK indicted before a Special Department of the District Court in Belgrade, k.p.no.5/03

On the basis of evidence produced at the main hearing relating to the above subject (article 342, paragraph 1 of the Act on Criminal Proceedings) conditions have matured for the expansion of indictment against Milorad ULEMEK charged with the criminal offence of armed insurgency according article 124, paragraph 2 of the Basic Penal Code, punishable under article 139, paragraph 1 of the Basic Penal Code.

Justification relating to the indictment KT's no. 2/03 of 21 August 2003 (see page 32)

describes the factual state from which stems the existence of the criminal offence of armed insurgency, in regard to the accused ULEMEK, though he is not charged with that offence. Namely, in the quoted place of the indictment it is maintained:

1. that "at the top of pyramid (criminal organization – remark by S.P.) were the defendant Luković-Legija and Dušan Spasojević";
2. that the "whole organization was so designed ....to gear its activity towards the conquest of power";

3. that "in implementation of that plan ... was included the Special Operations Unit, as a well trained armed formation, in obedience to Luković-Legija";

4. that the "first test of those ambitions was the SPU insurgency, which was politically motivated as reflected in its demands for dismissal of the Interior Minister and other personalities"; and

5. finally, that "the effects of uprising ...encouraged Spasojević and Legija to pursue the principal idea-conquest of power, but now in other way and by other means."

**(ATTACH. No.1)**

However, only the evidence produced at the main hearing with all certainty proved all those facts constituting the gist of the criminal offence of armed insurgency as spelled out by article 124, paragraph 2 of the Basic Penal Code, and established responsibility of the defendant ULEMEK for that offence.

I am above all referring to testimonies by witnesses Rodoljub MILOVIĆ, Zoran JANJUŠEVIĆ, Goran PETROVIĆ, Vladimir POPOVIĆ, Čedomir JOVANOVIĆ and

Zoran MIJATOVIĆ, who were for the first time heard only at the main hearing, but also to the partial admission of ULEMEK himself, who was also for the first time questioned at the main hearing, in view of his escape during investigation.

(Obviously those testimonies must be viewed as interrelated to those of testimonies, notably the one of the witness collaborator and of the accused Saša PEJAKOVIĆ, who were interrogated during investigation and questioned at the main hearing.)

Therefore, in view of the course of the evidence presentation procedure to date, conditions have now matured for expanding the indictment against the defendant ULEMEKA charged with the following:

Organizing and being a ringleader of the action of the Special Operations Unit aimed at endangering the FRY constitutional order and security in collusion with the late Dusan SPASOJEVIC in November 2001, as a former long-standing commander of the SOU, over which he retained control even after the expiry of his function.

During that insurgency the said Unit expressly disobeyed its superiors, voluntarily withdrew all its members to Kula barracks, cut off all telephone ties with direct superiors and outside world, withdrew its members from security services of airport Belgrade, withdrew its members from escorts of protected personalities, fully armed and using armed vehicles voluntarily occupied part of highway near "Sava Centre" by Belgrade, and threatened to use force unless its demands were met, namely that the Act on Co-operation with the Hague Tribunal be passed by the National Parliament, that the Interior Secretary, head of State Security and his deputy be replaced with a view to establishing control over the State Security Services and thus foiling the completion of legally prescribed tasks of those Services, all of which resulted in direct endangering of the constitutional order and security. By doing the aforementioned, he committed a criminal offence from article 124, paragraph 2, from the Basic Penal Code, punishable under article 139, paragraph 1 of the Basic Penal Code.

Justification :

Factual quotations and legal qualification of the offence stem from the following evidence:

### **1 Disobedience, severance of communication, abandonment of tasks**

"Uprising erupted in November 2001 ...Commander of the Special Operations Unit, on order of Luković (that is Ulemek – remark by S.P.) who still exercised the function of the shadow commander of the unit, invited the unit's members to abandon their duties and withdraw into the barracks, together with the unit members engaged as escorts of protected personalities. They blocked some roads in Kula and highway near Centre Sava."

