

# BOSNIA-HERZEGOVINA

## Amnesty International's concerns in the case of Edin Garaplija

### Introduction

In view of the consideration by the Human Rights Chamber of Bosnia and Herzegovina of the application by Edin Garaplija (Case no. CH/00/6558, *Edin Garaplija v. the Federation of Bosnia and Herzegovina*), Amnesty International expresses its concern that criminal proceedings against Edin Garaplija, which commenced in 1996, violated his right to a full and fair hearing as guaranteed by international standards and national law.<sup>1</sup> Amnesty International is also concerned about the failure of the authorities to date to fully investigate human rights abuses committed by (para) military units under their control during the war. Allegations relating to these abuses have been raised, among others, by Edin Garaplija during the Supreme Court proceedings.

### Background

Edin Garaplija is a former officer of the Bosnian Federation intelligence agency AID (*Agencija za istraživanje i dokumentaciju*). In the spring of 1996 he was reportedly ordered by his superior officer to investigate Nedžad Herenda, a former member of the paramilitary formation *Ševe*, which had been active during the war in Bosnia-Herzegovina. Members of *Ševe* were suspected of having been involved in serious crimes, including human rights abuses in Sarajevo. The first stage of the operation involved the surveillance and documentation of Nedžad Herenda's movements and contacts; subsequently Mr Garaplija and his team were ordered to arrest and question him.<sup>2</sup> The investigation was conducted under cover as both the regular and the secret police forces were allegedly heavily infiltrated by former members of the *Ševe* or their associates; if details of the investigation became more widely known it was feared that the whole operation might collapse.

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<sup>1</sup> The overview and analysis of proceedings against Edin Garaplija are based on legal documents relating to the case, notably court records and the first instance judgment of the Sarajevo Cantonal Court of June 1997, the judgment of the Federation Supreme Court of May 1998, court records of the public part of the renewed appeal proceedings before the Supreme Court on 24 October 2000 and the judgement issued by the Supreme Court on that same day. In addition sources included the Human Rights Chamber's decision of 3 July 2000, the appeals filed by Mr Garaplija's defence lawyer against the Supreme Court's judgments in 1998 and 2000, his renewed application to the Human Rights Chamber, interviews with Edin Garaplija and his lawyer and media reports about the trial.

<sup>2</sup> The original order under which Edin Garaplija was operating states that an operation codenamed Eagle (*Orao*) was to be conducted, in two phases : firstly Nedžad Herenda was to be placed under surveillance and next he was to be arrested for "further operative processing". The order further mentioned that there were reasonable suspicions that he had perpetrated serious criminal offences such as terrorism and crimes under international law and that the operation should be conducted under cover in the interests of further investigations into criminal offences. English translation (the Bosnian version not being available to Amnesty International) of AID Order dated 10 June 1996, no. 04-27/96, re: 17-18/96, signed by Kemal Ademović, Director.

On 25 June 1996 Mr Garaplija and four other officers detained Mr Herenda in Sarajevo. He was first detained in a house rented by AID in the Sarajevo quarter of Bjelave. During 25 June the AID director instructed Edin Garaplija to move Mr Herenda to another location, as other AID officials had become aware of his arrest and it was thought they might jeopardize the investigation. Mr Herenda was subsequently taken to a privately-owned house (belonging to a relative of one of Mr Garaplija's colleagues) on the outskirts of Sarajevo near Butmir airport.

On 28 June 1996 and in the early hours of 29 June, Mr Herenda was reportedly shot. The circumstances and number of times he was shot remain in dispute (see below). On 29 June he was reportedly taken to a highway north of Sarajevo where he was left, again in circumstances which remain disputed between the parties. A regular police patrol picked him up shortly thereafter, apparently by arrangement, and took him to the Koševo hospital in Sarajevo.

On 2 July 1996 Edin Garaplija and one of his colleagues were arrested by regular police on suspicion of the kidnapping and attempted murder of Nedžad Herenda. Three days later police arrested a third AID officer who had been involved in the detention. For the duration of the investigation Edin Garaplija claims he was held in virtual incommunicado detention and was only allowed occasional visits from his mother and the lawyer representing him who was provided by AID.

