OČI BOJE FRONTA

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odazvala vojnom pozivu
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tokom NATO intervencije
u SR Jugoslaviji

CENTAR ZA ANTIRATNU AKCIJU

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❖ ❖ ❖

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CENTAR ZA ANTIRATNU AKCIJU
Beograd, avgust 2000.

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* *Pločnici Toronta... Oči boje fronta... Lozinka svih nas*
Stih iz pesme "Živeti slobodno" sa albuma "Devedesete", autora Đorđa Balaševića

Sadržaj

Napomena izdavača

Centar za antiratnu akciju (dalje: Centar) oformio je projekat pod nazivom *Oči boje fronta*. Razlozi za to su višestruki i nalaze se u sveukupnosti složene unutrašnje i međunarodne situacije, posmatrane kako sa društvenog i političkog, tako i sa vojnog aspekta. U tom smislu, potrebno je posebno ukazati na činjenicu da je ovako kompleksna i komplikovana stvarnost dodatno bila opterećena ogromnim greškama koje su učinili tadašnji režim u SR Jugoslviji kao i međunarodna zajednica, a što je sve dovelo do NATO intervencije sa stravičnim i još uvek ne u potpunosti sagledivim posledicama po našu zemlju.

Izgubljeni ljudski životi su očigledno najteža posledica koja nas je zadesila. Zvaničan podatak o broju poginulih lica i dalje nije objavljen, humanitarna, materijalna, ekološka i svaka druga šteta su ogromne i još uvek nemerljive, a brojne su i povrede medunarodnog i vlastitog unutrašnjeg prava koje su učinile države članice NATO za vreme intervencije.

Međutim, pored ovih drastičnih posledica NATO intervencije, u isto vreme su se odigrali još neki događaji, koji su zbog svog društvenog i posebno pravosudnog značaja, na svojevrsan način obeležili našu stvarnost. To su, između ostalog, odbijanje većeg broja građana da uzmu ućešće u Vojsci Jugoslavije i neujednačena kaznena politika po tom pitanju. Iako su ova pitanja od ogromnog društvenog i pravnog značaja, ondašnje

vlasti nisu informisale javnost istinito i blagovremeno. Pored toga, neke nevladine organizacije su iznosile međusobno kontradiktorne informacije, što je stvaralo dodatnu konfuziju i strah kod građana.

Imajući sve to u vidu, Centar se opredelio da o svemu progovori otvoreno i odgovorno. U tom cilju, Centar je stručno i ozbiljno istražio, odnosno osvetlio onu stranu složene i osetljive problematike koja se odnosi na odbijanje građana da uzmu oružje u ruke i upuste se u neravnoptavan i besmislen rat protiv NATO i s tim u vezi različitog postupanja naših sudova.

Iz navedenih razloga Centar je uspostavio projekat «Oči boje fronta«, koji se odnosi na lica koja se nisu odazvala vojnom pozivu ili su pobegla iz Vojske Jugoslavije tokom NATO intervencije u SR Jugoslaviji. Ovaj projekat rezultat je šestomesečnog rada grupe istraživača i stručnjaka Centra. Istraživanje je obavljeno tokom 2000. godine, a prethodila su mu individualna istraživanja pojedinih saradnika tokom druge polovine 1999. godine.

Rezultati istraživanja koji se nalaze se pred vama pokazuju da je naše zakonodavstvo u predmetnoj oblasti ispolitizovano i da je sudska praksa po istom pitanju neusaglašena. Rezultati istraživanja sadrže i veći broj podataka u vezi lica koja su odbila da se uključe u jedinice Vojske Jugoslavije prilikom NATO intervencije. Takođe, detaljno je obrađeno i nekoliko desetina karakterističnih slučajeva.

Imajući sve izneto u vidu, a posebno opšte uslove i okolnosti u kojima su uglavnom mladi ljudi odbili da se upuste u rat s NATO, kao i činjenicu da sudovi, pogotovu na teritoriji Srbije i u prvim mesecima rada po navedenim slučajevima, nisu dovoljno vodili računa o istinskoj individualizaciji kazne, stvorena je situacija da veliki broj ovih ljudi bude osuđen na kazne zatvora i

to u dužem vremenskom periodu i da sada čeka da bude pozvan na izvršenje kazne.

Zbog svega ovog, Centar se zalaže za prevazilaženje problema na način da se amnestiraju svi zatvoreni i da se obustave svi sudski postupci.

Note of the Publisher

The Centre for Antiwar Action (hereinafter: the Centre) has elaborated a project entitled *Eyes the color of the frontline*. Reasons for this were multiple and can be found in the overall internal and international situation, observed both from the social and political, as well as military aspect. In that sense, it is necessary to particularly point to the fact that such complex and complicated reality was additionally burdened by grave mistakes committed by both the then regime in Yugoslavia and the international community, which brought about the NATO intervention with appalling and not yet fully determined consequences for our country.

Lost human lives are obviously the gravest consequence that we had suffered. The official data on the number of killed have not been published yet, while humanitarian, material, ecological and every other damages were enormous and are still immeasurable, which was all accompanied by numerous violations of international and our own national law committed by NATO member states during the intervention.

However, despite these drastic consequences of NATO intervention, some other events happened at the same time which, because of their social and, particularly, judicial importance, have specifically marked our reality. Among others those were: refusal of a large number of citizens to take part in the Army of

Yugoslavia and ununiform penal policy in this regard. Although these issues are of paramount social and legal importance, the then authorities did not inform the public truthfully and on time. Also, some non-governmental organisations presented mutually contradictory information which created additional confusion and instilled fear among citizens.

Bearing all this in mind, the Centre has decided to break the silence and speak about all this openly and responsibly. To that end, the Centre had professionally and seriously researched, or better said, threw light on that side of this complex and sensitive problem area which relates to the refusal of citizens to take up arms and go into an unequal and meaningless war against NATO and the varied conduct of courts in these matters.

For the above stated reasons, the Centre established the project "Eyes the Colour of the Frontline" which relates to persons who did not answer the call-up or fled from the country during NATO intervention against FR Yugoslavia. This project is a result of six-months work of a group of Centre's researchers and experts. The research was carried out in the course of 2000, and was preceded by individual studies or some researchers in the second half of 1999.

The research results before you show that our legislation in this subject-specific field has been politicised and judicial practice in that same area uncoordinated. The results of this research also include a large number of data on persons who refused to join the Yugoslav Army units during NATO intervention. Also, several dozen characteristic cases have been analysed.

Bearing in mind all the above said, and particularly the general conditions and circumstances under which mostly young people refused to go into war against NATO, as well as the fact

that in the first eight months of their work the courts, especially those in the territory of Serbia, did not take account of the true individualisation of the punishment in the mentioned cases, it happened that a large number of these persons were convicted to longer prison sentences and are now waiting to be called to serve them.

For all these reasons, the Centre is pleading for the overcoming of this problem by the granting of pardon to all the imprisoned and by the suspension of all court proceedings.

I. STANJE DO 24. MARTA 1999. GODINE

Nakon Dejtonskog sporazuma (1995. godine) nisu prestale delimične mobilizacije na teritoriji SRJ. Težište ratnog žarišta prebačeno je na Kosovo. U prvo vreme, vrši se mobilizacija rezervnog policijskog sastava, jer se smatralo da stanje na Kosovu treba smiriti policijskim akcijama. Međutim, od počeka 1998. godine, kada dolazi do masovnih ubistava civila, više se uključuje i VJ, doduše u prvo vreme, kao logistika.

Jedan broj mladih ljudi izbegavao je prijem vojnih poziva za mobilizaciju. Oni su, uglavnom, napuštali prebivališta, a i zemlju. Ovo pitanje nije javno problematizovano, verovatno iz razloga političkog oportuniteta. Živelo se, manje-više, u uverenju da do nekih većih ratnih sukoba neće doći, a da se oružani sukob na Kosovu vodi protiv "šačice ostrašćenih terorista".

Dana 24. marta 1999. godine, međutim, Savezna vlada donosi Odluku o proglašenju nastupanja stanja neposredne ratne opasnosti, a 25. marta 1999. godine, ona donosi Odluku o proglašenju ratnog stanja. Ove odluke glase:

> "Na osnovu člana 99. tačka 10. Ustava Savezne Republike Jugoslavije, pošto je saslušala mišljenje predsednika Savezne Republike Jugoslavije i predsednika veća Savezne skupštine, Savezna vlada donosi

ODLUKU O PROGLAŠENJU NASTUPANJA NEPOSREDNE RATNE OPASNOSTI

1) Proglašava se nastupanje neposredne ratne opasnosti, jer postoji opasnost od agresije na Saveznu Republiku Jugoslaviju.
2) Ova odluka stupa na snagu odmah.

Ova odluka je objavljena u "Službenom listu SRJ", br. 14/99".

"Na osnovu člana 99. tačka 10. Ustava Savezne Republike Jugoslavije, pošto je saslušala mišljenje predsednika Savezne Republike Jugoslavije i predsednika veća Savezne skupštine, Savezna vlada donosi

ODLUKU O PROGLAŠENJU RATNOG STANJA

1) Proglašava se ratno stanje jer je otpočela agresija na Saveznu Republiku Jugoslaviju.
2) Ova odluka stupa na snagu odmah.

Ova odluka je objavljena u "Službenom listu SRJ", br. 15/99"

Savezna vlada je ove odluke donela dan za danom, na osnovu ovlašćenja iz odredbe člana 99. tačka 9. Ustava SRJ. Po toj odredbi, Savezna vlada može takve odluke doneti **"kad Savezna skupština nije u mogućnosti da se sastane"**. Rašireno je mišljenje da su postojali uslovi da se Savezna skupština sastane. Ona se i sastala u uslovima ratnog stanja povodom pitanja pristupanja Jugoslavije Savezu Rusije i Belorusije.

Jasno je da su odmah učestali pozivi za mobilizaciju. Pozivi su, uglavnom, bili pojedinačni, a u nekim sredinama (Niš, na primer) i javni – preko TV i radio stanica. Neodazivanje pozivu

predstavljalo je krivično delo, a dezerterstvo, takođe, krivično delo protiv Vojske Jugoslavije (član 214. i 217. KZ SRJ), i to u uslovima ratnog stanja, što je automatski dovelo do primene odredbe člana 226. Krivičnog zakona SRJ. To je značilo bitno zaoštravanje zaprećene kazne. Tako, na primer, kazna za neodazivanje vojnom pozivu sa predviđene kazne do jedne godine, zaoštrena je na kaznu zatvora od jedne do deset godina; kazna za krijenje da bi se izbegla vojna služba, predviđena od tri meseca do pet godina, zaoštrena je na najmanje pet godina ili kaznu zatvora u trajanju od 20 godina, koliko se predviđa i za lica koja su napustila zemlju ili ostala u inostranstvu iz istog razloga. Takođe, u slučajevima primene odredbe člana 226. stav 2. i 3. u vezi sa odredbom člana 214. stav 2. i 3. i člana 217. stav 3. , 4. i 5. KZ SRJ, ne može se izreći uslovna osuda. Jer, prema odredbi člana 53. stav 3. KZ SRJ, uslovna osuda se ne može izreći za krivična dela za koja se ni ublažavanjem kazne ne može izreći kazna manja od jedne godine zatvora. To je slučaj iz člana 43. stav 1. tačka 1. KZ SRJ, kojim se uređuje da, ako je za krivično delo kao najmanja mera kazne propisan zatvor u trajanju od tri ili više godina, kazna se može ublažiti *do jedne godine*.

II. KRIVIČNO ZAKONODAVSTVO SRJ

Odredbe člana 214. i 217. KZ SRJ, glase:

"Neodazivanje pozivu i izbegavanje vojne službe

Član 214.

1) Ko bez opravdanog razloga ne dođe u određeno vreme na regrutovanje, radi saopštenja ratnog rasporeda ili prijema oružja, ili na služenje vojnog roka, vojnu vežbu ili drugu vojnu službu, iako je bio pozvan pojedinačnim ili opštim pozivom, kazniće se novčanom kaznom ili zatvorom do jedne godine.
2) Ko se krije da bi izbegao obavezu iz stava 1. ovog člana, iako je bio pozvan pojedinačnim ili opštim pozivom, kazniće se zatvorom od tri meseca do pet godina.
3) Ko napusti zemlju ili ostane u inostranstvu da bi izbegao regrutovanje, ili služenje vojnog roka, vojnu vežbu ili drugu vojnu službu, kazniće se zatvorom od jedne do deset godina.
4) Ko poziva ili podstiče više lica za izvršenje dela iz st. 1. do 3. ovog člana, kazniće se za delo iz stava 1. zatvorom do tri godine, a za delo iz st. 2. i 3. zatvorom najmanje jednu godinu.
5) Učinilac dela iz st. 2. i 3. ovog člana koji se dobrovoljno javi nadležnom državnom organu može se blaže kazniti ili osloboditi od kazne."

"Samovoljno udaljenje i bekstvo iz Vojske Jugoslavije

Član 217.

1) Vojno lice koje samovoljno napusti svoju jedinicu ili službu i ne vrati se na dužnost u roku od deset dana ili se u istom roku ne vrati na dužnost sa dozvoljenog bavljenja van jedinice ili službe, kazniće se zatvorom do jedne godine.

2) Kaznom iz stava 1. ovog člana kazniće se i vojno lice koje više od dva puta i kraće od deset dana nedozvoljeno boravi van svoje jedinice ili službe, kao i vojno lice koje samovoljno napusti svoju jedinicu ili službu za vreme izvršenja važnog zadatka ili povećanog stepena borbene gotovosti jedinice.

3) Vojno lice koje se krije da bi izbeglo službu u Vojsci Jugoslavije, ili koje samovoljno napusti svoju jedinicu ili službu i ne vrati se na dužnost u roku od trideset dana ili se u istom roku ne vrati sa dozvoljenog bavljenja van jedinice ili službe, kazniće se zatvorom od šest meseci do pet godina.

4) Vojno lice koje napusti zemlju ili ostane u inostranstvu da bi izbeglo službu u Vojsci Jugoslavije, kazniće se zatvorom najmanje jednu godinu.

5) Vojno lice koje priprema bekstvo u inostranstvo da bi izbeglo službu u Vojsci Jugoslavije, kazniće se zatvorom od šest meseci do pet godina.

6) Učinilac dela iz st. 3. i 4. ovog člana koji se dobrovoljno javi nadležnom državnom organu može se blaže kazniti. ”

Kako je predmet našeg razmatranja izvršenje ovih dela za vreme ratnog stanja, odlučivanje o visini kazne vrši se prema odredbi člana 226. KZ SRJ, koja glasi:

"Kažnjavanje za krivična dela izvršena za vreme ratnog stanja ili u slučaju neposredne ratne opasnosti

Član 226.

1) Za krivično delo iz …člana 214. stav 1. , člana 217. stav 1. i 2…ovog zakona, ako je izvršeno za vreme ratnog stanja ili u slučaju neposredne ratne opasnosti, učinilac će se kazniti zatvorom od jedne do deset godina.
2) Za krivično delo iz…člana 217. stav 5…ovog zakona, ako je izvršeno za vreme ratnog stanja ili u slučaju neposredne ratne opasnosti, učinilac će se kazniti zatvorom najmanje tri godine.
3) Za krivično delo iz …člana 214. st. 2. i 3, člana 217. st. 3. i 4… ovog zakona, ako je izvršeno za vreme ratnog stanja ili u slučaju neposredne ratne opasnosti, učinilac će se kazniti zatvorom najmanje pet godina ili zatvorom od dvadeset godina. "

Stanje neposredne ratne opasnosti proglašeno je 24. marta 1999. godine, a ratno stanje je trajalo od 25. marta do 24. juna 1999. godine.

Radnje krivičnog dela iz člana 214. KZ SRJ su: (1) neodazivanje, (2) izbegavanje, i (3) pozivanje i podsticanje više od dva lica na vršenje ovog krivičnog dela, a u krivičnom delu iz člana 217. KZ SRJ, radnje su: (1) samovoljno udaljenje više od 10 dana, (2) više od dva puta nedozvoljenog boravka van jedinice do 10 dana, (3) samovoljno napuštanje za vreme izvršenja važnog zadatka ili povećanog stepena borbene gotovosti jedinice; i (3) bekstvo. Međutim, ako se učinilac dela dobrovoljno javi nadležnom organu, može se blaže kazniti ili osloboditi od kazne za kvalifikovane oblike krivičnog dela. Kvalifikovani oblici ovih dela su, za delo iz člana 214. KZ SRJ: (1) krijenje, i

(2) bekstvo u inostranstvo, ili ostajanje u inostranstvu, a za delo iz člana 217. KZ SRJ: (1) krijenje, ili ako se ne vrati na dužnost u roku od 30 dana, (2) bekstvo u inostranstvo, ili ostajanje u inostranstvu. Za ovo delo i pripremanje bekstva se kažnjava. Ako se učinilac dela, međutim, dobrovoljno javi nadležnom organu, može se blaže kazniti za kvalifikovane oblike.

Kako nisu postavljene jasne granice između radnje iz stava 1. (nedolazak bez opravdanog razloga…) i stava 2. (krije se da bi izbegao obavezu…) člana 214. KZ SRJ, u pomenutom vremenskom periodu, vojni tužioci su, po pravilu, sve vojne obveznike koji nisu došli u ratnu jedinicu, optuživali za teži oblik krivičnog dela, odnosno optuživali su ih za skrivanje, iako za to nisu imali nikakve pouzdane podatke. Tako su ovi vojni obveznici odgovarali za delo iz stava 2. člana 214. , a u vezi sa članom 226. KZ SRJ. To je imalo za posledicu da se ovim licima nije mogla izreći manja kazna od jedne godine zatvora, bez obzira posle koliko dana se neko od njih pojavio u jedinici, odnosno koji su razlozi bili u pitanju za njegovo neodazivanje. Izvesnih odstupanja ima u praksi vojnog okruga u Podgorici. Na tom području, sudovi su izricali za prisutna lica, po pravilu, mesečne kazne.

Bitan, prvi elemenat za krivično delo iz člana 214. KZ SRJ je neodazivanje *bez opravdanog razloga*. Opravdan razlog je vezan za dve okolnosti: (1) nepostojanje saznanja o pozivu, i (2) sprečenost da se odaziva pozivu. Najviše je sporova bilo oko činjenice da li su vojni obveznici imali saznanja o pozivu. Sudovi su stajali na stanovištu da su svi obveznici imali saznanje o svojim obavezama s obzirom da im je bilo poznato da je zemlja bila u ratnom stanju. Neko pravno uporište za ovu tezu stoji u odredbi člana 7. Zakona o odbrani, koja glasi:

> "U slučaju napada na zemlju, svi građani u zemlji i inostranstvu, komande, jedinice i ustanove Vojske Jugoslavije, predstavnici

državnih organa i organizacija i organi upravljanja u preduzećima i drugim pravnim licima, dužni su da, odmah po saznanju, ne čekajući poziv ili naređenje, postupe po svom ratnom rasporedu i obavezama utvrđenim Planom odbrane zemlje, odnosno izvodom iz tog plana i odlukama i merama Savezne vlade."

