Case no. 2853/2016
Submitted on behalf of Mr. Dragan Vasiljković
According to the First Election Protocol with
International Covenant on Civil and Political Rights

Submission of Mr. Dragan Vasiljković on admissibility and validity United Nations Human Rights Committee

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AUTHOR'S STATEMENT

The Author hereby informs the Human Rights Committee of the United Nations that in the case Vasiljković v. Australia no. 2853/2016 received Statement of the Government of Australia dated May 22, 2023. and in accordance with the letter of the Office of the High Commissioner for Human Rights of the United Nations dated June 5, 2023. submits his statement to on the facts and legal arguments presented in the submission of the Government of Australia ("The Government").

The Author maintains his claim set out in the complaint dated July 21, 2016, that there has been a violation of his human rights guaranteed by Article 2, Article 7, Article 9, Article 10 (1), Article 14, Article 15 and Article 26 of the International Covenant on Civil and Political Rights (hereinafter: the Covenant) and responds to the Governments' Submsisions, as follows.

I

1. The Government has erred in its Submission that the extradition procedure is qualified as "a procedure of an administrative (administrative) nature" and therefore outwith the scope of the ICCPR.. This categorization is merely a mechanism to evade responsibility for the protection of human rights guaranteed by the Covenant, which entered into force for the State party on 25 December 1991, It follows from the conclusion of the response of the Government that the guarantees of the Covenant are applicable only in cases where the rules of criminal procedure apply. In light of the plain wording of Article 9(1) and the Views of the Human Rights Committee in Griffiths -v- Australia, this is a manifestly erroneous conclusion and serves to show that the Government has failed to take the measures prescribed at paragraph 9 of the Committee's View in Griffiths -v- Australia:

   ... [T]he State party is also under the obligation to take steps to prevent similar violations in the future. In this connection, the State party should review its legislation and practice, in particular, the Extradition Act No. 4 of 1988, as it has been applied in the present case, with a view to ensuring that the rights under articles 9 and 2 of the Covenant can be fully enjoyed in the State party.

2. A cursory reading of the Extradition Act No. 4 of 1988, as updated on 1 September 2021[1], shows that the legal provisions, which arguably breach Articles 9(1) and 9(4) of the Covenant remain in force[2]. If those provisions were in breach of Articles 9 (1) and 9(4) of the Covenant in the case of Griffiths, they amount to the same breach in this case.

[1] http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/ea1988149/

[2] Section 15(3) If a person is remanded in custody after making an application for bail, the person cannot make another application for bail during that remand unless there is evidence of a change of circumstances that might justify bail being granted; and

Section 15(6). A magistrate or eligible Judge shall not remand a person on bail under this section unless there are special circumstances justifying such remand.

3. The legal requirement of 'special circumstances' continues throughout the extradition process[3] Thus the judiciary in Australia cannot have regard for factors such as the individual:

   (a) is of good character, with no previous criminal convictions,
   (b) did not flee the requesting country after the warrant was issued,
   (c) does have substantial sureties and a place of residence, or
   (d) the passage of time between the alleged offenses and the extradition. Warrant (in this case approximately 15 years)

4. Instead, Australian legislation requires the Court to determine bail within the "special circumstances" prescribed at paragraph 25 of the Government of Australia Submission, thus creating an impermissibly high and arbitrary threshold for the grant of bail.

What is important to point out is that the nature of the extradition procedure always implies deprivation of liberty, determination of extradition detention until the final decision on extradition or extradition to another state is made. It is clear what administrative procedure entails in law. It is administrative in nature and does not encroach on basic human rights.

The extradition procedure is difficult to define since it is a legal transaction between two states regulated by the rules of international criminal law, which is also an expression of the political agreement of those states. Given its legal nature, extradition is a mixed legal institute to which the rules of international and domestic law apply.

If it is a mixed procedure, in which several judicial bodies and state bodies are involved, the Ministry of Justice as the final decision-maker in this case, the Author had to be recognized with all the rights that are recognized in criminal proceedings, we emphasize: notification of the accusation, trial within a reasonable time, application of measures of deprivation of liberty in the context of the right to freedom and security, the presumption of innocence, the right to an adequate legal remedy, so as not to be subjected to torture and cruel, inhumane and degrading procedures or punishments. The rights of a person who is in the process of extradition must be protected by all the rights guaranteed by the Covenant, therefore detention, including extradition detention, must last the shortest necessary time.

This provision applies equally to detention in the country where the trial is held and to extradition detention. The Covenant does not differentiate between the different types of proceedings that can be conducted in order to start a trial, but orders all states to "as soon as possible" hand over a suspect (including a person in extradition custody), quote... "to some other Authority Authorized by law to exercise judicial functions". The fact that Australia qualifies the extradition procedure

[3] Government of Australia Submission, Paras. 27 – 29

as an "administrative procedure" does not absolve Australia of its responsibility to "as soon as possible" release a person who is in extradition custody or hand it over to an "Authority competent to perform judicial functions", i.e. conduct a trial.

Certainly, extradition detention lasting 9 years does not fit into the guarantees provided by the Covenant, that is, it represents a violation of numerous provisions of this Covenant.

