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2	European Convention for the Protection of Human Rights and Fundamental	
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15	<i>the Convention Against Torture and Other Cruel, Inhuman or Degrading</i>	
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2	Restatement (Third) of Foreign Relations Law §702 (1987)	12, 13
3	Restatement (Third) of Foreign Relations Law of the United States, Pt. II Introductory Note (1987).....	12, 13, 22
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8	S. Rep. 102-249	10
9	S. Rep. No. 249, 102d Cong., 1st Sess., at 9-10 (1991)	24, 25
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12	<i>Tadic: Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction</i> , ICTY Appeals Chamber, IT-94-1 (Oct. 2, 1995)	17, 18
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14	<i>The Greek Case</i> , Report of the European Commission, vol. II, part 1 ¶ 2 (1969)	12
15	Theodor Meron, <i>The Geneva Conventions as Customary Law</i> , 81 Am. J. Int'l L. 348 (1987)	17
16	Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, 101 S. Exec. Rep. 30 (1990)	9, 11, 12
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18	<i>Tyrer Case</i> , 26 Eur. Ct. H.R. (ser. A) 15, ¶ 30 (1978)	13
19	United Nations Security Council Resolution 713 (1991).....	8
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21	United Nations Security Council Resolution 827 (1993).....	8, 17
22	Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc.A/810.....	9, 12
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1 Plaintiffs Kemal Mehinovic, Safet Hadzialijagic, Muhamed Bicic and Hasan
2 Subasic submit this trial brief in support of their claims for compensatory and punitive damages
3 under the Alien Tort Claims Act, the Torture Victim Protection Act and various municipal laws of
4 the State of Georgia and of Bosnia and Herzegovina.

5 **I. INTRODUCTION**

6 From April through November 1992, the plaintiffs, four Bosnian Muslim residents
7 of Bosanski Samac, Bosnia and Herzegovina, were unlawfully arrested, imprisoned, tortured and
8 subjected to inhuman and degrading treatment by the defendant Vuckovic and other members of
9 the pro-Serb military, police, and other forces. These abuses took place as part of a campaign of
10 terror commencing on or about April 17, 1992, when Serb military forces from Bosnia and
11 Herzegovina and elsewhere in the former Yugoslavia seized control of the municipality of
12 Bosanski Samac and other areas in Northern Bosnia and Herzegovina and began a genocidal
13 campaign which has become known as “ethnic cleansing.”

14 Defendant Vuckovic directly participated in “ethnic cleansing” during his tenure as
15 a soldier in the Bosnian Serb military. As detailed herein, during this tenure, Defendant Vuckovic
16 committed the following acts directly and in coordination with Serb military and political figures in
17 Bosanski Samac as part of the campaign of ethnic cleansing:

- 18 • Defendant Vuckovic participated in the forcible and arbitrary detention of the non-
19 Serbian males over age 18 in Bosanski Samac, including the plaintiffs;
- 20 • Defendant Vuckovic tortured these detainees, including the plaintiffs, and subjected
21 them to cruel, inhuman and degrading treatment, including sexual abuse;
- 22 • Defendant Vuckovic forced Bosnian Croat and Muslim residents, including the
23 plaintiffs, to flee Bosanski Samac and ransacked their homes and businesses,
- 24 • Defendant Vuckovic stole personal and real property from Bosnian Croat and
25 Muslim residents, including the plaintiffs, and forced them to perform compulsory
26 labor.

27 Plaintiffs claim that defendant Vuckovic acted in violation of international law
28 prohibiting torture, cruel, inhuman and degrading treatment, arbitrary detention without trial,
crimes against humanity, war crimes and genocide. Under United States domestic laws – the Alien
Tort Claims Act (“ATCA”) and the Torture Victim Protection Act (“TVPA”) – these violations of
international law entitle plaintiffs to compensatory and punitive damages, reasonable attorneys fees

1 and costs of suit, injunctive relief necessary to avoid further liquidation or transfer of assets and
2 any other relief that the court deems proper. Plaintiffs also make supplemental state law claims.

3 **II. PARTIES**

4 **A. Plaintiffs Kemal Mehinovic, Safet Hadzialijagic, Muhamed Bicic, and 5 Hasan Subasic**

6 All four plaintiffs are Muslim citizens of Bosnia and Herzegovina who were
7 residents of the municipality of Bosanski Samac, in northern Bosnia-Herzegovina, when Serb
8 military forces seized control of the town on April 17, 1992. Plaintiffs Kemal Mehinovic, Safet
9 Hadzialijagic, and Muhamed Bicic were born in Bosanski Samac. Hasan Subasic was born in
10 Odzak, Bosnia. None of the plaintiffs were participants or combatants in the armed conflict in the
11 former Yugoslavia. Rather, all four plaintiffs were civilians and businessmen in Bosanski Samac
12 during the relevant period. When the plaintiffs were released after periods of detention and torture
13 which lasted from six months to as long as two and a half years, they managed to leave the former
14 Yugoslavia. Kemal Mehinovic and Hasan Subasic currently reside in the United States. Safet
15 Hadzialijagic resides in Belgium, and Muhamed Bicic resides in Germany.

16 **B. Defendant Nikola Vuckovic**

17 Defendant Vuckovic is a Serbian-born citizen of the former Yugoslavia who
18 relocated to Bosanski Samac prior to 1992 and then later to Clarkston, Georgia where he currently
19 resides. Vuckovic served as a Bosnian Serb soldier in the Fourth Detachment (5th Battalion) of the
20 2nd Posavina Brigade of the Bosnian Serb Army which was stationed in Bosanski Samac when
21 armed conflict arose in the region in 1992. From May through November 1992, Vuckovic
22 regularly tortured and terrorized plaintiffs during visits to detention facilities in Bosanski Samac
23 where non-Serb civilians were held in captivity. These facilities included the *Sekreterijat*
24 *Unutrasnjih Poslova* (SUP) police station, the *Territorial Odbrana* (TO) warehouse, and the
25 *Osnova Skola* (OS) primary school building in the town of Bosanski Samac. Vuckovic often
26 coordinated his actions with and assisted Simo Zaric, the defendant's Bosnian Serb military
27 commander, and Stevan Todorovic, the local Bosnian Serb chief of police. Both Zaric and
28 Todorovic were indicted by the International Criminal Tribunal for the Former Yugoslavia
("ICTY") for crimes against humanity and other human rights abuses. Todorovic pled guilty to

1 persecution on ethnic, religious, and political grounds, a crime against humanity under the ICTY
2 statute, and was sentenced to a 10-year prison term on July 31, 2001. The evidence shows that
3 Vuckovic, acting alone and with his military and civilian superiors, committed numerous violations
4 of international law against the plaintiffs as part of a widespread and systematic campaign of
5 “ethnic cleansing.”

6 **III. OVERVIEW**

7 **A. The Genocidal “Ethnic Cleansing” Campaign Perpetrated By Serb 8 Military Forces in Bosanski Samac**

9 Between March and May 1992, Serb military forces from Bosnia and Herzegovina
10 and elsewhere in the former Yugoslavia attacked and seized control of various strategic locations in
11 Bosnia-Herzegovina, including Bosanski Samac.¹ On April 17, 1992, Serb military forces overran
12 Bosanski Samac, severed telephone communication and fired shots in the town.² Non-Serb
13 resistance was quickly suppressed by the arrival of Serb-controlled Yugoslav National Army tanks
14 and armored vehicles.³ The takeover of the town of Bosanski Samac was important to Serb
15 military and political strategy, which aimed to create a land bridge under Serb control that linked
16 the Krajina Serbs in Croatia to Serbia and western Bosnia-Herzegovina.⁴

17 In Bosanski Samac, Serb military forces, including the defendant Vuckovic and
18 other soldiers in the 5th Battalion of the 2nd Posavina Brigade, actively and enthusiastically
19 participated in the “ethnic cleansing” campaign, seeking to create an exclusively Serbian territory

21 ¹ *Prosecutor v. Dusko Tadic*, Trial Chamber II, Case No. IT-94-1 (Opinion and Judgment) (May 7, 1997)
22 (“*Tadic* May 7, 1997”) at ¶¶85-126, attached at Tab 1 of Plaintiffs Appendix of International Legal Materials:
23 Decisions of the International Criminal Tribunal for the Former Yugoslavia. Several cases before the International
24 Criminal Tribunal for the Former Yugoslavia (“ICTY”) are germane to this case, not only as evidence of the state of
international law, but also because the ICTY’s findings of fact in these cases directly corroborate plaintiffs’ testimony
as to the foundational facts of this case.

25 ² *Tadic* (May 7, 1997) at ¶125; Human Rights Watch, *War Crimes in Bosnia-Herzegovina: Bosanski
Samac*, Vol. 6, No. 5. (April 1994) (filed herewith as Plaintiffs’ Exhibit 7) at p. 6 (“The attack on Bosanski Samac
started on the 17th of April 1992.”).

26 ³ *Tadic* (May 7, 1997) at ¶125; Human Rights Watch, *War Crimes in Bosnia-Herzegovina: Bosanski
Samac*, Vol. 6, No. 5. (April 1994) (filed herewith as Plaintiffs’ Exhibit 7) at p. 6 (“They shelled [Bosanski] Samac
27 and entered it with tanks and military transports, although nobody tried to fight against them.”)

28 ⁴ Human Rights Watch, *War Crimes in Bosnia-Herzegovina: Bosanski Samac*, Vol. 6, No. 5. (April 1994)
(filed herewith as Plaintiffs’ Exhibit 7) at p. 4 (“These conquests have allowed the Serbs to establish a narrow land
corridor linking Serbia proper with “Republica Srpska,” and the “Republic of Serbian Krajina.”).

1 with contiguous borders linking the Serb-dominated area in Croatia with Serbia and Montenegro.⁵
2 This genocidal strategy resulted in civilian deaths, subjugation and/or forced expulsion of non-
3 Serbian populations from Bosanski Samac.⁶ Serb military forces imprisoned tortured and killed
4 non-Serbian adult males in the municipality and unlawfully deported and forcibly transferred
5 thousands of other Bosnian Croat and Muslim residents to other countries or other parts of Bosnia-
6 Herzegovina not controlled by Serb forces.⁷ During this campaign of terror, Serb forces also
7 ransacked homes and business of non-Serbs, stole and/or destroyed their personal and real
8 property, and unlawfully took possession of non-Serb property.⁸

9 Prior to the Serb military takeover of the municipality of Bosanski Samac, almost
10 17,000 Bosnian Croats and Muslims, out of a total population of 33,000 lived in the municipality.⁹
11 As a result of genocidal “ethnic cleansing” perpetuated by the Serb military forces, fewer than 300
12 Bosnian Croat and Muslim residents remained in the municipality.¹⁰ The municipality of Bosanski
13 Samac is now part of *Republika Srpska* under the Dayton accord.

15 ⁵ *Tadic* (May 7, 1997) at ¶¶85-126; Human Rights Watch, *War Crimes in Bosnia-Herzegovina: Bosanski*
16 *Samac*, Vol. 6, No. 5. (April 1994) (filed herewith as Plaintiffs’ Exhibit 7) at p. 4, fn 7 (“The main objective of ‘ethnic
17 cleansing’ is the removal of an ethnic group from a given area through murder, population exchanges, or forced
displacement.”).

18 ⁶ Human Rights Watch, *Bosnia and Herzegovina: The Continuing Influence of Bosnia’s Warlords*, Vol. 8,
19 No. 17(D). (December 1996) (filed herewith as Plaintiffs’ Exhibit 9) at p. 7 (“During the operation of “ethnic
20 cleansing,” Serb forces were responsible for massive violations of human rights and humanitarian law including attacks
21 against civilian targets, disproportionate use of force, pillage and the destruction of cultural objects and private
property, summary executions, and abuse in detention.”) and p. 3 (“Human Rights Watch/Helsinki has documented
acts of pre-meditated murder, “ethnic cleansing,” expulsions, obstruction of freedom of movement, obstruction of the
right to remain, the continued practice of forced labor, beating and torture in detention, threats and intimidation, looting
and the destruction of property.”).