(Report of the Commission of the Government of the Republic of

Serbia, DT 72 no. 00-002/2003/86 of 13 August 2003, page 24) – **ATTACH. No. 2**

"...they were all called by cell phones to convene urgently in Kula, and then, once there, that is what I learnt later, their cell phones and weapons were seized, they were placed in some premises and compelled to agree with what that group of people planned and to back the three formulated demands of ringleaders."

(Transcript of statement of witness Zoran MIJATOVIĆ at the main hearing, on 28 December 2004, page 8) – **ATTACH. No. 3**

"After that I received a fax, as did the office of Minister Mihajlovic, who was then on an official trip. And the fax more or less informed us that the Special Operations Unit, as we already knew, committed an ignominious and treacherous act, etc., blah blah, some stupidities, and because of that were no longer subordinated to me, as head of section and the Interior Secretary, Dušan Mihajlović. After that I tried again to contact them, but, in the meantime, they cut off all connections, how to put it, with outside world, on someone's order, I assume on order of those who organized everything. Therefore no-one in Kula any longer responded to our calls. Later we got to know that cell phones and other phones were seized from all the Unit's members and locked away. "

(Transcript of statement of witness Goran PETROVIĆ, at the main hearing, 18 May 2005, page 27) – **ATTACH. No.4**

"Maričić tried once again to get in touch with head of services....Head of services refused that, and instead asked him what entitled him to cut off all connections in the Kula centre. Then he ordered him to come straight away to Belgrade headquarters...and then a row with head of services ensued ...by and large the then commander refused to go to Belgrade..."

"Two hours later the then deputy Mijatović and the then head of the 7th Department drove into our yard.

They were bent on entering the Unit's centre...but the commander refused to receive them, and instead presented them with written demands of our Command....Mijatović took that piece of paper and then literally threw it at the commander...he told him that we had no right to place such demands,...and that unless we immediately calmed down, they would take different measures. Commander Maricic then got entangled in that row with the deputy, and the meeting ended, if I may put it, in a catastrophic way."

(Transcript of statement of defendant ULEMEK at the main hearing, 14 June 2004, page 28) – **ATTACH. No. 5**

"Then about half past one, when the blockade was effected, deputy Mijatovic came again...the then commander of the Unit told him that ...he he did not want to discuss and comment at all Mijatovic's proposals, though Mijatovic came back to smooth things over..."

(Transcript of statement of defendant ULEMEK at the main hearing, 14 June 2004, pages 33-34) – **ATTACH. No. 5**

"Why did I go there? Because the unit refused to see Goran Petrović"

(Transcript of statement of witness Zoran MIJATOVIĆ at the main hearing, 28 December 2004, page 31) – **ATTACH. No 3.**

### **2. Demands, threats, use of force**

"Demands made by the Unit were....adoption of Act on co-operation with the Hague Tribunal, a purely political matter, that is the matter of lawmaker, National parliament, and not in the least matter of police's concern or interest. The second demand was also of a purely political nature, and concerned the replacement of a minister, that is my resignation and dismissal of head and deputy head of the State Security Services ...." (page 19)

"...the official policy of the government whose member I was,

totally opposed those demands. In other words, that government urged a full co-operation with the Hague Tribunal, and not that a pertinent act or absence thereof serve as an excuse for non-cooperation with the Hague, for when we returned to the fold of the United Nations we accepted a commitment implied by such membership, including the one relating to co-operation with the Hague Tribunal, and there is a solid basis for direct application of rules of the ICTY, that is for their direct application by our judicial bodies."

"We witnessed how the pressure was brought to bear on other police members to join in the insurgency ...to back it."

"However, in parallel we were aware of the reality on the ground, namely that the Serb police at that moment of time did not have at its disposal any other armed formation to counter Red Berets, to disarm them or carry out the pertinent ministerial or head of Security Services decision on disbanding of that unit". (page 20)

"... it was quite clear that if we wanted to avoid any further confrontation and misfortune in the country that some compromises had to be made...in order to avoid a blood-bath which was hanging in the air in view of a protracted agony of that insurgency and the threat it posed to all accomplishments of my government and its plans relating to the further reform of this country." (page 22)

"I considered it an armed insurgency. And it was qualified as such by the State Security Services leadership, and by myself, and the government in the first communiques. It had all elements of that phenomenon, for if someone to whom the state gave arms to do his lawfully job and in line with the rules of service engagement, starts acting unlawfully, and contrary to the said rules, and fully armed comes to Belgrade to make public his demands, it can only constitute an armed insurgency. Afterwards that formulation...was practically re-formulated and accepted within the

framework of that awkward, but the only possible compromise at that moment of time..."