II

3. On December 12, 2005, the County Court in Šibenik issued a decision on conducting an investigation against the Author due to the existence of a well-founded suspicion that during 1991 - 1993. in Knin, Glina and Benkovac, during the armed conflicts between the Republic of Croatia and Serbia, committed several criminal acts of war crimes, namely war crimes against the civilian population, and war crimes against prisoners of war.

4. The extradition procedure began with the submission of the Petition for the extradition of Dragan Vasiljković, class: 720-04/06-01/01 dated January 20, 2006, by the Ministry of Justice of the Republic of Croatia with a note that in case of extradition approval, the procedure will be in accordance with the principle of specialty, and that the information on the statement and interpretation of legal provisions specified in that extradition request are correct.

5. The request for extradition in question was sent to Australia, namely the Criminal Justice Division, Attorney General's Department. The request for extradition made by the Republic of Croatia to Australia is based on the final decision on the investigation of the County Court in Šibenik Kio-86/05 of 12/12/2005, according to which the investigation is being conducted for two criminal offenses, namely for the criminal offense of war crimes against prisoners of war from Art. 122. OKZRH described under points 1 and 2 of the decision, and the criminal offense of war crimes against the civilian population from Art. 120, paragraphs 1 and 2, OKZRH in relation to the offense described under point 3 of the decision.

6. The Author was arrested on January 20, 2006 on the basis of an international warrant issued at the request of the Republic of Croatia. in Australia. The Author until July 8, 2015. he was in extradition custody in Australia, since the procedure for his extradition lasted nine years and six months.

7. On July 8, 2015. The Author was extradited to the Republic of Croatia, and he was sentenced to pretrial detention by the decision of the County Court in Split.

8. On December 31, 2015, the County State Attorney's Office in Split filed an indictment against the Author on suspicion of committing criminal acts of war crimes against humanity and international law, namely war crimes against prisoners of war committed by omission and commission, and criminal acts against the civilian population, in an identical manner as described in the previous case back in 2005. by the decision on conducting the investigation.

In the indictment of the County State Attorney's Office in Split, number: K-DO-148/10 of December 31, 2015, the Author was charged with having committed the following crimes:

"(...) against humanity and international law, under item I) the criminal offense of war crimes against prisoners designated and punishable under Article 122 of the Basic Criminal Code of the Republic of Croatia ("Narodne novine" number 31/93-refined text and 39/93-correction, supplementary Criminal Code of the Republic of Croatia) in connection with Article 28, paragraph 2 of the Criminal Code of the Republic of Croatia, the criminal offense of war crimes against prisoners of war designated and punishable under Article 1 22. Criminal Code of the Republic of Croatia and the criminal offense of war crimes against the civilian population designated and punishable under Article 120, paragraph 1. Criminal Code of the Republic of Croatia in connection with Article 28, paragraph 2. OKZ of the Republic of Croatia, all with the application of Article 43 of the OKZ of the Republic of Croatia."

9. The County Court in Split by judgment number: K-Rz-3/16 of September 26, 2017. Dragan Vasiljković, here the Author, was found guilty of four criminal offenses against humanity and international law, and that was the act described under point 1 of the sentence of the verdict for the criminal offense of crimes against prisoners of war, designated and punishable under Art. 122 of the Basic Criminal Code of the Republic of Croatia, in connection with Art. 28. paragraph 2., the criminal offense of war crimes against prisoners of war, designated and punishable under Art. 122. OKZRH and the criminal offense of a war crime against the civilian population, defined and punishable under Article 120, paragraph 1. in connection with art. 28, paragraph 2 of the Criminal Procedure Code, and the action described under point 2 of the sentence of the verdict for the criminal offense of war crimes against the civilian population marked and punishable under Art. 120, paragraphs 1 and 2, OKZRH, and with the application of Art. 43 of the same law, for each offense for which he was found guilty, prison sentences are previously determined for two criminal offenses of war crimes against prisoners of war from point 1 of the verdict and for one criminal offense of war crimes against the civilian population from point 1 of the verdict, for each such criminal offense, based on Art. 122. OKZRH, in connection with Art. 28. paragraph 2. OKZRH and art. 120. paragraph 1. OKZRH in connection with art. 28, paragraph 2 of the Criminal Code, imprisonment for a term of 5 (five) years each, and for the criminal offense of war crimes against the civilian population from point 2 of the verdict, based on Art. 120, paragraphs 1 and 2 of the Criminal Code, a prison sentence of 8 (eight) years, and is sentenced to a single prison sentence of 15 (fifteen) years, based on Art. 45, paragraph 1. OKZRH credits the accused with the time spent in extradition custody from January 20, 2006 to September 4, 2009, and from May 12, 2010 to July 8, 2015, as well as the time spent in pre-trial detention from July 9, 2015 onwards.

10. First of all, one should not lose sight of the fact that the specific case is a trial that was conducted after the Author was extradited based on the request for extradition that the Republic of Croatia made to Australia, and which is based on the final decision on the investigation of the Šibenik County Court Kio-86/05, dated 12.12.2005. g., according to which the investigation is carried out for two criminal offenses and that for the criminal offense of war crimes against prisoners of war from art. 122. OKZRH described under points 1 and 2 of the decision, and the

criminal offense of war crimes against the civilian population from Art. 120, paragraphs 1 and 2, OKZRH in relation to the offense described under point 3 of the decision.