## **Criminal proceedings before the Sarajevo Cantonal Court and Federation Supreme Court**

### **Summary of prosecution case**

In December 1996 the Sarajevo Public Prosecutor charged Edin Garaplija with abduction and attempted murder.<sup>3</sup> More specifically, Edin Garaplija was charged with having abducted and detained Nedžad Herenda for three days, shooting him in the head with the intention of killing him and then leaving him in a "septic hole" in a destroyed building along a road outside Sarajevo. Two other members of AID were also charged.

The prosecution's case was based primarily upon the testimony of Nedžad Herenda, who testified in the capacity of damaged party (*osteženik*). He stated that on 26 June Edin Garaplija and the two co-defendants had stopped him at gunpoint in the Ciglane neighbourhood in Sarajevo. After they had searched and handcuffed him he was ordered to get into a dark-coloured BMW, in which they drove to a house in the Bjelave quarter where Edin Garaplija started questioning him about his knowledge about the Ševe formation. Shortly afterwards they moved him to another house near the airport where he was held until the early hours of 29 June. Mr Herenda said that while he was in their

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<sup>3</sup> Articles 50(1) and 36(2)(4) respectively of the Criminal Code then in force

custody, he was subjected to various forms of ill-treatment by the accused and an unknown fourth man. They allegedly punched him, suspended him from his handcuffed wrists from radiator pipes on the wall so that his feet only barely touched the ground, burnt the soles of his feet with a lighter, and broke two of his fingers. One of the accused, Haris Pezo, allegedly hit him over the head with the silencer of his handgun, a Colt Magnum. Nedžad Herenda also claimed that he was subjected to psychological threats and intimidation.

Nedžad Herenda also said that, during the day of 28 June, one of the accused fired two bullets at his right knee, and just before dawn of the 29 June, Edin Garaplija fired two shots at him from an automatic handgun, aiming for his head. During the second shooting the gun apparently malfunctioned and Mr Herenda received superficial injuries to the head from bullet particles and parts of the gun's silencer<sup>4</sup>. He was subsequently taken from the house by car, wrapped in a blanket and dumped in a pit, described as a "septic hole" in the ruins of a destroyed café along the road some 15 kms outside Sarajevo. Nedžad Herenda believed the hole to be about one square metre and more than 1.75m (his own height) deep. In spite of his injuries he managed to crawl out of this hole and made his way to the main road where he subsequently stopped a police patrol which took him to hospital.

A forensic expert who had examined Nedžad Herenda several weeks after the detention testified at the trial. The expert stated that the victim had injuries to his head, which the expert assumed to have been caused by silencer and bullet particles, and serious injuries to his right knee. Furthermore there were other less serious injuries on the body, the cause of which the expert could not establish with certainty not knowing the full circumstances under which the victim had sustained them. The expert was unable to confirm that the victim's fingers had been broken as he only found "subjective evidence" (namely a reduced mobility of the little finger of the left hand in comparison to the right hand) of such injury. The other injuries which the victim claimed to have suffered had not been recorded by the hospital staff as Nedžad Herenda said that he had not sought treatment for them because of the more serious injuries caused by the shooting. A second medical expert testified that during a CT scan taken around November 1996, it was found that Nedžad Herenda had a skull fracture and that a piece of metal was lodged inside the bone in the back of his head. According to a ballistics expert, the metal particles found on the victim's head and hair were part of a silencer and a bullet believed to be of the same or similar calibre as that of the bullet removed from the victim's knee.

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<sup>4</sup> Amnesty International was informed that the gun, a 7.65 Skorpion machine pistol, was handed over to one of Mr Garaplija's superiors who had been called to the scene of the shooting on the 29 June. It subsequently went missing and could therefore not be forensically examined.