(Transcript of statement of witness Dušan MIHAJLOVIĆ at the main hearing, 15 March 2005, page 42) – **ATTACH. No.6**

"Dušan when faced with that situation, that is, with situation in which the possibility of an armed conflict was openly mentioned, decided to hand in his resignation..."

(Transcript of statement of witness Čedomir JOVANOVIĆ at the main hearing, 11 April 2005, page 14) – **ATTACH. No.7**

"...In November (in the insurgency –remark by S.P.) both ours and theirs destinies were defined. They decided to destroy us, and we decided to destroy them."

"On 11 March 2003 the only question which concerned us was the whereabouts of persons to be arrested and charged with the gravest crimes. That was the only question which concerned us. On 10 March witness-collaborator gave his testimony and that testimony met all the necessary prerequisites for prosecuting the Zemun Clan and Milorad Ulemek in keeping with the Anti-Organized Crime Act "

"And obviously to disband the Special Operations Unit, for on 17 March we planned to constitute the Council of Ministers of the State Union, in which, according to the plan Democratic Party was to take over the Defence Ministry. The foregoing was of special importance for us, since the Defence Ministry with its capabilities was the kind of guarantee with which we could respond to dictate of force. "

(Transcript of statement of witness Čedomir JOVANOVIĆ at the main hearing, 11 April 2005, page 70) – **ATTACH. No. 7**

### **3. Instrumentalization of State Security Services**

"Their motives were to overthrow this government. And they accomplished that goal. In other words the authorities could not neutralize them."

"They appointed Bracanović...In fact he was the key figure there. They got total control over those services (the Security-Information Agency-remark by S.P.)...they were mostly interested in surveillance, interception measures. They tapped the phones according to their needs. I remember once that Dušan was saying that in that body, whatever it is called, the Council for Security. And during that meeting in the Security Institute Žarko Korać suggested that we arrest them all. But their people were against it. So I know that Dušan commented it. They knew about all their talks, plans."

(Transcript of statement of witness collaborator Zoran VUKOJEVIĆ at the main hearing, on 13 April 2004, page 58) – **ATTACH. No. 8**

"That compromise was linked to ...fulfilment of Ulemek's wish ...that Andrija Savić and Milorad Bracanovića be appointed ...as successors of Petrović and Mijatović...and when we took that decision we...defined the State Security Sector as an institution in which we could not have even elementary, minimal faith. "

(Transcript of statement of witness Čedomir JOVANOVIĆ at the main hearing, 11 April 2005, page 12) – **ATTACH. No. 7**

"I said that the insurgency of Red Berets was the last act in a drama of that synchronized, organized and orchestrated, joint, and ultimately successful destruction of the State Security Services..."

(Transcript of statement of witness Vladimir POPOVIĆ at the main hearing on 13 April 2005, page 60) – **ATTACH. No. 9**

"Those two resignations ( of Minister Mihajlović and head of services Petrović – remark by S.P.) were requested....because of the role of those officials in clarification of the past crimes, of the crimes which were the Milosevic era legacy, crimes underscored by the Prime Minister in his government policy-promotion address before the National Parliament by the Prime Minister.

Namely Zoran Đinđić then said that Serbia shall become a normal society only when it clarifies tragic issues of disappearance of Ivan Stambolic, tragedy of Slavko Ćuruvija and obviously assassinations in Budva and Ibar Highway."

(Transcript of statement of witness Čedomir JOVANOVIĆ at the main hearing, 11 April 2005, page 6) – **ATTACH. No.7**

##### **5. Role of indictee ULEMEK as organizer and insurgency ringleader**

"When I came to Kula I saw a veritable chaos in front of the centre. There were hundreds of journalists and cameramen, all of them trying to enter. And we deliberated our move. We seriously discussed both possibilities, that is, the one of stopping the protest and the other of continuing it if our move failed to produce any result."