11. The extradition was approved precisely on the basis of that request and that decision on the conduct of the investigation, which means that the Author could not be tried for other criminal offenses and for other acts of execution, except for those for which extradition was approved. Consequently, the indictment could not charge Dragan Vasiljković with two more criminal offenses under the 1st point of the indictment (the criminal offense from Article 122 of the Criminal Code in connection with Article 28, paragraph 2 of the Criminal Code and the criminal offense from Article 120, paragraph 1 of the Criminal Code in connection with Article 28, paragraph 2 of the Criminal Code), nor could the court render a verdict declaring the Author guilty of four criminal offenses war crime.

12. It follows from the sentence itself that the Author is declared guilty on two counts of the indictment for four criminal acts against humanity and international law, as described in the sentence. First of all, it should be pointed out that the commission of a war crime with multiple acts constitutes only one criminal act and that in the case of two or more acts of commission, this fact is taken as an aggravating circumstance, but not as a separate criminal act. This is because the act of committing this criminal offense includes a multitude of mutually different procedures that are expressly prohibited in Art. 3rd paragraph 2nd IV. Geneva Covenants. At the same time, the perpetrator of the act is the person who ordered the taking of the actions described in paragraph 1 of that article, that is, the person who committed them. Therefore, it is unclear how and on what basis the court determines that the Author committed four criminal offenses, namely three criminal offenses against humanity and international law in item 1 of the indictment and sentence and one in item 3 of the indictment, ie item 2 of the sentence. In spite of all this, the court neither in the sentence nor in the explanation, describes the individual acts of execution for those four criminal acts for which the Author was found guilty and sentenced. Instead, the court only gives, both in the sentence and in the explanation of the verdict, the legal designation of those acts, for which the Author is declared guilty and sentenced, but does not delineate and clarify which actions from the factual description of the indictment and the sentence of the verdict represent which of the acts for which the Author was found guilty and for which he was sentenced.

13. From the above, it is clear that Australia does not handle data on whether guarantees have been fulfilled in accordance with the Australian Extradition Act because the days of guarantees have not been respected, as described in pt. 56 statements of the Government of Australia.

14. Comparing the decision on the investigation of the County Court in Šibenik, on the basis of which extradition proceedings were initiated, and in which decision it was stated, inter alia, that the Author is charged with the death of two Croatian soldiers, and the final verdict of the County Court in Split and the decision of the Supreme Court of the Republic of Croatia, that it is a false accusation against the Author, given that the Republic of Croatia provided only one piece of

evidence for such a serious crime, and that was the witness Peru Dragišić, it is clear that the court acquitted him of the said crime o Author from guilt.

15. The witness Pero Dragišić, answering the special questions of the president of the court panel, and after previously stating that he could not remember the names of the persons who brought the two Croatian soldiers, nor that he saw or heard how those soldiers were treated, and that he did not see that anyone beat those Croatian soldiers, and that later, after an hour, he heard some shots, and that he did not see that those two Croatian soldiers were killed, and that he did not see the Author, that he would have been on the spot or that he would have said anything and that it was for death learned about two soldiers from a colleague in the kitchen, and in any case he did not see the dead bodies of those Croatian soldiers, was called to explain the differences in the statements given to the investigation on 08/20/1998 and 05/29/2015. since in those statements he says the exact opposite about the same event, he states that his statement from 05/29/2015 is correct, and when repeatedly questioned about any difference in those statements compared to the statement given at the main hearing, he confirms that what is stated in those minutes is correct. It is illogical and lifeless, and in practice and theory impossible, for a witness of that age, after a period of one and a half days has passed, to forget everything he said, even though in that earlier statement he described the details, and stated the names and surnames of the persons, and their places of residence, and therefore the testimony at the main hearing is obviously more credible, because it is not possible that the witness does not remember anything at all from what he testified a little over a year ago. In addition, when the witness is called to state the names of the persons, which according to the records of the investigation, he correctly stated, as well as their places of residence, the witness does not know a single name, and in relation to their places of residence, he states information that is completely different from the information he gave in earlier statements, so for Dragan Radišić, he declares that he is from Tiškovec in Bosnia and Herzegovina, and Jovo Pešić is also from somewhere there, but he does not know exactly, and when he declares that he has known these people for over fifteen years, which is theoretically impossible, no vital and illogical, because the persons whose names I mentioned in my statements given in the investigation are all three with places of residence in the Republic of Serbia, so obviously the testimony of this witness is untrue, because it is evident that he did not know these persons from before, and he does not even know their places of residence. That the testimony of this witness was given in the investigation in 1998. and in 2015. untrue, lifeless and illogical, stems from the fact that this witness stated at the main hearing that he had seen Captain Dragan, here the Author, several times during the war, but that he saw the Author for the first time today, especially when one takes into account the fact that this witness, when asked by the Author, at one point asked the Author, "Who are you, sir?", which clearly indicates that this witness does not know the Author at all and that obviously everything he stated in these statements, regarding the Author's person, is untrue, i.e. it follows that everything what this witness said at the beginning of the main hearing, when he answered the direct questions of the president of the council in the negative that the Author would have been present at all at the event in Bruška, and that as a result he could not say anything to the persons present, nor could he have known about that event, and when he says that he did not see

the dead bodies of those killed Croatian soldiers, and that he heard about their death from a colleague in the kitchen, true and credible.