### Summary of defence case

Edin Garaplija exercised his right to remain silent during the investigation by the Sarajevo Cantonal Court investigative magistrate. Edin Garaplija's defence lawyer explained at trial that his client's decision to remain silent during the investigation was motivated by his wish to protect the Federal intelligence agency he worked for and therefore only after the agency had become involved in the proceedings did he testify in his defence. During the trial hearing Edin Garaplija testified that he had been on a business trip to Tuzla during the relevant period. One of Edin Garaplija's superior officers in AID also told the court that during the first half of 1996 Edin Garaplija had participated in counter intelligence operations in Tuzla; however this witness stressed that he could not, with any certainty, state whether Mr Garaplija had been in Tuzla during the whole time period in question.<sup>5</sup>

The defence challenged prosecution claims that Mr Herenda had been ill-treated while he was detained and before he was shot, arguing that there was no medical evidence to support the claims. They requested another medical expert be called in order to clarify the cause and nature of the victim's head injuries.<sup>6</sup> The defence also argued that there were inconsistencies between the medical evidence and the victim's description of how he was thrown into the hole and the absence of injuries which he would have sustained.<sup>7</sup>

The defence countered the charge that the three accused had jointly committed the crimes of abduction and attempted murder arguing that the prosecution had not submitted any evidence demonstrating that an agreement or a joint plan existed between the accused which showed their intent or wish to commit the crimes, or an agreement to divide the tasks between them in order to realize these goals.

The court rejected Edin Garaplija's alibi and physical evidence submitted in its support, which it considered to have been falsely constructed by the accused and which was contradicted and negated by a number of other witnesses. The court accepted the testimony of the victim in full, considering it to be convincing and credible as well as supported by testimony of other witnesses, material evidence and expert testimony. Consequently the court found that the three accused had acted in concert in carrying out

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<sup>5</sup> This witness, FM, who testified on 6 May 1997, towards the end of the trial, had apparently been present during all of the previous court hearings, which is not normally permitted in domestic criminal procedure (see Article 319 (2) of the Federation Code of Criminal Procedure). He had also been partly involved in the investigation phase of the proceedings against Edin Garaplija.

<sup>6</sup> The request was rejected by the court, arguing that a forensic expert had already given his opinion on the head wound and that further testimony would be superfluous (*suvišno*).

the abduction, and that Edin Garaplija had fired two shots at the victim from a distance of less than 1m “with the intention to kill him and thereby conceal the evidence of the criminal offence of abduction”.<sup>8</sup> Haris Pezo was convicted of inflicting serious bodily harm in connection with his having fired two shots at Mr Herenda’s knees.<sup>9</sup>

In May 1998 the Federation Supreme Court rejected appeals, filed by Edin Garaplija’s defence lawyer against the conviction and sentence, and confirmed the judgment of the Cantonal Court. Despite his request to attend appeal proceedings in order to present new evidence to the appeal court, Edin Garaplija was not allowed to do so. Subsequently, in September 1998, Mr Garaplija engaged another lawyer who reportedly requested a review of the legality (*zahtjev za zaštitu zakonitosti*) of the case which was rejected by the Federal Prosecutor. His request to have criminal proceedings renewed was also rejected by the Cantonal Court.<sup>10</sup>

#### **Human Rights Chamber decision of July 2000**

In September 1998 Edin Garaplija filed a complaint with the Human Rights Chamber for Bosnia and Herzegovina, alleging that his rights to a fair trial as guaranteed by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) had been violated. The Human Rights Chamber held, in July 2000, that the fact that Edin Garaplija had not been allowed to attend his appeal violated Article 6, Paragraphs 1 and 3(c).<sup>11</sup> The Chamber concluded that, under domestic criminal procedure, the Supreme Court had jurisdiction to review the first instance decision both on points of law and fact. The appellant had challenged the factual findings of the Cantonal Court and had requested to present new evidence to the appeal court, and the Chamber considered that under the provisions of the ECHR he had the right to do so. The Chamber found that Edin Garaplija was denied the right to attend appeal proceedings in his case without reasonable justification, which violated the rights guaranteed to him under Article 6, and ruled that appeal proceedings should be renewed.

#### **Renewed appeal proceedings**

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<sup>8</sup>Cantonal Court judgment of June 1997, page 2.

<sup>9</sup> Article 42(1) of the Criminal Code. Both Haris Pezo and Refik Muran were acquitted of the charge of attempted murder.