22 ⁷ *Tadic* (May 7, 1997) at ¶126; Human Rights Watch, *War Crimes in Bosnia-Herzegovina: Bosanski*
23 *Samac*, Vol. 6, No. 5. (April 1994) (filed herewith as Plaintiffs’ Exhibit 7) at p. 15 (“While most Muslim and Croat
men were held in detention centers in the Bosanski Samac area, many non-Serbian women, children, and elders were
confined to their villages or taken to other areas.”).

24 ⁸ Human Rights Watch, *War Crimes in Bosnia-Herzegovina: Bosanski Samac*, Vol. 6, No. 5. (April 1994)
25 (filed herewith as Plaintiffs’ Exhibit 7) at p. 14 (“Shooting was going on all night long as well as robbery...Serbian
soldiers were coming and taking whatever they wanted...we were not allowed to lock the door.”).

26 ⁹ *Prosecutor v. Simic, et al.*, (Second Amended Indictment) (December 11, 1998) (filed herewith as
Plaintiffs’ Exhibit 12) at 8.

27 ¹⁰ *Id.* See also Human Rights Watch, *Bosnia and Herzegovina: The Undicted: Reaping the Rewards of*
28 *“Ethnic Cleansing”*, Vol. 9, No. 1(D). (January 1997) (filed herewith as Plaintiffs’ Exhibit 10) at p. 3 (Commenting
on the effect of ethnic cleansing, Human Rights Watch reports: “Prior to the war, more than a half a million non-Serbs
lived in what is now the northern region of Republika Sprska. Today, fewer than 20,000 non-Serbs remain throughout
the territory.”)

1 **B. Actions of Defendant Vuckovic as Part of the Campaign of Ethnic**
2 **Cleansing**

3 Between May and November 1992, the defendant and other soldiers and police
4 officers frequented the makeshift detention facilities in the town of Bosanski Samac where the
5 plaintiffs were being held without warrant or charge and often without any contact with their
6 families or the outside world. During these visits, Vuckovic and the other soldiers tortured and
7 abused the plaintiffs and other Bosnian Muslims. As will be described by the plaintiffs in their
8 testimony, this torture and abuse took many forms including:

- 9 • beating with a variety of instruments such as guns, police batons, baseball bats and
10 metal pipes on all parts of the body including the genitals;
- 11 • kicking;
- 12 • performance of mock executions or “russian roulette”;
- 13 • denial of medical care, food and water;
- 14 • forced and compulsory labor;
- 15 • repeated immersion of one plaintiff’s head in toilets;
- 16 • pulling of teeth;
- 17 • sexual abuse including forced sexual contact with other prisoners;
- 18 • “branding” by cutting one plaintiff’s forehead; and
- 19 • being forced to witness killings, torture, rapes, and other abuses against other
20 detainees.

21 Defendant Vuckovic directly performed these acts upon the plaintiffs and aided and
22 assisted other Serb soldiers and police officers who performed similar acts on plaintiffs. Defendant
23 Vuckovic’s statements during this torture reveal that Vuckovic’s motivation for persecuting
24 plaintiffs was their Muslim ethnicity and religion, and display Vuckovic’s intent to participate in
25 and contribute to the widespread Serbian campaign to annihilate or displace Bosnian Muslims. For
26 example, Vuckovic repeatedly stated during his torture of the plaintiffs, that Muslims were the
27 “enemies of the Serbian people,” that they “were going to be eliminated,” and that “no more
28 Muslims should be born.”

1 **IV. ARGUMENT**

2 **A. This Court Has Jurisdiction over Plaintiffs’ Federal and State Law**
3 **Claims**

4 This Court has jurisdiction over plaintiffs’ federal claims under the Alien Tort
5 Claims Act (“ATCA”), the Torture Victim Protection Act (“TVPA”) and 28 U.S.C. § 1331, and
6 supplemental jurisdiction over plaintiffs’ related state law claims under 28 U.S.C. § 1367.¹¹

7 **B. Defendant Vuckovic Is Liable Under The Alien Tort Claims Act For**
8 **Acts Of Torture, Cruel, Inhuman and Degrading Treatment, Arbitrary**
9 **Detention, Crimes Against Humanity, War Crimes, and Genocide**

10 The ATCA provides:

11 The district courts shall have original jurisdiction of any civil
12 action by an alien for a tort only, committed in violation of the law
13 of nations or a treaty of the United States.¹²

14 The Eleventh Circuit and all other federal circuits presented with claims under
15 ATCA have held that the ATCA provides a federal remedy when (1) an alien sues (2) for a tort (3)
16 committed in violation of the law of nations.¹³ As all four plaintiffs are aliens and sue in tort, they
17 clearly meet the first two elements of an ATCA claim.

18 As set out below, each of plaintiffs’ causes of action set out a violation of customary
19 international law actionable under the ATCA. Conduct violates the “law of nations” if it
20 contravenes “well-established, universally recognized norms of international law.”¹⁴ These norms
21 must be “specific, universal and obligatory.”¹⁵

22 Practically, United States courts find the norms of contemporary international law
23 by “consulting the works of jurists, writing professedly on public law; or by the general usage and
24

25 ¹¹ Order of Judge Hunt dated September 9, 1999 Denying Defendant’s Motion to Dismiss (“This Court has
26 jurisdiction under 28 U.S.C. §§ 1331 and 1350 and supplemental jurisdiction of the state law claims.”). *See also*
27 *Abebe-Jira v. Negewo*, 72 F.3d 844, 847 (11th Cir. 1996), *cert. denied*, 519 U.S. 830 (1996); *Kadic v. Karadzic*, 70
28 F.3d 232, 246 (2d Cir. 1995), *cert. denied*, 518 U.S. 1005 (1996); *Cabello v. Fernandez Larios*, __ F.Supp. 2d __ 2001
WL 964931 (S.D. Fla. 2001) at *7; *Xuncax v. Gramajo*, 886 F. Supp. 162, 178 (D. Mass. 1995); *Paul v. Avril*, 901
F.Supp. 330, 331 (S.D.Fla. 1994).

¹² 28 U.S.C. §1350; *Kadic*, 70 F.3d at 238

¹³ *See Abebe-Jira*, 72 F.3d at 846-48

¹⁴ *Kadic*, 70 F.3d at 239 (citing *Filartiga v. Pena-Irala*, 630 F.2d 876, 888 (2d Cir. 1980)).

¹⁵ *Alvarez-Machain v. United States*, 2001 WL 1042148 (9th Cir. 2001) at *2. Although a *jus cogens*
violation satisfies the ‘specific, universal and obligatory’ standard, it is not necessary to prove a *jus cogens* violation to
show a violation of customary international law, and therefore a claim under the ATCA. *Id.*

1 practice of nations; or by judicial decisions recognizing and enforcing that law.”¹⁶ In finding these
2 norms, courts considering ATCA claims have relied on various sources including treatises¹⁷,
3 restatements¹⁸, international instruments such as treaties and conventions¹⁹, and domestic and
4 international case law²⁰ to define customary international law. Of particular relevance to the
5 instant case are the holdings of the International Criminal Tribunal for the Former Yugoslavia
6 (“ICTY”). The ICTY was established in 1993 in order to prosecute persons responsible for serious
7 violations of international humanitarian law committed in the territory of the former Yugoslavia.²¹
8 The United States has explicitly endorsed the approach of the ICTY Statute and of the Tribunal
9 itself.²² In fact, several cases before the ICTY relate to events in Bosanski Samac, and the ICTY
10 has imposed sentence following the guilty plea by Vuckovic co-conspirator Stevan Todorovic to
11 human rights violations.²³

12 As described below, the following acts of the defendant are violations of customary
13 international law and, therefore, valid grounds for civil liability under the ATCA: Torture, Cruel,
14 Inhuman or Degrading Treatment; Arbitrary Detention, Crimes Against Humanity, War Crimes
15 and Genocide.²⁴

16 ¹⁶ *Kadic*, 70 F.3d at 238 (quoting *Filartiga*, 630 F.2d at 880, in turn quoting *United States v. Smith*, 18 U.S.
17 (5 Wheat) 153, 160-61).

18 ¹⁷ See e.g., *Kadic*, 70 F.3d at 243.

19 ¹⁸ See, e.g., *id.*; *Cabello* at *10.

20 ¹⁹ See, e.g., *Kadic*, 70 F.3d at 241; *Xuncax*, 886 F. Supp. at 184; *Alvarez-Machain* at *4.

21 ²⁰ *Abebe-Jira*, 72 F.3d at 846-47.

22 ²¹ See United Nations Security Council Resolution 808 (1993) attached at Tab 1 of Plaintiffs’ Appendix of
International Legal Materials: International Instruments and Other Materials.

23 ²² See United Nations Security Council Resolution 827 (1993) reaffirming United Nations Security Council
Resolution 713 (1991) and approving the Report of the Secretary General (S-25T04 and Add. 1) made pursuant to
24 paragraph 2 of United Nations Security Council Resolution 808 (1993). Resolution 827 and Report attached at Tabs 2
and 3 of Plaintiffs’ Appendix of International Legal Materials: International Instruments and Other Materials.

25 ²³ See *Prosecutor v. Stevan Todorovic*, Trial Chamber I, Case No. IT-95-9/1 (Sentencing Judgment) (July
26 31, 2001) (“*Todorovic* July 31, 2001”), attached at Tab 2 of Plaintiffs Appendix of International Legal Materials: ICTY
Decisions.

27 ²⁴ See, e.g., *Hilao v. Estate of Marcos*, 103 F.3d 767 (9th Cir. 1996) (torture, summary execution,
28 disappearance); *Kadic*, 70 F.3d 232 (genocide, rape, torture, summary execution); *In re Estate of Marcos Human
Rights Lit.*, 25 F.3d 1467 (9th Cir. 1994) (torture, summary execution, disappearance); *Beanal v. Freeport-McMoran,
Inc.*, 969 F. Supp. 362 (E.D. La. 1997) (genocide and human rights abuses); *Cabiri v. Assasie-Gyimah*, 921 F. Supp.
1189 (S.D.N.Y. 1996) (torture); *Xuncax*, 886 F. Supp. 162 (kidnapping, torture, sexual abuse, summary execution.)

1 **1. Torture**

2 United States courts presented with the issue unanimously have recognized that
3 official torture violates obligatory norms of customary international law and is thus actionable
4 under the ATCA.²⁵ For example, the Second Circuit recently held that “official torture is
5 prohibited by universally accepted norms of international law.”²⁶ The prohibition of torture under
6 customary international law is also evidenced by the fact that torture violates numerous
7 international human rights treaties.²⁷ The Convention Against Torture and Other Cruel, Inhuman
8 or Degrading Treatment or Punishment, at Art. 1 defines torture as:

9 any act by which severe pain or suffering, whether physical or
10 mental, is intentionally inflicted on a person for such purposes as
11 obtaining from him or a third person information or a confession,
12 punishing him for an act he or a third person has committed or is
13 suspected of having committed, or intimidating or coercing him or a
14 third person, or for any reason based on discrimination of any kind,
15 when pain or suffering is inflicted by or at the instigation of or with
16 the consent or acquiescence of a public official or other person acting

15 ²⁵ See, e.g., *In re Estate of Marcos*, 25 F.3d at 1475 (noting that torture violates “specific, universal and
16 obligatory standard” of international law); *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 717 (9th Cir.
17 1992) (finding that the prohibition against official torture has attained status of *jus cogens* norm); *Filartiga*, 630 F.2d at
18 876 (holding that former Inspector General of Police in Asuncion, Paraguay, could be held liable under the ATCA for
19 the torture and consequent death of a seventeen-year old boy); *Mushikiwab v. Barayagwiza*, 1996 WL 164496
20 (S.D.N.Y. April 9, 1996) (finding Rwandan Hutu leader liable for torture and summary execution committed as part of
21 the genocidal campaign); *Paul*, 901 F. Supp. at 335 (finding former military leader of Haiti liable under the ATCA for
22 torture of six Haitian citizens by soldiers under his command and control); *Xuncax*, 886 F. Supp. at 184 (“Numerous
23 federal court decisions and an ever-growing number of international agreements and conventions have established
24 beyond question that the use of official torture is strictly prohibited by the most fundamental principles of international
25 law.”); *Forti v. Suarez-Mason*, 672 F. Supp. 1531 (N.D. Cal 1987).