16. The Supreme Court imposed individual sentences on the Author, namely: for one criminal offense from Art. 122 of the Criminal Code of the Republic of Croatia described in point 1 of the sentence of the first-instance verdict, on the basis of the same legal regulation, a prison sentence of seven years, and for the criminal offense from Art. 91, paragraph 2, items 1, 2 and 9 of the CC/11. described in point 2 of the sentence of the first-instance verdict, based on Art. 91, paragraph 2, CC/11. also a prison sentence of seven years. Since individual sentences were determined for the accused under two laws (CPC of the Republic of Croatia and CC/11), a single prison sentence was imposed according to CC/11. By applying this law and its provisions, Art. 51, paragraphs 1 and 2 of CC/11, the Author was sentenced to a single prison term of 13 years and 6 months.

III

17. The procedure for the extradition of the Author began with the submission of the Petition for the extradition of Dragan Vasiljković, here the Author, class: 720-04/06-01/01 dated January 20, 2006, by the Ministry of Justice of the Republic of Croatia, with a note that if the extradition is approved, it will be in accordance with the principle of specialty, and that the information on the statement and interpretation of legal provisions specified in that request for extradition are correct.

18. The extradition request in question was sent to Australia, namely the Criminal justice division, Attorney General's Department. There is a way of initiating extradition in the requesting state which refers to an "urgent case" according to its law, namely Art. 16, paragraph 1 of the European Covenant on Extradition. An emergency should be considered a situation before starting criminal proceedings. The initiator of the extradition procedure is the state attorney as a domestic judicial body designated by a special law to provide international legal assistance (Article 2, paragraph 2 of the Law on International Legal Assistance, and in connection with Article 14, paragraph 1 of the Law on the State Attorney's Office and Article 19, point 5 of the Criminal Procedure Law). Based on the collected materials from the police and state attorney's reports, he assesses whether there are prerequisites for the extradition of the wanted person, and initiates the extradition procedure by submitting an application for temporary arrest for the purpose of extradition (Art. 44 ZOMPP). As the decision on detention must be attached to the application (Art. 44. pt. 3 ZOMPP), it is necessary to ask the investigating judge for a decision on detention (Art. 44. t. 3. ZOMPP), as well as to obtain from the investigating judge a legally binding decision on conducting an investigation against a fugitive foreigner after the adoption of which it is possible to make a decision on detention, and to issue and issue an international warrant (Art. 505, paragraph 1. in connection with Article 508, Paragraph 3 of the CPC).

19. The request for temporary arrest for the purpose of extradition is drawn up by the county state attorney and sent to the Minister of Justice. The Minister of Justice does not decide on its expediency, but only submits it to the competent court in whose territory the person whose

extradition is sought is found (Art. 45 ZOMPP). The law requires the urgency of the case, and separates it from the evaluation of the expediency of extradition, the former being the exclusive purview of domestic judicial bodies, which must ensure the presence of the extradited person in the eventual extradition procedure in the requested country. In the event that the extradited person is temporarily arrested and detained at the request of our state attorney, he will be released after the short periods of detention.

19. If the requested person is extradited, he will be prosecuted only for the criminal offense for which the extradition was approved, in accordance with the principle of specialty.

The courts are obliged to comply with it in full and in its entirety, this means that the decision of the requested country on extradition may not be exceeded by sentencing the extradited person, unless it is a question of changing the legal qualification, but never changing the factual basis of the criminal offense (Article 14, paragraph 3 of the European Covenant on Extradition from 1957).

20. If the factual substratum of the criminal offense changes in terms of deviations from the provisions of the internal law of the requesting state, it is necessary to request permission for the trial from the requested state. According to the provisions of Art. 14. paragraph 1 of the European Covenant on Extradition from 1957. she is obliged to give that consent if it is a criminal offense with a new factual description, because otherwise, if she doesn't have that consent, our court is bound by the written application, evidence and witnesses presented when pronouncing the verdict.

IV

21. The Author will at this point, even though the extradition procedure was carried out 'without evidence' according to the Extradition Act of 1988, express himself on the claims that the Author's detention was illegal because during the proceedings before the Croatian courts the initial accusations were based on false witnesses.

22. The testimonies of the prosecution witnesses are contradictory and contrary to each other in essential aspects. In relation to item 1. verdict, even though they all stayed together in the same room all the time, it is illogical and lifeless, that they saw almost nothing the same, that they speak differently about everything, from the shape and color and clothes, the markings on the uniforms, the guards' uniforms, the Author's clothes, the appearance of the room itself, the description of the interior of the room, about who came to the prison area, when, where and how they were beaten.

23. In relation to the material evidence proposed by the prosecution that was conducted during the proceedings, the Author states that it is not possible to determine the authenticity of documents that were made by hand, that is, who is the scribe of those documents, and even though they are documents related to the performance of the service, none of them contain a single mark that such a document should have because it has neither an official mark, nor an order number, nor an official seal.