<sup>10</sup>See Decision on Admissibility and Merits, delivered on 6 July 2000. Case no. CH/98/934; *Edin Garaplija against the Federation of Bosnia and Herzegovina*, paragraph 22.

<sup>11</sup> *Ibid.*

Consequently, renewed appeal proceedings in the case against Edin Garaplija, Haris Pezo and Refik Muran were held on 5 October and 24 October 2000. On 5 October the Supreme Court decided that both Haris Pezo and Refik Muran were not adequately represented and adjourned the session. The Supreme Court was also asked by defence counsel for Edin Garaplija to exclude one of the judges on the panel as there were allegations that he had been in recent contact with AID officials. The Supreme Court rejected this request as unfounded.<sup>12</sup>

Prior to the 5 October 2000 session, Amnesty International urged the Federation authorities that Edin Garaplija be allowed to attend appeal proceedings in his case - after having received information which indicated that he might not be given permission to be present. The organization also expressed the view that, in the interests of fairness and impartiality, the panel of judges hearing the appeal should not consist of the same judges who heard Edin Garaplija's appeal in 1998.<sup>13</sup> However on both days of the appeal sessions, the composition of the panel of judges remained unchanged. Edin Garaplija was present at both sessions.

On 24 October 2000, the Supreme Court conducted a second appeal session and allowed all three defendants to present their cases. During this session, Edin Garaplija made a statement of several hours' length in which he gave detailed information about the investigation against Nedžad Herenda and the *Ševe*. He alleged that the *Ševe* had been engaged in a series of criminal offences since its formation, ranging from drug and weapon smuggling to the unlawful killing of Serb prisoners of war and civilians in Sarajevo during the 1992-1995 siege. These alleged crimes included the summary execution in May 1992 of a group of some 12 Serbs (some of whom were reported to be civilians) and sniping operations on civilians in Serb-held parts of Sarajevo. The *Ševe* were also allegedly involved in a bomb-attack with the intent to kill the then-commander of the Bosnian government army, General Sefer Halilović. The General was not at home, however his pregnant wife and brother were killed as a result of the attack. Moreover, it became apparent that Bosnian government officials in Sarajevo, both in the Interior Ministry as well as in the Presidency of the then Republic of Bosnia and Herzegovina, had been aware of these crimes but had failed to investigate them and bring those responsible to justice. Edin Garaplija stated that he handed a written record of the interrogation of Nedžad Herenda over to his superiors, as he was obliged to do under the regulations of the agency.

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<sup>12</sup> Decision of the Supreme Court (No. Su 423/00), 5 October 2000.

<sup>13</sup> See *Bosnia-Herzegovina: Supreme Court should hear Garaplija*; Amnesty International Press release, 4 October 2000, AI Index EUR 63/011/2000.

Edin Garaplija insisted that he had acted upon the orders of his superior - the director of AID -, and denied that he or his men had in any way ill-treated Mr Herenda while he was in their custody. According to him a firearm had been used when the officer guarding Mr Herenda fired at his lower legs when he was attempting to escape. Mr Garaplija, who claimed that he was not present in the house at this point, was thereafter notified and returned to the house. He immediately notified his own superior about the shooting. He also ordered the guard who fired the shot to submit an official report about the shooting to his supervisor. Mr Herenda was driven to the main road and left there, admittedly to be picked up by a regular police unit, which had apparently been previously notified about the incident and which took him to a first aid clinic and subsequently to the Koševo hospital in Sarajevo. Immediately after he arrived in the Sarajevo hospital, he was reportedly visited by two AID officers,<sup>14</sup> one of whom was allegedly a former member of the *Ševe*. He denied shooting Nedžad Herenda in the head, stating that it was his responsibility to protect the life of a “key witness”. He also underlined that the police investigation into the shooting was flawed: the weapon used was not examined and he was not subjected to routine paraffin tests.<sup>15</sup>

Both Haris Pezo and Refik Muran stated in their testimony to the court that they agreed with the testimony of Edin Garaplija which described the events. Haris Pezo admitted that he had fired two shots at Nedžad Herenda, aiming for his lower legs and injuring him in the knee, when Mr Herenda allegedly made an attempt to escape. Immediately afterwards he rang Edin Garaplija, who returned to the house and ordered him to report the shooting in writing to his superior in AID.