(Transcript of statement of defendant ULEMEK at the main hearing, 14 June 2004, page 34) – **ATTACH. No. 5**

"While I worked in Spasojević's security services, Legija once ordered us to go to the Unit in Kula. ...After our arrival in the SOU seat in Kula, Legija convened all of us, security men, about dozen of us. Then he discarded two or three, for they were not members of the SOU. Then he told us that from that moment on, we were part of the protest or insurgency, I cannot recall the exact term he used, and that those not willing to join in were free to return their IDs and pistols and leave. No-one dared oppose him. I don't know if he then mentioned the reason for the insurgency."

"My opinion is that Legija commanded that unit until its dissolution."

(Minutes on interrogation of indictee Saša PEJAKOVIĆ, in the office of investigating magistrate, 23 May 2003) – **ATTACH. No. 10**

President of Trial Chamber: Have you stated that, then, during the protest, the defendant, Milorad

Ulemek Luković, told members of the Unit, that they were in the midst of protest or uprising, you were not very clear about that, and that he said that those who did not want to join in were free to return their pistols and badges, and that none of the present dared do that ?

Indictee Saša Pejaković: "Yes, but even more powerful people stated that there was no way to counter them."

(Transcript of statement of defendant Saša PEJAKOVIĆ at the main hearing on 19 February 2004, page 18) – **ATTACH. No. 11**

"At the time Legija was stage-managing the insurgency in Kula."

(Transcript of statement of witness collaborator Zoran VUKOJEVIĆ at the main hearing on 13 April 2004, page 57). – **ATTACH. no. 8**

"During the insurgency, as I have already said, the chief, the true commander was Legija. He staged – managed the insurgency through Gumar, and not Legija, was the formal commander of the SOU."

(Minutes on interrogation of indictee Saša PEJAKOVIĆ in the office of investigating magistrate on 23 May 2003, page 8) – **ATTACH. No. 10**

"I talked the whole night to Ulemek in the SOU officer's canteen....After many hours we reached a kind of agreement to invite Dusan Mihajlovic to Kula...."

(Transcript of statement of witness Čedomir JOVANOVIĆ at the main hearing on 11 April 2005, page 13) – **ATTACH. No. 7**

"From the first to the last moment Milorad Ulemek was the commander of the SOU. It certainly was not Maricic, because he feared even Ulemek's shadow."

(Transcript of statement of witness Čedomir JOVANOVIĆ at the main hearing on 11 April 2005, page 19) – **ATTACH. No. 7**

"I came to the Ministry (of internal affairs – remark by S.P.) They took me to the Minister's office. Lukic and professor Andrija Savić were there too. And there we agreed that

the Unit be transferred from the State Security Sector, that is, placed under the direct command of the government of the Republic of Serbia, whereupon head of Sector and Minister Mihajlovic would be vested in operational powers over the Unit..."

(Transcript of statement of defendant ULEMEK at the main hearing on 14 June 2004, page 37) **ATTACH. No. 5**

"In November 2001, on the day when Generals Tomić and Pavković were to leave for Moscow, and during the Red Berets insurgency, Mikelic and Legija paid a visit to the generals. Legija was in possession of information of an imminent confrontation between the SOU and "Kobre", and since he thought that "Kobre" were subordinated to the Security Directorate of Chief of Staff he asked for Tomić's pertinent opinion. Tomić then gave him his assurances of army's non-intervention."

(Note of the Military Security Services Directorate, strictly confidential, no. 1-31 of 22 June 2003. to the Anti-Organized Crime Department) – **ATTACH. No. 12**

"During the insurgency and related developments, by monitoring talks between the Unit members with others, we understood for the first time, at least I grasped it for the first time, that the Unit's command was greatly influenced by Mr. Lukovic and those whom we mention, Spasojevic and Ljubisa Buha Ćume, that gang. For they were directly involved in organization and backing of that insurgency."