The Author also states that newspaper articles cannot be evidence of facts, as well as the book "Burnt Earth", because newspaper articles and books convey the Author's opinion and are not evidence of facts. Also, the medical documentation is not relevant for the reason that it does not originate from the time of injury and it is not possible to determine the time of injury based on these documents, and without these elements such documentation cannot have the purpose of proving the time and manner of injury.

In relation to the videos proposed by the prosecution, the Author points out that they are not original and that their authenticity cannot be established. The recordings are not complete, they are partially damaged, and some recordings are compilations made from parts of recordings from various television stations or from various amateur recordings. Some interviews in the reviewed recordings were made in English without subtitles or voice translation. There is no information about the time of creation of any recording or about the Authors. It is unclear for what purpose this evidence was taken, as almost none of the footage relates to any of the counts of the indictment.

The right to an independent and impartial court (the right to a fair trial)

24. The request for a 'fair' trial was upheld by the Board as follows:

The concept of a fair trial includes the guarantee of a fair and public trial. The fairness of the procedure implies the absence of any direct or indirect influence, pressure or intimidation or interference from any party and for any motive...

25. The Author requested the disqualification of all judges of the County Court in Split, due to suspicion of their bias, because all of them are natives or through friendly ties from regions where war crimes were committed, but his request was rejected, both by the president of the County Court in Split, who rejected the request for the disqualification of all judges of that court, and by the Supreme Court of the Republic of Croatia, which rejected the disqualification of the County Court in Split.

26. In accordance with the guarantees from the Covenant, which Australia should have received from the Republic of Croatia upon extradition, to which the Author was extradited; that the Author will be tried by an independent court, which means his independence from the executive power and the parties. When examining whether a judicial body can be considered independent, attention must be paid, among other things, to the way members of that body are elected, the length of their mandate and the existence of guarantees against external pressure, but also to whether such a body gives the impression of independence. In a democratic society, it is of fundamental importance that the courts enjoy the trust of the public, and if it is a question of criminal proceedings, then above all, the trust of the defendant. Impartiality in this sense means the absence of prejudice or negative approach of the judge or court.

The existence of impartiality is verified by the test of subjective and objective impartiality. With regard to the subjective test, the judge's personal impartiality must be presumed until proven

otherwise. The test of objective bias examines whether the court itself, and its judicial composition, including the specific judge, offered sufficient guarantees to exclude any legitimate doubts regarding its impartiality.

Presumption of innocence

Article 14, paragraph 2 of the Covenant prescribes:

Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

27. The Author's guarantee of the presumption of innocence was violated. The newspaper articles described under the facts of this case have fully influenced the general opinion that the Author is the perpetrator of the criminal acts in question still in the stages of preliminary investigation and investigation. In the context of the assumption that the Author is guilty, it is possible to follow the statements of politicians of the time, as well as future prosecution witnesses.

With such statements in public, in the absence of material evidence, they wanted to create an image of the Author as a war criminal in advance, so that he could be more easily convicted later during the proceedings. Through the media, he was portrayed as a "bloodthirsty" and a perpetrator of serious war crimes. He was called a war criminal before the court decision. No one believes in the Author's innocence today.

28. A fundamental distinction should be made between a statement that someone is only suspected of committing a criminal offense and a clear statement, while there is no final conviction, that the individual has committed the criminal offense in question. on the other hand, whether a statement by a public official represents a violation of the principle of presumption of innocence must be determined in the context of the specific circumstances in which the contradicted statement was given. In any case, the opinions expressed cannot constitute statements by a public official that the Author is guilty, which would encourage the public to believe that he or she is guilty and prejudice the assessment of the facts by the competent judicial Authority. The Author therefore considers that Article 14, paragraph 2 of the Covenant has been violated.

Article 15 of the Covenant prescribes:

1 . No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

29. The aforementioned provisions protect persons from punishment for a criminal offense that was not prescribed by law at the time it was committed. This also reflects the principle that only the law can prescribe a criminal offense and punishment (nullum crimen, nulla poena sine lege). It follows that we must first know which behaviors are prohibited in order to be held responsible for their performance. The article in question prohibits the state from imposing a harsher sentence on an individual than the one that could have been imposed at the time the criminal offense was committed.

30. The Supreme Court, in the judgment Kž-rz 4/2018-10, in point 1, convicted the Author of a criminal offense against humanity and international law, war crimes against prisoners of war from Article 122 of the Criminal Code of the Republic of Croatia, and in point 2 of the verdict, he was convicted of committing a criminal offense against humanity and human dignity, a war crime from Article 91, paragraph 2, points 1, 2, 9 in connection with paragraph 4 of the same article of the Criminal Code (KZ/11).

In this proceeding, the Author was convicted for the acts of execution that took place in 1991. in the 6th and 7th months, and that these actions are qualified as criminal offenses from Art. 122. OKZRH and from Art. 91 st. 2. items 1, 2, 9 in connection with paragraph 4. of the same article of the Criminal Code (KZ/11), and which laws did not even exist at the time of the execution of the actions from the factual description of the verdict, had not been adopted and had not entered into force.