Međutim, smatramo da je ovo pravno stanovište neprihvatljivo, obzirom da nije bila proglašena opšta mobilizacija, već delimična. Postupanje na način predviđen ovom odredbom dovelo bi do haotičnog stanja. Dakle, jedino je ispravno pravno stanovište da se utvrdi činjenica da li je vojni obveznik imao saznanje o vojnom pozivu.

Obzirom da je vojnim obveznicima, po pravilu, poslat pojedinačni poziv, u postupku je trebalo utvrditi da li je taj poziv uručen. Pri tome, moraju se u obzir uzeti kriterijumi utvrđeni odredbama Zakona o opštem upravnom postupku, jer se radi o obaveznom ličnom dostavljanju iz člana 87. tog zakona. Sudovi su, međutim, smatrali da je poziv uručen ako je vojni pozivar nekom od članova porodice, ili susedima, ostavio obaveštenje o vojnom pozivu. Štaviše, sudovi su ovu činjenicu uzimali kao dokazanu i tada kada se vojni obveznik sa zakašnjenjem javio svojoj ratnoj jedinici, bez obzira na njegovu izjavu da se javio odmah po saznanju za poziv! Navodimo primer: **Optuženi D. R, star 29 godina, carinik, vojni obveznik, osuđen je na kaznu zatvora u trajanju od 1 (jedne) godine, jer je, skrivajući se, izbegao vojnu službu, tako što je promenio boravište a da o tome nije obavestio nadležne organe**. Optuženi se branio da nije znao za poziv, da je redovno bio na službi u Carini, a da je jedno vreme spavao kod devojke. Kada je 4. aprila 1999. godine saznao za poziv, jer je obaveštenje ostavljeno na vratima stana, odmah se javio u Vojni odsek. Sud nije uvažio ovu odbranu, smatrajući da je optuženi "…dobro znao da je po ratnoj formaciji

vojni policajac, što znači da je pouzdano mogao očekivati pozivanje u VJ upravo u prvim danima rata". Međutim, ima i slučajeva obustavljanja krivičnog postupka. Navodimo primer: **Protiv vojnog obveznika B. Š, star 37 godina, pokrenut je krivični postupak, jer se 29. 31999. godine nije javio u ratnu jedinicu, a da mu se poziv nije mogao uručiti, jer je promenio boravište bez prijave nadležnom organu. Postupak je obustavljen odustankom vojnog tužioca, koji je u toku priprema za glavni pretres utvrdio da je optuženi uredno izvršio promenu boravišta, te da nije mogao da bude upoznat sa mobilizacijskim pozivom**.

Drugi osnov opravdanog razloga jeste sprečenost. Najčešći razlog bila je bolest. Međutim, sudovi nisu uvažavali medicinsku dokumentaciju građanskih bolnica. Za njih je bio merodavan samo nalaz i mišljenje Vojnolekarske komisije. Takođe, nije uvažavan kao opravdan razlog i okolnost da su vojni obveznici bili na putu van mesta prebivališta, u selu, na primer, gde ne postoje telefonske veze.

Napuštanje zemlje ili ostajanje u inostranstvu izazivalo je održavanje glavnog pretresa u odsutnosti okrivljenog. U ovim okolnostima su bitna dva pitanja (1) da li je lice u inostranstvu imalo saznanje o vojnom pozivu, i (2) da li je postojala namera da se izbegne odazivanje vojnom pozivu. Po pravilu, sudovi su a priori smatrali da su sva lica obaveštena o vojnom pozivu samim tim što je proglašeno ratno stanje! Da li se neko nalazi u inostranstvu zakjučivalo se na osnovu bilo kakvog svedočenja bliskih srodnika ili drugih lica. Navodimo jedan slučaj: **Optuženi I. J., star 25 godina, trgovac, vojni obveznik, osuđen je u odsutnosti na kaznu zatvora u trajanju od 6 (šest) godina, jer je, da bi izbegao vojnu službu, dana 22. 3. 1999. godine, napustio zemlju**. Sud je doneo presudu na osnovu izjava roditelja optuženog da im se sin nalazi u inostranstvu i fotokopije pasoša

koju je priložio branilac (!?) kojom se dokazuje da se optuženi nalazi u inostranstvu. Međutim, bilo je i izuzetaka, kada je obustavljen krivični postupak. Navodimo primer: **Protiv vojnog obveznika S. M, star 31 godinu, pokrenut je krivični postupak jer se nije javio u vojnu jedinicu 25. marta 1999. godine, iako je za to znao preko brata, koji je poziv primio i bez obzira na upozorenje pozivara da se mora javiti na vojni poziv. Postupak je obustavljen odustankom vojnog tužioca, koji je utvrdio da optuženi od 1993. godine ne živi u Jugoslaviji, te da nije mogao biti upoznat sa sadržinom poziva**.

Druga okolnost-namera nije se posebno dokazivala; u svakom slučaju se uzimala kao dokazana činjenica da je namera postojala. Posebno ukazujemo na slučajeve povlačenja vojske sa borbenog položaja bez naredbe starešine. Sudovi su oglašavali krivim vojne obveznike, koji su, zajedno sa celom jedinicom, napuštali borbena mesta zbog borbenih dejstava neprijateljskih snaga, jer su to uradili bez naređenja svojih starešina. Čudno je, međutim, da su i starešine sa tim vojnicima napuštali borbene položaje, a nisu krivično odgovarali. Navodimo primer: **Optuženi G. Đ, star 35 godina, radnik, vojni obveznik, osuđen je na jedinstvenu kaznu zatvora u trajanju od 1 (jedne) godine i 6 (šest) meseci – za delo iz član 217. KZ SRJ na 1 godinu i za delo teške krađe iz člana 166. KZS na jednu godinu, jer je samovoljno napustio jedinicu, te da je na Kosovu prisvojio veliku količinu robe**. Optuženi se brani tako što iznosi da im je 23. 5. 1999. godine starešina rekao da su sve ostale čete samovoljno napustile borbena mesta, a da je ostala samo njihova četa. Tada je neko rekao da idu i oni, što su i učinili… Na glavnom pretresu su starešine optuženog potvrdile da su "jedinice tih vojnika napustile borbene linije i oni nisu mogli da ih zadrže", kao i to da "nikom od vojnika nije izdavao naređenje da ostanu na položaju i vrate se na mesto razmeštaja, jer je i on sam pošao sa njima".

III. POSTUPANJE SUDOVA

Kaznena politika nije bila ujednačena. Prvih dana sudovanja, vojni sudovi su izricali drastične kazne, delom zbog neiskustva sudija, delom da bi se uticalo na odziv vojnih obveznika. Kasnije, Vrhovni vojni sud je zauzeo kriterijume izricanja kazni, pa se, unekoliko, ujednačila kaznena politika. I dalje, nedovoljno se vodilo računa o individualizaciji kazne. Štaviše, i obrasci presuda su bili štampani radi ekspeditivnosti suđenja. Karakteristično je, na primer, da je još prilikom suđenja licima koja su se posle desetak dana od obaveštenja o mobilizaciji javila u svoje jedinice, od strane sudija koji su postupali u njihovim predmetima, javno saopštavano da će izricane kazne biti posle rata oproštene donošenjem Zakona o amnestiji, ili pomilovanjem. Nažalost, do toga nije došlo, pa su ti ljudi, koji su nakon suđenja odmah otišli na vršenje ratnih zadataka, dovedeni u veoma tešku situaciju, jer moraju ići na izdržavanje zatvorske kazne. Naime, njihove kazne se više ne mogu ublažiti u postupku vanrednog ublažavanja, jer se radi o delima gde se ni ublažavanjem ne može izreći manja kazna od godinu dana zatvora (za dela iz člana 214. stav 2. i 3. u vezi sa članom 226. stav 2. i 3. KZ SRJ). Tako je ispalo da su ovi mladi ljudi, zbog pogrešne pravne kvalifikacije dela i njenog nekritičnog prihvatanja od strane vojnih sudova, dovedeni u bezizlaznu situaciju. Očigledno, nema raspoloženja da se donese Zakon o amnestiji, a i da se

da masovno pomilovanje, jer su presudni politički stavovi i jaka polarizacija između onog šta je "patriotsko" a šta je "izdajničko"!

Prvostepeni sudovi su licima koja su se bilo kada javila u jedinicu, uglavnom izricali kazne zatvora u proseku od po jednu godinu za krivična dela iz člana 214. stav 1. i 2. i 217. stav 1. i 2. KZ SRJ. Međutim, na području Crne Gore, za ova krivična dela, izricale su se kazne u proseku od 3 do 6 meseci, jer su sudovi menjali kvalifikaciju dela iz stava 2. u stav 1. Dok, za lica u odsustvu, izricane su visoke kazne zatvora, u proseku od 6-7 godina.

Stvarno nadležan sud za krivična dela iz člana 214. i 217. KZJ je vojni sud. Stvarna nadležnost se ceni prema odredbama Zakona o vojnim sudovima. Prema odredbi člana 9. t. 1. Zakona o vojnim sudovima, vojni sudovi sude za krivična dela koja učine vojna lica, a u slučajevima predviđenim ovim zakonom – i za krivična dela koja učine druga lica. Tako, prema odredbi člana 10. stav 1. t. 8. ovog zakona, vojni sudovi sude civilnim licima za krivična dela iz člana 2o1. do 236. KZ SRJ. To znači da su vojni sudovi stvarno nadležni da sude svim licima koja učine krivična dela neodazivanja pozivu i izbegavanje vojne službe iz člana 214. KZ SRJ i samovoljno udaljenje i bekstvo iz Vojske Jugoslavije iz člana 217. KZ SRJ.

Mesna nadležnost se utvrđuje prema odredbama Zakona o krivičnom postupku, Krivičnog zakona SRJ i Zakona o vojnim sudovima. Prema odredbi člana 26. stav 1. ZKP, po pravilu, mesno je nadležan sud na čijem je području delo učinjeno ili pokušano. Dok, prema odredbi člana 32. Krivičnog zakona SRJ, krivično delo je izvršeno kako u mestu gde je učinilac radio ili je bio dužan da radi, tako i u mestu gde je posledica nastupila. I, pripremanje i pokušaj smatraju se izvršenim kako u mestu gde je izvršilac radio, tako i u mestu gde je po njegovom umišljaju posledi-

ca trebalo da nastupi ili je mogla da nastupi. U svetlu ovih zakonskih odredbi, mesna nadležnost za krivična dela iz člana 214. KZ SRJ ceni se, po pravilu, prema mestu gde je poziv trebalo da se uruči, dok za krivično delo iz člana 217. KZ SRJ ceni se, po pravilu, prema mestu gde je došlo do napuštanja jedinice, odnosno gde je trebalo da se vrati vojno lice nakon odobrenog odsustva.

Prema odredbi člana 8. Zakona o vojnim sudovima postoje tri prvostepena vojna suda: Vojni sud u Beogradu, koji pokriva područje Prve armije; Vojni sud u Podgorici, koji pokriva područje Druge armije; i Vojni sud u Nišu, koji pokriva područje Treće armije. Međutim, za vreme ratnog stanja, ovi sudovi prestaju sa radom, s tim da se prvostepeni vojni sudovi formiraju pri komandama vojnih okruga, divizija, korpusa, armija, komandi ratnog vazduhoplovstva i protivvazdušne odbrane i komandi ratne mornarice. Vrhovni vojni sud, međutim, nastavlja rad u sedištu Štaba Vrhovne komande (član 74. Zakona o vojnim sudovima). Za vreme ratnog stanja od 25. marta do 24. juna 1999. godine, formirano je 20 ratnih sudova, od toga u Beogradu 5 prvostepenih ratnih vojnih sudova, u Novom Sadu 2 ratna suda…. Odeljenja Vrhovnog vojnog suda formirana su u Nišu i Podgorici. Prema odredbi člana 75. Zakona o vojnim sudovima, za vreme ratnog stanja postavljenja, udaljenja od dužnosti i razrešenje od dužnosti predsednika, sudija i sudija-porotnika vojnih sudova vrši predsednik Republike, na predlog načelnika Štaba Vrhovne komande. Po prestanku ratnog stanja, svi krivični predmeti su raspoređeni u pomenuta tri vojna suda u Beogradu, Podgorici i Nišu.

Za sudije i vojne tužioce su postavljena lica – vojni obveznici prema već ranije utvrđenom ratnom rasporedu. U većem broju, ta lica u svom građanskom statusu se nisu bavila sudskom delatnošću. To je dovelo, ne samo u početku, do nesnalaženja

kako u pogledu primene procesnog prava, tako i u pogledu pravne kvalifikacije dela i kaznenog tretmana, odnosno odlučivanja.

Prvih dana ratnog stanja počela su i prva suđenja, jer su istovremeno sa vojnim sudovima, i u okviru istih jedinica i komandi vojnih okruga, formirani i organi vojnog tužilaštva.

IV. ZAPAŽANJA O KRIVIČNOM POSTUPKU

Savezna vlada je svojom Uredbom o primenjivanju Zakona o krivičnom postupku za vreme ratnog stanja ("Službeni list SRJ", br. 21/99), izvršila bitne izmene u Zakonu o krivičnom postupku. Tako, za okrivljenog u bekstvu, uspostavlja se i mesna nadležnost suda gde bude uhvaćen, ili gde se sam prijavio (član 2. Uredbe); skida se obaveza pribavljanja odobrenja za krivično gonjenje ako se radi o krivičnim delima iz glave XV (protiv ustavnog uređenja…), glave XVI (protiv čovečnosti…), glave XX (protiv Vojske Jugoslavije, dakle i za krivična dela iz člana 214. i 217. KZ SRJ) i za krivična dela za koja je propisana kazna zatvora od najmanje 5 godina (član 3); ne može se tražiti izuzeće zbog sumnje u nepristrasnost (član 4); pojedine istražne radnje može voditi i organ unutrašnjih poslova, koji u hitnim slučajevima te radnje može voditi i bez zahteva javnog tužioca (član 6); organi gonjenja mogu izvršiti pretres lica i stana bez sudskog naloga, ako postoji sumnja da su izvršena gorepomenuta krivična dela (iz glave XV, XVI, XX…) (član 7); pritvor od 30 dana može odrediti i organ unutrašnjih poslova (član 8); javni tužilac može podići optužnicu bez sprovođenja istrage i bez saglasnosti istražnog sudije (član 9); vreme od uručenja optužnice do glavnog pretresa ne može biti kraće od četrdesetosam časova (član 10); prigovor na optužnicu ne utiče na održavanje glavnog pre-

tresa (član 11); u slučaju prekida pretresa duže od mesec dana, ili u slučaju izmene veća, novi pretres ne mora teći iznova (član 12); rok za žalbu je tri dana (član 15)…

U pogledu krivičnog dela iz člana 214. KZ SRJ, pokrenuti su i krivični postupci protiv vojnih obveznika koji nisu primili poziv, ali po saznanju su se javili nadležnim vojnim organima. Zanimljivo je da su pokrenuti krivični postupci i protiv lica, koji su se odmah javila u svoje ratne jedinice, ali nadležni organi, zbog svojih propusta i neažurnosti, nisu imali saznanja o tome. Protiv takvih lica, iako osnovana sumnja nije bila potkrepljena odgovarajućim dokazima, podignuta je optužba za kvalifikovani oblik krivičnog dela. Kada su takva lica pritvarana, utvrđivalo se da su sve vreme bili u svojim ratnim jedinicama. Nažalost, broj tih slučajeva nije mali. Nije poznato da su preduzimane mere protiv lica u nadležnim vojnim organima, koji su svoj posao neodgovorno obavljali. .

U pogledu krivičnog dela iz člana 217. KZ SRJ, pokrenuti su krivični postupci i protiv lica koja su se iz svojih jedinica, često iz privatnih kuća gde su bili smeštena, odlazili u prodavnicu po pivo, ili, prolazeći pored svojih mesta boravišta, svraćali da se raspituju za svoju porodicu.

Poseban je slučaj u Crnoj Gori. Zbog zaoštrenih političkih odnosa između saveznih i republičkih vlasti, te i republičkih vlasti i VJ, poklapali su se vojni pozivi i već podeljena rešenja o radnoj obavezi. Obveznici su bili u rascepu: da li da prihvate rešenje o radnoj obavezi i sačuvaju svoja radna mesta, ili da krivično odgovaraju za neodazivanje pozivu vojnih vlasti, ili da se na vojni poziv odazivaju i ne prihvate rešenje o radnoj obavezi čime su dovodili u pitanje svoje radno mesto. Čini se da je opredeljenje uglavnom bilo na osnovu političkog stava, jer bilo je dosta slučajeva pokretanja krivičnog postupka protiv onih koji su prednost dali radnoj obavezi.

Istražne radnje su, neretko, vodili oficiri bezbednosti, u skladu sa ovlašćenjima iz člana 6. pomenute Uredbe, ali dosta često na način suprotan odredbama ZKP o saslušanju okrivljenog, o upozorenju na njegova prava u pogledu odbrane, kao i u pogledu činjenica koje nisu bile bitne za krivično delo za koje je okr. optužen. Praktično su stvarana nezakonita dosijea o ličnosti sa političkim motivima. Neretko se htelo dokazati da su vršenju ovakvih krivičnih dela sklone ličnosti podložne porocima (droga i sl.) i opozicionom delovanju.

Međutim, često su vojni tužioci, na osnovu odredbe člana 9. citirane Uredbe, podizali neposredne optužnice, bez sprovođenja istrage, bez obzira što se radilo o krivičnim delima za koja su bile zaprećene izuzetne visoke kazne zatvora.

Prema odredbi člana 70. stav 2. ZKP, po podizanju optužnice, za pomenuta krivična dela, odmah je postavljan branilac po službenoj dužnosti, jer je u početku veoma mali broj optuženih uzimao branioca po svom slobodnom izboru. Advokati su postavljani iz spiskova koji su sačinjeni od strane advokatskih komora. Advokatska komora u Beogradu je, na primer, stavila na raspolaganje vojnim sudovima oko 50 advokata, koji su pružali besplatnu pravnu pomoć. Međutim, sudovima se dobrovoljno javio i još jedan broj advokata po svojoj želji, izjasnivši se, takođe, da će pružati besplatnu pravnu pomoć. Najčešće, advokati su po pokrenutom krivičnom postupku, obaveštavani telefonskim putem da su postavljeni za branioce po službenoj dužnosti; branjenike su sretali na zakazanom glavnom pretresu; znatno su bile otežane komunikacije između branioca i optuženog. Optuženi je iz pritvora doveden na glavni pretres gde je najčešće odmah priznavao izvršenje krivičnog dela.

Veliki broj suđenja održan je u odsutnosti optuženih, bez da se vodi računa o uslovima predviđenim u odredbi člana 300.