The defence further disputed the allegation that after the shootings Mr Herenda had been thrown into and climbed out of a septic hole. They cited the absence of forensic evidence (traces of blood etc) at the very narrow opening of the hole - which measured around 35 by 66 cm - and the difficulty a seriously injured person would have had to get out of the hole which was allegedly around 1.90 m deep.<sup>16</sup>

As to his alibi, Edin Garaplija testified that while he was in investigative detention, he was ordered not to reveal any details of the operation conducted against Nedžad Herenda, as he was bound by the law regulating AID not to disclose operational details, and that he was also threatened that he and his family would lose their lives if he were to

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<sup>14</sup> *Slobodna Bosna*, 23 November 2000, “Šokantna ispovijest bivšeg AID-ovca Šoka”.

<sup>15</sup> Transcript of Supreme Court session of 24 October 2000, pages 18-19.

<sup>16</sup> During an inspection at the site of the hole on 29 June 1996, a police officer, who was taller and younger than Mr Herenda, got into the hole and was not able to climb out without help from others.

disobey. He was subsequently instructed to present an alibi constructed for him by AID regarding the Tuzla business trip.

The lawyers for all three accused repeated their request for the 1997 verdict of the Cantonal Court to be quashed, as it was based primarily on the testimony of one witness (Ned)ad Herenda). They asked that the facts of the case be re-established, taking into account their new testimonies. The defence asked that proceedings be remitted to the court of first instance, in order that the Cantonal Court conduct a new examination and evaluation of new evidence presented by the accused and by other witnesses they proposed to call.<sup>17</sup>

During the proceedings in the Supreme Court on 24 October 2000, the Federation Deputy Public Prosecutor stated that, in his opinion, the court of first instance had established the factual circumstances of the case correctly and completely. He therefore maintained the position that the appeals of the defendants be rejected as unfounded. In addition the Public Prosecutor indicated that the prosecution of individuals formerly involved in the *Ševe* formation had been initiated “as of today”.<sup>18</sup>

Following the Federal Prosecutor’s statement, the Supreme Court retired to a closed session and rendered its judgment, dated 24 October 2000, which was reportedly received by Edin Garaplija’s defence lawyer one month later. In contrast to the Cantonal Court the Supreme Court found Edin Garaplija, Haris Pezo and Refik Muran guilty of ill-treatment in the course of duty (Article 54 of the Criminal Code); in addition Edin Garaplija was found guilty of attempted murder (Article 36, (2)(4)) and Haris Pezo of inflicting serious bodily harm (Article 42(1)). Edin Garaplija was ordered to serve a total of seven years’ imprisonment while his co-defendants received sentences of up to

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<sup>17</sup>Edin Garaplija’s defence lawyer listed these as : Enver Mujezinović and Irfan Ljevaković (former officers in the Yugoslav and Bosnian security services, who were involved in the criminal investigation against Garaplija); Lušija Faik (the deputy Interior Minister at the time of the events, regarding why investigators did not conduct paraffin glove and ballistic tests into the shooting; Bakir Alispahic (former Interior minister, and former chief of the Sarajevo Centre for the Security Services - CSB - regarding the establishing *Seva* formation); Fikret Muslimović (former commander of the security services in the Sarajevo military region) and Jusuf Jašarević (former chief of security of the Bosnian Government Army - *Armija Bosne i Hercegovine* - on how the AbiH used the formation); Alija Izetbegović (former Presidency chairman and member during and after the war about his knowledge on the *Seva*); Senad Pečanin (editor-in-chief of the independent Sarajevo weekly *Dani* regarding a document published by him which allegedly ordered the liquidation of Sefer Halilović); Munir Alibabić, former Chief of the Sarajevo CSB who was fired in 1994 when he presented the Presidency with a written report about illegal activities of *Seve* saying they should be brought to justice; Hasan Pervan and Kemal Čopra (the fourth and fifth member of the team which had arrested and detained Mr Herenda). It was also requested that Ned)ad Herenda be heard again.