In the specific case, the Criminal Code and Criminal Code/11 were applied, and not the Criminal Code of the SFRY, which was in force at the time of the crime, which was more favorable to the Author.

The Criminal Code was adopted only on March 22, 1993, and the Criminal Code was adopted in 2011, i.e. after the events to which the enforcement actions from the verdict refer. The Author is charged with the commission of a criminal offense under laws that did not even exist when the offense was allegedly committed, and in this case the criminal law was applied retroactively, which is prohibited by criminal legislation, the Constitution of the Republic of Croatia and the Covenant on Human Rights and Fundamental Freedoms.

At the time of the execution of the criminal acts, the Criminal Code of the SFRY, which was formally adopted as a republican law on October 8, 1991, was in force and in direct application. For the specific case, the applicable law is prescribed by the Criminal Code of the SFRY, which was in force and directly applicable in the Republic of Croatia at the time of the commission of the crime, and since October 8, 1991. it is applied as a adopted republican law, which with later amendments in 1992 and 1993. also changes its name to OKZRH. The Christmas Constitution of 1990 in the Republic of Croatia, the death penalty was abolished, and the maximum penalty prevented under that law was more favorable than the one prescribed by the Criminal Code, because with the abolition of the death penalty, the maximum prescribed prison sentence remained

the prison sentence of 15 years, as prescribed by Art. 38 of the Criminal Code of the SFRY, which until its takeover on October 8, 1991. applied directly, and afterwards as adopted republican law.

31. In relation to point 1 of the sentence of the verdict, the Supreme Court established that it is about the responsibility of the accused of war crimes against prisoners as an omission of commission, which criminal offense he partly committed by inaction. In such a state of affairs, the Author is charged with the commission of a criminal offense by inaction, and undoubtedly from the legal text of the criminal offense from Art. 122. OKZRH, it follows that this offense is committed by anyone who, in violation of the rules of international law, orders that prisoners of war be killed, tortured,... or who commits one of the aforementioned offenses, which excludes responsibility for the execution of this criminal offense by inaction as part of the so-called Command responsibilities. Command responsibility was introduced into the legislation of the Republic of Croatia only with amendments to the Criminal Code in 2004. (Official Gazette 105/04), when Article 18 prescribed as a new criminal offense designated as Art. 167, and the criminal offense of command responsibility for the commission of criminal offenses described in Art. from 156 to 167 of that law - criminal offenses against humanity and international law, which clearly indicates that until then the legislation of the Republic of Croatia did not recognize command responsibility.

32. Also, to determine the commander's responsibility for the actions taken by his subordinates and which actions fulfill the characteristics of a criminal offense against humanity and international law, the Supreme Court takes the provision of Art. 28 of the Criminal Code of the Republic of Croatia and in that norm there is room for determining the responsibility of the Author for war crimes against prisoners of war in the manner of determining the responsibility of the commander for the actions of his subordinates that were not prevented, which in one part fulfilled the characteristics of the criminal offense from Art. 122. OKZ HR.

33. Such an extensive interpretation of the criminal offense is not acceptable. Criminal offense from Art. 122. OKZRH cannot be interpreted in such a way that with the application of Art. 28. OKZRH, which describes the method of execution of a criminal offense, which can be executed according to the text of the law only by doing - issuing an order, can also be done by not doing. This would indicate that the offense could be committed by not issuing an order, which is of course not acceptable (according to the logic of the matter, an offense which is prescribed to be committed by doing cannot be committed by inaction at the same time, and neither any extensive interpretation of Article 28 of the Criminal Code of Criminal Procedure, can give a different conclusion, because paragraph 2 of that article stipulates that a criminal offense can be committed by inaction, only when the perpetrator fails to perform the act that he was obliged to perform, and this implies that the act that he was obliged to perform must be prescribed as his duty and obligation). All the more so since Art. 122. OKZRH clearly stipulates that this act, apart from issuing orders, can also be carried out by the perpetrator himself committing an act from the legal description. An overly broad interpretation of the law is not allowed. After all, this point of view is supported by the fact that the legislator thought in the same way when he passed the

aforementioned amendments to the Criminal Code, which prescribed as a special criminal offense command responsibility, that is, the responsibility of military commanders for the actions of their subordinates even when he did not issue direct orders for action, which is against the international law of war. After all, our legal theory and jurisprudence until the introduction of this new criminal offense did not consider that the criminal offense of war crime from Art. 120 and Art. 122. OKZRH can also commit a crime by inaction, that is, from the position of guarantor for the actions of its subordinates.

34. Furthermore, the Criminal Code of the SFRY, which should have been applied in the specific case, does not define crimes against humanity or command responsibility. The conducts, that is, the acts that were charged against the Author, were defined as punishable conducts, that is, as criminal acts, namely as War Crimes against the Civilian Population and War Crimes against Prisoners of War, in the Criminal Code of the SFRY.

Also, observing the commander's responsibility through the basic ratio of the command function, and in connection with that through the general principles of criminal legislation, including the modalities of committing a criminal offense, which can be committed both by doing and not doing, and as stated in the explanation of the Supreme Court's judgment, is contrary to Article 7.para.2. Covenants.