26 ²⁶ *Kadic*, 70 F.3d at 243 (citing *Filartiga*, 630 F.2d at 885.) In *Filartiga*, the Second Circuit declared that
27 “the torturer has become like the pirate and slave trader before him *hostis humani generis*, an enemy of all mankind.”
28 *Filartiga*, 630 F.2d at 890.

29 ²⁷ See, e.g., Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc.A/810, at 71, art. 5
30 (1948) (“No one shall be subjected to torture. . . .”) [hereinafter “Universal Declaration”]; S. Rep. No. 102-249, section
31 II (1991) (“Official torture and summary execution violate standards accepted by virtually every nation. This universal
32 consensus condemning these practices has assumed the status of customary international law.”); Convention Against
33 Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, 39 U.N. GAOR Supp.
34 (No. 51), at 197, U.N. Doc A/39/51 (Dec. 10, 1984) (*entered into force* June 26, 1987) (ratified by the United States
35 Oct. 21, 1994) [hereinafter “Torture Convention”]; International Covenant on Civil and Political Rights, art. 7, G.A.
36 Res. 2200 A (xx1), 21 U.N. GAOR Supp. (No.16), at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 717 (Dec. 16, 1966)
37 (*entered into force* Mar. 23, 1976) (ratified by the United States Sept. 1992) [hereinafter “ICCPR”]; European
38 Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 27 I.L.M. 1154 (Nov.
39 26, 1987) (*entered into force* Feb. 1, 1989); European Convention for the Protection of Human Rights and
40 Fundamental Freedoms, art. 3, 213 U.N.T.S. 222 (Nov. 4, 1950) (*entered into force* Sept. 3, 1953) [hereinafter
41 “European Convention”]. Universal Declaration, Torture Convention, ICCPR, European Torture Convention and
42 European Convention attached as Tabs 4-8 of Plaintiffs’ Appendix of International Legal Materials: International
43 Instruments and Other Materials.

1 in an official capacity.²⁸

2 The following acts (among others) have been deemed to constitute physical torture
3 in international law: (1) rape, sexual abuse and other forms of gender violence; (2) sustained
4 systematic beating performed with truncheons or other instruments while the victim is bound or
5 restrained; (3) electric shocks, burning or exposure to extreme heat or cold; (4) binding or
6 otherwise forcing the victim into positions causing pain or (5) denial of food, water or medical
7 attention.²⁹ Vuckovic, personally and in conjunction with other Serbian soldiers, inflicted severe
8 pain and suffering on the plaintiffs.³⁰ For example, all plaintiffs were systematically beaten with
9 truncheons and other objects; in some instances, on the genitals. Several had teeth pulled out with
10 pliers. All plaintiffs were denied food, water and medical care.

11 In addition, as noted in the definition of torture under the Torture Convention,
12 mental torture consisting of “prolonged mental harm caused by or resulting from: the intentional
13 infliction or threatened infliction of severe physical pain or suffering; ... the threat of imminent
14 death; or the threat that another person will imminently be subjected to death, [or] severe physical
15 pain or suffering” also violates customary international law.³¹ Defendant Vuckovic played
16 “russian roulette” with the plaintiffs and performed numerous mock executions. This conduct
17 clearly constitutes mental torture.

18 The requirement of an illegitimate purpose behind the acts of torture also is met.
19 The statements of Defendant Vuckovic evidence the fact that the defendant tortured plaintiffs

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21
22
23 ²⁸ This definition is substantially similar to the definition used in the TVPA, which legislation is intended to
“carry out the intent” of the Torture Convention. S. Rep. 102-249, at 3. See discussion at IV.C.

24 ²⁹ See *Filartiga*, 630 F.2d at 877; *Forti*, 672 F. Supp. at 1541; *Xuncax*, 886 F. Supp. at 184; *Cabiri*, 921 F.
25 Supp. at 1196; *In re Estate of Marcos Human Rights Litig.*, 25 F.3d at 1475. In the case of sexual assault, the ICTY
26 has noted: “. . . international criminal rules punish not only rape but also any serious sexual assault falling short of
27 actual penetration. It would seem that the prohibition embraces all serious abuses of a sexual nature inflicted upon the
physical and moral integrity of a person by means of coercion, threat of force or intimidation in a way that is degrading
and humiliating for the victim’s dignity.” *Prosecutor v. Anto Furundizija*, Trial Chamber II, Case No. IT-95-17/1
(Judgment) (December 10, 1998) at ¶186, attached at Tab 3 of Plaintiffs Appendix of International Legal Materials:
ICTY Decisions.

28 ³⁰ See Section IV.D, *supra*, for a discussion of Vuckovic’s liability as an aider and abettor.

³¹ S. Rep. 102-249.

1 based on discrimination against and hatred of Bosnian Muslims.³² Vuckovic stated “*Muslimani se*
2 *više netrebaju radat . . . Udrite ih u muda*” (“No more Muslims should be born . . . Hit him in the
3 balls.”) and “*Sue cemo vas pobit*” (“We will kill all of you”). Plaintiffs will establish that these
4 acts were also carried out with the intent of intimidating and punishing plaintiffs in accordance
5 with the Bosnian Serb government’s campaign of ethnic cleansing, or to obtain information.

6 **2. Cruel, Inhuman and Degrading Treatment**

7 Cruel, inhuman, and degrading treatment (“CIDT”) is a discrete and well-
8 recognized violation of customary international law and is, therefore, a separate ground for liability
9 under the ATCA.³³ Initially, some federal courts considering claims under the ATCA were
10 hesitant to find that acts constituting CIDT were universally recognizable as international torts.³⁴
11 However, subsequent to United States signature of the Convention Against Torture and Other
12 Cruel, Inhuman and Degrading Treatment or Punishment in 1988 and its ratification of the
13 International Covenant on Civil and Political Rights in 1992, courts, including the Eleventh Circuit
14 Court of Appeals, have recognized CIDT as a violation of customary international law, at least to
15 the extent that the conduct also would be prohibited by the Fifth, Eighth, and/or Fourteenth
16 amendments to the U.S. Constitution.³⁵ These courts, accordingly, have allowed defendants to be
17 held liable for the infliction of cruel, inhuman or degrading treatment. International instruments
18 and decisions also recognize cruel, inhuman and degrading treatment as a distinct violation of
19 international law.³⁶

20
21 ³² The ICTY has held with respect to the interpretation of the Torture Convention: “. . . there is no
22 requirement that the conduct must be solely perpetrated for a prohibited purpose. Thus, in order for this requirement to
23 be met, the prohibited purpose must simply be part of the motivation behind the conduct and need not be the
predominating or sole purpose.” *Prosecutor v. Zejnir Delalic*, Trial Chamber II, Case No. IT-96-21 (Judgment)
(November 16, 1998) (also known as “*Celebici Camp*”) at ¶ 470, attached at Tab 4 of Plaintiffs Appendix of
International Legal Materials: ICTY Decisions.

24 ³³ *Abebe-Jira*, 72 F.3d at 847; *Cabello* at *12; *Xuncax*, 886 F. Supp. at 187.

25 ³⁴ *See e.g., Forti v. Suarez-Mason*, 672 F.Supp. at 1541.

26 ³⁵ *Abebe-Jira v. Negewo*, 72 F.3d at 847; *Cabello* at *12; *Paul*, 901 F. Supp. at 330; *Xuncax*, 886 F. Supp. at
27 187-89. The District Court for the Northern District of Georgia, in *Abebe-Jiri*, held that cruel, inhuman and degrading
28 treatment, in addition to torture, was contrary to settled international law and a proper ground for liability under the
ATCA. *Abebe-Jiri v. Negewo*, 1993 WL 814304 (N.D. Ga. 1993). The Eleventh Circuit Court of Appeals affirmed
that District Court opinion in its entirety, although its decision only mentions torture. *Abebe-Jira*, 72 F.3d 844 (11th
Cir. 1996).

³⁶ ICCPR, art. 7; Universal Declaration, art. 5 (“No one shall be subjected to torture or to cruel, inhuman, or
degrading treatment or punishment.”) (emphasis added); American Convention on Human Rights, 1144 U.N.T.S. 23

1 CIDT is often similar to torture, but may be less severe, or may lack the purposes
2 generally associated with torture.³⁷ Under Article 3 of the European Convention, torture and
3 inhuman or degrading treatment or punishment have been held to include the creation of “a state of
4 anguish and stress by means other than bodily assault.”³⁸ Generally, CIDT includes acts which
5 inflict mental or physical suffering, anguish, humiliation, fear and debasement which do not rise to
6 the level of “torture.”³⁹ Whether treatment amounts to CIDT depends upon an assessment of all
7 the particularities of a case, including specific conditions at issue, duration of the measures
8 imposed, the objectives pursued by the perpetrators, and the effects on the persons involved.⁴⁰ As
9 described herein at Section III.B the defendant’s conduct towards plaintiffs clearly constitutes
10 cruel, inhuman and degrading treatment to the extent it does not rise to the level of torture.⁴¹

11 3. Arbitrary Detention

12 Arbitrary detention is a violation of customary international law and thus actionable
13 under the ATCA.⁴² “Arbitrary detention is cited as a violation of international law in all

14
15 (entered into force July 18, 1978), art. 5 [hereinafter “American Convention”], attached as Tab 9 of Plaintiffs’
16 Appendix of International Legal Materials: International Instruments and Other Materials.

17 ³⁷ Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, 101 S. Exec. Rep. 30, at 13
18 (1990) (“[T]orture is at the extreme end of cruel, inhuman or degrading treatment.”); *see also Ireland v. United*
19 *Kingdom*, 25 Eur. Ct. H.R. (ser. A) 65-67, ¶ 167 (1978); Declaration on the Protection of All Persons from Being
20 Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1, G.A. Res. 3452, 30 U.N.
21 GAOR Supp. (No. 34), at 91, U.N. Doc. A/10034 (1975) (“Torture constitutes an aggravated and deliberate form of
22 cruel, inhuman or degrading treatment or punishment.”). *Ireland v. UK* and Torture Declaration attached as Tabs 10-
23 11 of Plaintiffs’ Appendix of International Legal Materials: International Instruments and Other Materials. *See also J.*
24 *H. Burgers & H. Danelius, The U.N. Convention Against Torture: A Handbook on the Convention Against Torture and*
25 *Other Cruel, Inhuman or Degrading Treatment or Punishment* 150 (1988) (“Unlike in the definition of torture . . . the
26 purpose of the act is irrelevant in determining whether or not the act should be considered to constitute cruel, inhuman
27 or degrading treatment.”).

28 ³⁸ *See also The Greek Case*, Report of the European Commission, vol. II, part 1, at 364, ¶ 2 (1969), cited in
Roger Myers, *A New Remedy for Northern Ireland: the Case for United Nations Peacekeeping Intervention in an*
Internal Conflict, N.Y.L. Sch. J. Int’l & Comp. L. 1, n. 109.

³⁹ Restatement (Third) of Foreign Relations Law §702, Reporters’ Note 5 (1987).

⁴⁰ *See, e.g., Tyrer Case*, 26 Eur. Ct. H.R. (ser. A) 15, ¶ 30 (1978), attached as Tab 12 of Plaintiffs’
Appendix of International Legal Materials: International Instruments and Other Materials (holding that a distinctive
element of degradation is degree of humiliation adjudged according to circumstances of individual case and that the
assessment of humiliation is necessarily relative); *Ireland v. United Kingdom*, 25 Eur. Ct. H.R. (ser. A), ¶¶ 162, 167
(1978) (holding that minimum level of severity required to determine violation depends on circumstances of particular
case, including duration of treatment and physical and mental effects). Similar case-by-case application has been
undertaken by U.S. federal courts in cases of torture. *See, e.g., Filartiga*, 630 F.2d at 883; *Forti*, 672 F. Supp. at 1543.