<sup>18</sup> Transcript of Supreme Court session, page 17.



four-and-a-half years' imprisonment. No other changes were made to the judgment of the court of first instance. Edin Garaplija was provisionally released from prison on 2 August 2001.

### **Concerns about the judgment of the Supreme Court**

Amnesty International is concerned about aspects of the proceedings before the Supreme Court.

#### **1. Judicial panel**

The appeal proceedings in the case of Edin Garaplija were conducted by the same panel of Supreme Court judges which had considered and rejected his earlier appeal in 1998. Amnesty International notes that on 5 October 2000, the lawyers for the accused raised allegations that one of the judges on the panel had - prior to both the 1998 and the 2000 appeal proceedings - been contacted by AID officials. These officials are alleged to have given the judge instructions on how to decide the case against Edin Garaplija.

The request by Edin Garaplija's lawyer that the judge be recused from the proceedings was rejected by the President of the Supreme Court (who was not on the panel) on that same day. The President concluded that there was no evidence to substantiate the allegations, and that in order to find that a judge lacked impartiality it must be shown that the judge had acted in a biased way.<sup>19</sup> In view of the importance not only of actual, but also of perceived impartiality of the appeal court, Amnesty International questions whether in these circumstances a new panel should have been appointed.

#### **2. Consideration of additional evidence**

Amnesty International is concerned about the decision of the Supreme Court not to allow the full and fair hearing of additional evidence which the accused sought to present. The organization is also concerned that the reasons underlying this decision were not clearly set out in the Supreme Court's October 2000 judgment.

The Supreme Court judgment stated (in its explanatory section) that, in giving effect to the Human Rights Chamber's order to repeat appeal proceedings, it had decided not to hold a "hearing" (*pretres*) - at which new evidence could be presented and examined. Instead the Supreme Court chose to conduct a "session" (*sjednica*),<sup>20</sup> at which

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<sup>19</sup> Decision of the Federation Supreme Court, No. Su:423/00, 5 October 2000, signed by Suada Selimović, President of the Supreme Court.

<sup>20</sup> There is a significant difference between an appellate court conducting a hearing rather than a session, since in a hearing the court may establish the facts (different from those found by the court of first instance), and examine (new) evidence through the questioning of witnesses.

the accused could present in a summary fashion the information that they sought have examined in a court. The court justified this decision by stating that, according to Article 367(1) of the Code of Criminal Procedure, a *hearing* could only be conducted if either new evidence would be presented or that evidence already presented would be repeated, because the court of first instance had erroneously or incompletely established the facts, or if there were legitimate reasons not to return the case to the court of first instance.<sup>21</sup> The Supreme Court did not consider that any of these conditions existed and therefore decided to only conduct an appeal *session* (according to Article 365 of the Criminal Code).<sup>22</sup>

The Supreme Court's decision on this issue is not consistent with the arguments presented by the lawyers for the accused, who explicitly challenged the factual findings of the court of first instance. They also sought to present and have examined new evidence by either the Cantonal Court or the Supreme Court.

In this regard, Amnesty International is concerned that the summary of the new evidence presented by Edin Garaplija and his co-defendants was not given due consideration by the appeal court, which refused to either hold a hearing in order to fully consider the new evidence or to remit the case to the court of first instance to reestablish the factual situation, taking into consideration the new evidence.

### **2.1 Denial of the opportunity to call and examine witnesses**

The Supreme Court judgment did say that there was no need to call the witnesses proposed by the defence, because none of them had been eye witnesses to the events.<sup>23</sup> However Amnesty International is concerned that this conclusion did not take into account the fact that among the witnesses sought to be called were the two other members of Edin Garaplija's team (who were alleged to be present at the events), as well as one of his superiors, who reportedly arrived at the scene shortly after the shooting. In addition, the court did not give any reasons as to why it concluded that none of the other witnesses - several of whom had been involved in the criminal investigation of the case - would not be able to provide further facts which had bearing on the case.

Amnesty International notes that there were allegations that the accused had been threatened that they would be killed if they would reveal details about the operation they were engaged in, and as a result at the trial before the Cantonal Court they did not seek to

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<sup>21</sup> Article 368 (4) of the Criminal Procedure Code states furthermore that "The parties and defence counsel may present new evidence and facts in the hearing".