General legal principles can represent a source of international criminal law when and if they are sufficiently accessible and predictable at the material moment. The principle of non-retroactivity does not prevent a person from being punished for an act or omission that at the time it was committed constituted a criminal offense according to general legal principles recognized by the community of civilized nations. Although historically established to justify the Nuremberg and Tokyo verdicts, this safeguard also applies to other court proceedings. It has its own field of application, because it refers to criminal acts that at the material moment have not yet crystallized as part of international customary law, nor have they been included in the law of international agreements that apply to the facts, but have already represented an unsustainable attack on the principles of justice, which is evident from the practice of a relevant number of countries.

In order to avoid legal uncertainty and to respect the other side of the principle of legality, i.e. the principle of concreteness (nullum crimen sine lege certa et stricta), it is necessary to strictly follow the practice of the relevant state: only when the general legal principles reflect domestic and practices according to international agreements of a relevant number of states, they can be recognized as practices that express the will of the community of civilized nations to criminalize a certain form of behavior. It follows that the criminalization of behavior based on general legal principles is not an exception to the principle of prohibition of retroactive application of the criminal law to the extent that the behavior already corresponded, from a material perspective, to criminal behavior at the time it occurred. Therefore, the "Nuremberg-Tokyo Clause" does not apply when, at the material moment, that behavior was punishable as a criminal offense under

domestic law, but with a lesser penalty than that which was later accepted in a new law or international agreement.

Article 26 of the Covenant stipulates that

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

35. In the specific case, the Author was discriminated against before the Croatian courts because of his Serbian nationality. The Author was treated differently than other persons of Croatian nationality who were previously convicted of serious and serious war crimes. Croatian courts have imposed lighter sentences on perpetrators of Croatian nationality in proceedings where a larger number of victims was undisputedly established. This difference in treatment cannot be explained objectively or reasonably, and there is no legitimate, objective goal that would justify this difference in treatment.

36. That the Author was treated in a discriminatory manner is also evident from the fact that the first-instance court did not accept the testimony of the defense witness and considered it unreliable, explaining this by the fact that the testimony of the defense witness contradicted the testimony of the victim's witness. This cannot be a reason for not accepting defense witnesses, but a basis for evaluating all evidence individually, and all evidence together and in relation to the testimony of other witnesses.

37. The first-instance court also states that since these witnesses were on the same side as the Author during the armed conflict, they wanted to help the Author avoid criminal liability. It is not allowed to eliminate the testimony of witnesses just because they are members of the opposing armed forces of the enemy, that is, to unreservedly accept and evaluate as credible the testimony of all prosecution witnesses who are members of the party to the armed conflict against whom the crime was committed. Defense witnesses are Serbs, who belonged to the enemy army. The non-acceptance of the testimony of the defense witnesses as true is the result of discrimination on the basis of nationality, because on the other hand, the court gave full credit to the defense witnesses, who are of Croatian nationality.

38. Furthermore, the Supreme Court confirms the position of the first-instance court; that it is justified to talk about the motives of such testimony, and that the defense witnesses try to facilitate the position of the defendant with whom in the Homeland War they were members of the military side hostile to the Republic of Croatia. Such explanations of the court are insufficient, unreasonable and unacceptable. Given that it was a trial related to wartime events, defense witnesses could not be any other person than those who directly participated in those events, and who were then in a hostile position. The first-instance and second-instance courts eliminate the

testimony of every witness who was on the Serbian side during the war as unreliable. The testimony of every witness who was on the Serbian side during the war is unreliable by the very fact that he was on the Serbian side, and one can always talk about the motives of such testimony, regardless of the quality and content of the testimony, and the characteristics of a certain person in the circumstances at that time and his immediate knowledge.

39. Furthermore, the discrimination of the Author is also visible when applying the applicable law, that is, the criminal law. At the time of the execution of the criminal acts for which the Author was convicted, the Criminal Code of the SFRY, which was formally adopted as a republican law on October 8, 1991, was in force and in direct application. courts in the Republic of Croatia, including the County Court in Split as the first-instance court in this case for criminal offenses committed at that time, rendered verdicts with the application of that law (Kio 149/92, District Court in Šibenik, K-45/92, District Court Zadar, K-745/92, District Court Osijek – Military Court).

40. All of the above shows that from the very beginning, that is, from the adoption of the Decision on the investigation and the submission of the request for extradition, on the basis of such decision on the investigation, sufficient care was not taken to try the Author seriously, fairly and impartially.

41. The fact that the Author was treated differently because of his Serbian nationality than other persons of Croatian nationality who were previously accused of serious criminal offenses stems from the fact that he was deprived of his liberty for almost 12 years before the verdict was passed.

41. Discrimination by the Author in relation to persons of Croatian nationality also stems from recent court practice. Namely, persons of Croatian nationality who were previously accused of serious and serious criminal acts of war crimes were sentenced to a prison sentence of less than 12 years, while the Author was sentenced to a prison sentence of 13 years and 6 months. In relation to this claim, the Author cites some examples of criminal proceedings and prison sentences to which defendants of Croatian nationality were sentenced:

1. Crime in SISKO: The accused Vladimir Milanković was sentenced to 10 years in prison for the commission of a war crime because, as the commander of the police force, he did not prevent the killing of 24 civilians.