ZKP, obzirom da Uredbom ova odredba nije stavljena van snage, niti je izmenjena. Prema odredbi člana 300. stav 3. ZKP, optuženom se može suditi u odsutnosti (1) ako je u bekstvu, ili (2) ako je nedostižan državnim organima, *a postoje važni razlozi* da mu se sudi iako je odsutan. Nije se utvrđivalo da li je optuženi u bekstvu – ta činjenica se podrazumevala. Pokazaće se da je bilo brojnih slučajeva da vojni obveznici, bez svoje krivice, nisu primili poziv, da nisu bili obavešteni, odnosno da su imali opravdan razlog da se nisu odazvali pozivu. Činjenica o bekstvu je, manje-više, bila opravdano pretpostavljena za one koji su napuštali jedinicu… Po pravilu, u predmetima nema dokaza o tome da su optuženi, kojima se sudi u odsutnosti, stvarno nedostižni državnim organima! Konačno, sudovi ne obrazlažu koji je osobito važan razlog za suđenje u odsutnosti!? Zbog takvog negativnog odnosa prema pravima "odsutnog" i, može se reći, prema samom optuženom, suđenja su bila veoma kratka, a izrečene kazne izuzetno visoke! Valjda, računalo se da će zainteresovano osuđeno lice koristiti svoje pravo iz člana 410. stav 1. ZKP i tražiti ponavljanje postupka. Međutim, treba imati u vidu da se ponavljanje postupka može tražiti samo u roku od jedne godine po saznanju o postojanju presude kojom je osuđen u odsutnosti. Ta neodređenost u izrazu "po saznanju", neretko predstavlja kobnu činjenicu, a osuđeni se, obično, zbog visine kazne, pritvara! Navodimo jedan primer ponovljenog krivičnog postupka: **Optuženi N. R, star 21 godinu, radnik bez zaposlenja, vojni obveznik, osuđen je u odsutnosti na kaznu zatvora u trajanju od 8 (osam) godina, jer je pobegao iz vojne jedinice. Nalazi se na izdržavanju kazne od 25. februara 2000. godine. Prvostepeni sud je dozvolio ponavljanje postupka, dostavio je optužnicu, prekinuo izvršenje kazne i odredio pritvor do završetka glavnog pretresa. Krivični postupak je u toku**.

Zbog želje da budu što ekspeditivniji, vojni sudovi se nisu mnogo upuštali u provere odbrane optuženih u pogledu razloga zbog kojih se nisu odazvali pozivima, kao ni u pogledu činjenice da li su, ili nisu, primili pozive za javljanje u jedinice. Veliki je broj obveznika koji su promenili svoje adrese, odselili se od roditelja, i sl. , ali nisu obavestili vojne odseke o promeni adrese. Ta činjenica je sudu bila dovoljna da optužene oglasi krivim. Tačno je da postoji obaveza prijave adrese boravka i vojnim organima, ali nepostupanje predstavlja samo prekršaj i ne dokazuje i umišljaj vojnog obveznika da se neopravdano ne odaziva vojnom pozivu. Neodazivanje pozivu mora da predstavlja voljnu radnju tog obveznika da on, iako je uredno primio poziv, ne želi da se tom pozivu odazove. Sud, dakle, treba da dokazuje vinost, a ne da a priori smatra obveznika vinim, ako on sam suprotno ne dokaže.

Drastičniji je, međutim, slučaj u Nišu gde je pozivanje obveznika vršeno preko medija – lokalne TV i radio stanice koje su objavile spisak vojnih pošta za koje važi mobilizacija. Izveštaj tih medijskih kuća uzimao se kao dokaz da je optuženi bio uredno pozvan za mobilizaciju. Dakle, uzima se kao utvrđena činjenica da je vojni obveznik stalno bio na području gledanosti i slušanosti ovih medijskih kuća, te da svaki stanovnik obavezno gleda i sluša (ili mora da gleda i sluša) te TV i radio stanice!?

O okolnosti da li je optuženi stvarno znao za poziv za vojnu službu, po pravilu, saslušani su pozivari, kao i članovi uže porodice optuženog. Međutim, članovi uže porodice nisu upozoravani da su povlašćeni svedoci, te da ne moraju svedočiti (član 227. ZKP). Iz priznanja članova uže porodice da su pozivari stvarno došli da predaju poziv, sud je izvlačio zaključak da su optuženi znali za poziv, te da su se krili, što je povlačilo optuživanje za teži – kvalifikovani oblik krivičnog dela iz člana 214. KZ SRJ.

V. BROJ LICA KOJA SE NISU ODAZVALA VOJNOM POZIVU I KOJA SU POBEGLA IZ VOJSKE JUGOSLAVIJE

Javnosti nisu prezentirani podaci o broju poslatih poziva za mobilizaciju, kao ni podaci o broju osoba koje se nisu odazvale vojnom pozivu. Za javnost je plasiran podatak da je odazivanje vojnom pozivu iznad svih očekivanja, a da je broj dezertera "beznačajan"[1] i da se radi o visokom patriotskom činu. S druge strane, na teritoriji Republike Crne Gore, javio se problem "ciljnog mobilisanja", pretežno onih iz redova političkih grupacija koje su imale kritički stav prema zvaničnoj politici SRJ. Kao protiv-meru, vlasti u Crnoj Gori su uveli radnu obavezu. Visoki zvaničnici su javno odbijali prijem vojnih poziva. U jako politizovanoj atmosferi, veći broj ljudi je ohrabrivan da se ne odaziva vojnom pozivu. Taj politički problem je, po okončanju ratnog stanja, rešen na taj način što je Skupština Crne Gore donela Zakon o amnestiji[2] o čijoj pravnoj prirodi je bilo manje pravne, a više političke rasprave.

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1 "Danas" od 2. septembra 1999. godine. Predsednik Vrhovnog vojnog suda u Beogradu, general Miloš Gojković izjavljuje : "Velika je sreća da je broj dezertera u poslednjem ratu bio beznač ajan u odnosu na broj pozvanih…"

Takođe, i o broju lica protiv kojih je poveden krivični postupak zbog neodazivanja pozivu i izbegavanju vojne službe (član 214. KZ SRJ) i samovoljnom udaljenju i bekstvu iz VJ (član 217. KZ SRJ) ima raznih nagađanja. Tako, u "Intervjuu dana" na Radio B2-92, predsednik Jugoslovenskog komiteta pravnika za ljudska prava, tvrdi da prema njihovim saznanjima "u Srbiji ima 11.000-14.000 pokrenutih postupaka, s tim što još nisu stigle prijave iz svih vojnih komandi, i imamo podatak iz Crne Gore da je podneto 14.000 optužnica i to je potvrdila Vlada Crne Gore i Helsinški odbor za ljudska prava u Crnoj Gori"[3]. Ista ličnost, pozivajući se na izjavu načelnika pravne službe Generalštaba Vojske Jugoslavije (sada bivšeg), iznosi podatak o 28.000 podignutih optužnica protiv lica koja su izvršila vojna krivična dela[4]. Ova tvrdnja je potpuno neodređena, jer ne precizira o kojim se krivičnim delima radi ("vojna krivična dela"), za koji period izvršenja krivičnih dela se odnosi ("trenutno u Jugoslaviji je podignuto"), koji broj lica se krivično goni ("28.000 optužnica")... Bez obzira na politizaciju pitanja odazivanja vojnom pozivu u Crnoj Gori, sa rezervom treba primiti podatak o podignutim optužnicama u broju od 14.000! Takođe treba imati u vidu da se nadležnost podgoričkog vojnog suda prostire i na deo Srbije.

2 Zakon je objavljen u «Službenom listu Republike Crne Gore, br. 44/99 od 22. novembra 1999. godine. Ovim zakonom oslobađaju se od krivi noggonjenja i oslobađaju se izvršenja krivičnih sankcija po pravosnažnim presudama lica koja su u periodu od 1. juna 1998. godine do 30. juna 1999. godine izvršila krivi nadela: neodazivanje pozivu i izbegavanje vojne službe – č lan214, izbegavanje vojne službe onesposobljavanjem ili obmanom – č lan215, protivzakonito oslobađanje od vojne službe – 216, samovoljno udaljenje i bekstvo iz VJ – član217, izbegavanje propisa i pregleda – član 218, neizvršavanje materijalne obaveze – č lan 219, propisana Krivičnim zakonom Savezne Republike Jugoslavije.

3 Jugoslovenski komitet pravnika za ljudska prava: «Amnestija – kampanja, zakon, slučajevi», Beograd, str. 71.

4 Isto, str. 94.

Da bi imali veće razumevanje prema teškoćama utvrđivanja približnog broja osoba koje se nisu odazvale vojnom pozivu u vremenu dok je trajalo ratno stanje (25. mart do 24. jun 1999. godine), treba imati u vidu faze krivičnog gonjenja i postupka:

1) predkrivični postupak je faza u kojoj upravne vlasti podnose krivične prijave tužilaštvu, odnosno obaveštavaju vojno tužilaštvo o licima kojima je uručen poziv, a nisu se javila nadležnim vojnim vlastima, kao i o licima kojima se nije mogao uručiti poziv. Na osnovu tih podataka, vojno tužilaštvo aktivira vojni sud. Imajući u vidu brojne razgovore sa braniocima i prema našim saznanjima, podneto je 22.000 krivičnih prijava protiv lica koja se nisu odazvala vojnom pozivu (član 214. KZJ). Vojna tužilaštva su uzela na rad polovinu tih krivičnih prijava, smatrajući da ne treba pokrenuti krivični postupak protiv lica koja su kasnila samo nekoliko dana. Istovremeno, utvrđeno je da ima neažurnosti u radu vojnih odseka, jer je veliki broj vojnih obveznika već bio u svojim ratnim jedinicama i dužnostima, a da vojni odseci o tomo nisu imali ažurnu evidenciju. Smatramo da još ima predmeta koji nisu obrađeni u vojnom tužilaštvu;
2) prethodni postupak – vojno tužilaštvo podnosi zahtev vojnom istražnom sudiji da sprovodi istragu, ili pojedine istražne radnje; ili
3) podiže neposrednu optužnicu (što je bio najčešći slučaj), ako ima dovoljno dokaza za to; i
4) glavni pretres kada sud donosi presudu o krivičnoj stvari.

Prema našim saznanjima, broj optuženih lica za krivično delo neodazivanja pozivu i izbegavanje vojne službe iz člana 214. u vezi sa članom 226. KZ SRJ iznosi oko 7.000, a za krivično delo samovoljnog udaljenja i bekstva iz VJ iz člana 217. u vezi sa članom 226. KZ SRJ oko 700.

Do okončanja ratnog stanja, od ovih 7.700 krivičnih predmeta pravosnažno je okončano oko 970. Na području dva vojna suda u Vojvodini (pri Novosadskom Korpusu i pri Komandi vojnog okruga Novi Sad) od 450 pokrenutih postupaka, presuđeno je 235 predmeta. Najveći broj predmeta se odnosi na krivično delo iz člana 214. KZ SRJ – oko 200 predmeta. Na krivično delo iz člana 217. KZ SRJ odnosi se 35 predmeta. Podneto je Vrhovnom vojnom sudu 347 zahteva za vanredno ublažavanje kazni, od čega u 1999. godini 185, a u toku 2000. godine 162 zahteva. Svi podneti zahtevi su rešeni. Najveći broj podnetih zahteva je usvojen, a kazne ublažavane do zakonskog minimuma od jedne godine za krivična dela iz člana 214. stav 2. i 3. i člana 217. stav 3. , 4 i 5. u vezi sa članom 226. stav 2. KZ SRJ, odnosno izricane su uslovne osude za lica osuđena za krivična dela iz člana 214. stav 1. i 217. stav 1. i 2. u vezi sa članom 226. stav 1. KZ SRJ, ako su za to postojali zakonski uslovi. Zahtevi su, po pravilu, usvajani ukoliko se osuđeni javio, odnosno vratio u jedinicu, u roku do dvadeset dana i nakon toga čitavo vreme proveo u jedinici. Odbijeno je samo 20 zahteva.

Podneto je oko 20 molbi za pomilovanje. Nijedna nije rešena.

Prema našim saznanjima ne radi se na donošenju Zakona o amnestiji.

Treba posebno napomenuti da u ove brojeve nisu uračunati slučajevi sa područja Kosova. Kao što je poznato, Albanci ili nisu pozivani u vojnu službu, ili ako su pozivani, uglavnom se nisu odazivali. Nije poznato da je vođen neki postupak.

VI. OBRADA JEDNOG BROJA PREDMETA

U skladu s prikupljenim podacima, obradili smo 43 krivična predmeta sa područja sva tri vojna suda i to 23 predmeta po osnovu člana 214. KZJ i 20 predmeta po osnovu člana 217. KZJ.

Navedena 23 predmeta po osnovu člana 214. KZJ okončana su na sledeći način: 9 optuženih je osuđeno na kaznu zatvora, u 2 slučaja je izrečena uslovna osuda, u 1 slučaju je izrečena novčana kazna, protiv 2 lica postupak je obustavljen, u slučaju 6 lica optužba je odbijena i 1 lice je oslobođeno.

Navedenih 20 predmeta po osnovu člana 217. KZJ okončani su na sledeći način: 16 optuženih je osuđeno na kaznu zatvora, prema 3 je izrečena uslovna osuda i u 1 slučaju optužba je odbijena.

Veći broj predmeta bio je pravosnažno okončan; od toga raspolagali smo i odlukama Vrhovnog vojnog suda po zahtevima o vanrednom ublažavanju kazni. Obavljen je razgovor sa jednim brojem branilaca, koji su izneli svoja zapažanja o pravnim pitanjima i sprovedenom krivičnom postupku. Iznosimo karakteristične slučajeve, raspoređene prema pojedinim krivičnim delima.

NEODAZIVANJE POZIVU I IZBEGAVANJE VOJNE SLUŽBE (ČLAN 214. KZ SRJ) – 23 SLUČAJA

1. Optuženi D. J., star 34 godine, hemijski tehničar, vojni obveznik, osuđen je na kaznu zatvora u trajanju od 1 (jedne) godine, jer bez opravdanog razloga nije otišao u Ratnu jedinicu, iako je bio upoznat da je pozivan 24. , 25. i 26. marta 1999. godine.

Optuženi se branio da je tih dana bio u Crnoj Gori sa suprugom i dvoje dece na svadbi kod brata od tetke. Kad je saznao da je ratno stanje, pokušavao je da telefonom kontaktira roditelje, ali su linije bile loše. Tek ga je 2. aprila 1999. godine, otac telegramom obavestio da je dobio poziv za mobilizaciju. Istog dana je krenuo za Beograd, a sutradan se javio u vojni odsek, gde je pritvoren i predat sudu. Sud je u dokaznom postupku izvršio uvid u telegram, ali je ostao u uverenju da je verovatno optuženi ranije saznao za poziv. Sud, međutim, nije prihvatio da postoji kvalifikovani oblik iz stava 2. ovog krivičnog dela, jer nije dokazano da se optuženi krio.

Žalba optuženog je odbijena. Zahtev za vanredno ublažavanje je usvojen i izrečena mu je uslovna osuda, jer je osuđeni "odmah otišao u jedinicu gde je ostao dva puna meseca, da je u to vreme bio dobar vojnik, iako je zbog zdravstvenog stanja imao ozbiljnih problema, zbog kojih je od strane NVLK (Niže vojno-lekarske komisije) oglašen privremeno nesposobnim…"

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2. Optuženi Z. R., star 37 godina, mašinski tehničar, vojni obveznik, osuđen je na kaznu zatvora u trajanju od 6 (šest) meseci, jer bez opravdanog razloga nije otišao u RJ, iako je 28. marta 1999. godine, poziv primio njegov otac.

Optuženi se branio da se od februara 1999. godine nalazio u selu udaljenom preko 300 km od Beograda, te da je o pozivu saznao dana 24. aprila 1999. godine, kada se vratio u Beograd. Vojnom odseku se prijavio 25. aprila 1999. godine. Na glavnom pretresu, otac je potvrdio sve navode optuženog. Sud nije poklonio veru iskazu optuženog i njegovog oca, jer je "neuverljiv i sračunat s ciljem da se izbegne krivična odgovornost optuženog".

Žalba optuženog je odbijena, a vojnog tužioca usvojena, te je optuženi osuđen na 2 (dve) godine zatvora.

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3. Optuženi D. R., star 29 godina, carinik, vojni obveznik, osuđen je na kaznu zatvora u trajanju od 1 (jedne) godine, jer je, skrivajući se, izbegao vojnu službu, tako što je promenio boravište a da o tome nije obavestio nadležne organe.

Optuženi se branio da nije znao za poziv, da je redovno bio na službi u Carini, a da je jedno vreme spavao kod devojke. Kada je 4. aprila 1999. godine saznao za poziv, jer je obaveštenje ostavljeno na vratima stana, odmah se javio u Vojni odsek. Sud nije uvažio ovu odbranu, smatrajući da je optuženi "…dobro znao da je po ratnoj formaciji vojni policajac, što znači da je pouzdano mogao očekivati pozivanje u VJ upravo u prvim danima rata. ".

Po uloženoj žalbi, Vrhovni sud još nije doneo odluku.

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4. Vojni obveznik Z. P., star 40 godina, saobraćajni tehničar, optužen je da, iako je bio pozvan pojedinačnim pozivom dana 24. 3. 1999. godine, on se u RJ javio tek 5. 4. 1999. godine.

Optuženi se branio da poziv nije primio, jer je u to vreme bio mobilisan i raspoređen u Službu za osmatranje. Dana 5. aprila

supruga ga je obavestila da je tražen i da treba da se javi vojnom odseku, što je on i učinio. Sud je sve ove činjenice potvrdio u dokaznom postupku. Vojni tužilac je ostao pri optužbi. Sud je, međutim, optuženog oslobodio od optužbe.

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5. Optuženi S. T., star 30 godina, elektrotehničar, vojni obveznik, osuđen je na kaznu zatvora u trajanju od 1 (jedne) godine, jer se bez opravdanog razloga nije javio u jednicu 25. 3. 1999. godine, već 2. 4. 1999. godine, iako je za poziv znao njegov otac.

Optuženi se branio da je za poziv saznao tek 2. 4. 1999. godine kada se i javio u vojni odsek. Otac je obavestio pozivare da sin nije tu. Sud je saslušao oca, ali njegovoj izjavi nije poklonio veru.

Vrhovni sud još nije odlučio o žalbi.

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6. Optuženi S. Đ., star 33 godine, srednja škola, vojni obveznik, izrečena mu je uslovna osuda, jer se bez opravdanog razloga nije javio u RJ 23. 3. 1999. godine, kada je majka upoznata sa pozivom, već se javio 5. 4. 1999. godine.

Optuženi se branio da je on na privremenom radu u inostranstvu, da ga je majka 28. marta 1999. godine, telefonom obavestila o vojnom pozivu, te da nije mogao u Beograd stići pre 4. aprila 1999. godine, da je dao svoj doprinos obaranju aviona F-18 zbog čega je nagrađen.

Vrhovni vojni sud je odbio žalbu vojnog tužioca, a prvostepenu presudu potvrdio.