⁴¹ *See also* Section IV.B.5.b for a discussion of ICTY decisions construing “inhuman treatment.”

⁴² *See Alvarez-Machain*, at *5; *Forti*, 672 F. Supp. at 1541.

1 comprehensive international human rights instruments.”⁴³ Generally, detention is arbitrary if “it
2 is not pursuant to law; it may be arbitrary also if it is incompatible with the principles of justice or
3 with the dignity of the human person.”⁴⁴ Specifically, arbitrary detention is detention of a person
4 in an official detention facility or in any other place, without notice of charges and failure to bring
5 that person to trial within a reasonable time. *Id. See also Soroa-Gonzales v. Civiletti*, 515 F.Supp.
6 1049, 1061, n.18. (N.D. Ga. 1981).

7 All of the plaintiffs in the instant case were arbitrarily detained in Bosanski Samac
8 without warrant or charges by pro-Serb military or police forces for periods of six months or more.
9 Three of the four plaintiffs were transferred after their detention in Bosanski Samac to larger
10 concentration camps where they were detained, and subject to further inhumane treatment and
11 forced labor for another year or more. Defendant Vuckovic knowingly and actively participated in
12 the plaintiffs’ continued unlawful detention at each of the three facilities where plaintiffs were held
13 in Bosanski Samac during 1992.

14 Plaintiff Mehinovic was abducted on or about May 27, 1992, at his home, and
15 detained at the SUP until mid-July 1992. He was then transferred to the TO until November 1992,
16 after which he remained in other detention camps until late 1994. Plaintiff Hadzialijagic was
17 detained on or about April 20, 1992, and initially held at the SUP and TO for sixteen days. After a
18 series of transfers to various detention facilities outside of Bosanski Samac, he was returned to
19 Bosanski Samac and remained there in facilities frequented by Vuckovic for another five months.
20 After a year or more in the Batkovic concentration camp, Hadzialijagic was released in a civilian
21 exchange. Plaintiff Bicic was detained on or about April 18, 1992. The army transferred him to
22 various detention facilities including SUP, OS and other Serb camps until about November 1992.
23 Plaintiff Subasic was arrested without warrant on or about April 24, 1992, and was detained in
24 various centers until about June 9, 1994. As detailed *infra*, all four plaintiffs were detained against
25 their will in a way clearly incompatible with human dignity. None of the plaintiffs were given
26

27
28 ⁴³ Restatement (Third) of Foreign Relations Law §702, Reporters’ Note 6 (1987) (*citing, inter alia*,
Universal Declaration, art. 9; ICCPR, art 9; European Convention, art. 5; American Convention, art. 7.)

⁴⁴ Restatement (Third) of Foreign Relations Law, § 702 comment h (1987).

1 notice of any charges and none were brought to trial.⁴⁵

2 Plaintiffs will establish at trial that defendant Vuckovic was aware or should have
3 been aware that plaintiffs were illegally detained solely on the basis of their ethnicity, and that he
4 directly and indirectly participated in their continued unlawful detention by keeping them forcibly
5 restrained, and aiding and abetting their captors and guards.

6 **4. Crimes Against Humanity**

7 Crimes against humanity have been proscribed under international law since the
8 Nuremberg trials, and therefore are actionable under the ATCA.⁴⁶ Crimes against humanity were
9 first codified in the Charter of the International Military Tribunal (IMT), which authorized the
10 criminal trials at Nuremberg. The IMT Charter defined crimes against humanity as:

11 murder, extermination, enslavement, deportation, and other
12 inhumane acts committed against any civilian population, before or
13 during the war, or persecutions on political, racial, or religious
14 grounds in execution of, or in connection with, any crime within the
15 jurisdiction of the Tribunal, whether or not in violation of the
16 domestic law of the country where perpetrated.⁴⁷

17 Almost immediately, however, this definition was expanded under customary international law.⁴⁸

18 The Rome Statute, for example, defines crimes against humanity as any of certain enumerated acts
19 “when committed as part of a widespread or systematic attack directed against any civilian

20 ⁴⁵ As will be described at trial, Plaintiff Mehinovic was subjected to a show trial completely devoid of due
21 process during his detention at the Bijeljina military base.

22 ⁴⁶ *Cabello* at *11 (finding that “the ruling of the Nuremberg Tribunal memorialized the recognition of
23 ‘crimes against humanity’ as customary international law.”) *See also Tadic* (May 7, 1997), ¶ 623. (Since Nuremberg,
24 “the customary status of the prohibition against crimes against humanity and the attribution of individual criminal
25 responsibility for their commission have not been seriously questioned.”)

26 ⁴⁷ Charter of the International Military Tribunal, 59 Stat. 1546, 1547, E.A.S. No. 472, 82 U.N.T.S. 284, art.
27 6(c) (Aug. 8, 1945). In 1946, the General Assembly endorsed the principles of international law recognized in the IMT
28 Charter. *See* G.A. Res. 95, 1st Sess., at 1144, U.N. Doc. A/236 (1946); *see also* Convention on the Non-Applicability of
Statutory Limits to War Crimes and Crimes Against Humanity, art 1(b) 660 U.N.T.S. 195 (Nov. 26, 1968), *reprinted in*
8 I.L.M. 68 (1969) (adopting Nuremberg definition of crimes against humanity except for in connection with
aggressive war). The IMT Charter and Statute of Limitations Convention are attached as Tabs 13-14 of Plaintiffs’
Appendix of International Legal Materials: International Instruments and Other Materials.

⁴⁸ Since Nuremberg, the definition of crimes against humanity has evolved significantly. First, the scope of
enumerated offenses has been expanded to include, *inter alia*, imprisonment, rape, and torture. Control Council Law
No. 10, art. II (1)(c) (Dec. 20, 1945). Second, while the IMT Charter formerly required a nexus between the wrongful
acts and an armed conflict, this element has been eliminated from the modern definition of crimes against humanity.
Control Council Law No. 10. Control Council Law No. 10 is attached as Tab 15 of Plaintiffs’ Appendix of
International Legal Materials: International Instruments and Other Materials.

1 population, with knowledge of the attack.”⁴⁹ These acts include: murder, extermination,
2 imprisonment or other severe deprivation of physical liberty, torture, rape or sexual violence,
3 persecution against any identifiable group on the basis of racial, political, ethnic, cultural or
4 religious status and other inhumane acts.⁵⁰

5
6 The acts of the defendant described herein, including torture, imprisonment, sexual
7 abuse, cruel, inhuman and degrading treatment and persecution, committed as part of the Bosnian
8 Serb Government’s policy of ethnic cleansing, constitute crimes against humanity. As documented
9 in numerous reports by governmental and non-governmental organizations and by the ICTY, the
10 Bosnian Serb campaign constituted a widespread and systemic attack on and persecution of
11 Bosnian Muslims and other groups because of their ethnicity and religion.

12 Defendant Vuckovic is liable for the commission of these acts even if he was not
13 aware that his conduct might rise to the level of crimes against humanity. International law
14 provides that an actor is guilty if he knew or should have known that his conduct constituted crimes
15 against humanity.⁵¹ The evidence will show that Defendant Vuckovic committed international law
16 violations against the plaintiffs with discriminatory intent often making statements to the effect that
17 he intended to “eliminate” Muslims. However, the defendant remains liable for crimes against
18 humanity even if he was unaware that his actions constituted such crimes.

19 5. War Crimes

20 Acts of murder, rape, torture, destruction of property and arbitrary detention of
21 civilians committed in the course of hostilities violate the international law of war and, hence, are a
22

23
24 ⁴⁹ Rome Statute of the International Criminal Court, adopted by the United Nations Diplomatic Conference
25 on the Establishment of an International Criminal Court on 17 July 1998 [hereinafter “Rome Statute”], art. 7, attached
as Tab 16 of Plaintiffs’ Appendix of International Legal Materials: International Instruments and Other Materials.

26 ⁵⁰ *Id.* See also Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious
27 Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991
[hereinafter “ICTY Statute”], art. 5, attached as Tab 17 of Plaintiffs’ Appendix of International Legal Materials:
International Instruments and Other Materials.

28 ⁵¹ Rome Statute, art. 7; *Prosecutor v. Tihomir Blaskic*, Trial Chamber I, Case No. IT-95-14 (Judgment)
(March 3, 2000), at ¶249 (requiring “actual or constructive knowledge”) attached at Tab 5 of Plaintiffs Appendix of
International Legal Materials: ICTY Decisions.

1 proper basis for liability under the ATCA.⁵² The Second Circuit Court of Appeals, in the *Kadic*
2 decision, relied upon the Geneva Conventions of 1949, which were drafted in response to the
3 atrocities of World War I and which codified many of the customary laws of war, to define war
4 crimes.⁵³ The U.N. Secretary General has also concluded that the Geneva Conventions have
5 “beyond a doubt become part of international customary law.”⁵⁴ Several provisions of the Geneva
6 Conventions, in particular, have been held to be *jus cogens* norms of international law.⁵⁵

7 **a. Common Article 3**

8 Common article 3, which is substantially identical in each of the four Geneva
9 Conventions, applies to “armed conflict[s] not of an international character” and binds “each Party
10 to the conflict ... to apply, as a minimum, the following provisions”:

11 Persons taking no active part in the hostilities ... shall in all
12 circumstances be treated humanely, without any adverse distinction
13 founded on race, colour, religion or faith, sex, birth or wealth, or any
14 other similar criteria.

15 To this end, the following acts are and shall remain prohibited at any
16 time and in any place whatsoever with respect to the above-
17 mentioned persons:

18 (a) violence to life and person, in particular murder of all kinds,
19 mutilation, cruel treatment and torture;

20 (b) taking of hostages;

21 (c) outrages upon personal dignity, in particular humiliating and
22 degrading treatment;

23 ⁵² *Kadic*, 70 F.3d at 242-43, citing *In re Yamashita*, 327 U.S. 1, 14 (1946).

24 ⁵³ *Kadic*, 70 F.3d at 242-43, citing Convention for the Amelioration of the Condition of the Wounded and
25 Sick in Armed Forces in the Field, 6 U.S.T.S. 3114, 75 U.N.T.S. 31 (Aug. 12, 1949) (“Convention I”); Convention for
26 the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 6 U.S.T.S.
27 3217, 75 U.N.T.S. 85 (Aug. 12, 1949) (“Convention II”); Convention Relative to the Treatment of Prisoners of War, 6
28 U.S.T. 3316, 75 U.N.T.S. 135 (Aug. 12, 1949) (“Convention III”); Convention Relative to the Protection of Civilian
Persons in Time of War, 6 U.S.T.S. 3516, 75 U.N.T.S. 287 (Aug. 12, 1949) (“Convention IV”). The United States is
party to all four Geneva Conventions. See U.S. Dep’t of State, *Treaties in Force*, at 428-32. Conventions I-IV attached
as Tabs 18-21 of Plaintiffs’ Appendix of International Legal Materials: International Instruments and Other Materials.

⁵⁴ Report of the Secretary-General Pursuant to Paragraph 2 of the Security Council Resolution 808 and
Security Council Resolution 827, at 9, U.N. Doc. S/25704 (1993); see also *Tadic: Decision on the Defense Motion for
Interlocutory Appeal on Jurisdiction*, ICTY Appeals Chamber, IT-94-1, ¶¶ 98, 117, 127 (Oct. 2, 1995) (describing the
Geneva Conventions as part of customary international law). These international norms are now codified in article 8 of
the Rome Statute. See also Theodor Meron, *The Geneva Conventions as Customary Law*, 81 Am. J. Int’l L. 348
(1987).