(Transcript of statement of witness Dušan MIHAJLOVIĆ at the main hearing, on 15 March 2005, page 40) – **ATTACH. No. 6**

"What is clear to me now, and what was clear to us during the very insurgency, was the fact that the upper echelons of the Special Operations Unit were totally subordinated to the informal influence of its former commander and that they had very close ties with head of Zemun Clan, Dušan

Spasojević, the man who practically co-ordinated that action and was frequently present in Kula and in the SOU centre."

(Transcript of statement of witness Čedomir JOVANOVIĆ at the main hearing on 11 April 2005, pages 6-7) – **ATTACH. No. 7**

"A large part of the SOU members, mostly simple people, uneducated people, some even without the primary school education, considered those who enlisted them as their absolute masters. And that large number of people was consequently easy to instrumentalize and manipulate."

(Transcript of statement of witness Vladimir POPOVIĆ at the main hearing on 16 May 2005, page 11) – **ATTACH. No. 13**

"...everyone knew that Gumar (Maričić – remark by S.P.) did not command the Unit...he wielded no authority, he was not able to issue orders even to his wife, let alone to anyone in the Unit. It was a well-known fact that he was placed in that position by Legija. If Legija had appointed a scarecrow, even that scarecrow would command the Unit. Therefore Legija was an absolute ruler and master of that Unit....until the day of 12 March...."

(Transcript of statement by witness Vladimir POPOVIĆ at the main hearing of 16 May 2005, page 21) – **ATTACH. No. 13**

"I think that I have explained in detail the role of Legija the last time. But I can repeat that to the letter, namely what the Unit was, what was the exact role of of the Unit members, namely that there were 10 or 15 of them involved, and not more, that Legija was considered among them the absolute master, and despite only 10 or 15 people with gangland ties, about 200 of them considered Legija their God and moreover, feared him."

(Transcript of statement of witness Vladimir POPOVIĆ at the main hearing 16 May 2005, page 24) – **ATTACH. 13**

## **6. Role of the late DUŠAN SPASOJEVIĆ in the insurgency**

"In the early days of insurgency, one night after 22 p.m., when we had all retired, Šare Nenad called me to come down. He also called another colleague, I cannot recall his name now. He told us to wait in the hall of the building. And then, after indeed a long wait, the door next to the boiler room opened and Šare Nenad appeared. He told us to go to bed. Behind his back I saw Dušan Spasojević, he waved at us. I did not wave ack because Škene at the time told me that Spasojevic's arrival should be considered a secret."

(Minutes on interrogation of indictee Saša PEJAKOVIĆ in the investigating magistrate office on 23 May 2003) – **ATTACH. No. 10**

"I went to the government of Serbia building. In the adjacent courtyard Ljubiša Buha and Dušan Spasojević were waiting for me. And then Dušan told me 'don;t yield, this must be finished'."

(Transcript of statement of defendant ULEMEK at the main hearing on 14 June 2004, page 35) **ATTACH. No. 5**

"During the first meeting (during the November 2001 insurgency – remark by S.P.) with General Tomic, Legija asked Tomic if he could invite a mate of his desiring to see a general who had apprehended Perišića. Soon afterwards, Dušan Spasojević, joined us. He was probalby sitting in his car, awaiting to be received."

(Strictly Confidential Note of the Military Security Services no. 1-31 of 22 June 2003, to the Anti-Organized Crime Department) – **ATTACH. No. 12**

"So when the insurgency broke out we all had the aforementioned foreknowledge, also because a number of Unit's members, on grounds of their varied criminal activities, was surveilled by the Department. Of course we had those pertinent operational data, and they were confirmed during the insurgency. I am primarily referring to intercepted telephone

conversations, some of which were publicly disclosed, notably those between the Unit members and Spasojevic and Buha." (page 34)

"As regards Buha I am not so sure, but as regards Spasojević I know that the said instrumentalizaiton of the Unit was closely linked to some of their criminal activities." (page 43)

(Transcript of statement of witness Goran PETROVIĆ at the main hearing on 18 May 2005, page 34) – **ATTACH. No. 4**

"It was a very unpleasant, brief conversation, the one in which Spasojevic openly exposed his intentions, and clearly indicated his role within the framework of the Special Operations Unit. He practically acted as a SOU representative. He said that the protest would continue until their demands were met, that Mihajlović and Petrović would be replaced, that he and others in that regard enjoyed bhe backing of all others. His words clearly demonstrated their resolve and intentions."