❖

7. Optuženi G. Ž., star 33 godine, elektrotehničar, vojni obveznik, osuđen je na 1 (jednu) godinu zatvora, jer se krijući izbegao vršenje vojne službe, tako što je trebao da se 25. 3. 1999. godine javi u RJ, ali mu se poziv nije mogao uručiti, a on se javio tek 24. 4. 1999. godine.

Optuženi se branio da na toj adresi ne živi od 1995. godine, ali da promenu adrese nije prijavio nadležnim organima. Međutim, kada je saznao za poziv, odmah se prijavio vojnom odseku. U dokaznom postupku, Sud nije poklonio veru iskazima roditelja. Sud smatra da je zbog propusta samog optuženog došlo do neuručivanja poziva.

Žalba optuženog je odbijena.

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8. Optuženi S. A., 53 godine, vojni obveznik, radnik, osuđen je na kaznu zatvora u trajanju od 3 (tri) meseca, jer se bez opravdanog razloga nije javio u RJ.

Opštuženi se branio da 24. marta nije mogao primiti poziv, jer je bio na lekarskom pregledu. Poziv je primio 25. marta 1999. godine. Istovremeno, na poslu su mu rekli da će dobiti rešenje o radnoj obavezi, te ako ne ostane na poslu, prestaće mu radni odnos. Takođe je bolestan, leva strana mu je delimično oduzeta. Sud nije uvažio ove očigledne razloge, iako je izvršio uvid i u rešenje o radnoj obavezi u preduzeću.

Vrhovni vojni sud je uvažio žalbu optuženog i ukinuo prvostepenu presudu, jer sud nije potpuno utvrdio činjenično stanje. Naime, u međuvremenu, Vojno-lekarska komisija je optuženog oglasila vojno nesposobnim.

❖

9. Optuženi V. R. , star 54 godine, vojni obveznik, osuđen je na 6 (šest) meseci zatvora, jer je odbio primiti poziv, te bez opravdanog razloga se dana 3. 4. 1999. godine nije javio u VJ.

Optuženi se brani da je bio lošeg zdravstvenog stanja, a da je 1991/92 četiri meseca bio na dubrovačkom ratištu.

❖

10. Optuženi V. R. , star 37. godina, vojni obveznik, radnik, osuđen je na kaznu zatvora u trajanju od 6 meseci, jer se bez opravdanog razloga i u uslovima ratnog stanja i napada na zemlju, nije javio u vojnu jedinicu.

Branio se da prilikom pokušaja uručenja poziva nije znao da se radi o vojnom pozivu, jer je bio uzbuđen očekujući rađanje drugog deteta.

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11. Optuženom L. R. , star 50 godina, srednja škola, vojni obeznik, izrečena je uslovna osuda, jer je odbijajući prijem poziva, bez opravdanog razloga nije otišao u RJ.

Optuženi se branio da je on imao rešenje o radnoj obavezi, pa je od poštara odbio prijem preporučene pošiljke.

❖

12. Optuženi Z. M. , star 36 godina, maš. ing., vojni obveznik, osuđen je na kaznu zatvora u trajanju od 1 (jedne) godine, jer se bez opravdanog razloga nije dana 24. 3. 1999. godine javio u RJ po opštem pozivu preko TV-5 Niš, već se javio 29. 4. 1999. godine.

Optuženi se branio da je stvarno na TV-kanalu 5 Niš, bilo opšteg poziva i da su naznačeni bili brojevi VP. On, međutim, nije gle-

dao svoju knjižicu. Nakon nekoliko dana drug iz iste jedinice je rekao da ćemo dobiti pojedinačne pozive. Navodi da je pojedinačni poziv dobio 28. 4. 1999. godine, a već se sutradan javio u RJ. Sud je kao dokaz izveo izveštaj TV-5 u kojem se vidi da je na kajronu kojim se vojni obveznici obaveštavaju nalazi i broj VP optuženog.

Vojni sud nije odlučio o uloženoj žalbi.

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13. Optuženi I. P. , star 43 godine, mašinski tehničar, vojni obveznik, osuđen je na novčanu kaznu u iznosu od 3.000 din, jer se dana 15. 3. 1999. godine nije javio u jedinicu, iako je lično primio poziv.

Optuženi se brani da je odbio da primi poziv, jer je bio revoltiran što se on poziva, da je otišao do nekog vojnog starešine i rekao je da je bolestan, jer nema polovinu desne lopatice i da mu je loša porodična situacija, da je učesnik rata 1991. godine. Navodi da je već 17. marta 1999. godine bio u vojnoj bolnici. Sud nije prihvatio pravnu kvalifikaciju da je delo vršeno za vreme ratnog stanja.

Predmet se nalazi u Vrhovnom vojnom sudu.

❖

14. Optuženi M. M. , star 42 godine, vozač, vojni obveznik, osuđen je na kaznu zatvora u trajanju od 4 meseca, jer se nije odazvao na pojedinačni poziv od 26. maja 1999. godine, pa je nakon privođenja u vojnu policiju 28. 5. 1999. godine, već sutradan bez pitanja napustio službene prostorije vojne policije, te se vojnoj policiji sam prijavio tek 2. 6. 1999. godine.

Optuženi se brani da mu je majka dala pojedinačni poziv i da se on sam javio. Priznaje da je napustio prostorije vojne policije,

ali je to učinio jer je tamo pio mnogo, pa se nije mogao kontrolisati. Otputovao je u Beograd do svoga brata i odmah se vratio i javio u vojnu policiju, iskreno se kajući. Sud nije prihvatio pravnu kvalifikaciju iz optužnice o kvalifikovanom obliku krivičnog dela.

Predmet se nalazi u Vrhovnom vojnom sudu.

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15. Optuženi I. J. , star 25 godina, trgovac, vojni obveznik, osuđen je u odsutnosti na kaznu zatvora u trajanju od 6 (šest) godina, jer je, da bi izbegao vojnu službu, dana 22. 3. 1999. godine, napustio zemlju.

Sud je doneo presudu na osnovu izjava roditelja optuženog da im se sin nalazi u inostranstvu i fotokopije pasoša koju je priložio branilac (!?) kojom se dokazuje da se optuženi nalazi u inostranstvu.

❖

16. Vojni obveznik Z. M, star 34 godine, bravar, optužen je da se nije javio vojnoj jedinici iako je lično primio poziv dana 2. 4. 1999. godine. Optužba je odbijena, jer je na glavnom pretresu utvrđeno da se optuženi uredno javio u jedinicu.

❖

17. Vojni obveznik Z. O, star 31 godinu, dipl. maš. ing, optužen je da se nije javio vojnoj jedinici iako je lično primio poziv dana 4. 4. 1999. godine. Optužba je odbijena, jer je na glavnom pretresu utvrđeno da se optuženi uredno javio u jedinicu.

❖

18. Vojni obveznik P. M, star 30 godina, srednja škola, optužen je da se nije javio vojnoj jedinici iako je lično primio poziv dana 24. 3. 1999. godine. Optužba je odbijena, jer je na glavnom pretresu utvrđeno da se optuženi uredno javio u jedinicu.

❖

19. Vojni obveznik V. R, star 37 godina, mašinski tehničar, optužen je da se nije javio vojnoj jedinici iako je lično primio poziv dana 30. 3. 1999. godine. Optužba je odbijena, jer je na glavnom pretresu utvrđeno da se optuženi uredno javio u jedinicu.

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20. Vojni obveznik P. G, star 38 godina, nezaposlen, optužen je da se nije javio vojnoj jedinici iako je vojni poziv primila njegova majka dana 28. 3. 1999. godine. Optužba je odbijena, jer je na glavnom pretresu utvrđeno da se optuženi uredno javio u jedinicu.

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21. Vojni obeznik I. R, star 24 godine, fizički radnik, optužen je da se nije javio vojnoj jedinici iako je lično primio poziv dana 31. 3. 1999. godine. Optužba je odbijena, jer je na glavnom pretresu utvrđeno da se optuženi uredno javio u jedinicu.

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22. Protiv vojnog obveznika S. M, star 31 godinu, pokrenut je krivični postupak jer se nije javio u vojnu jedinicu 25. marta 1999. godine, iako je za to znao preko brata, koji je

poziv primio i bez obzira na upozorenje pozivara da se mora javiti na vojni poziv. Postupak je obustavljen odustankom vojnog tužioca, koji je utvrdio da optuženi od 1993. godine ne živi u Jugoslaviji, te da nije mogao biti upoznat sa sadržinom poziva.

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23. Protiv vojnog obveznika B. Š, star 37 godina, pokrenut je krivični postupak, jer se 29. 3. 1999. godine nije javio u ratnu jedinicu, a da mu se poziv nije mogao uručiti, jer je promenio boravište bez prijave nadležnom organu. Postupak je obustavlje odustankom vojnog tužioca, koji je u toku priprema za glavni pretres utvrdio da je optuženi uredno izvršio promenu boravišta, te da nije mogao da bude upoznat sa mobilizacijskim pozivom.

SAMOVOLJNO UDALJAVANJE I BEKSTVO IZ VOSKE JUGOSLAVIJE (ČLAN 217. KZ SRJ) – 20 SLUČAJEVA

1. Optuženi Z. M, star 30 godina, poljoprivrednik, vojni obveznik, osuđen je na kaznu zatvora u trajanju od 1 (jedne) godine, jer je samovoljno napustio jedinicu i istog dana je zaustavljen i lišen slobode. Protiv njega je odbijena optužba za krivično delo teške krađe robe u vrednosti preko 70.000 din. sa područja Kosmeta.

Optuženi se branio da je 23. 5. 1999. godine naređeno povlačenje, pa je on svojim kamionom pošao prema naznačenom mestu. Postojale su glasine da je vojska počela da beži, jer su vojnici bili preplašeni zbog velikih gubitaka. Dok, za stvari je

rekao da su u kamion njegovog vlasništva stavili drugi vojnici, koji su te stvari uzimali iz napuštenih kuća na Kosovu. Kasnije, za vreme kontrole na putu, oni su to negirali. Sud je poverovao starešinama optuženog da oni nisu dali nikakvo naređenje za povlačenje, već da "oni nisu mogli da zadrže vojnike koji su se ukrcali u vozila i krenuli kućama". U pogledu krivičnog dela teške krađe, vojni tuižilac je odustao od optužbe.

Žalba optuženog je odbijena, ali je usvojen zahtev za vanredno ublažavanje, te je optuženom izrečena uslovna osuda, "jer je psihički oboleo u ratnim uslovima – anksiozno depresivan… te teško oboljenje dede – infarkt…".

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2. Optuženi G. Đ, star 35 godina, radnik, vojni obveznik, osuđen je na jedinstvenu kaznu zatvora u trajanju od 1 (jedne) godine i 6 (šest) meseci – za delo iz član 217. KZ SRJ na 1 godinu i za delo teške krađe iz člana 166. KZS na jednu godinu, jer je samovoljno napustio jedinicu, te da je na Kosovu prisvojio veliku količinu robe.

Optuženi se brani tako što iznosi da im je 23. 5. 1999. godine starešina rekao da su sve ostale čete samovoljno napustile borbena mesta, a da je ostala samo njihova četa. Tada je neko rekao da idu i oni, što su i učinili. Za stvari kaže da je "našao stvari koje su verovatno ostavili Šiptari prilikom bekstva i iste prisvojio…". Na glavnom pretresu su starešine optuženog potvrdile da su "jedinice tih vojnika napustile borbene linije i oni nisu mogli da ih zadrže", kao i to da "nikom od vojnika nije izdavao naređenje da ostanu na položaju i vrate se na mesto razmeštaja, jer je i on sam pošao sa njima".

Žalba optuženog je odbijena, ali je usvojen zahtev za vanredno ublažavanje, te je optuženom izrečena jedinstvena kazna zatvora u trajanju od 8 (osam) meseci, jer se osuđeni vratio u svoju

ratnu jedinicu, da su kod njega nastali određeni zdravstveni problemi psihičke prirode…

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3. Optuženi D. Z, star 43 godine, poljoprivrednik, vojni obveznik, osuđen je na kaznu zatvora u trajanju od 1 (jedne) godine i 6 (šest) meseci, jer je u dva navrata napustio jedinicu, jednom 7 sati (9. 4. 1999), a drugi put 4 dana (11-15. 4. 1999).

Optuženi se branio da je prvi put išao po kafanama da konzumira alkohol, a drugi put je išao da poseti familiju, kao i prijateljicu, pa ponovo kafane.

Vrhovni vojni sud je uvažio žalbu optuženog i smanjio je kaznu zatvora na 1 (jednu) godinu.

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4. Optuženi I. T, star 38 godina, bravar, vojni obveznik, izrečena mu je uslovna osuda što je u dva navrata samovoljno napustio jedinicu, i to 12. 4. 1999. u trajanju od 2 sata i 27. 4. 1999. godine u trajanju od 3 sata.

Optuženi se branio da je prvi put otišao u prodavnicu, udaljenu 50 metara od jedinice na pivo, a drugi put kući da pomogne ženi da prenese neke stvari iz podruma, a zatim svratio u restoran na piće. Sud je utvrdio da je optuženi dobar i savestan vojnik.

Vrhovni vojni sud je potvrdio ovu presudu.

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5. Optuženi D. S., star 43 godine, nezaposlen, vojni obeznik, osuđen je na 3 (tri) meseca zatvora, jer je dana 19. maja 1999. godine samovoljno napustio jedinicu, otišao kući i u jedinicu se vratio nakon 8 sati odsustvovanja.

Optuženi se brani da je poljoprivrednik, da ima ženu i troje dece, a da nemaju sredstava za život. Morao je da ide kući da bi obavio neke neophodne poljoprivredne radove.

Predmet se nalazi u Vrhovnom vojnom sudu.

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6. Optuženi Đ. P., star 49 godina, Albanac, ugostiteljski radnik, vojni obveznik, osuđen je na kaznu zatvora u trajanju od 10 (deset) meseci, jer se nakon dozvoljenog boravka van jedinice do 14. 4. 1999. godine, nije vratio u jedinicu.

Optuženi se brani da je, pored podozrenja i neprijatnosti od svojih sunarodnika, često pozivan i odazivao se vojnim pozivima, pa je bio i na ratištu. Zbog saobraćajne nesreće, često ima jake glavobolje i gubitak ravnoteže, da je trebalo po odobrenju da se javi NVLK, ali je on ostao kod kuće.

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7. Optuženi N. R., star 21 godinu, radnik bez zaposlenja, vojni obeznik, osuđen je u odsutnosti na kaznu zatvora u trajanju od 6 (šest) godina, jer je pobegao iz vojne jedinice. Nalazi se na izdržavanju kazne od 25. februara 2000. godine. Prvostepeni sud je dozvolio ponavljanje postupka, dostavio je optužnicu, prekinuo izvršenje kazne i odredio pritvor do završetka glavnog pretresa. Krivični postupak je u toku.

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8. Optuženi B. K, star 23 godine, radnik bez zaposlenja, ranije osuđivan, na odsluženju vojnog roka, osuđen je na kaznu zatvora u trajanju od 1 (jedne) godine, jer je dana 6. 6. 1999. godine samovoljno napustio jedinicu.

Optuženi se brani da je od svog starešine tražio dopust od dva dana da bi posetio svoju bolesnu majku. Kako nije dobio dopust,

samovoljno je napustio jedinicu. Javio se tek na poziv istražnog sudije. Sud je utvrdio da je optuženi bio primeran vojnik i kandidat za komandira odeljenja, da je nedovoljno zrela ličnost, ali sud nije utvrdio da li je optuženi stvarno tražio odobrenje da poseti svoju bolesnu majku.

Presuda nije pravosnažna.

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9. Optuženi Z. R., star 26 godina, komercijalni referent, na odsluženju vojnog roka, izrečena mu je uslovna osuda, jer se sa odobrenog odsustva-bolovanja vratio dana 21. 4. 1999. godine, umesto dana 11. 4. 1999. godine.

Optuženi se branio da mu je u rodnom mestu civilni hirurg produžio bolovanje do 23. aprila 1999. godine, što je i javio vojnom odseku. Međutim, ovi nisu javili u jedinicu, pa je morao da se u jedinicu vrati pre isteka produženog bolovanja. Sud je potvrdio odbranu optuženog, utvrdio da se optuženi vratio u jedinicu, iako je i dalje hramao, kao i da je bez pogovora izvršavao postavljene zadatke, ali nije priznao bolovanje od civilnog lekara.

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10. Optuženi F. B., star 23 godine, Musliman, radi u inostranstvu, osuđen je u odsutnosti na kaznu zatvora u trajanju od 7 (sedam) godina, jer se od odobrenog odsustvovanja, koje je isteklo 30. 4. 1999. godine, nije vratio u jedinicu.

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11. Optuženi D. S., star 38 godina, radnik, vojni obveznik, osuđen je u odsutnosti na 7 godina zatvora, jer je 6. 4. 1999. godine, samovoljno napustio jedinicu i više se nije vratio.

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12. Optuženi R. B., star 27 godina, Musliman, na odsluženju vojnog roka, radnik, osuđen je u odsutnosti na kaznu zatvora u trajanju od 6 (šest) godina, jer se sa odobrenog vikend-odsustva, koje je isteklo 29. 4. 1999. godine, više nije vratio u jedinicu.

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13. Optuženi N. K., star 20 godina, Musliman, na odsluženju vojnog roka, osuđen je u odsutnosti na kaznu zatvora u trajanju od 7 (sedam) godina, jer do dozvoljenog boravka van jedinice, od 1. maja 1999. godine više se nije vratio u jedinicu.

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14. Optuženi S. K., star 28 godina, na odsluženju vojnog roka, osuđen je u odsutnosti na kaznu zatvora u trajanju od 8 (osam) godina, jer se više nije vratio u svoju jedinicu sa odobrenog odsustva koje je isteklo 5. maja 1999. godine.

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15. Optuženi M. Ž., star 20 godina, radnik, na odsluženju vojnog roka, osuđen je u odsutnosti na kaznu zatvora u trajanju od 5 (pet) godina, jer je dana 2. 4. 1999. godine samovoljno napustio svoju jedinicu i više se nije vratio.

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16. Optuženi M. Đ., star 21 godinu, radnik, na odsluženju vojnog roka, osuđen je u odsutnosti na kaznu zatvora u trajanju od 5 (pet) godina, jer je dana 30. 3. 1999. godine samovoljno napustio svoju jedinicu i više se nije vratio.

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17. Optuženi K. D., star 22 godine, automehaničar, Musliman, na odsluženju vojnog roka, osuđen je u odsutnosti na kaznu zatvora u trajanju od 3 (tri) godine, jer se sa odobrenog odsustva, koje je isteklo 1. maja 1999. godine, više nije vratio u jedinicu.

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18. Optuženi A. A, star 21 godinu, radnik, Musliman, na odsluženju vojnog roka, osuđen je u odsutnosti na kaznu zatvora u trajanju od 3 (tri) godine, jer se sa odobrenog odsustva, koje je isteklo 10. maja 1999. godine, više nije vratio u jedinicu.

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19. Optuženi D. Š., star 37 godina, osuđen je u odsutnosti na 7 (sedam) godina zatvora, jer se sa odobrenog odsustva, koje je isteklo 4. 5. 1999. godine, više nije vratio u jedinicu.