2. Crime on KORANSKOM MOST: Accused Mihajlo Hrastov was sentenced to 4 years in prison for the war crime he committed as a member of a special unit of the Karlovac Police Department and killed 13 soldiers, reservists of the JNA, with a machine gun.

3. The crime in PAULIN DVOR: The accused Enes Viteškić was sentenced to 11 years in prison for the commission of a war crime for killing 18 residents of Paulin Dvor.

4. Crime in LORA: The accused Tomislav Duić was sentenced to a prison sentence of 8 years, the accused Tonči Vrkić was sentenced to a prison sentence of 8 years, the accused Davor Banić was sentenced to a prison sentence of 7 years, the accused Miljenko Bajić was sentenced to a prison

sentence of 4 years and 6 months, the accused Josip Bikić was sentenced to a prison sentence of 6 years, the accused Emilio Bungur was sentenced to a prison sentence of 6 years, Ante Gudić was sentenced to a prison sentence of 6 years, the defendant Anđelko Botić was sentenced to a prison sentence of 6 years, and for committing the criminal act of war crime because they kept a large number of detained civilians, mostly of Serb nationality, physically and mentally abused them without any legal basis, and the following were killed: Gojko Bulović and Nenad Knežević.

5. Crime in the MEDAC POCKET: The accused Mirko Norac was sentenced to a prison sentence of 6 years for the commission of a war crime under command responsibility, because he did not prevent the killing of the civilian population and the destruction of their property.

6. Crime in KARLOVAC: Accused Željko Gojak was sentenced to 9 years in prison for committing the criminal act of war crime, which he committed by killing two civilians with multiple shots, one of whom was a minor girl.

Article 9 of the Covenant stipulates:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer Authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

42. The degree of doubt required under Art. 9. The Covenant is a "reasonable suspicion" that must be interpreted in the Covenantal sense of this term. "Reasonable suspicion" implies the existence of facts or information that would satisfy an objective observer that the person in question committed the criminal act. What will be considered "founded" will depend on all the circumstances of the individual case. The Author of the request considers that all the courts so far, during the multiple extensions of the pretrial detention, have not stated at all, from which arises

the existence of a well-founded suspicion that the Author of the request has committed the criminal acts of war crimes that are charged against him.

43. The Author believes that in the procedure conducted before the Authorities of Australia, it is not stated at all what the reason for the reasonable suspicion that the Author committed the criminal acts that were charged against him stems from.

From all the decisions, an objective observer would not be able to conclude that the Requester is reasonably suspicious, because there is no explanation of where the Requester was during the incriminated period, which results from witness statements, what kind of material documentation the court has and so on. So, from the few decisions, it is not at all clear why the Author of the request is reasonably suspected of the specifically enumerated criminal acts and therefore has already violated Art. 9. Covenant.

44. The Author of the request points out here that his detention in extradition detention was really not reasonable. The Author of the request has been deprived of liberty for more than 11 years due to criminal offenses for which there is no reasonable suspicion that he committed them. The prosecuting Authorities did not show any laziness and haste in dealing with the Author's case.

35. The Author of the request reminds that the right to freedom is one of the fundamental human rights that cannot be thwarted due to slowness in the actions of criminal prosecution bodies and courts. The 25-year gap since the alleged commission of criminal offenses is so far that it is simply completely unknown for what reason the Author of the request would be held in extradition prison.

49. The Author of the request believes that his deprivation of liberty for 11 years and 2 months is a period that exceeds the reasonable duration of deprivation of liberty before the trial, and that therefore there was also a violation of Art. 9 of the Covenant.

50. The Author of the request believes that he did not have effective legal means available to challenge the legality of his detention. Namely, although he formally had at his disposal the right to appeal against the decision determining or extending detention.

Article 2 of the Covenant stipulates:

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative Authorities, or by any other competent Authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent Authorities shall enforce such remedies when granted.

53. It is proposed to comply with this request for a review of the legality of the decision on extradition, and it is suggested that the Australian Government Attorney-General's Department, in the process of deciding on this request, request the Author's file from the International Criminal Tribunal for the former Yugoslavia (ICTY) and inspect it. The same was necessary due to the fact that a detailed investigation was conducted before the International Criminal Tribunal for the former Yugoslavia (ICTY) about the Author's war journey and The Hague investigators did not find any relevant evidence that could lead to doubt that Dragan Vasiljković (aka Daniel Snedden) committed a war crime. All this in comparison with the evidence collected by the Republic of Croatia for the initiation of the investigative procedure, which evidence does not have a level of quality that could be used to suspect anyone, that is, in the specific case of the Author, of committing a serious war crime. Nevertheless, in this particular case, an investigation was launched and the extradition of the Author was requested.

VI. CONCLUSION

54. For the reasons stated above, the Author believes that his rights guaranteed by Article 2, Article 7, Article 9, Article 10 (1), Article 14, Article 15 and Article 26 of the Covenant have been violated.

In Zagreb, 20.07.2023. Author