(Transcript of statement of witness Čedomir JOVANOVIĆ at the main hearing 11 April 2005, page 9) – **ATTACH. No. 7**

"...we did not know, before the Red Berets insurgency, that the insurgency was directly linked to the arrest of Dušan Spasojević and that Dušan Spasojević's influence on that Unit was so enormous that for them that act was tantamount to the arrest of -their chief."

(Transcript of statement of Vladimir POPOVIC at the main hearing on 16 May 2005, page19) – **ATTACH. No. 13**

## **7. Awareness of jeopardy to the constitutional order (premeditation)**

"So the only issue was whether we would stage the blockade of airport because of that morning's announcement by Minister Mihajlovic relating to an imminent hand-over of his friend, and party colleague, Admiral Jokic to the Hague Tribunal...However after having

discussed the blockade idea, we opted out....namely such an action, such a decision, could have entailed the army intervention, since the army was, in a way, in charge of all those federal institutions."

(Transcript of statement of defendant ULEMEK at the main hearing on 14 June 2004, page .33) – **ATTACH. No. 5**

"I said that we were indirectly familiar with the plans relating to occupation of some important points in town and its vicinity, and I directly mentioned Gazela flyover, Belgrade airport location, state TV building, even the government building proper."

(Transcript of statement of witness Čedomir JOVANOVIĆ at the main hearing on 12 April 2005, page 58) – **ATTACH. No. 14**

## 8. Motive

"...I shall only expose the facts, on 19 October 2001 Carla del Ponte sent a copious, three to four pages letter to Duško Mihajlović requesting him to forward to her a complete documentation on the Special Operations Unit...and most explicitly she requested Zvezdan Jovanović and Milorad Ulemek records. To be perfectly honest Milorad was in that letter mentioned under three or four names, aliases, but the request was clearly related to him. So we received that letter on 19 October 2001, just a month ahead of the Unit's insurgency. So who was in the know about that request for records on the Unit's activities, as it was clearly stated, in Croatia, Bosnia and even in Kosovo...I really don't know..."

(Transcript of statement of witness Zoran MIJATOVIĆ at the main hearing on 28 December 2004, pages 33-34) – **ATTACH. No. 3**

"So, the SOU insurgency was linked to the showdown with people combatting the organized crime."

"Those two resignations (of Minister Mihajlović and department head Petrović – remark by S.P.) were demanded ....because of their role in clarification of the recent past crimes,

the crimes considered the legacy of Milosevic regime era, and the crimes underscored by the Prime Minister in his government policy promotion address to the parliament. Then Zoran Đinđić said that Serbia would become a normal society only when it totally clarified the tragic issues of disappearance of Ivan Stambolić, tragedy of Slavko Ćuruvije and obviously Budva and Ibar Highway assassinations."

(Transcript of statement of witness Čedomir JOVANOVIĆ at the main hearing on 11 April 2005 page 6) – **ATTACH. No. 7**

"As regards the Special Operations Unit insurgency, that was in fact the last stage of the conflict, which began when it was realized that we, as the new authorities were not ready, contrary to expectations, to meet demands aiming to totally transform the character of society we were bent on creating in Serbia. So the distance created between the Special Operations Unit and the first man of that Unit, was months-long. It escalated when Ulemek provoked first a scandal in a Kula disco, and later in Stupica Club, after which he was removed from the Interior Ministry."