<sup>22</sup> Supreme Court judgement, page 5. Article 366 of the Criminal Procedure Code stipulates that the court of second instance needs to decide on whether or not to hold a hearing while sitting in a session of the panel.

<sup>23</sup> Supreme Court judgment, page 10.

have the main prosecution witness fully questioned. Following the principle of equality of arms, in any new hearing at which evidence would be taken, Amnesty International considers that the defence should have had a genuine opportunity to challenge and question anew Mr Herenda's testimony and test his reliability as a witness, given that the prosecution case and the subsequent guilty verdict rested primarily on his testimony. The categorical refusal of the appeal court to grant the request that new evidence be presented and examined by a court deprived the accused of the possibility to do so.

Amnesty International further notes that the Supreme Court judgment implicitly acquits the accused of the charge of abduction, substituting this charge with other offences. However the judgment omits to provide an explicit explanation for this decision. It would appear that the evidence evidently underlying this acquittal (notably the summary of the new evidence that the accused sought to address and the AID order which had been submitted to the court) would merit examination for the court in order to come to this conclusion. Under the Federation Criminal Procedure Code, the court should have mentioned in its judgment why and how the new evidence and facts impacted upon their decision.<sup>24</sup> Under domestic criminal procedure new evidence resulting in an acquittal must furthermore be presented in new trial proceedings.<sup>25</sup>

#### **Failure to investigate allegations of human rights violations by the Ševe formation**

Amnesty International notes that the testimony of Edin Garaplija in the Supreme Court not only presented information in his own defence, but also included information on acts which, if proven true, would constitute serious crimes committed during the war by members of a military unit believed to be under the control of the Bosnian Government. These alleged crimes included violations of the right to life - ie the extra-judicial killings of prisoners of war and civilians, including by sniping - which the state has a duty to investigate.

It is of great concern to Amnesty International that none of Edin Garaplija's claims that the Ševe had engaged in violations of human rights during the war, which were made

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<sup>24</sup> "In quashing the judgment of the court of first instance due to the erroneous or incomplete establishment of the factual situation, the [verdict] must cite which elements of the factual situation were lacking, or the reasons why the new evidence and facts are important and influential for reaching a correct decision". (Federation Criminal Procedure Code, Article 381 (3). In this respect, it is significant to note that the Supreme Court at one point describes the arrest of Mr Herenda as him being "taken away" (*odvođenje* - Supreme Court judgement, page 6) and further on as an "arrest" (*lišavanje slobode, hapšenje* pages 9-10)

<sup>25</sup> According to criminal procedure, criminal proceedings against an individual can be renewed when: "New facts are presented or new evidence submitted which in itself or in relation to previously submitted evidence proves that the accused did not commit the acts prescribed in the judgment" (Article 395 (1)(5) of the Federation Criminal Procedure Code).

before the court in the presence of the Federation Deputy Public Prosecutor appear to have led to a prompt, thorough and independent judicial investigations. This concern is reinforced by the fact, that during and after the war similar allegations of these human rights violations were reported by various sources in a number of publications.<sup>26</sup> Some of these reports quoted witnesses, who had been members of the army or the security forces during the relevant time period, who suggested a significant degree of collusion by government officials in the perpetration and subsequent cover-up of these crimes.

It is significant that the Supreme Court apparently accepted that Edin Garaplija and his colleagues were conducting an official operation in their capacity as AID employees<sup>27</sup>, the stated purpose of which included the investigation of serious criminal offences. Whatever the basis and outcome of trial proceedings against Edin Garaplija, his confirmed role of AID investigator who had access to first-hand testimony of these alleged crimes renders him an important witness available to any investigation of such allegations.

Although the Federal Public Prosecutor stated on 24 October 2000 that he intended to initiate an investigation into the alleged crimes of the *Ševe* reported by Edin Garaplija, Amnesty International is not aware that - more than one year later - investigations have been opened in any court to date, nor that charges have been brought against anyone in connection with human rights violations allegedly committed by the *Ševe* formation.