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20. Vodnik u rezervi D. T., star 43 godine, radnik, optužen je da je samovoljno napustio dužnost 19. 5. 1999. godine, a da se vratio 20. 5. 1999. godine. Optužba je odbijena, jer je na glavnom pretresu utvrđeno da je optuženi urednom dozvolom napustio jedinicu.

ZAKLJUČAK:

Veliki broj krivičnih predmeta nije rešen. Ti predmeti stoje kao "Damoklov mač" iznad glava velikog broja mladih ljudi. Jedan deo tih mladića strahuje da se ti krivični postupci ne (zlo)upotrebe u političke svrhe. Treba pojačati kampanju za pravno okončanje tih krivičnih predmeta: (1) obustavom krivičnog postupka, ukoliko nisu podignute optužnice; (2) obustavom, odnosno odlaganjem izvršenja pravosnažnih osuđujućih sudskih presuda; (3) čestim pritiscima javnog mnjenja za donošenjem Zakona o amnestiji, u cilju momentalnog oslobađanja svih zatvorenih.

Avgust, 2000.

EYES
THE COLOR OF
THE FRONTLINE

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a project of the Centre for Antiwar Action about the persons who boycotted the draft or deserted from the Yugoslav army during the NATO invervention in FR Yugoslavia

CENTRE FOR ANTIWAR ACTION
Belgrade, August 2000

EYES THE COLOR OF THE FRONTLINE*

* "*Sidewalks of Toronto… Eyes the colour of the frontline… Password of us all*"
– A verse from the song "To live in freedom" from the LP "The 1990s" by Djordje Balašević

I. SITUATION UNTIL MARCH 24, 1999

Following the signing of the Dayton Peace Accords (1995) partial mobilisations did not stop in the territory of FRY. The emphasis in the war effort shifted to Kosovo. At first, mobilisation of the reserve police corps was carried out because it was believed that the situation in Kosovo should be pacified by police operations. However, after the events in early 1998, when massive killings of civilians took place, also the Yugoslav Army (VJ) became involved to a larger extent but, at first, as logistical support only.

A number of young people evaded being drafted. For the most part, they abandoned their domiciles and even the country. This issue was not declared a problem in public, probably for political reasons. People lived more or less believing that there would not be any larger-scale armed clashes and that the armed conflict in Kosovo was going on against "a handful of impassioned terrorists".

On March 24, 1999, however, the Federal Government adopted the Decision to Proclaim the Immediate Threat of War and on March 25, 1999 it adopted the Decision to Proclaim the State of War. These decisions read as follows:

> "By virtue of Article 99, item 10 of the Constitution of the Federal Republic of Yugoslavia, having heard the opinion of the

President of the Federal Republic of Yugoslavia and the Presidents of the Chambers of the Federal Assembly, the Federal Government has adopted

THE DECISION TO PROCLAIM THE IMMEDIATE THREAT OF WAR

1) The immediate threat of war is hereby proclaimed because there is threat of aggression against the Federal Republic of Yugoslavia.
2) This decision shall take effect immediately.

This decision was published in the "Official Gazette of FRY" No. 14/99."

"By virtue of Article 99, item 10 of the Constitution of the Federal Republic of Yugoslavia, having heard the opinion of the President of the Federal Republic of Yugoslavia and the Presidents of the Chambers of the Federal Assembly, the Federal Government has adopted

THE DECISION TO PROCLAIM THE STATE OF WAR

1) The state of war is hereby proclaimed because an aggression has started against the Federal Republic of Yugoslavia.
2) This decision shall take effect immediately.

This decision was published in the "Official Gazette of FRY" No. 15/99".

The Federal Government passed these decisions day after day on the basis of the authorisation under Article 99, item 9 of the FRY Constitution. Under that provision, the Federal Government may make such decisions **"when the Federal Assembly is not in a position to meet"**. The opinion prevails that conditions did exist for the Federal Assembly to meet. It eventually did meet in conditions of the state of war to discuss the issue of Yugoslavia's accession to the Alliance of Russia and Belarus.

It is clear that mobilisation calls became increasingly frequent immediately. These calls were, for the most part, individual but in certain parts – Niš, for instance – they were also public – via TV and radio stations. Failure to respond to this draft was a criminal offence and desertion also a criminal offence against the Yugoslav Army (Articles 214 and 217 of the Criminal Code of FRY) and particularly in conditions of the state of war which led automatically to the enforcement of Article 226 of the FRY Criminal Code (CC). This meant that much harsher sentences would be pronounced relative to the prescribed punishment. Thus, for instance, the punishment for boycotting the draft was changed from up to 1 year to 1 to 10 years' imprisonment. Going into hiding in order to evade doing the military service, punishable by three months' to five years' imprisonment, now became punishable by a harsher sentence of at least 5 years' or 20 years' imprisonment equal to that for persons who have left the country or remained abroad for the same reason. Further to this, in the cases of enforcement of Article 226 paragraphs 2 and 3, in connection with Article 214, paragraph 2 and 3, and Article 217, paragraphs 3, 4 and 5 of the FRY Criminal Code, a suspended sentence may not be pronounced. For, under Article 53, paragraph 3 of the FRY Criminal Code, a suspended sentence may not be passed for any criminal offence for which even after atten-

uation of punishment a sentence of less than a year's imprisonment cannot be given. This refers to the case from Article 43, paragraph 1, item 1 of the Criminal Code of FRY which stipulates that if the least punishment for a criminal offence is three or more years' imprisonment, the sentence may be reduced to up to *one year* in prison.

II. CRIMINAL LEGISLATION OF FRY

The provisions of Article 214 and 217 of the FRY CC read as follows:

"Failure to respond to the draft and evasion of military service

Article 214

1) Whoever, without a justified reason, fails to come at a given time to the recruitment in order to be told his war duty station, or in order to be commissioned weapons, or in order to do his military service, a military exercise or any other military service, although he has been called-up by an individual or general draft, shall be fined or punished by up to 1 year in prison.
2) Whoever goes into hiding in order to evade military service mentioned in paragraph 1 of this Article, although he has been called-up by an individual or general draft, shall be punished by three months' to five years' imprisonment.
3) Whoever leaves the country or remains abroad in order to evade recruitment, or doing his military service, a military exercise or any other military service, shall be punished by one to ten years' imprisonment.

4) Whoever calls or incites several other persons to commit the offence from paragraphs 1 – 3 of this Article, shall be punished for the offence mentioned in paragraph 1 by up to three years in prison, and for the offence mentioned in paragraphs 2 and 3 by at least one year in prison.

   The perpetrator of the offence mentioned in paragraphs 2 and 3 of this Article who reports to the competent authority of his own free will may be given a more lenient sentence or may be acquitted."

"Wilful departure and desertion from the Yugoslav Army

Article 217

1) A military officer who wilfully leaves his unit or service and fails to return to his duty within 10 days or does not return to his unit or service after having been permitted to leave to do an assignment outside the unit, shall be punished by up to one year in prison.
2) Any military officer who stays without permission more than twice and for less than 10 days away from his unit or service, as well as any military officer who wilfully leaves his unit or service during the execution of an important assignment or at the time of heightened combat readiness has been called in that unit shall also be punished by the term of imprisonment specified in paragraph 1 of this Article.
3) A military officer who goes into hiding in order to evade service in the Yugoslav Army (VJ) or who wilfully leaves his unit or service and fails to return to duty within thirty days or fails to return within the same time limit from an assignment he has been

given to do away from his unit or service, shall be punished by six months' to five years' imprisonment.

4) A military officer who leaves the country or remains abroad in order to evade service in the Yugoslav Army shall be punished by at least one year in prison.

5) A military officer who is preparing to flee abroad in order to evade service in the Yugoslav Army shall be punished by six months' to five years' imprisonment.

6) The perpetrator mentioned in paragraphs 3 and 4 of this Article who reports to the competent authority of his own free will may be punished more leniently."

As the subject of our consideration here is the commission of these offences during the state of war, any decision on the length of the term of imprisonment is governed by Article 226 of the FRY CC which reads as follows:

"Punishment for criminal offences committed during the state of war or in case of immediate threat of war

Article 226

1) The perpetrator who commits the criminal offence mentioned in… Article 214 paragraph 1, Article 217, paragraphs 1 and 2… of this Law, during the state of war or in case of immediate threat of war, shall be punished by one to ten years' imprisonment.

2) The perpetrator who commits the criminal offence mentioned in ... Article 217 paragraph 5 … of this Law during the state of war or in case of immediate threat of war, shall be punished by at least 3 years' imprisonment.

3) The perpetrator who commits the criminal offence mentioned in … Article 214 paragraphs 2 and 3, Article 217 paragraphs 3 and 4… of this Law during the state of war or in case of immediate threat of war shall be punished by at least 5 years in prison or by twenty years' imprisonment."

The state of immediate threat of war was proclaimed on March 24, 1999 and the state of war lasted from March 25 to June 24, 1999.

The acts of criminal offence mentioned in Article 214 of the FRY CC are: (1) failure to respond to the call-up, (2) evasion and (3) calling on and encouraging more than two persons to commit this criminal offence. Criminal offences mentioned in Article 217 of the FRY CC are: (1) wilful departure and no-show over a period of more than 10 days, (2) staying away from the unit for a period of up to 10 days twice without permission; (3) wilful departure during the execution of an important assignment or heightened combat readiness of the unit; and (3) desertion. However, if the perpetrator reports to the competent authority of his own free will, he may be punished more leniently or acquitted for the mentioned "qualified" forms of the criminal offence at hand. The "qualified" forms of these offences are, for the offence mentioned in Article 214 of the FRY CC: (1) going into hiding; and (2) escape abroad or remaining abroad. For the offence mentioned in Article 217 of the FRY CC the qualified forms are: (1) going into hiding, or if he fails to return to his duty within 30 days; (2) escape abroad or remaining abroad. The preparations for the desertion are also punishable. However, if the perpetrator reports to the competent authority of his own free will, he may be punished more leniently for the "qualified" forms.

As no clear distinction has been drawn between the act mentioned in paragraph 1 (failure to come without any justified

reason…) and paragraph 2 (he is hiding in order to evade his duty...) of Article 214 of the FRY CC, in the mentioned period, Military Prosecutors as a rule charged all military conscripts who failed to come to their unit with a graver form of the criminal offence, i.e. they charged them with going into hiding although they did not dispose of any reliable information on that score. As a result, such military conscripts were called upon to answer for the criminal offence mentioned in paragraph 2 of Article 214 in connection with Article 226 of the FRY CC. Consequently, such persons could not be given any sentence shorter than up to one year in prison no matter after how many days any one of them returned to his unit i.e. what were the reasons for his failure to respond. There were certain departures from this practice in the Military District in Podgorica. In that region, the courts, as a rule, punished such persons by several months in prison.

An important and first element for the criminal offence mentioned in Article 214 of the FRY CC is failure to respond by coming *without any justified reason*. This justified reason is linked to two circumstances: (1) not knowing that a call-up has been sent and (2) being prevented from responding to the call. Most of the disputes arose over whether military conscripts had any knowledge about the draft or not. The courts maintained that all conscripts had knowledge about their duties since it was common knowledge that the country was in a state of war. Some legal justification for this claim can be found in Article 7 of the Law on Defence that reads as follows:

> "In case of an attack against the country, all its citizens at home and abroad, the commands, units and institutions of the Yugoslav Army, representatives of the agencies and organisations of government administration and management boards and other decision-making bodies in enterprises and other legal persons

are duty-bound, immediately upon learning about it, without waiting for a call or an order, to act in accordance with their war duty station and carry out the obligations stipulated by the National Defence Plan or excerpt from that Plan and the obligations mentioned in the decisions and measures taken by the Federal Government".

However, we hold that this legal view is unacceptable given the fact that no general mobilisation had been proclaimed but only partial. Acting in the manner stipulated by this provision would have resulted in chaos. Hence, the only correct legal course of action is to establish whether a military conscript had any knowledge about his draft.

Since military conscripts were, as a rule, sent individual draft calls, the proceedings had to establish whether that draft call had been delivered. In doing this, the criteria to be taken into account were those established in the Law on General Legal Procedure because what was at issue – compulsory delivery is governed by Article 87 of this Law. However, the courts held the view that a call-up had been delivered if the military authority left the notice informing about the draft call with a family member or with neighbours. Moreover, the courts took this fact as proven even when a military conscript reported to his military unit with a delay, although he stated that he had come as soon as he learnt about the call-up! By way of example: **The accused D.R., aged 29, customs officer, draft registrant, was sentenced to 1 (one) year in prison because he went into hiding in order to evade his military duty by changing his place of residence without informing the competent authorities thereof.** The defendant argued that he had not known anything about the draft call, that he was at his place of duty with the Customs, and that for a while he spent nights with his girlfriend. When on April

4, 1999 he learnt about the draft call, the notice having been left at the door of his apartment, he immediately reported to the military department. The Court disregarded his defence holding the view that the accused "… knew full well that he was on military police force as his war duty station meaning that he could certainly have expected to be called by the VJ precisely in the first few days of the war." However, there are also cases when criminal proceedings were suspended. Here an example: **Criminal proceedings were initiated against a draft registrant B.š., aged 37, because on March 29, 1999 he failed to report to his military unit and the draft call could not be delivered because he had changed his place of residence without reporting it to the competent authority. The proceedings were suspended when the Military Prosecutor dropped the charges having established in the course of preparations for the main hearing that the accused had changed his place of residence in accordance with the law and could not be informed of his draft call.**

The second basis for a justified reason is*the inability to respond to a call-up.* The most frequent reason was illness. However, the courts refused to take into consideration the medical papers issued by civilian hospitals. The only plausible paper for them was the findings and opinion of the Military Medical Commission. They likewise refused to take into consideration as a justified reason the fact that military conscripts had been away on business, in the country, for instance, with no telephone communications.

Leaving the country or remaining abroad were factors that mandated the holding of the main hearing *in absentia*. In such circumstances, two questions are of relevance: (1) whether the person abroad had any knowledge about the draft and (2) whe-

ther there was any intention to evade responding to the call-up. As a rule, the courts held *a priori* the view that all persons were informed of the draft by the very fact that the state of war had been proclaimed! Whether somebody was abroad or not was determined on the basis of any testimony given by his next of kin or other persons. An example: **The accused I.J., aged 25, a salesman, draft registrant, was sentenced in absentia to six (6) years in prison because, to evade his military duties, on March 22, 1999 he left the country**. The Court passed this judgement on the basis of the statement by his parents that their son was abroad and a photocopy of his passport provided by his counsel for the defence (!?) proving that the accused was abroad. However, there were also exceptions, namely when criminal proceedings were suspended. Here an example: **Criminal proceedings were initiated against draft registrant S.M., aged 31, because he failed to report to his military unit on March 25, 1999 although he had known about it through his brother who received the draft call and regardless of the warning by the call-up courier that he had to respond to that call-up. The proceedings were suspended when the Military Prosecutor dropped the charges having established that the accused had not lived in Yugoslavia since 1963 and that he could not have been informed of the contents of the draft call.**

The second circumstance – intention was not necessary to prove in particular; in every case the Court held the view that it was a state of fact that the intention had existed. We point out in particular to the cases of withdrawal of the military from a line of combat without the order of superior officers. The Courts found guilty the military conscripts who had, together with their entire unit, abandoned line of combat due to the war operations by the enemy forces, because they had done so without the order of their

superior officers. It is strange, however, that the superior officers abandoned such combat stations with those soldiers and were not made to answer for it. Here an example: **The accused G.Dj., aged 35, a worker, draft registrant, was given a combined sentence of one (1) year and six (6) months in prison – for the offence mentioned in Article 217 of the FRY CC – 1 year and for the offence of grand larceny mentioned in Article 166 of the Criminal Code of Serbia – one year, because he wilfully left his unit and appropriated a large quantity of goods in Kosovo.** In his defence, the accused argued that on May 23, 1999 their superior officer told them that other companies had wilfully left their combat stations and that only their company had remained. Then somebody said that they should leave too and so they did. At the main hearing, the superior officers of the defendant confirmed that "the units of those soldiers had left their combat stations and they could not stop them" as well as that "he did not give the order to anyone of the soldiers to remain at the position and return to the place of their original assignment because he, too, joined them".

III. ACTION BY THE COURTS

The punitive policy was not uniform. In the first few days of their work, the Military Courts pronounced drastic sentences, partly due to the lack of experience of the judges, partly in order to thus influence military conscripts to respond in larger numbers. Later on, the Supreme Military Court developed criteria for pronouncing sentences and the punitive policy became somewhat more uniform. However, insufficient attention continued to be given to individual aspects of punishment. Nevertheless, even sentence forms were published in order to expedite the work of the Courts. Typically, for example, when they tried persons who reported to their units after ten or so days after receiving the draft call, the judges who ruled in such cases, stated in public that the sentences passed would be forgiven after the war under the pending Amnesty Law or that the convicts would be pardoned. Regrettably, this did not materialise and, as a result, those people, who after such trials proceeded to join their units in time of war, were placed in a very serious situation because they now have to serve their terms of imprisonment. Namely, their sentences cannot be commuted in the special commutation procedure because the offences at issue are such that not even by way of commutation can a more lenient sentence be pronounced than one year in prison (for offences mentioned in Article 214, paragraphs 2 and 3 in connection with Article 226 paragraphs 2 and 3 of the FRY

CC). It has thus happened that these young people, due to the incorrect legal qualification of the offence and its uncritical acceptance by the Military Courts, face a hopeless situation. Evidently, those responsible do not feel like enacting the Amnesty Law or granting pardon en masse because of decisive importance are political stands and strong polarisation between what is "patriotic" and what is "treacherous"!

First-instance courts gave to persons who reported to the unit at any time, for the most part, sentences of up to one year on average for the criminal offences mentioned in Article 214, paragraphs 1 and 2 and Article 217, paragraphs 1 and 2, of the FRY CC. However, in the territory of Montenegro, even sentences from 3 to 6 months on average were passed for such criminal offences because the Courts changed the qualification of the offence from that mentioned in paragraph 2 to that mentioned in paragraph 1. As for absent persons, heavy prison sentences were given averaging from 6 to 7 years.

The actually competent court for the criminal offences mentioned in Articles 214 and 217 of the CCY is the Military Court. Actual jurisdiction is determined under the provisions of the Law on Military Courts. Under Article 9, item 1, of the Law on Military Courts, military courts try offences committed by military officers and, in cases stipulated by this Law, also the offences committed by other persons. Thus, under Article 10, paragraph 1, item 8, of this Law, Military Courts try civilians for the criminal offences mentioned in Articles 201-236 of the FRY CC. This means that Military Courts are actually competent to try all persons who commit criminal offences of failure to respond to the call-up and evade military service mentioned in Article 214 of the FRY CC and wilful departure from and desertion from the Yugoslav Army mentioned in Article 217 of the FRY CC.