⁵⁵ See *Report on the Protection of War Victims*, 296 Int’l Rev. Red Cross 391, 413-14 (1993) (“Common
Article 3 unquestionably forms part of customary international law”); Oren Gross, *The Grave Breaches System and the
Armed Conflict in the Former Yugoslavia*, 16 Mich.J.Int’l L. 783, 825, n. 184.

1 (d) the passing of sentences and carrying out of executions without
2 previous judgment pronounced by a regularly constituted court....

3 *Kadic*, 70 F. 3d, at 242, citing Geneva Conventions common art. 3(1). “Thus, under the law of war
4 as codified in the Geneva Conventions, all ‘parties’ to a conflict--which includes insurgent military
5 groups--are obliged to adhere to these most fundamental requirements of the law of war.”⁵⁶

6 Defendant Vuckovic’s conduct, detailed herein, constitutes violence to life and person in the form
7 of torture and cruel treatment, outrages upon the personal dignity of the plaintiffs and the passing
8 of sentences against plaintiffs without previous judgment. This conduct violates the customary
9 international law of war as found in common article 3 of the Geneva Conventions and provides a
10 basis for liability under the ATCA.⁵⁷

12 **b. Grave Breaches**

13 The “grave breaches” provisions of the Geneva Conventions similarly define the
14 bounds of customary international law.⁵⁸ These provisions, found in each of the Geneva
15 Conventions, are also codified in Article 2 of the ICTY Statute as follows:

16 The International Tribunal shall have the power to prosecute persons
17 committing or ordering to be committed grave breaches of the

18 ⁵⁶ *Kadic*, 70 F.3d at 242.

19 ⁵⁷ There has been significant discussion in various international fora regarding whether the conflict in the
20 former Yugoslavia constitutes an “international” or “non-international” armed conflict for the purpose of the
21 application of the law of war. *See, e.g., Kadic*, 70 F.3d at 243, n. 8; *Prosecutor v. Dusko Tadic*, Appeals Chamber,
22 Case No. IT-94-1 (Judgment) (July 15, 1999) attached at Tab 6 of Plaintiffs Appendix of International Legal Materials:
23 ICTY Decisions., ¶ 87 (concluding that the conflict in the former Yugoslavia was, for all relevant periods, international
24 in character). As a practical matter, this question is moot for the purposes of this proceeding. As the Eleventh Circuit
25 has noted, “[T]here is no foreign civil war exception to the right to sue for tortious conduct that violates the
26 fundamental norms of the customary laws of war.” *Linder v. Portocarrero*, 963 F.2d 332, 336 (11th Cir. 1992). The
27 ICTY has explained similarly that the combatants in any conflict, whether internal or international, are required to
28 abide by the customary laws of war that respect “protection of civilians from hostilities, . . . protection of civilian
objects, in particular cultural property, protection of all those who do not (or no longer) take active part in hostilities,”
and prohibitions on certain means and methods of warfare. ‘Common Article 3’ prescribes “minimum mandatory rules
applicable to internal armed conflicts . . . [that] reflect elementary considerations of humanity applicable under
customary international law to any armed conflict, whether it is of an internal or international character. Therefore, at
least with respect to the minimum rules in Article 3, the character of the conflict is irrelevant.” *Tadic, Decision on the
Defence Motion on Jurisdiction*, ICTY Appeals Chamber, IT-94-1-T, ¶ 102 (Oct. 2, 1995) (citation omitted).
Moreover, The International Court of Justice has said that in international conflicts, the rules in common Article 3
“constitute a minimum yardstick, in addition to the more elaborate rules which are also to apply to international
conflicts.” *Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. U.S.A.)*,
1986 I.C.J. 14, 114, ¶ 218 (June 27, 1986).

⁵⁸ Convention I, art. 50; Convention II, art. 51; Convention III, art. 130; Convention IV, art. 147.

1 Geneva Conventions of 12 August 1949, namely the following acts
2 against persons or property protected under the provisions of the
relevant Geneva Convention:

- 3 (a) willful killing;
- 4 (b) torture or inhuman treatment, including biological experiments;
- 5 (c) willfully causing great suffering or serious injury to body or
6 health;
- 7 (d) extensive destruction and appropriation of property, not justified
by military necessity and carried out unlawfully and wantonly;
- 8 (e) compelling a prisoner of war or a civilian to serve in the forces of
a hostile power;
- 9 (f) willfully depriving a prisoner of war or a civilian of the rights of
10 fair and regular trial;
- 11 (g) unlawful deportation or transfer or unlawful confinement of a
civilian;
- 12 (h) taking civilians as hostages.

13
14 The relevant grave breaches in the instant case are torture and inhuman treatment,
15 willfully causing great suffering or serious injury, extensive destruction and appropriation of
16 property, willful deprivation of trial and unlawful confinement.

17 As described, *infra*, the acts of defendant Vuckovic unquestionably fit within the
18 accepted international definition of torture. Therefore, the customary international law of war, as
19 described in the grave breaches provisions of the Geneva Conventions and the Statute of the ICTY,
20 provides an additional ground for Vuckovic's liability under the ATCA.

21 The ICTY has held that "inhuman treatment" includes "not only acts such as torture
22 and intentionally causing great suffering or inflicting serious injury to body, mind or health but also
23 extended to other acts contravening the fundamental principle of humane treatment, in particular
24 those which constitute an attack on human dignity."⁵⁹ Similarly, the ICTY has held that "willfully
25 causing great suffering or serious injury to body or health" includes injury to "mental health" and
26 "includes those acts which do not fulfil the conditions set for the characterization of torture, even
27
28

⁵⁹ *Blaskic* (March 3, 2000) at ¶ 155, citing *Delalic* (November 16, 1998) ("Celebici Camp") at ¶ 544.

1 though acts of torture may also fit the definition given...⁶⁰ Therefore, it is clear that facts which
2 prove a violation of the customary international legal prohibition against cruel, inhuman and
3 degrading treatment during armed conflict also make out a violation of the laws of war under the
4 grave breaches provisions of the Geneva Conventions.

5 The ICTY has held that destruction of property which is “extensive, unlawful and
6 wanton” and is “unjustified by military necessity” is a grave breach.⁶¹ Therefore, Vuckovic’s
7 participation in looting and occupation of plaintiffs’ property violates the customary international
8 law of war in the context of the Bosnian Serb campaign of ethnic cleansing.⁶²

9 Finally, as described herein, Vuckovic participated in plaintiffs’ arbitrary detention.
10 This also makes out a violation of the law of war.

11 **6. Genocide**

12 Defendant Vuckovic is liable under the ATCA pursuant to customary international
13 law prohibiting genocide.⁶³ The Second Circuit in *Kadic* relied upon the Convention on the
14 Prevention and Punishment of the Crime of Genocide (“Genocide Convention”) to find a “specific
15 articulation of the prohibition against genocide in international law.”⁶⁴

16 The Genocide Convention absolutely prohibits genocide “whether committed in
17 time of peace or in time of war.”⁶⁵ Subsequent international agreements, resolutions and court
18

19
20 ⁶⁰ *Blaskic* (March 3, 2000) at ¶ 156, citing *Delalic* (November 16, 1998) (“Celebici Camp”) at ¶ 511.

21 ⁶¹ *Blaskic* (March 3, 2000) at ¶ 157.

22 ⁶² See also Article 3 of the ICTY Statute which describes additional war crimes outside the definition of
grave breaches and which prohibits “plunder of public or private property.”

23 ⁶³ *Kadic*, 70 F.3d at 241-42. See also *Princz v. Federal Republic of Germany*, 26 F.3d 1166, 1180 (D.C.
24 Cir. 1994) (“One need not pause long before concluding that the international community’s denunciation of both
genocide and slavery are accepted norms of customary international law and, in particular, are *jus cogen* norms.”);
Siderman de Blake, 965 F.2d at 715; *Beneal*, 969 F. Supp. at 372; *Xuncax*, 886 F. Supp. at 187, n. 35.

25 ⁶⁴ *Kadic*, 70 F.3d at 241, citing Convention on the Prevention and Punishment of the Crime of Genocide,
26 entered into force January 12, 1951, 78 U.N.T.S. 277 in U.S. State Department of State, *Treaties in Force* 345 (1994)
[hereinafter “Genocide Convention”], attached as Tab 22 of Plaintiffs’ Appendix of International Legal Materials:
27 International Instruments and Other Materials. See also *The Genocide Convention Implementation Act of 1987*, 18
U.S.C. §1901 (1988), which criminalizes genocide and makes it actionable under domestic U.S. law.

28 ⁶⁵ Genocide Convention, art. 1. The Genocide Convention also states explicitly that it is intended to codify
existing customary law. The parties “confirm that genocide . . . is a crime under international law which they undertake
to prevent and to punish.” *Id.* (emphasis added).

1 decisions have reaffirmed its absolute prohibition.⁶⁶ As found by the Second Circuit, genocide is
2 defined as any of certain enumerated acts, including “(a) Killing members of the group; (b)
3 Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the
4 group conditions of life calculated to bring about its physical destruction in whole or in part; (d)
5 Imposing measures designed to prevent births within the group; [and] (e) Forcibly transferring
6 children of the group to another group.” when they are “committed with intent to destroy, in whole
7 or in part, a national, ethnical, racial, or religious group, as such.”⁶⁷ Notably, in the *Kadic* decision,
8 the Second Circuit affirmed that “the proscription of genocide has applied equally to state and non-
9 state actors.”⁶⁸

10 As detailed herein, defendant Vuckovic participated in the unlawful arrest and
11 detainment of non-Serb males over the age of 18 in Bosanski Samac; tortured detainees and
12 subjected them to cruel, inhuman and degrading treatment and other abuses at Serb-controlled
13 detention facilities in Bosanski Samac; forced non-Serb residents of Bosanski Samac to leave their
14 homes, stealing their personal and real property; and forced Bosnian Muslim and Croatian residents
15 of Bosanski Samac to perform compulsory labor. Through these actions, defendant Vuckovic
16 demonstrated an intent to destroy Bosnian Muslims in accordance with the Bosnian Serb
17 Government’s systematic and widespread campaign of ethnic cleansing. When the defendant
18 tortured Muslim detainees, including plaintiffs, he made statements such as “Muslims [are] not
19 human beings,” and that Muslims were “going to be eliminated.” Therefore, defendant Vuckovic

21 ⁶⁶ See, e.g., Rome Statute, art. 5 (making genocide a core crime within the jurisdiction of the Court);
22 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity.
23 Reservations to the Convention on Genocide Case, 1951 I.C.J. Rep. 15, 23 (1951) (advisory opinion); G.A. Res. 96(I),
24 U.N. Doc. A/64/Add.1 (1946) (affirming that genocide is a crime under international law); G.A. Res. 180(II), U.N.
GAOR, 2d Sess., U.N. Doc. A/519 (1947) (same); Principles of International Cooperation in the Detection, Arrest,
Extradition, and Punishment of Persons Guilty of War Crimes and Crimes Against Humanity, G.A. Res. 3074 (Dec. 3,
1973); 3 *Trials of War Criminals Before the Nuernberg Military Tribunals* 983 (1951).

25 ⁶⁷ *Kadic*, 70 F.3d at 241, citing Genocide Convention, art. 2.

26 ⁶⁸ *Kadic*, 70 F.3d at 242 (“Appellants’ allegations . . . clearly state a violation of the international law norm
27 proscribing genocide, regardless of whether Karadzic acted under color of law or as a private individual.”). See also
28 Genocide Convention, art. 4 (“[P]ersons committing genocide . . . shall be punished, whether they are constitutionally
responsible rulers, public officials or private individuals.”); Restatement (Third) of Foreign Relations Law of the
United States, Pt. II Introductory Note (1987) (“[I]ndividuals may be held liable for offenses against international law,
such as piracy, war crimes, or genocide.”). Genocide is a crime under international and United States law whether
perpetrators are “private individuals, public officers or statesmen.” G.A. Resolution 96(1), I U.N. GAOR, U.N. Doc.
A/64/Add.1 at 188-89 (1946).

1 has violated customary international law prohibiting genocide, rendering him liable to plaintiffs
2 under the Alien Tort Claims Act.