(Transcript of statement of witness Čedomir JOVANOVIĆ at the main hearing on 11 April 2005, pages 5-6) – **ATTACH. No. 7**

## 9. Consequences, qualifying circumstances from article 139 of the Basic Penal Code

"...I think that the Prime Minister several times ....asked above all Lukić and Mihajlović what would they do if the Unit left Kula and came to Belgrade, here to the Interior Ministry? They just shrugged off that idea and kept saying 'Well nothing, it is not a good idea.' And finally he asked them what they would do if the Unit raided the government's premises and threw him into the street? They kept reiterating that it was not a good idea, that no-one in that Unit should confront the police, Gendarmerie or anyone else. Then the

Prime Minister got up and left the meeting." (page 28)

"I advocated the thesis that the state had to defend itself by all means, for only in that way it demonstrated its state attributes. If in the state there is another force which has a bigger monopoly over the physical coercion, then such an organized gang, a grouping is ....more powerful than the state proper." (page 28)

Lawyer Srđa Popović: "Do you think that at that moment (of insurgency-remark by S.P.) the security and constitutional-legal order of the country were threatened, is that your opinion?"

Witness Goran Petrović: "If the late Prime Minister asked the Minister and head of Public Security Department... "What will you do if they come to the government building and throw me into the street", and they replied 'Nothing', that it is clear that that there was a real and grounded assumption that a coup could be effected anytime, that a criminal offence could be committed with impunity, and even that the power could be taken over by someone else. So in such a situation that possibility was very real." (page 49)

(Transcript of statement of witness Goran PETROVIĆ at the main hearing on 18 May 2005, page 28) – **ATTACH. No. 4**

"After the Red Berets insurgency, the government of Serbia formed the Council for State Security".

"...majority of those meetings (of the Council for State Security – remark by S.P.) dealt with those organized gangs, Surchin gang, Zemun gang, etc. And also with the Special Operations Unit." (Transcript of statement of witness Zoran JANJUŠEVIĆ at the main hearing on 14 March 2005, pages 4 and 7) – **ATTACH. No. 15**

"...I had sporadic contacts with Mr. Savic, while I met more frequently Mr. Bracanović, since he used to invite us to his office....until I realized that he was lying, that he was making a fool of me, because he considered me an amateur in those

matters. When I grasped that he was lying I decided to stop attending those meetings....many things he was telling me where contrary to the reality on the ground...Public security was in possession of different data and that made me realize that something was wrong."

(Transcript of statement of witness Zoran JANJUŠEVIĆ at the main hearing on 14 March 2005, pages 7-8) – **ATTACH. No. 15**

"...incoming (to Public Security from the Security-Information Agency –remark by S.P.) information and data, in the shape of typed texts, information in writing, were largely inaccurate. They failed to indicate what was happening on the ground, to point out to the factual state. For that reason we insisted, if a serious action was to be taken, to have some technical devices to be able at least to subsequently listen again to some segments of conversations, and draw our own conclusions, instead of being fed with some conclusions typed on paper. Then Public Security operational units and colleagues from the State Security were at loggerheads. Many people admitted

that they knew what was happening, we mistrusted State Security, and we knew that someone was giving information to Spasojevic Dusan."

(Transcript of statement of witness RODOLJUB MILOVIĆ at the main hearing on 27 December 2004, page 17) – **ATTACH. No. 16**

"But upon our return to Serbia we faced both the Washington and Brussels question 'whose debts are we writing off', that is, 'who hold the reins of power in Serbia'? Are we in charge, when I say 'we', I am referring to democratic authorities, or the authorities are insurgents at the time demonstrating their power in the heart of downtown Belgrade."

(Transcript of statement of witness Čedomir JOVANOVIĆ at the main hearing on 11 April 2005, page 12) – **ATTACH. No. 7**

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In view of a state of report, the Prosecution should expand the indictment to include the offence of the armed insurgency (in realistic coincidence with other offences with which the defendant ULEMEK is

charged, in view of different natures of acts and consequences thereof). This expansion is unavoidable in view of adherence to the principle of legality (article 46, paragraph 1 of the Act on Criminal Proceedings) which duty-binds the prosecutor to institute the criminal prosecution proceedings if conditions laid down by the law are met and if there is enough evidence.

Lawmaker determined that in that case the prosecutor could not be guided by purposefulness of prosecution (principle of opportunity), even if it could be justified by a public interest. It is especially impossible in the case in question, in which the supreme public interest-protection of constitutional order and security of the country-was jeopardized.

11 July 2005,

(Srđa Popović, lawyer )  
in Belgrade

*We join in the proposal :*  
(Rajko Danilović, lawyer)  
(Radivoj Paunović)