Local jurisdiction is determined under the provisions of the Law on Criminal Procedure, the FRY Criminal Code and the Law on Military Courts. Under Article 26, paragraph 1 of the Law on Criminal Procedure local jurisdiction is, as a rule, with the Court in whose area the offence was committed or attempted. On the other hand, under Article 32 of the FRY Criminal Code, a criminal offence is committed both at the place where the perpetrator worked or was obliged to work and at the place where the consequence occurred. Further, preparation and attempt are considered committed both at the place where the perpetrator worked and at the place where, according to his plan, the consequence was due to occur or could have occurred. In the light of these legal provisions, local jurisdiction for the criminal offence mentioned in Article 214 of the FRY CC is, as a rule, determined to be at the place where the draft call was to be delivered and, for the criminal offence mentioned in Article 217 of the FRY CC, as a rule, at the place where the unit was abandoned, i.e. where a military officer was obliged to return after his approved leave of absence.

Under Article 8 of the Law on Military Courts there are three first-instance Military Courts: the Military Court in Belgrade, which covers the area of the First Army; the Military Court in Podgorica, which covers the area of the Second Army; and the Military Court in Niš, which covers the area of the Third Army. However, during the state of war, these Court cease working and first-instance courts are set up at the Commands of military districts, divisions, corps, Armies, Commands of the Air Force and Air Defences and the Command of the Navy. However, the Supreme Military Court continues working at the Headquarters of the Supreme Command (Article 74 of the Law on Military Courts). During the state of war from March 25 to June

24, 1999, 20 courts-martial were set up, 5 of which in Belgrade as first-instance military courts-martial, 2 courts-martial in Novi Sad, etc. Departments of the Supreme Military Court were set up in Niš and Podgorica. Under Article 75 of the Law on Military Courts, during the state of war, it is the President of the Republic, at the proposal of the Chief of Staff of the Supreme Command that appoints, grants leaves of absence and relieves of duty the President, the judges and jurors of the Military Courts. Upon the cessation of the state of war, all criminal cases were distributed among the three mentioned Military Courts in Belgrade, Podgorica and Niš.

Persons – military conscripts were appointed judges and Military Prosecutors according to their predetermined war duty station. For the most part, these persons as civilians had not been involved with the work of the courts. Not only in the beginning but later on as well, this resulted in their lack of resourcefulness both with regard to the application of procedural law and the legal qualification of the offences and the punitive treatment i.e. decision-making.

In the first days of the state of war the first trials began because at the same time as the military courts the Military Prosecutors' Offices were established as part of the same units and Commands of the military districts.

IV. OBSERVATIONS ON CRIMINAL PROCEDURE

By its Decree on the Application of the Law on Criminal Procedure during the State of War ("Official Gazette of FRY" No. 21/99), the Federal Government introduced substantial amendments to the Law on Criminal Procedure. Thus, for a defendant-deserter, the court in whose territory he is caught or where he reports by himself shall have local jurisdiction (Article 2 of the Decree); the obligation to procure the approval for the prosecution of the criminal offences from Chapter XV (against the constitutional order…), Chapter XVI (against humanity…), Chapter XX (against the Yugoslav Army, hence also of the criminal offences mentioned in Articles 214 and 217 of the FRY CC) and of the criminal offences punishable by at least 5 years in prison (Article 3) shall be abolished; no exemption may be requested on the grounds of suspected lack of impartiality (Article 4); certain investigating acts may also be carried out by the competent police officer who, in emergency cases, may conduct such acts also without the Public Prosecutor's request (Article 6); the prosecution may search a person or an apartment without a warrant on the grounds of suspicion that the above mentioned criminal offences have been committed (those mentioned in Chapter XV, XVI, XX…) – Article 7; 30-day detention may be ordered also by the competent police officer (Article 8); the Public Prose-

cutor may issue an indictment without having conducted an investigation and without the consent of the investigating judge (Article 9); the period from the delivery of the indictment to the main hearing may not be shorter than 48 hours (Article 10); an objection to the indictment does not affect the holding of the main hearing (Article 11); in case of any interruption of the hearing lasting for more than 1 month or in case of any change in the composition of the Chamber, the new hearing need not start from the beginning (Article 12); the deadline for an appeal is three days (Article 15), etc.

As for the criminal offence mentioned in Article 214 of the FRY CC, also initiated were criminal proceedings against military conscripts who had not received the draft call but, on the basis of their own knowledge, reported to the competent military authorities. Interestingly enough, criminal proceedings were also initiated against persons who had immediately reported to their military units but the competent authorities, due to omissions and lack of expediency, did not learn about it. Although the grounds for suspicion were not corroborated by relevant evidence, such persons were sued for the qualified form of the criminal offence in question. When the authorities proceeded to detain such persons, they established that they had been at their military units all the time. Regrettably, the number of such cases is not negligible. It is not known that measures were taken against any persons in the competent military bodies who were discharging their duties irresponsibly…

As for the criminal offence mentioned in Article 217 of the FRY CC, criminal proceedings were also initiated against persons who would go out, from their units often quartered in private houses, to a local store for a beer or who, passing by their places of residence, would drop by to inquire about their family.

The situation in Montenegro is a particularly interesting case. Due to the exacerbated political relations between the federal and republic authorities, and *ipso facto* between the republic authorities and VJ, call-ups and the already distributed obligatory working duty decisions coincided. Conscripts were in two minds: to accept the decision on obligatory working duty and keep their jobs but be held answerable for boycotting the military authorities, or to respond to the draft call and fail to accept the decision on their working duty thus putting in jeopardy their jobs. The decision seems to have been mostly taken on the basis of one's political attitude because there were a large number of instances where criminal proceedings were initiated against persons who gave preference to the obligatory working duty.

Investigations were, frequently, conducted by security officers, in accordance with the powers under Article 6 of the mentioned Decree but quite often in a manner contrary to the provisions of the Law on Criminal Procedure (LCP) concerning the hearing of the defendant, warning him of his rights regarding his defence as well as regarding the facts of no relevance to the criminal offence which he stood accused of. Illegal files were created in practice of persons with political motives. Often, the intention was to prove that it was persons susceptible to vice (taking narcotics and the like) and with opposition predilections that were inclined to commit such criminal offences.

However, the Military Prosecutors, under Article 9 of the above mentioned Decree, often issued direct indictments without conducting investigations although they concerned the criminal offences punishable by extremely long terms of imprisonment.

Under Article 70, paragraph 2 of the Law on Criminal Procedure, immediately after an indictment was issued an *ex officio* counsel for the defence was appointed because in the beginning

only a very low number of defendants retained a counsel at their own free choice. The lawyers were appointed from the lists established by the Bars. The Bar in Belgrade, for instance, made available to the Military Courts some 50 lawyers who gave free-of-charge legal counsel. However, the Courts were also contacted, of their own free will, by a number of other lawyers who also declared their readiness to give free legal counsel. Most often, lawyers were informed by phone of the initiated criminal proceedings and that they had been appointed *ex officio* counsels for the defence; they met their clients at the previously scheduled main hearing; the communications between the counsel for the defence and the accused were made very difficult. The defendant would be brought out of detention to the main hearing where he most often and immediately confessed to having committed the criminal offence in question.

A large number of trials were held *in absentia* without taking into account the conditions stipulated in Article 300 of the LCP although this provision had neither been annulled nor amended under the Decree. Under Article 300, paragraph 3 of the LCP, a defendant may be tried *in absentia:* (1) if he is in flight, or (2) if he is inaccessible to the authorities and *there are important reasons* for him to be tried though he is absent. It was not established whether the defendant was in flight – that fact was taken for granted. It transpired that there were numerous cases of military conscripts who had, through no fault of their own, not received the draft call, were not informed or had a justified reason not to respond to the draft. The fact about flight was more or less correctly presumed for those who left their unit… As a rule, the cases contain no evidence indicating that the defendants, being tried *in absentia*, were really inaccessible to the authorities! Finally, the courts do not explain which particularly

important reason prompted them to try persons *in absentia*!? Due to such a negative attitude to the rights of the "absent one" and, one can say, to the accused himself, the trials were short and the pronounced terms of punishment extremely long! The courts probably reckoned that the defendant concerned would invoke his right under Article 410, paragraph 1 of the LCP and request the review of proceedings. However, it should be borne in mind that the review of proceedings may be requested only within a year as of the knowledge on the existence of the judgement passed against such a person *in absentia*. The imprecision of the term "as of the knowledge" often represents a dire fact and the convict is usually, due to the seriousness of the sentence, put in detention! Here an example of the reviewed criminal proceedings: **The accused N.R., aged 21, unemployed worker, draft registrant, was sentenced in absentia to eight (8) years in prison for his escape from his military unit. He started serving his term on February 25, 2000. The first-instance court allowed the review of proceedings, issued the indictment, suspended the serving of the sentence and ordered detention until the completion of the main hearing. Criminal proceedings are underway.**

Wishing to be as expeditious as possible, the military courts did not dwell too long on checking with the counsels for the defence on the reasons for which the defendants did not respond to the draft calls nor the fact that they had or had not received the call-up to report to their units. A large number of conscripts changed their addresses, moved out of their parents' apartments, etc. but failed to inform the military departments of their new address. This fact was sufficient for the court to find the accused guilty. It is true that the obligation exists for a person to report his address also to the military authorities, but failure to do

so is only a minor offence and does not prove the intention of a military conscript to unjustifiably boycott the draft. Failure to respond to a call-up must represent a deliberate act by that conscript showing that, although he has received the draft call, he does not wish to respond to it. The court, hence, has to prove the guilt and not *a priori* to consider a conscript guilty unless he himself proves the contrary.

However, the case in Niš is more drastic because conscripts were called via the media – the local TV and radio stations – that announced a list of military garrisons for which mobilisation was underway. The report by those media was taken as evidence that the defendant had been properly called-up for mobilisation. Hence, the courts took as an established fact that the military conscript was within the viewing and hearing range of these media and that each and every inhabitant by all means watches and listens to (or has to watch and listen to) these TV and radio stations!?

As a rule, the court heard what the call-up couriers as well as the closest relatives of the defendant had to say on whether the defendant had actually known about the call-up or not. However, the closest relatives were not warned that they were privileged witnesses and that, as such, they needed not testify (Article 227 of the LCP). The court concluded from the confession by the closest relatives that the call-up couriers had really come to deliver the draft call, that the defendants knew of the call and that they went into hiding and this then resulted in charges for a graver, i.e. qualified form of the criminal offence mentioned in Article 214 of the FRY CC.

V. NUMBER OF PERSONS WHO BOYCOTTED THE DRAFT AND OF PERSONS WHO DESERTED FROM THE YUGOSLAV ARMY

The general public was not presented data on the number of sent call-ups nor on the number of persons who boycotted them. The public was told that the number of persons responding to these call-ups was above all expectations, that the number of deserters was "insignificant"[1] and that this attested to a highly patriotic act. On the other hand, the problem arose in the territory of the Republic of Montenegro of "target mobilisation" of predominantly persons from the ranks of the political groups that had a critical attitude to the official policy of FRY. As a counter-measure, the authorities in Montenegro introduced the obligatory working duty. High-ranking officials publicly refused to receive draft calls. In a highly politicised atmosphere, a number of people were encouraged to boycott the draft. This political problem, following the cessation of the state of war, was resolved when the Assembly of Montenegro enacted the Amnesty

1 Daily "Danas" (Today) of September 2, 1999. President of the Supreme Military Court in Belgrade, General Miloš Gojković, stated: " It is a great luck that the number of deserters in the past war was insignificant compared to the number of the called-up."

Law[2] whose legal nature prompted less of a legal and more of a political debate.

There are further also many different conjectures about the number of persons against whom criminal proceedings were initiated for failure to respond to the draft call and for evasion of military service (Article 214 of the FRY CC) and for wilful departure and escape from VJ (Article 217 of the FRY CC). Thus, in the broadcast "Interview of the Day" on Radio B2-92, the Chairman of the Yugoslav Committee of Lawyers for Human Rights claims that, according to their sources, "there are in Serbia 11,000 to 14,000 initiated proceedings but we haven't received reports from all the military commands. According to our data from Montenegro, 14,000 indictments have been submitted and this has been confirmed by the Government of Montenegro and the Helsinki Human Rights Committee in Montenegro[3]". The same person, recalling the statement made by the Chief of the Legal Service of the General Staff of the Yugoslav Army (currently former), presented the datum about 28,000 indictments rendered against persons who had committed military criminal offences[4]. This claim is totally imprecise because it does not specify which criminal offences are at issue ("military crimi-

2 The Law was published in the "Official Gazette of the Republic of Montenegro" No. 44/99 of November 22, 1999. This law acquits from criminal prosecution and from criminal sanctions under the valid judgements the persons who committed the following criminal offences in the period from June 1, 1998 to June 30, 1999: failure to respond to the draft call and evasion of military service – Article 214; evasion of military service by incapacitation or delusion – Article 215; unlawful freeing from military service – Article 216, wilful departure from and desertion from VJ – Article 217; evasion of regulations and check-ups – Article 218; failure to meet the material obligation – Article 219, as prescribed by the Criminal Code of the Federal Republic of Yugoslavia.

3 Yugoslav Committee of Lawyers for Human Rights: "Amnesty – Campaign, Law, Cases", Belgrade, p. 71.

4 Ibidem, p. 94.

nal offences"); to which period of the commission of criminal offences it refers ("currently issued in Yugoslavia"); how many persons are prosecuted ("28,000 indictments"); etc. Regardless of the politicisation of the issue of responding to the draft in Montenegro, the datum on as many as 14,000 indictments should be taken with a grain of salt! It should further be borne in mind that the Podgorica Military Court's jurisdiction covers also a part of Serbia.

To better understand the difficulties associated with establishing the approximate number of persons who failed to respond to the call-up during the state of war (March 25 to June 24, 1999), the reader is advised to take note of the stages of criminal prosecution and procedure:

1) pre-criminal procedure is the stage when the administrative authorities file criminal complaints with the Prosecutor's Office, i.e. inform the Military Prosecutor's Office of the persons to whom the call-up was delivered and who failed to report to the competent military authorities, as well as of the persons to whom the call-up could not be delivered. On the basis of these data, the Military Prosecutor's Office activates the Military Court. According to the numerous talks with the counsels for the defence and our own sources, 22,000 criminal complaints have been filed against persons who failed to respond to the draft (under Article 214 of the CCY). The Military Prosecutors' Offices started the processing of a half of those criminal complaints holding the view that no criminal proceedings should be initiated against persons who had only been several days late in responding to the call-up. At the same time, it was established that military departments had out-of-date information because a large number of military conscripts had already been with their military units and at their military duties and the military departments did not have any up-to-date information about it. We be-

lieve that there are still cases that have not been processed at the Military Prosecutor's Office;

2) preliminary procedure – the Military Prosecutor's Office submits a request to the military investigating judge to conduct an investigation or particular investigating acts; or

3) direct issuance of indictment (which happened in the majority of cases), if the Military Prosecutor's Office disposes of sufficient evidence to do so; and

4) main hearing when the court passes judgement on the criminal case at hand.

According to our findings, the number of accused persons for the criminal offence of failure to respond to the draft and evasion of military service under Article 214 in connection with Article 226 of the FRY CC is around 7,000 and for the criminal offence of wilful departure and escape from VJ under Article 217 in connection with Article 226 of the FRY CC it is around 700.

Until the cessation of the state of war, of these 7,700 criminal cases in around 970 cases a legally binding judgements were handed down. In the territory of two military courts in Vojvodina (at the Novi Sad Corps and at the Command of the Military District Novi Sad), judgements were passed in 235 cases out of the 450 initiated proceedings. Most cases, i.e. around 200 related to the criminal offence mentioned in Article 214 of the FRY CC. Thirty-five cases concerned the criminal offence mentioned in Article 217 of the FRY CC. 347 requests were submitted to the Supreme Military Court for special commutation of sentences: 185 cases in 1999 and 162 requests in the course of 2000. All the submitted requests were finalised. The majority of the submitted requests were granted and the sentences commuted to the legal minimum of one year for the criminal offences mentioned in Ar-

ticle 214, paragraphs 2 and 3 and Article 217, paragraphs 3,4 and 5 in connection with Article 226, paragraph 2 of the FRY CC, i.e. suspended sentences were given to persons convicted of the criminal offences mentioned in Article 214, paragraph 1 and Article 217, paragraphs 1 and 2 in connection with Article 226, paragraph 1 of the FRY CC if the legal conditions permitted. The requests were, as a rule, complied with if the convict had reported or returned to his unit within up to 20 days and had then spent the entire period at the unit. Only 20 requests were rejected.

Around 20 pardon requests were submitted. Not a single has been finalised.

According to our sources, no amnesty law is in the process of being drafted or enacted.

It should be mentioned in particular that the above figures do not include the cases from the region of Kosovo. As is well known, the Albanians were either not called-up to join the military service or, if called-up, they, for the most part, did not respond. The authors do not know of any relevant proceedings there.

VI. ANALYSIS OF SPECIFIC CASES

In accordance with the gathered data, we have analysed 43 criminal cases from the area of three military courts, out of which 23 were tried under Article 214 of the Criminal Code of Yugoslavia and 20 on the basis of Article 217 of Criminal Code of Yugoslavia.

The mentioned 23 cases tried under Article 214 of the CCY were concluded in the following way: 9 accused were sentenced to imprisonment, in 2 cases a suspended sentence was pronounced, 1 person was fined and against 2 persons proceedings were stayed, in 6 cases the charges were rejected and one person was acquitted.

The given 20 cases tried under Article 217 of the Criminal Code of Yugoslavia were concluded as follows: 16 accused were sentenced to imprisonment, 3 were given suspended sentences and in 1 case charges were dismissed.

A final judgement has been handed down in the majority of cases; we also had decisions of the Supreme Military Court on motion for special commutation of sentence granted. We had talks with a number of defence counsels who told us their observations on legal issues and conducted criminal proceedings. We give here the most characteristic cases, according to committed individual criminal offences.

FAILURE TO REPORT FOR MILITARY SERVICE AND DRAFT EVASION (ARTICLE 214 OF THE CC FRY) – 23 CASES

1. The accused D.J., 34 years old, a chemical technician, a draft registrant, convicted to one year prison sentence for failing to report to his war unit (RJ) without a valid reason, although he was informed that he had been called up on March 24, 25 and 26, 1999.

The accused argued that on those he days he had been with his wife and two children at his cousin's wedding in Montenegro. When he found out about the state of war, he tried to contact his parents by phone, but the line was bad. Only on April 2, 1999 his father informed him by a cable that he had received a mobilisation call. On that same day he departed for Belgrade and reported to the military department where he was detained and handed over to the court. During hearing of evidence the Court inspected the telegram, but remained convinced that the accused had probably learned earlier of the call-up. However, the Court did not find the existence of the qualified form of this criminal act criminal offence under paragraph 2, as it was not proved that the accused was in hiding.