3 **C. Plaintiffs Have A Cause of Action Under The Torture Victim Protection**
4 **Act**

5 The TVPA provides a private, federal cause of action for torture and extrajudicial
6 killing committed anywhere in the world.⁶⁹ To state a claim under the TVPA, plaintiffs must
7 allege that (1) the individual defendant acted under the actual or apparent authority, or under color
8 of law, of any foreign nation; (2) the individual defendant subjected an individual to torture or
9 extrajudicial killing; and (3) plaintiffs have exhausted “adequate and available remedies” in the
10 country where the violative conduct occurred.⁷⁰

11 The first element of a TVPA claim requires a showing of governmental involvement
12 in the torture or killing.⁷¹ In this case is it undisputed that the defendant acted with the actual
13 authority of the Bosnian Serb government. In any event, “[i]n construing the terms ‘actual or
14 apparent authority’ and ‘color of law,’ courts are instructed to look to principles of agency law and
15 to jurisprudence under 42 U.S.C. § 1983, respectively.”⁷² Under this standard, Vuckovic was
16 clearly acting with the actual or apparent authority of the Bosnian Serb government. During the
17 time period at issue from April to November, 1992, defendant Vuckovic admits that he served as a
18 soldier for the army of the self-proclaimed Bosnian Serb republic within Bosnia and Herzegovina
19 (the “*Republika Srpska*”) which acted in collaboration with the government of the recognized
20 nation of the former Yugoslavia and its dominant constituent republic, Serbia.⁷³ Specifically, the
21 defendant concedes, and this court has previously found, that he served in the Fourth Detachment
22 of that army, commanded by Simo Zaric, who has been indicted by the International Criminal

23
24 ⁶⁹ See Order of Judge Hunt dated September 9, 1999 Denying Defendant’s Motion to Dismiss
25 (“International laws and treaties which plaintiffs claim defendant violated do not themselves provide a private cause of
26 action. Instead, the cause of action is conferred by either or both the TVPA and the Alien Tort Claims Act.”).

27 ⁷⁰ Torture Victim Protection Act of 1991, Pub.L.No. 102-256, 106 Stat. 73, codified at 28 U.S.C. § 1350 *et*
28 *seq.*

⁷¹ *Beneal*, 969 F. Supp. at 362; *Kadic*, 70 F.3d at 245 (citing H.R.Rep. No. 367, 102d Cong., 2d Sess.
(1991)).

⁷² *Kadic*, 70 F.3d at 245.

⁷³ See First Amended Answer, ¶ 19.

1 Tribunal for the Former Yugoslavia for war crimes.⁷⁴ Defendant Vuckovic coordinated his actions
2 and had regular contact with Simo Zaric (defendant’s Bosnian Serb military commander) as well as
3 with Stevan Todorovic (the Bosnian Serb Chief of Police).⁷⁵ Vuckovic was admitted, in military
4 uniform, by guards at the various Bosanski Samac detention facilities, often on a routine and daily
5 basis, to torture and terrorize detainees. Therefore, plaintiffs will demonstrate governmental
6 involvement as required by the ATCA.

7 As described extensively at Section IV.B.1, plaintiffs will demonstrate that
8 defendant tortured plaintiffs, satisfying the second element of the TVPA as well. The TVPA
9 provides the following definition of torture:

10 “[A]ny act, directed against an individual in the offender’s custody or
11 physical control, by which severe pain or suffering...whether
12 physical or mental, is intentionally inflicted on that individual for
13 such purposes as obtaining from that individual or a third person
14 information or a confession, punishing that individual for an act that
15 individual or a third person has committed or is suspected of having
16 committed, intimidating or coercing that individual or a third person,
17 or for any reason based on discrimination of any kind...”

18 TVPA, § 3(b). This definition closely follows the definition set out in the Torture Convention,
19 quoted in section IV.B.2 above. For the same reasons set out in section IV.B.2, Vuckovic’s actions
20 meet the TVPA’s definition of torture.
21

22 As no “adequate and available” remedies exist for plaintiffs in Bosnia, the TVPA’s
23 exhaustion “requirement” is moot.⁷⁶ The legislative history to the TVPA indicates that “courts in
24 the United States do not require exhaustion in a foreign forum when foreign remedies are
25 unattainable, ineffective, inadequate, or obviously futile.” S. Rep. No. 249, 102d Cong., 1st Sess.

26 ⁷⁴ *Id.* See also Order of Judge Hunt dated September 9, 1999 Denying Defendant’s Motion to Dismiss at p.
27 2 (“Defendant Vuckovic ... was a soldier in the Bosnian Serb army under the command of Simo Zaric, who has been
28 indicted in the Hague for war crimes.”).

⁷⁵ Mr. Todorovic has pled guilty to charges in the ICTY related to his involvement in the campaign of terror
that took place in Bosanski Samac. *Todorovic* (July 31, 2001 at ¶¶1-17).

⁷⁶ TVPA, § (2)(b). The legislative history of the TVPA instructs courts to approach cases brought under the
TVPA with an assumption that “in most instances the initiation of litigation under this legislation will be virtually
prima facie evidence that the claimant has exhausted his or her remedies in the jurisdiction in which the torture
occurred...The procedural practice of international human rights tribunals generally holds that the respondent has the
burden of raising the nonexhaustion of remedies as an affirmative defense and must show that domestic remedies exist
that the claimant did not use.” S. Rep. No. 249, 102d Cong., 1st Sess., at 9-10 (1991)

1 (1991).⁷⁷ As noted by the Ninth Circuit, the burden is on the respondent to raise non-exhaustion.
2 *Hilao v. Estate of Marcos*, 103 F. 3d at 778, n. 5. Peggy Hicks, designated by the plaintiffs as an
3 expert on the issue of exhaustion of remedies, explains in her report earlier submitted to the Court
4 that remedies for human rights abuses against Muslims in Bosnia-Herzegovina have been
5 unattainable, ineffective, inadequate or obviously futile from 1992 until the plaintiffs’ departure
6 from the country. As Hicks opines: “[t]he judicial system of one entity of the state of Bosnia and
7 Herzegovina – the Republic Srpska – was both legally incapable and politically unwilling to
8 provide any effective remedy in this case. The judicial system of the other entity – the Federation
9 of Bosnia and Herzegovina – was [unable] to provide an effective remedy because the defendant
10 was not present in the Federation.” As the Second Circuit observed in *Kadic*: “[I]t seems evident
11 that the courts of the former Yugoslavia, either in Serbia or war-torn Bosnia, are not now available
12 to entertain plaintiffs’ claims.”⁷⁸

13 Therefore, defendant Vuckovic is liable to plaintiffs for his conduct under the
14 Torture Victim Protection Act.

15
16 **D. Defendant Vuckovic is Both Directly and Vicariously Liable for Human Rights Violations Perpetrated Against Plaintiffs**

17 As described above, Defendant Vuckovic personally committed many torts in
18 violation of international law directly against the plaintiffs. In addition, the evidence at trial will
19 demonstrate that Vuckovic frequently aided and abetted and conspired with other persons in the
20 commission of the torts. Domestic United States courts have long held that principles of vicarious
21 liability operate to confer liability on a defendant under the ATCA for international torts committed
22 in conjunction with others.⁷⁹ Similarly, the Senate report on the TVPA notes that that statute is

24
25 ⁷⁷ See also *Xuncax*, 886 F. Supp. at 178 (the court reviews TVPA legislative history and finds that the exhaustion requirement “was not intended to create a prohibitively stringent condition precedent to recovery under the statute.”)

26 ⁷⁸ *Kadic*, 70 F.3d at 250.

27 ⁷⁹ *Abebe-Jira*, 72 F.3d at 848; *Hilao v. Estate of Marcos*, 103 F.3d at 776-778; *Xuncax*, 886 F. Supp. at 178 (allowing TVPA claim against Guatemalan Minister of Defense even though plaintiff was not in his personal custody or physical control; *Carmichael v. United Technologies Corp.*, 835 F.2d 109, 113-114 (5th Cir. 1998) (ATCA jurisdiction over “private parties who conspire in, or *aid or abet*, official acts of torture by one nation against the citizens of another nation” (emphasis added)).

1 intended to cover those who “ordered, abetted, or assisted” in the violation.⁸⁰ Most international
2 conventions similarly recognize that an individual may be vicariously liable for violations of
3 international law.⁸¹ The ICTY Statute states that “A person who planned, instigated, ordered,
4 committed or otherwise aided and abetted in the planning, preparation or execution of a crime
5 referred to in Articles 2 to 5 of the present statute [grave breaches of the Geneva Conventions of
6 1949, violations of laws or customs of war, genocide or crimes against humanity] shall be
7 individually responsible for the crime.”⁸²

8 The ICTY has interpreted article 7(1) to require both an *actus reus* and adequate
9 *mens rea*.⁸³ The ICTY has held that the *actus reus* of aiding and abetting requires “practical
10 assistance, encouragement or moral support which has a substantial effect on the perpetration of
11 the crime.” *Id.* at ¶ 235. Notably, this formulation does not require the tangible assistance of the
12 aider and abettor. *Id.* at ¶ 232. As to *mens rea*, the ICTY has found that it is not necessary for the
13 accomplice to share the *mens rea* of the principal. *Id.* at ¶ 236. Rather, it is sufficient that the
14 accomplice knows that his actions will assist the perpetrator in the commission of the crime. *Id.*

15 In this case, defendant Vuckovic conspired with and aided Serb military and
16 political forces in committing genocide, war crimes, torture and other wrongful acts against
17 plaintiffs. For example, he committed “mock executions” in cooperation with the Bosnian Serb
18 Chief of Police, Todorovic, at various detention centers in Bosanski Samac. Defendant perpetrated
19 heinous acts against plaintiffs together with other Bosnian Serb soldiers and police officials, jointly
20 carrying out torture and humiliations of plaintiffs, and taking turns beating them. On one occasion,
21 the defendant told drunk Bosnian Serb soldiers at one detention center to “help themselves” to the
22 detainees. The defendant also assisted in the unlawful detainment and torture of plaintiffs and
23 failed to take any action to prevent it. In doing so, Vuckovic demonstrated both the *actus reus* and
24 the *mens rea* of an aider and abettor. Therefore, Defendant Vuckovic is “responsible under
25 international law for his own acts, [and] for acts which he directed, ordered, aided, abetted or

26 ⁸⁰ See S. Rep. No. 249, 102nd Cong., 1st Sess. 1991 at *8 and citation to authority at n. 16.

27 ⁸¹ See, e.g., Rome Statute, art. 25.

28 ⁸² ICTY Statute, art. 7(1).

⁸³ *Furundzija* (July 21, 2000) at ¶ 191.

1 participated in...⁸⁴

2 **E. Plaintiffs' Causes of Action Under Georgia State Law**

3 **1. Assault and Battery/Violent Injury or Attempt to Commit Injury**

4 Under Georgia law, the elements of assault and battery are: (1) a physical injury
5 done to another; (2) whatever may be the intention of the person causing the injury; (3) unless his
6 is justified under some rule of law; and (4) intention shall be considered in the assessment of
7 damages. Ga. Code Ann. § 51-1-13 (1998). Any violent or illegal attempt to commit a physical
8 injury upon a person is a tort for which damages may be recovered. Ga. Code Ann. § 51-1-14
9 (1998). Defendant Vuckovic is liable for assault and battery for committing unjustified acts of
10 physical violence which constituted harmful and offensive contacts. *See Greenfield v. Colonial*
11 *Stores*, 110 Ga. App. 572, 574-75 (Ga. Ct. App. 1964). The defendant's intention in committing
12 such injuries does not affect his liability. *See Hendricks v. Southern Bell Tel. & Tel. Co.*, 193 Ga.
13 App. 264, 265-66 (Ga. Ct. App. 1989). As described herein, Defendant Vuckovic committed
14 extensive physical injuries against all of the plaintiffs, without their consent, and in a harmful and
15 offensive manner.