Under domestic criminal procedure the public prosecutor has the specific right and duty to prosecute people suspected of criminal offences by undertaking all measures necessary to discover crimes, identifying the perpetrators, supervising the work of the police, requesting the opening of an investigation and issuing and presenting indictments.<sup>28</sup>

In addition, Amnesty International recalls that the United Nations Guidelines on the Role of Prosecutors provide that :

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<sup>26</sup> See for example: "Ispovijest Edina Garaplija - I Kemi i Bakiru je odgovaralo da Ugljen bude ubijen", *Dani* 28 September 1998; "Služaj Garaplija ponovo pred sudom", *Slobodna Bosna*, 13 July 2000; "Skandalozno: Ko je snajperisao po Sarajevu?", *Slobodna Bosna*, 27 October 2000; "Šokantna ispovijest bivšeg AID-ovca Šoka", *Slobodna Bosna*, 23 November 2000; "rtva rata orlova i Ševe", *Dani*, 29 October 2000; "Kemo Ademovi i Dragan Viki odgovaraju Bakiru Alispahi - iji je zloin u Velikom parku?" *Slobodna Bosna*, 8 December 2000; "Zloini: Ti, ja i sarajevski Veliki park", *Slobodna Bosna*, 14 December 2000; "Ugljenov ubica nikada neće biti otkriven", *Dani*, 8 June 2001; *Ubijanje Sarajeva*, by eljko Vukovi, Belgrade, Kron/B92, 1993..

<sup>27</sup> Supreme Court judgment, pages 9-10.

<sup>28</sup> Federation Criminal Procedure Code, Article 41 (1)-(3).

“ Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.” (Article 15) <sup>29</sup>

Amnesty International acknowledges the substantial difficulties in investigating and attributing criminal responsibility for human rights violations which occurred in the context of an armed conflict, in which a chaotic and complex structure of military, police and intelligence forces developed with multiple lines of command and overlap of functions and personnel. Yet the organization is convinced that the prosecution of those suspected of abuses not only serves the purpose of achieving justice and establishing the truth, but also would contribute towards restoring public trust in the law enforcement systems in the country. Such measures would also be crucial to addressing the pressing need to complement the work of the International Criminal Tribunal for the former Yugoslavia, which given its limited scope and *ad hoc* nature, will not be able to address all crimes under international law which were committed during the conflict in Bosnia-Herzegovina.

#### **Conclusions and recommendations**

Amnesty International welcomes the fact that Edin Garaplija was permitted to attend renewed appeal proceedings before the Supreme Court in October 2000 (as ordered by the Human Rights Chamber). However the organization remains concerned that he was convicted and sentenced to a term of imprisonment after proceedings that failed to allow for the full and fair examination of the available evidence before an independent and impartial court. To this extent Amnesty International is concerned that the proceedings against Edin Garaplija may have violated his right to a fair hearing as guaranteed in Article 6 of the European Convention on the Protection of Human Rights and Fundamental Freedoms.

Amnesty International also remains concerned that the allegations, including those made by Edin Garaplija on 24 October 2000, of human rights abuses committed during the war by the *Šeš* formation apparently have yet to be investigated with due diligence by the appropriate authorities.

Amnesty International recommends :

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<sup>29</sup> UN Guidelines on the Role of Prosecutors, Adopted by consensus by the Eight UN Congress on the Prevention of Crime and Treatment of Offenders on 7 September 1990.

- that the case against Edin Garaplija be remitted to a court, where, before a new panel of judges, the new evidence in the case can be presented, examined and considered;
- that during such proceedings Edin Garaplija be allowed to call and examine or have examined all witnesses whose testimony would be relevant, and challenge and question prosecution evidence;
- that - in view of the sensitive nature of the case - Mr Garaplija and his family, as well as anyone testifying or participating in any renewed proceedings in the case, be provided with adequate protection against undue interference, harassment and intimidation;
- that the authorities ensure the initiation of a thorough, independent and impartial investigation of alleged violations of national and international law by the *Ševe* formation - as described among others by Edin Garaplija in the Supreme Court. A separate investigation should be opened into allegations of official collusion in such crimes. As a result of these investigations, those reasonably suspected of criminal conduct should be brought to justice.