The appeal of the accused was not granted. the motion for special commutation was approved and a suspended sentence was pronounced because the accused "went to his unit immediately and stayed there for full two months, all that time was a good soldier, although he had serious health problems which is why the Lower Military-Medical Commission found him temporarily unfit for military service…"

2. The accused Z.R., 37 years old, a mechanical technician, a draft registrant, was convicted to at least 6 (six) months in prison, for failing to appear in his RJ, although his father received his call-up on March 28, 1999.

The accused defended himself by claiming that since February, 1999 he was in a village more than 300 kms away from Belgrade and that he learned of his call-up on April 24, 1999 upon his return to Belgrade. He reported to the military department on April 25, 1999. At the main hearing the father confirmed all allegations of the accused. The Court did not lend credence to his statement of the accused and his father because they were "implausible and calculated with the intent of avoiding criminal responsibility of the accused".

The appeal of the accused was rejected and of the military prosecutor granted so that the accused was sentenced to 2 (two) years of prison.

❖

3. The accused D.R., 29 years of age, customs officer, a draft registrant, sentenced to 1 (one) year in prison for hiding in order to avoid his military service by changing place of residence without informing competent authorities accordingly.

The accused defended himself by claiming that he did not know about the call-up and was on his regular duty in the Customs Administration, as well as that he spent several nights at his girlfriend's place. When he learned about the call-up on April 4, 1999 in a notice left on the front door of his apartment, he immediately reported to the military department. The court did not lend credence to his statement being of the opinion that the accused "...knew full well that he was on the military police force as his war duty station, which means that he could count on being called up to the Army of Yugoslavia in the first days of war".

The Supreme Court has not yet decided his appeal.

❖

4. Draft registrant Z.P., 40 years old, transportation technician, charged for reporting to his RJ only on April 5, 1999 although he had been called-up on March 24, 1999.

In his defence the accused claimed not having received the draft call, because at that time he had been mobilised and was on war duty in the Monitoring Service. On April 5 his wife informed him that they were looking for him and that he should report to the military department, which he did. The Court established all these facts in the probative proceedings. Military Prosecutor stood by his indictment. However, the Court acquitted the accused of all charges.

❖

5. The accused S.T., 30 years of age, an electrician, a draft registrant, was sentenced to 1 (one) year of prison for not reporting to his RJ, without a valid reason, on March 25, 1999 but on April 2, 1999, although his father knew for his call up.

In his defence the accused claimed that he learned about the call-up only on April 2, 1999 when he reported to the military department. His father informed the call-up courier that his son was away. The Court heard the father, but did not give credence to his statement.

The Supreme Court has not yet decided the appeal.

❖

6. The accused S.Dj., 33 years old, with completed secondary school education, a draft registrant, was sentenced to a suspended sentence of unjustifiably failing to report to his RJ on March 23, 1999 when his mother was informed of his call-up, but only on April 5, 1999.

In his defence, the accused said that he was temporarily working abroad so that his mother informed him by phone on March 28, 1999 on the call-up and he was unable to get to Belgrade before April 4, 19999, as well as that he made his contribution in downing the F-18 aircraft for which he was awarded.

The Supreme Court rejected the military prosecutor's appeal and confirmed the sentence of the first-instance court.

❖

7. The accused G. Ž., 33 years old, electrical technician, a draft registrant, was sentenced to 1 (one) year in prison for hiding in order to avoid doing his military service, by reporting on March 25, 1999 to his RJ, but since he could not be handed his call-up, he reported on April 24, 1999.

The accused pleaded that he had not been living at the mentioned address since 1995, but failed to report the change of address to the competent authorities. However, when he learned about the call-up, he immediately reported to the military department. After hearing the evidence, the Court did not give credence to the statement of his parents. In the Court's opinion it was due to the negligence of the accused that the call-up was not delivered.

The appeal of the accused was rejected.

❖

8. The accused S.A., 53 years old, a draft registrant and worker, was sentenced to 3 (three) months in prison for unjustifiably failing to report to his RJ.

In his defence the accused said that he couldn't receive the call-up on March 24, because he went for his medical check up. He received the call-up on March 25, 1999. At the same time, he was told at his place of work that he would be issued a decision

on obligatory work duty and would lose his job if he left his post. He also said that he was sick, and that his left side was partially paralysed. The Court did not take into consideration these obvious reasons, although he had inspected the decision on work duty made by his enterprise.

The Supreme Military Court took into account the appeal of the accused and annulled the sentence of the first-instance court because it failed to establish the facts. Namely, in the meantime, the Military Medical Commission proclaimed the accused unfit for army service.

❖

9. The accused V. R., 54 years old, a draft registrant, was convicted to 6 (six) month prison sentence for refusing to receive his call-up and failing to report to the Yugoslav Army without any reason on April 3, 1999.

In his defence the accused stated that he was of poor health and that he had spent four months on the Dubrovnik war theatre in 1991/92.

❖

10. The accused V.R., 37 years old, a draft registrant, worker, was sentenced to 6 months in prison for unjustifiably failing to report to his RJ during the state of war and while the country was being attacked.

He defended himself by claiming that he was not aware that it was a call-up he was being served because he was excited expecting the birth of his second child.

❖

11. A suspended sentence was pronounced to 50 years old accused L.R., with secondary school education and draft registrant, for not showing up in his RJ by refusing to receive his call-up without a valid reason.

The accused claimed in his defence that he had a decision on work duty which was why he refused to take the registered mail from the postman.

❖

12. The accused Z.M., 36 years old, a mechanical engineer and a draft registrant, was sentenced to 1 (one) year in prison for not reporting to his military unit in response to a general call-up broadcast on TV-5 Niš on March 24, 1999 without a valid reason. He reported on April 29, 1999.

The accused defended himself admitting that there was a general call-up on the Niš TV-5 and that numbers of military garrisons were also given. However, he did not check his service book. Several days later a friend of his from the same unit told him that they would receive individual call-ups. He stated that he got his personal call-up on April 28, 1999 and reported to RJ immediately the next day. As proof the Court presented the report of TV-5 which showed the number of the military garrison of all draft registrants.

The Military Court has not yet decided the appeal.

❖

13. The accused I.P., 43 years old, a mechanic and a draft registrant was fined with dinars 3,000 for not reporting to the unit on March 15, 1999 although he received his call-up personally.

The accused pleaded that he refused to receive the call-up because he was revolted for being called-up and that he went to see

some military officer and told him that he was sick because a half of his shoulder-blade was missing and his family situation was very serious, that he participated in the 1991 war. He stated that already on March 17, 1999 he was in military hospital. The Court did not find that the criminal offence was committed during the state of war.

The case is still in the Supreme Military Court.

❖

14. The accused M.M., 42 years old, a draft registrant, a driver, was convicted to 4 month prison sentence for failing to respond to the individual call-up of May 26, 1999 and because, after being brought in for questioning by the Military Police (MP) on May 28, 1999, he left the MP official premises without asking permission and voluntarily reported to the MP only on June 2, 1999.

In his defence the accused said that his mother had given him his personal call-up and that he had reported on his own. He admitted leaving the MP premises, but said that he had done that because he had been drinking heavily there and was unable to control himself. He went to Belgrade to see his brother and immediately returned and reported to the MP sincerely regretting his behaviour. The Court did not admit legal formulation from the indictment of the qualified form of the criminal offence.

The case is still in the Supreme Military Court.

❖

15. The accused I.J., 25 years old, tradesman and a draft registrant, was sentenced in absentia to 6 (six) months in prison for leaving the country on March 22, 1999 with the intention of evading draft.

The chamber reached the decision on the basis of the statement of the parents of the accused that their son was abroad and photo

copy of his passport enclosed by his defence counsel (!?) which proves that the accused was abroad.

❖

16. 34 years old draft registrant Z.M., a locksmith, was accused for failing to report to his military unit although he had personally received his call-up on April 2, 1999. All charges were dropped because the Court determined at the main hearing that the accused had regularly reported to his unit.

❖

17. Draft registrant Z.O, 31 years of age and a graduate mechanical engineer was charged for failing to report to his military unit although he had personally received his call-up on April 4, 1999. All charges were dropped because the Court determined at the main hearing that the accused had properly reported to his unit.

❖

18.Draft registrant P.M, 30 year old, with secondary school education was accused of failing to report to his military unit although he had personally received his call-up on March 24, 1999. All charges were dropped because the Court determined at the main hearing that the accused had properly reported to his unit.

❖

19. Draft registrant V.R, 37 years of age and a mechanical technician was charged of failing to report to his military unit although he had personally received his call-up on

March 30, 1999. All charges were dropped because the Court determined at the main hearing that the accused had properly reported to his unit.

❖

20. Draft registrant P.G, 38 years of age and unemployed was accused of failing to report to his military unit although his mother had received his call-up on March 28, 1999. All charges were dropped because the Court determined at the main hearing that the accused had regularly reported to his unit.

❖

21. A worker and draft registrant I.R., 24 years of age, a labourer, was charged of failing to report to his military unit although he had personally received his call-up on March 31, 1999. All charges were dropped because the Court determined at the main hearing that the accused had properly reported to his unit.

❖

22. Criminal proceedings were instituted against 31 years old draft registrant S.M. because he failed to report to his military unit on March 25, 1999 although he was informed of his obligation by his brother who had received his call-up, and despite warning of the call-up courier that he had to respond to the draft call. The proceedings were stayed because the Military Prosecutor dropped the charges after determining that the accused had not been living in Yugoslavia since 1963 and therefore could not have been informed of the content of his draft call.

❖

23. Criminal proceedings were instituted against 34 years old draft registrant B.Š. because he failed to report to his war unit on March 29, 1999 and because his call-up couldn't be delivered as he had changed his residence without reporting the change to the competent authority. The proceedings have been stayed by military prosecutor's abandonment of all action as during preparations for the main hearing he had determined that the accused had regularly reported the change of the place of residence and therefore could not have be informed of the call-up.

WILFUL DEPARTURE AND DESERTION FROM THE ARMY OF YUGOSLAVIA (ARTICLE 217 OF THE CRIMINAL CODE OF FRY) – 20 CASES

1. The accused Z.M., 30 years old, a farmer and draft registrant was sentenced to 1(one) year in prison for wilfully leaving his unit. On that same day he was apprehended and placed in detention. Charges were dropped against him for criminal offence of grand larceny of goods in the value of dinars 70,000 from Kosmet.

In his defence the accused pleaded that on May 23, 1999 the withdrawal of forces was ordered so that with his truck he started towards the specified points. There were rumours that the army was on the run as the soldiers were scared because of the heavy losses. For the mentioned goods he said that other soldiers, who took these things from the abandoned houses around Kosovo, had put them in the trucks which were his property. Later on, during a road check-up they denied having done this. The Court lent credence to the statement of his superiors that no withdrawal order had been issued, but that "they were unable to

stop the soldiers who got on the trucks and went home". As far as the criminal offence of grand larceny was concerned, the prosecutor dropped the charges.

The appeal of the accused was rejected, but the request for special commutation of sentence granted so that the accused was given a suspended sentence "for getting mentally ill in war conditions – suffering from anxious depression, and among other because of his grandfather's cardiac infarction…"

❖

2. The accused G.Dj., 35 years old, a worker and draft registrant, was sentenced to a combined sentence of 1 (one) year and 6 (six) months in prison: namely, for the offence from Article 217 of the FRY Criminal Code to one year and one year for grand larceny from Article 166, of the CC of Serbia because he wilfully deserted from his unit and appropriated a large quantity of goods in Kosovo.

The accused argued that on May 25, 1999 his superior told him that all other units had wilfully left their combat stations and that only their unit was left. Then someone said that they should also leave, which they did. As far as the thing were concerned, he said that "he found the things which Shqipetars had probably left when running away, and that he took them…" At the main hearing, the superiors of the accused confirmed that "the units of these soldiers have abandoned the frontline and that they were unable to stop them", and that "he did not order the soldiers to remain at their combat stations and return to their war duty station, because he left with them".

The appeal of the accused was rejected, but the special motion for commutation of sentence was granted so that a combined sentence of 8 (eight) months was pronounced to the accused because he had returned to his war unit and because he also had certain mental problems.

❖

3. The accused D.Z., 43 years old, a farmer and draft registrant was sentenced to 1 (one) year and 6 (six) months in prison for leaving his unit on two occasions – once for 7 hours (April 9, 1999) and once for 4 days (April 11 to 15, 1999).

In his defence the accused stated that the first time he went on a binge to different city cafes and the second time he went to see his family and girl-friend and ended up in a cafe.

The Supreme Military Court granted the appeal of the accused and reduced his prison sentence to 1 (one) year.

❖

4. The accused I.T., 38 years old, a locksmith and draft registrant was given a suspended sentence for wilfully leaving his unit on two occasions – the first time on April 12, 1999 for 2 hours and the second time on April 27, 1999 for 3 hours.

In his defence the accused stated that the first time he went to a shop some 50 meters from his unit to have a beer, and the second time he went home to help his wife take up some things from the cellar and then stopped at a restaurant for a drink. The Court determined that the accused was a good and conscientious soldier.

The Supreme Military Court confirmed this sentence.

❖

5. The accused D.S., 43 years old, unemployed and draft registrant was sentenced to 3 (three) months in prison for wilfully leaving his unit on May 19, 1999, going home and returning to his unit after 8 hours of absence.

The accused stated that he was a farmer with a wife and three children who were left without any means of livelihood. He was forced to go home in order to do some work in the fields.

The case is still in the Supreme Military Court.

❖

6. The accused Dj.P., 49 years old Albanian, a waiter and a draft registrant, was convicted to 10 (ten) months in prison for failing to return to his unit after his approved leave of absence from the unit till April 14, 1999.

The accused defended himself by saying that apart from mistrust and troubles he suffered on the part of his fellow-nationals, he had been frequently called-up and always answered the call, so that he even spent some time in the war theatre. As a result of a traffic accident, he had frequent headaches and loss of balance, and the approval to report to the lower-instant military-medical commission, but stayed at home.

❖

7. The accused N.R, 21 years old, an unemployed worker and a draft registrant was sentenced in absentia to 6 (six) months in prison for deserting from his military unit. He is serving his sentence as of February 25, 2000. The first instance court allowed the review of proceedings, issued the indictment, interrupted the execution of punishment and ordered detention until the end of the principal process. Criminal proceedings are underway.

❖

8. The accused B.K., 23 years old, an unemployed worker and a draft registrant, with previous convictions was sen-

tenced to 1 (one) year in prison for wilfully leaving his unit on June 6, 1999.

In his defence, the accused said that he asked his superior officer for a two-day leave to visit his sick mother. As he did not get it, he wilfully left his unit. He reported only when he got the summons from the investigating judge. The Court determined that the accused was an exemplary soldier and a candidate for the squad leader, that he was an insufficiently mature person. But, the Court did not determine whether the accused had really asked permission to visit his sick mother.

The judgement is not final.

❖

9. The accused Z.R., 26 years old, a sales officer, doing his army service was given a suspended sentence for returning from the approved sick-leave on April 21, 1999, instead on April 11, 1999.

The accused claimed that a civilian surgeon from his home town extended his sick-leave up till April 23, 1999 which he reported to the military department. However, the department failed to inform his unit so that he had to return to his unit before his extended sick-leave was over. The Court confirmed the defence of the accused, determined that the accused had returned to his unit although he was still limping, as well as that he carried out all entrusted tasks without any objection, but refused to recognise the sick-leave granted by a civilian doctor.

❖

10. A 23 years old accused Moslem F.B., employed abroad, was sentenced in absentia to 7 (seven) years in prison for failing to return to his unit on April 30, 1999 from the approved leave.

❖

11. The accused D.S., 38 years old, a worker and a draft registrant, was convicted in absence to 7 (seven) years of prison for wilfully leaving his unit on April 6, 1999 and failing to return.

❖

12. The accused R.B., 27 years old, a Moslem doing his army service and a worker, was convicted in absence to 6 (six) years of prison for failing to return to his unit after the expiry of his approved weekend-leave on April 29, 1999.

❖

13. The accused N.K., 20 years of age, a Moslem doing his army service, was convicted in absence to 7 (seven) years of prison for failing to return to his unit on May 1, 1999 after the approved leave.

❖

14. The accused S.K., 28 years of age, doing his army service was convicted in absence to 8 (eight) years of prison because he never returned to his unit from the approved leave which expired on May 5, 1999.

❖

15. The accused M. Ž., 20 years of age, a worker doing his army service, was convicted in absence to 5 (five) years of prison for wilfully leaving his unit on April 2, 1999 and never returning.

❖

16. The accused M. Dj., 21 years old, a worker serving the army, was convicted in absence to 5 (five) years of prison for wilfully leaving his unit on March 30, 1999 and failing to return.

❖

17. The accused Moslem K.D., 22 years of age, a car-mechanic serving the army, was convicted in absence to 3 (three) years of prison for failing to return his unit from his approved leave which expired on May 1, 1999.

❖

18. The accused Moslem A.A., 21 years of age, a worker serving the army, was convicted in absence to 3 (three) years of prison for failing to return his unit from his approved leave which expired on May 10, 1999.

❖

19. The accused D.Š, 37 years of age, was convicted in absentia to 7 (seven) years of prison for failing to return from his approved leave which expired on May 4, 1999 and never returning to his unit.

❖

20. Reserve sergeant D.T., 43 years of age, a worker, was charged for wilfully leaving his duty on May 19, 1999 and returning on May 20, 1999. Charges against him were rejected because it was determined at the main hearing that the accused left his unit with an orderly permission.

CONCLUSION:

A large number of criminal cases has not been resolved. These cases are like a sword of Damocles hanging over the heads of many young people. A number of these young men fear that these criminal proceedings might be (ab)used for political purposes. The campaign for legal conclusion of these cases should be intensified: (1) by staying criminal proceedings, if the indictment has not been issued; (2) by staying, i.e. suspension of the execution of final court judgements; (3) by increased pressure on the public opinion for the adoption of the Amnesty Law in order to immediately release all imprisoned persons.

August, 2000.

Izveštaj Centra za antiratnu akciju

po projektu *Oči boje fronta*,
o licima koja se nisu odazvala vojnom pozivu
ili su pobegla iz Vojske Jugoslavije tokom nato
intervencije u SR Jugoslaviji

Centar za antiratnu akciju uspešno je okončao rad na projektu *Oči boje fronta*. Projekat je imao velikog odjeka u javnosti, a sa dobijenim rezultatima posebno su upoznati mediji, druge nevladine organizacije i eksperti.

Projekat je otpočeo je da se realizuje 1. aprila 2000. godine i trajao je do 1. oktobra 2000.godine, znači šest meseci.

Istraživanje sprovedeno u okviru Projekta imalo je za osnovni cilj da, što je moguće preciznije, utvrdi koliko lica se nije odazvalo vojnom pozivu i koliko se samovoljno udaljilo iz jedinica Vojske Jugoslavije za vreme NATO intervencije u SR Jugoslaviji. Pored toga, cilj Projekta je bio i da se posebno prouči nekoliko desetina karakterističnih slučajeva, kako bi se sagledale okolnosti pod kojima je protiv ovih, uglavnom mladi ljudi, vođen krivični postupak i kako bi im Centar, na najcelishodniji način, organizovao pružanje pravne i humanitarne pomoći.