16 **2. False Imprisonment**

17 False imprisonment is the unlawful detention of the person of another, for any
18 length of time, whereby such person is deprived of his personal liberty. Ga. Code Ann. § 51-7-20
19 (1998). Plaintiffs need not show malice or lack of probable cause to state a claim for false
20 imprisonment. *Lowe v. Turner*, 115 Ga.App. 503, 506 (1967). A detention "need not consist of
21 physical restraint, but may arise out of words, acts, gestures or the like which induce a reasonable
22 apprehension that force will be used if the plaintiff does not submit; and it is sufficient if they
23 operate upon the will of the person threatened and result in a reasonable fear of personal difficulty
24 or personal injury." *Kemp v. Rouse-Atlanta, Inc.* 207 Ga.App. 876, 879 (1993). Each of the

25
26 ⁸⁴ *Abebe-Jira v. Negewo*, 1993 WL 814304 (N.D. Ga 1993) at *4, affirmed *Abebe-Jira v. Negewo*, 72 F.3d
27 844 (11th Cir. 1996). Moreover, Defendant Vuckovic cannot raise a defense that he was merely following superior
28 orders. Neither international nor domestic law recognize the existence of superior orders as a defense to a subordinate's
liability for conduct violative of customary international law. *See, e.g.*, Statute of the ICTY at art. 7 (4) ("The fact that
an accused person acted pursuant to an order of a government or of a superior shall not relieve him of criminal
responsibility..."); *Little v. Bareme*, 6 U.S. 170, 179 (1804).

1 plaintiffs was detained without an arrest warrant and without being told of the charges against
2 them. Defendant Vuckovic subjected plaintiffs to restraint and physical violence in detention, and
3 was complicit in plaintiffs' ongoing arbitrary detention. *See Hampton v. Norred & Associates*, 216
4 Ga. App. 367, 368 (Ga. Ct. App. 1995). Therefore, Vuckovic is liable to plaintiffs under Georgia
5 state law prohibiting false imprisonment.

6 **3. Intentional Infliction of Emotional Distress**

7 The defendant is liable for intentional infliction of emotional distress if he engaged
8 in conduct that (1) was intentional or reckless, (2) extreme and outrageous, and (3) had a causal
9 connection to plaintiffs' emotional distress that was (4) severe. *See Hendrix v. Phillips*, 2207 Ga.
10 App. 394, 395 (Ga. Ct. App. 1993). Defendant Vuckovic intentionally harmed and humiliated the
11 plaintiffs. The extreme and outrageous nature of the defendant's actions, which are, in fact,
12 violations of the law of nations, are "intolerable in a civilized community" as required under
13 Georgia law. *Phinazee v. Interstate Nationalease, Inc.*, 237 Ga. App. 39, 39-40 (Ga. Ct. App.
14 1999). Furthermore, the plaintiffs suffered severe mental anguish as a direct result of the
15 defendant's actions. Defendant Vuckovic's conduct thus meets all of the requisite elements for
16 imposing liability for intentional infliction of emotional distress.

17 **4. Conspiracy**

18 Georgia law allows plaintiffs to recover for civil conspiracy, defined as a
19 combination between two or more persons to do some unlawful act which is a tort or else to do
20 some lawful act by methods which constitute a tort.⁸⁵ As described herein, Vuckovic conspired
21 with others to detain, torture and abuse plaintiffs.

22 **F. Plaintiffs' Causes of Action Under Laws of Bosnia and Herzegovina**

23 Plaintiffs similarly have a cause of action under the laws of Bosnia and Herzegovina
24 as they existed at the time of the acts committed by the defendant in 1992. The defendant's actions
25 render him liable for civil damages to plaintiffs under the Law of Obligations, the code governing
26 contractual and tort law in Bosnia and Herzegovina in 1992.

27
28

⁸⁵ *Summer-Minter & Assoc. v. Giodano*, 288 Ga. 86, 184 (1971); *Hames v. Shaver*, 220 Ga. 412 (1972).

1 **1. The Operative Laws**

2 The acts alleged by the plaintiffs took place between April and November, 1992.
3 During this period, although the laws applicable to persons residing in Bosnia and Herzegovina
4 were in flux because of the political crisis and subsequent civil war described herein, the principal
5 laws applicable to defendant’s conduct remained unchanged. Immediately after the proclamation
6 of independence of Bosnia and Herzegovina on March 6, 1992, the new sovereign state of Bosnia
7 and Herzegovina adopted the federal law of Yugoslavia as part of its municipal law. It was this set
8 of laws that remained in effect in Bosnia and Herzegovina until the entry into force of the Dayton
9 Agreement (The General Framework Agreement for Peace in Bosnia and Herzegovina) in 1996.
10 This adoption was accomplished with the passing of several “decrees with the force of law” by the
11 Presidency of the Republic, which reenacted into law former federal legislation with non-
12 substantive amendments, such as changing the names and institutions of “Yugoslavia” to “Bosnia
13 and Herzegovina,” and removing references to the defunct socialist self-management system. One
14 comprehensive decree, passed on April 11, 1992, enumerated about 120 federal laws to be adopted
15 immediately, while another, passed on the same date, declared 54 federal laws to be no longer in
16 force. For some key statutes, including the Criminal Code of Yugoslavia, the Law of Criminal
17 Procedure, the Law of Obligations and the Law on Civil Procedure, special decrees were passed
18 which also contained amendments to the original text. Furthermore, the Constitution of the
19 republic of Bosnia and Herzegovina, formerly a federal unit, became the Constitution of a
20 sovereign state. This Constitution, though amended several times after the declaration of
21 independence, provided a constitutional framework for the functioning of the Bosnian government
22 during the war period (1992-1996). Since 1992, therefore, the main body of law in Bosnia and
23 Herzegovina is essentially the same as former federal law of Yugoslavia, and its legal system
24 maintains significant continuity with its past.

25 The legal system of Bosnia and Herzegovina, as adopted from the laws of the
26 former Yugoslavia, belongs in the family of civil law jurisdictions. In civil law jurisdictions, the
27 primary source to be consulted to determine civil liability and possible remedies are the basic codes
28 that govern obligations (contract and tort), substantive criminal law, civil procedure, and criminal

1 procedure. The Constitution of Bosnia and Herzegovina must also be considered to be binding
2 law, being superior to all other legislation. Finally, because of the reliance on abstract statutory
3 provisions, the law of *delict* (tort) in the states of former Yugoslavia is also significantly shaped by
4 the interpretations of the leading commentators. Accordingly, to correctly determine and prove
5 liability of the defendant, judges in Bosnia and Herzegovina would refer to one or more of the
6 leading treatises on the law obligation.⁸⁶ The decisions of all the Supreme Courts of the six former
7 republics and the former Federal Court (*Savezni Sud*) are considered to have some authority, but
8 generally, they are of secondary importance. In the vast majority of cases, statutory principles
9 supplemented by reference to the commentaries suffice for the resolution of a case.

10 The following are the laws operative in Bosnia and Herzegovina in 1992 and
11 applicable to the defendant's conduct:

12 **a. Statutes**

13 The statutes (laws) of former Yugoslavia from 1945 to 1991, which represented by
14 far the most important source of law, were published in a federal reporter called "The Official
15 Journal of the Socialist Federal Republic of Yugoslavia" (*Službeni list SFRJ*).⁸⁷ The first part of the
16 citation is a consecutive number, and the second the year of publication:

- 17
- 18 • *Zakon o obligacionim odnosima*, the Law of Obligations (covering contract and tort), published
19 in *Službeni list SFRJ* No. 29/78, with amendments published in No. 39/85 and No. 57/89. An
English translation was published as "The Law of Contract and Torts" (Dr. Đurica Krstić,
trans.) by *Jugoslovenski pregled*, Beograd 1997.
 - 20 • *Zakon o parni nom postupku*, the Law on Civil Procedure, published in *Službeni list SFRJ* No.
21 4/77, with subsequent amendments published in No. 36/77, No. 36/80, No. 69/82, No. 58/84,
No. 74/87, No. 57/89, No. 20/90 and No. 35/91.
 - 22 • *Zakon o krivi nom postupku*, the Law on Criminal Procedure, published in *Službeni list SFRJ*
23 No. 4/77, with amendments published in No. 36/77, No. 13/85, No. 26/86, No. 74/87, No.

24 ⁸⁶ The leading commentaries on the Yugoslav law of obligations are Stojan Cigoj, *Komentar obligacionih*
25 *razmerij*, Commentary on Obligations, published by *Časopisni zavod Uradni list SR Slovenije*, Ljubljana 1984 [cited
26 hereinafter as "Cigoj"]; Boris Vizner, *Komentar Zakona o obveznim (obligacionim) odnosima*, Commentary on the
27 Law of Obligations, Zagreb 1978; and Borislav T. Blagojević, Vrleta Krulj, *Komentar Zakona o obligacionim*
28 *odnosima*, Commentary on the Law of Obligations, 2nd ed., published by *Savremena administracija*, Beograd 1983
[cited hereinafter as 'Blagojević'].

⁸⁷ The statutes cited in this brief were published, in addition to official reports, in collections edited by
publishers in various republics. The texts reproduced and translated below are drawn from both Croatian, Bosnian and
Serbian language versions, depending on availability, and the wording of different articles may therefore reflect this.
However, all of the versions used are equally authoritative.

1 57/89, and No. 3/90.

- 2 • *Krivi ni zakon Socijalističke Republike Bosne i Hercegovine*, the Criminal Code of the Socialist
3 Republic of Bosnia and Herzegovina, published in *Službeni list SR Bosne i Hercegovine* No.
4 16/77, with a correction in No. 19/77, and amendments published in No. 32/84, No. 19/86, No.
5 40/87, No. 41/87, No. 33/89, No. 2/90 and No. 24/91.
- 6 • *Krivi ni zakon Socijalističke Federativne Republike Jugoslavije*, the Criminal Code of the
7 Socialist Federal Republic of Yugoslavia, published in *Službeni list SFRJ* No. 44/76, with a
8 correction in No. 36/77 and amendments in No. 56/77, No. 34/84, No. 37/84, No. 74/87, No.
9 57/89, No. 3/90, No. 38/90 and No. 45/90.

10 **b. Constitutional documents**

- 11 • *Ustav Socijalističke Federativne Republike Jugoslavije*, The Constitution of the Socialist
12 Federal Republic of Yugoslavia of 1974, published in *Službeni list SFRJ* No. 9/74. An English
13 translation (Dr. Marko Pavić, trans.) was published by *Jugoslovenska stvarnost* Newspaper
14 and Publishing house, *Jugoslovenski pregled*, Beograd 1989.
- 15 • *Ustav Socijalističke Republike Bosne i Hercegovine*, The Constitution of the Socialist Republic
16 of Bosnia and Herzegovina of 1974, published in *Službeni list SR BiH* No. 4/74, after 1992 in
17 force as *Ustav Republike Bosne i Hercegovine*, The Constitution of the Republic of Bosnia and
18 Herzegovina. This Constitution was amended several times after the declaration of
19 independence, see, e.g., *Službeni list Republike BiH* No. 8/94, No. 30/95 and No. 37/95. An
20 edited version of the text was published in *Službeni list Republike BiH* No. 5/93.

21 **c. Adopting decrees**

22 The following is a list of relevant “Decrees with the force of law” (*Uredba sa*
23 *zakonskom snagom*) adopted by the Presidency of the Republic of Bosnia and Herzegovina
24 (*Predsjedništvo Republike Bosne i Hercegovine*) acting on the proposal of the Government (*Vlada*
25 *Republike BiH*) in the period immediately following the declaration of independence. The decrees
26 were published in a reporter called “The Official Journal of the Republic of Bosnia and
27 Herzegovina” (*Službeni list Republike BiH*). The first number is the consecutive number of the
28 reporter and the second is the year of publication.