Prvi korak u istraživanju je bio da se, što preciznije, utvrdi broj lica koja su krivično gonjena, jer se nisu odazvala vojnom

pozivu i time izbegla vojnu službu (član 214. Krivičnog zakona Jugoslavije – KZJ) i jer su se samovoljno udaljila iz Vojske Jugoslavije (član 217. KZJ). Ova dva krivična dela trebalo je sagledati u vezi člana 226. KZJ, odnosno kažnjavanja za krivična dela koja su izvršena za vreme ratnog stanja ili u slučaju neposredne ratne opasnosti.

Stvarno nadležni sudovi za navedena krivična dela su vojni sudovi. U skladu s Zakonom o vojnim sudovima, ovi sudovi sude svim licima, prema tome i civilima, za krivična dela iz čl. 201-236 KZJ, znači i za krivična dela 214. i 217 KZJ, u vezi sa krivičnim delom iz čl. 226. KZJ.

Istraživanje je obuhvatilo celu teritoriju SR Jugoslavije koju pokrivaju tri prvostepena vojna suda, koji se nalaze u Beogradu, Nišu i Podogorici. Za vreme trajanja ratnog stanja, a to je bilo od 25. marta 1999. do 24. juna 1999. godine, organizacija ovih sudova je promenjena. Tri postojeća prvostepena vojna suda prestala su s radom, a pri određenim vojnim jedinicama formirano je 20 ovih sudova. Pored toga, osnovana su i dva odeljenja Vrhovnog vojnog suda. Po prestanku ratnog stanja, svi krivični predmeti su raspoređeni u pomenuta tri prvostepena vojna suda. Ovo je istraživački posao učinilo složenijim i dugotrajnijim.

Dodatnu otežavajuću okolnost u istraživanju predstavljala je i činjenica da nadležni organi ni do danas nisu prezentovali podatke o broju poslatih vojnih poziva neposredno pre i za vreme NATO intervencije, kao ni o broju lica koja se nisu odazvala ovim pozivima. U javnosti je samo plasiran neodređen podatak da je broj lica koja se nisu odazvala vojnom pozivu "beznačajan".

Istraživanjem u okviru Projekta došlo se do podataka da je za krivično delo neodazivanja pozivu i izbegavanja vojne službe

iz čl. 214. KZJ, a u vezi s čl. 226. KZJ, optuženo oko 7.000 lica, dok je za krivično delo samovoljnog udaljavanja i bekstva iz Vojske Jugoslavije iz čl. 217. KZJ, a u vezi s čl. 226. KZJ, optuženo oko 700 lica. Istraživanjem je utvrđeno da je do završetka trajanja ratnog stanja pravosnažno okončano oko 970 predmeta, ali da veliki broj preostalih predmeta i danas još uvek nije konačno rešen, jer su u toku postupci po žalbi, kao i molbi za pomilovanje. Dinamika presuđivanja po ovim predmetima značajno je usporena, što ukazuje na nesigurnost sudskih organa u pogledu daljeg postupanja i odlučivanja, a time i prvazilaženja ovog širokog društvenog problema.

Postupanje prvostepenih vojnih sudova bilo je različito, odnosno kaznena politika nije bila ujednačena. Ovo je posebno bilo izraženo u prvim danima sudovanja, kada su vojni sudovi izricali drastične kazne, kako radi uticaja na odziv vojnih obveznika, tako i zbog neiskustva. Tako na primer, prvostepeni sudovi su licima koja su se u bilo koje vreme vratila u vojnu jedinicu, izricali kaznu zatvora u trajanju uglavnom od godinu dana za krivično delo iz čl. 214. stav 2. KZJ. Razlog za ovo leži u činjenici što su vojni tužioci, po pravilu, sve obveznike koji nisu došli u ratnu jedinicu optuživali za teži oblik krivičnog dela, znači za skrivanje, iako za to nisu imali nikakve pouzdane dokaze. Time su svesno izbegavali primenu odredbe iz. čl. 214. stav 1. KZJ (nedolazak bez opravdanog razloga..), odnosno opredeljivali su se za teži oblik krivičnog dela koji je utvrđen u stavu 2. istog člana (krije se da bi izbegao obavezu...). U ovom drugom slučaju nije se mogla izreći kazna manja od jedne godine zatvora.

Dodatni problem za ova lica predstavljala su i javna obećanja sudija da će im te kazne biti oproštene posle rata, donošenjem zakona o amnestiji ili pomilovanjem. Nažalost, do

toga nije došlo, a kako su se ti ljudi osećali i kako su mogli da izvršavaju ratne zadatke na koje su bili upućivani odmah po izricanju kazne, može se samo pretpostaviti. Takve kazne zatvora više se nisu mogle ublažiti u postupku vanrednog ublažavanja, jer se radi o delima za koja se ni ublažavanjem ne može izreći kazna blaža od jedne godine zatvora (čl. 214. stav 2. i 3. u vezi sa čl. 226. stav 2. i 3. KZJ). Tako su ova lica, zbog pogrešne pravne kvalifikacije dela od strane vojnoih sudova, dovedena u bezizlaznu situaciju.

Pored ovog, karakteristično je i da su sudovi u Srbiji i Crnoj Gori različito postupali. Tako su prvostepeni sudovi u Srbiji, po pravilu izricali kazne zatvora u trajanju od jedne godine za krivična dela iz čl. 214. stav 1. i 2. i čl. 217. stav 1. i 2. KZJ, dok su se sudovi u Crnoj Gori opredeljivali za lakši oblik ovih krivičnih dela, znači za čl. 214. stav 1. i čl. 217. stav 1. KZJ, te su izricali kazne zatvora u trajanju od 3 do 6 meseci. Zajedničko im je bilo da su licima u odsustvu, a to su lica koja su po pravilu otišla u inostranstvo, izricali visoke kazne zatvora, u proseku od 6-7 godina.

Kasnije, Vrhovni vojni sud je zauzeo kriterijume u cilju ujednačavanja kaznene politike, ali se ni tada nije vodilo dovoljno računa o istinskoj idividualizaciji kazne.

Istraživanjem u okviru Projekta posebno su obrađena i proučena 43 karakteristična predmeta sa područja sva tri vojna suda, i to 23 predmeta po osnovu člana 214. KZJ i 20 po osnovu člana 217. KZJ. Proučeni su sudski spisi ovih predmeta i obavljeni razgovori sa osuđenim licima i njihovim braniocima. Centar je bio spreman da ovim osuđenim licima pruži pravnu pomoć. Međutim, sva ova lica su imala obezbeđenu pravnu pomoć i bili su zainteresovana samo za prijem humanitarne pomoći. Od navedena 43 predmeta, Centar je izabrao 20 predmeta, znači 20

osuđenih lica, za dodelu humanitarne pomoći. Dominantni kriterijumi za izbor osuđenih radi dodele humanitarne pomoći bili su: okolnosti izvršenja dela i vođenja krivičnog postupka, stepen iskazanih građanskih i političkih uverenja, kazna koja im je izrečena, visina troškova koje su u toku sudskog postupka imali kao i njihovo, odnosno porodično imovinsko stanje.

Na projektu su radila tri pravnika i više saradnika, odnosno istraživača. Prvu ocenu projekta dali su upravo oni koji su radili na njegovoj realizaciji. Njihova zajednička ocena je da su ispunjeni zadaci postavljeni predlogom projekta. Drugu ocenu dali su nadležni organi Centra koji su prevashodno konstatovali da predmetna pitanja projekta ne smeju da budu tabu tema našeg društva, već da o tome treba govoriti otvoreno, javno i argumentovano. Centar je zaključio da je ovaj vrlo značajan projekat izveden u veoma teškim uslovima i da su kroz samostalno organizovan istraživački rad prikupljeni odgovori koji u velikoj meri osvetljavaju predmetni problem. Imajući u vidu činjenicu da nadležni državni organi nisu objavili nikakve korisne i upotrebljive informacije, kao i da druge nevladine organizacije i pojedinci nisu izvršili slična istraživanja u ovom obimu, Centar smatra da je ovaj projekat dao odgovore na postavljene zadatke i time ispunio svoje ciljeve.

Razmatrakući ovaj složen društveni problem, Centar je sagledao sve iznete okolnosti i činjenice, te je konstatovao da je trenutno najaktuelniji problem taj što veliki broj mladih ljudi čeka na izvršenje izrečenih kazni i što nadležni organi ne nagoveštavaju donošenje Zakona o amnestiji u cilju prevazilaženja tog problema.

Imajući sve izloženo u vidu, naročito u kontekstu ukupnog društvenog stanja u SR Jugoslaviji, Centar se opredelio za nastavak rada u predmetnoj oblasti i u tom cilju sprovodiće odgovarajuće aktivnosti, i to:

- 1. da zajedno s drugim nevladinim organizacijama predvodi kampanju koja će imati za cilj da se u Srbiji hitno donese zakon kojim bi se amnestirali svi zatvoreni i obustavali svi sudski postupci i time neutralisao ovaj veliki društveni problem. Ukoliko se Zakon ne donese u razumnom roku, ova kampanja će da preraste u svojevrstan pritisak na režim.

  Ovo tim pre što je Centar predlagao i podržao donošenje Zakona o amnestiji Crne Gore (novembra 1999), kojim su oslobađena od krivičnog gonjenja i izvršenja krivičnih sankcija po pravosnažnim presudama, sva ona lica koja su u periodu 1.6.1998.–30.6.1999. godine, izvršila i krivična dela iz čl. 214. i 217. KZJ.

- 2. da zajedno s drugim nevladinim organizacijama predvodi kampanju za usvajanje neophodnih zakonskih promena kojim bi se u potpunosti i bez ikakve diskriminacije stvorili uslovi za korišćenje ustavnog prava na prigovor savesti. Time bi se omogućila realizacija prava na civilno služenje vojne obaveze. U ovom slučaju, Centar će se zalagati za nametanje shvatanja da se prigovor savesti podnosi iz uverenja, a ne zbog kukavičluka ili iz interesa.

- 3. da nastavi s praćenjem predmetne problematike i socijalne situacije, s ciljem daljeg pružanja pravne i humanitarne pomoći.

Po uspešnom završetku rada na projektu, sačinjen je ovaj izveštaj.

Tekst projekta i izveštaja prevedeni su na engleski i francuski jezik i publikovani su.

Report of the Center for Antiwar Action

on the project
Eyes the colour of the frontline,
about the persons who evaded the draft or deserted from the Yugoslav Army during the NATO intervention in the FR of Yugoslavia

The Center for Antiwar Action has successfully completed its work on the Project *Eyes the Colour of the Frontline*. The Project attracted great attention of the public, while the media, other non-governmental organisations and experts were specially informed on its results.

The work on the Project started on April 1, 2000 and was completed on October 1, 2000; i.e. it took six months for preparation.

The research carried out within the Project was basically targeted at the most precise possible determination of the number of persons who failed to respond to their draft call and persons who wilfully deserted from the Yugoslav Army units during the NATO intervention in the FR of Yugoslavia. Apart from that, the Project objective was also to study several dozen characteristic cases in order to establish circumstances under which criminal

proceedings were initiated against these mostly young men, so that the Center could organise the most appropriate provision of legal and humanitarian assistance.

The first step in this research was to determine as precisely as possible the number of persons who were criminally prosecuted for failing to respond to the call-up and thereby evaded military service (Article 214 of the Criminal Code of Yugoslavia – CC) and for wilfully deserting from the Yugoslav Army (Article 217, FRY CC). These two criminal offences had to be observed in relation to Article 226 of the FRY Criminal Code, i.e. punishment of criminal offences committed during the state of war or in case of an immediate threat of war.

The military courts are competent for the mentioned criminal offences. Under the Law on Military Courts these courts prosecute all persons, including civilians, for criminal offences from Articles 201-236 of the FRY Criminal Code, meaning that they are in charge of trying criminal offences from Articles 214 and 217 of the Criminal Code of FRY related to the criminal offence from Article 226 of the Criminal Code of FRY.

The research covered the entire territory of the FR of Yugoslavia, which is under the jurisdiction of three first-instance military courts located in Belgrade, Niš and Podgorica. During the state of war, which lasted from March 25, 1999 to June 24, 1999, the organisation of these courts was changed. The three existing first-instance military courts suspended their work, while 20 new such courts were established in specific military units. In addition, two Chambers of the Supreme Military Court were also established. After the suspension of the state of war, all criminal cases were distributed to the mentioned three first-instance military courts. This made this research more complex and time consuming.

An additional difficulty was posed by the fact that to this very day the competent authorities have neither presented data on the number of call-ups sent immediately before and during NATO intervention, nor on the number of persons who failed to respond to this draft call. The public was only vaguely informed that the number of persons who failed to respond to the call-up was "insignificant".

According to the findings of Project research some 7,000 persons were charged for the criminal offence of failing to respond to draft call and draft evasion from Article 214 of the Criminal Code of FRY in connection to Article 226 of the Yugoslav Criminal Code, while for the criminal offence of wilful departure and desertion from the Yugoslav Army from Article 217 of the CC of the FR Yugoslavia related to Article 226 of the CCY, some 700 persons were accused. The research established that until the end of the state of war a final judgement was handed down in some 970 cases, but that there remained a great number of unresolved cases because the submitted appeals or pardon petitions have not been decided yet. The pace at which these trials are progressing has been significantly slowed down, which points to the indecision of the judicial authorities as to which further course of action to take and decisions to make, and thus overcome this grave social problem.

The first-instance courts applied different procedures, or better said their punitive policy was not uniform. This was particularly evident in the first days of their work when Military Courts passed drastic sentences, partly in order to thus influence military conscripts to respond in larger numbers and partly due to the lack of experience. For example, persons who returned to their military units at any time, first-instance courts punished by one year in prison for the criminal offence from Article 214, para-

graph 2 of the Criminal Code of FRY. Reason for this is that Military Prosecutors, as a rule, charged all draft registrants who failed to report to their military unit for serious criminal offence, i.e. for hiding, although they had no reliable proof of that. Thereby they consciously avoided the application of provisions of Article 214, paragraph 1 of the Criminal Code of FRY (failure to appear without justified reason), or better said they choose to charge them for a more serious criminal offence specified in paragraph 2 of that same Article (hiding with an intention of avoiding draft). In such case it was impossible to pass more lenient sentence than one year in prison.

An additional problem for such persons were public promises given by the judges that these sentences would be forgiven after the war by the adoption of the Amnesty Act or that those sentenced would be pardoned. Regrettably, this did not materialise and we can only assume how those people felt and how capable they were of carrying out war assignments entrusted to them immediately after the pronouncement of their sentences. Such prison sentences couldn't be commuted in the special commutation procedure because the offences at issue were such that not even by way of commutation could a more lenient sentence be pronounced than one year in prison (for offences mentioned in Article 214, paragraphs 2 and 3 in connection with Article 226, paragraphs 2 and 3 of the Criminal Code of Yugoslavia). It has thus happened that these young people, due to the incorrect legal qualification of the offence by the Military Courts, found themselves in a hopeless situation.

In addition, it is characteristic that Courts in Serbia and Montenegro treated such cases differently. Consequently, for the most part, first-instance courts in Serbia pronounced sentences of up to one year on average for the criminal offences mentioned

in Article 214, paragraphs 1 and 2 and Article 217, paragraphs 1 and 2, of the CC of Yugoslavia, while courts in the territory of Montenegro, opted for less serious form of criminal offences, both from Article 214, paragraph 1 and Article 217, paragraph 1 of the FRY CC, and pronounced sentences from 3 to 6 months. The only thing common to courts from both Republics is that they pronounced heavy prison sentences averaging from 6 to 7 years to absent persons who, as a rule, went abroad.

Later on, the Supreme Military Court developed criteria for passing sentences with a view to making the punitive policy more uniform, but even then insufficient attention was devoted to individual aspects of punishment.

As a part of Project research we have particularly analysed and studied 43 characteristic criminal cases from the area under the jurisdiction of all three military courts, out of which 23 were tried under Article 214 of the Criminal Code of Yugoslavia and 20 on the basis of Article 217 of Criminal Code of Yugoslavia. We have studied court documents and conducted talks with the convicted persons and their defence counsels. The Centre was willing to provide legal assistance to all these convicted persons. However, legal assistance was already provided to all of them and they were only interested in ways of obtaining humanitarian aid. Out of the mentioned 43, the Center choose 20 cases, i.e. 20 convicted persons to receive humanitarian aid. The prevailing criteria in selecting the convicted persons to whom the humanitarian aid would be supplied were: circumstances under which the act was committed and the manner in which the proceedings were conducted, degree of demonstrated civic and political beliefs, the pronounced sentence, the amount of expenses they had during their trial, and their own, as well as their family's material situation.

The Project team included three lawyers and a number of associates, i.e. researchers. Those who worked on the Project were the first to give their opinion of it. Their common impression was that all tasks set in the Project assignment have been fulfilled. The Centre's competent authorities who, in the first place, thought that topics treated by the Project must not remain off limits in our society, but must be discussed openly, publicly and with arguments were the second to evaluate the Project. The Centre came to the conclusion that this important Project was carried out under very difficult conditions and that through independently organised research work it managed to gather data that shed more light on this subject matter. Bearing in mind the fact that the competent state authorities have not published any useful or practical information, nor that any other non-governmental organisation or individual have carried out research work of similar scope, the Centre has come to the conclusion that this Project has provided answers to tasks it was entrusted with and has thereby achieved its goal.

Studying this complex social problem, the Center has observed all presented circumstances and facts and came to the conclusion that at this moment the most acute problem is the fact that a great number of young people are still waiting to serve their pronounced sentences and that the competent authorities have not shown any intention to adopt the Amnesty Act, which would help to overcome this problem.

Bearing in mind all the above-presented facts, especially in the context of the overall social situation in FR Yugoslavia, the Center has decided to continue its work in this problem area and, to that end, to carry out the following activities:

- 1. Together with other non-governmental organisations, to launch a campaign aimed at the most urgent possible

adoption of the law in Serbia according to which all imprisoned persons would be pardoned and court proceedings stayed and by which this major social problem would be neutralised. Unless this law is passed within a reasonable time limit, the campaign would be transformed into a special kind of pressure on the regime.

The more so as the Center proposed and supported the adoption of the Amnesty Act of Montenegro (in November 1999) under which all persons who between June 1, 1998 and June 30, 1999 committed criminal offences from Articles 214 and 217 of the FRY Criminal Code were acquitted from criminal prosecution and execution of criminal sanctions passed in binding judgements.

- 2. Together with other non-governmental organisations, to launch a campaign for the adoption of necessary legal changes, which would fully and without any discrimination, create conditions for the exercise of the constitutional right to conscientious objection. This would also ensure the exercise of the right of young men to perform their military service as civilians. In that case, the Center would exert its efforts for the conscientious objectors to be treated fairly for their beliefs, and not as cowards.
- 3. To keep monitoring this problem area and social situation so as to continue to provide the necessary legal and humanitarian aid.

This Report has been prepared upon the successful completion of the work on this Project.

Texts of the Project and Report have been translated into English and French and published.

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