- 29 • *Uredba sa zakonskom snagom o preuzimanju i primjenjivanju saveznih zakona koji se u Bosni i*
30 *Hercegovini primjenjuju kao republički zakoni*, Decree with the force of law on the adoption
31 and application of federal laws which shall be applied in Bosnia and Herzegovina as laws of the
32 republic, adopted by the Presidency on 11. April 1992, published in *Službeni list Republike BiH*
33 Year I, No. 2/92.
- 34 • *Uredba sa zakonskom snagom o neprimjenjivanju odredaba saveznih zakona i propisa*
35 *donesenih za njihovo izvršavanje na teritoriji Socijalističke Republike Bosne i Hercegovine*,
36 Decree with the force of law on the non-application of provisions of federal laws enacted for
37 their implementation on the territory of the Socialist Republic of Bosnia and Herzegovina,
38

1 adopted by the Presidency on 11. April 1992, published in *Službeni list Republike BiH* Year I,
2 No. 2/92.

- 3 • *Uredba sa zakonskom snagom o preuzimanju Krivičnog zakona Socijalističke Federativne*
4 *Republike Jugoslavije*, Decree with the force of law on the adoption of the Criminal Code of
5 the Socialist Federal Republic of Yugoslavia, adopted by the Presidency on 11. April 1992,
6 published in *Službeni list Republike BiH* Year I, No. 2/92.
- 7 • *Uredba sa zakonskom snagom o preuzimanju Zakona o krivičnom postupku*, Decree with the
8 force of law on the adoption of the Law on Criminal Procedure, adopted by the Presidency on
9 11. April 1992, published in *Službeni list Republike BiH* Year I, No. 2/92.
- 10 • *Uredba sa zakonskom snagom o preuzimanju Zakona o obligacionim odnosima*, Decree with the
11 force of law on the adoption of the Law of Obligations, adopted by the Presidency on 11.
12 April 1992, published in *Službeni list Republike BiH* Year I, No. 2/92.
- 13 • *Uredba sa zakonskom snagom o preuzimanju Zakona o parničnom postupku*, Decree with the
14 force of law on the adoption of the Law on Civil Procedure, adopted by the Presidency on 11.
15 April 1992, published in *Službeni list Republike BiH* Year I, No. 2/92.

11 d. Commentaries

12 The leading commentaries (treatises) on the law of obligations, which includes
13 *delict* (tort), and comprehensively state the law, including judicial practice, are:

- 14 • Stojan Cigoj, *Komentar obligacijskih razmerij*, Commentary on Obligations, vol. I-IV,
15 published by Časopisni zavod Uradni list SR Slovenije, Ljubljana 1984-86.
- 16 • Boris Vizner, *Komentar Zakona o obveznim (obligacionim) odnosima*, Commentary on the
17 Law of Obligations, Zagreb 1978.
- 18 • Borislav T. Blagojević, Vrleta Krulj, *Komentar Zakona o obligacionim odnosima*, Commentary
19 on the Law of Obligations, 2nd ed., published by *Savremena administracija*, Beograd 1983.

19 2. Civil Liability

20 In Bosnia, civil liability arising from contract and tort is governed by the Law of
21 Obligations (*Zakon o obligacionim odnosima*), a comprehensive and modern codification adopted
22 by federal Yugoslavia in 1978.⁸⁸ Chapter I of the Law contains basic principles that apply to all
23 obligations between private parties, including a general prohibition of causing damage. In section
24 2 of Chapter II, the Law defines bases of liability (Art. 154), injury (Art. 155), and fault (Art. 158).
25 It prescribes redress for damages in cases involving bodily injury and health (Art. 195) and
26 specifies what kind of non-material damages can be recovered (Art. 200). These provisions,
27

28 ⁸⁸ See *Zakon o obligacionim odnosima*, the Law of Obligations (covering contract and tort), published in
Službeni list SFRJ, No. 29/78, with amendments published in No. 39/85 and No. 57/89. An English translation was
published as “The Law of Contract and Torts” (Dr. Đurica Krstić, trans.) by *Jugoslovenski pregled*, Beograd 1997.

1 however, provide only a framework of tort law. The decisions of superior courts (the so-called
2 “judicial practice”) and commentaries on the Law of Obligations, which usually contain abridged
3 court decisions, supplement the legislative framework and must be consulted to determine
4 existence of liability.

5 **a. Elements of a Civil *Delict* and the Duty to Compensate**

6 A civil *delict* (tort) can be broadly defined as an act or an event which causes
7 unlawful damage to a legally protected interest.⁸⁹ According to legal doctrine, it involves four
8 elements (or prerequisites): a damaging fact (act or event), unlawful damage, causal link and
9 responsibility (fault).⁹⁰ The definition of “unlawful damage” is the most important element of a
10 *delict*. In order for a damaging act or event to trigger liability, it must be, as the commentaries put
11 it, impermissible. In the absence of other explicit prohibition, liability may be found for violation
12 of the general rule of Art. 16 of the Law of Obligations, which stipulates:

13
14 Art. 16 Prohibition of causing damage
15 Everyone shall be bound to refrain
16 from an act which may cause damage
to another.

14 Član 16. Zabrana uzrokovanja štete
15 Svako je dužan da se uzdrži od postupka
16 kojim se može drugom prouzrokovati šteta.

17 Usually, however, liability depends on a violation of a more specific rule of either
18 law (*e.g.*, criminal statutes, administrative regulations etc.), morality (*e.g.*, abuse of rights or
19 payment for marriage), professional conduct (*e.g.*, medical malpractice), or some other accepted
20 rule.⁹¹ In the present case, violation of an established rule or rules can be most persuasively
21 demonstrated by reference to provisions of criminal law. A necessary condition of finding a
22 tortfeasor liable is that a violated rule protects some legally recognized interest; in other words, the
23 rule must be intended to prevent the kind of damage that is inflicted. Because of their preventive
24 character, provisions of criminal law enumerated below satisfy this condition by definition.

25
26
27 ⁸⁹ See *Cigoj* at 513. See also *Blagojevi* at 485.

28 ⁹⁰ *Id.* at 486. Fault is not required in cases of strict liability.

⁹¹ See *Cigoj* at 589.

1 whoever with the same intent commits
2 one of the foregoing acts, shall be
3 punished by imprisonment for no less
4 than five years or by the death
5 penalty.*⁹²

6 * See Art. I – VII of The Convention on
7 the Prevention and Punishment of the
8 Crime of Genocide, ratified by Order of
9 the Presidium of the National Assembly
10 of Yugoslavia of June 21, 1950,
11 published in *Službeni vesnik*
12 *Prezidijuma Narodne skupstine FNRJ*
13 No. 2/50.

14 Art. 142 War crime against the civilian
15 population

16 Whoever in violation of rules of
17 international law effective at the time of
18 war, armed conflict or occupation,
19 orders that civilian population be
20 subject to killings, torture, inhuman
21 treatment, biological experiments,
22 immense suffering or violation of
23 bodily integrity or health; dislocation or
24 displacement or forcible conversion to
25 another nationality or religion; forcible
26 prostitution or rape; application of
27 measures of intimidation and terror,
28 taking hostages, imposing collective
punishment, unlawful bringing in
concentration camps and other illegal
arrests and detention, deprivation of
rights to fair and impartial trial; forcible
service in the armed forces of enemy's
army or in its intelligence service or
administration; forcible labor,
starvation of the population, property
confiscation, pillaging, illegal and self-
willed destruction and stealing on large
scale of a property that is not justified
by military needs, taking an illegal and
disproportionate contribution or
requisition, devaluation of domestic
currency or the unlawful issuance of
currency, or who commits one of the
foregoing acts, shall be punished by
imprisonment for not less than five
years or by the death penalty.*

* *Vidi čl. I-VII Konvencije o sprečavanju i
kaznavanju zločina genocida, koja je
ratifikovana Ukazom Prezidijuma Narodne
Skupštine FNRJ od 21. VI 1950 ("Službeni
vesnik Prezidijuma Narodne Skupštine
FNRJ", br. 2/50).*

*lan 142. Ratni zločin protiv civilnog
stanovništva*

*Ko kršeći pravila međunarodnog prava za
vreme rata, oružanog sukoba ili okupacije
naredi da se prema civilnom stanovništvu
vrše ubistva, mučenja, nečovečna
postupanja, biološki eksperimenti,
nanošenje velikih patnji ili povreda telesnog
integriteta ili zdravlja; raseljavanje ili
preseljavanje ili prisilno odnarodnjavanje
ili prevođenje na drugu veru; prisiljavanje
na prostituciju ili silovanja; primenjivanje
mera zastrašivanja i terora, uzimanja
talaca, kolektivno kažnjavanje,
protivzakonito odvođenje u koncentracione
logore i druga protivzakonita zatvaranja,
lišavanje prava na pravilno i nepristrasno
suđenje; prisiljavanje na službu u oružanim
snagama neprijateljske sile ili u njenoj
obaveštajnoj službi ili administraciji;
prisiljavanje na prinudni rad,
izgladnjavanje stanovništva, protivzakonito
i samovoljno uništavanje ili prisvajanje u
velikim razmerama imovine koje nije
opravdano vojnim potrebama, uzimanje
nezakonite i nesrazmerno velike kontribucije
i rekvizicije, smanjenje vrednosti domačeg
novca ili protivzakonito izdavanje novca, ili
ko izvrši neko od navedenih dela, kazniće se
zatvorom najmanje pet godina ili smrtnom
kaznom.**

⁹² Annotations marked by an asterisk (*) are found in an official publication of the federal and all republican Criminal Codes called "A collection of Criminal Codes" (*Zbirka krivičnih zakona*), published by *Novinsko-izdavačka ustanova Službeni list SFRJ*, Beograd 1977. The annotations explain the connection of the articles with the text of international instruments ratified by Yugoslavia.

1 * See Art. 146. and 147 of The
2 Convention Relative to the Protection
3 of Civilian Persons in Time of War,
4 ratified by Order of the Presidium of
5 the National Assembly of Yugoslavia
of March 28, 1950, published in
*Službeni vesnik Prezidijuma Narodne
Skupstine FNRJ* No. 6/50.

6 Art. 145 Organizing a group and
7 instigating the commission of genocide
and war crimes

8 (1) Whoever organizes a group for the
9 purpose of committing criminal acts
10 referred to in articles 141 to 144 of this
law, shall be punished by imprisonment
for not less than five years.

11 (2) Whoever becomes a member of a
12 group referred to in paragraph 1 of this
13 article, shall be punished by
imprisonment for not less than one
year.

14 (3) A member of a group referred to in
15 paragraph 1 of this article who exposes
16 the group before he has committed a
17 criminal act in its ranks or on its
18 account, shall be punished by
imprisonment for a term not exceeding
three years, but the court may also
refrain from imposing a punishment on
him.

19 (4) Whoever calls or instigates the
20 commission of criminal acts referred to
21 in articles 141 to 144 of this law, shall
22 be punished by imprisonment for a term
23 exceeding one year but not exceeding
10 years.

24 Art. 154 Racial and other
25 discrimination

26 (1) Whoever on the basis of distinction
27 of race, color, nationality or ethnic
28 background violates basic human rights
and freedoms recognized by the
international community, shall be
punished by imprisonment for a term
exceeding six months but not exceeding
five years.

(2) The sentence set forth in paragraph

* *Vidi čl. 146. i 147. Ženevske konvencije o
zaštiti građanskih lica za vreme rata od 12.
VIII 1949, koja je ratifikovana Ukazom
Prezidijuma Narodne Skupštine FNRJ od
28. III 1950 ("Službeni vesnik Prezidijuma
Narodne Skupštine FNRJ", br. 6/50).*

*Član 145. Organizovanje grupe i
podsticanje na izvršenje genocida i ratnih
zločina*

*(1) Ko organizuje grupu radi vršenja
krivičnih djela iz čl. 141 do 144 ovog
zakona, kazniće se zatvorom najmanje pet
godina.*

*(2) Ko postane pripadnik grupe iz stava 1.
ovog člana, kazniće se zatvorom najmanje
jednu godinu.*

*(3) Pripadnik grupe iz stava 1. ovog člana
koji otkrije grupu pre nego što je u njenom
sastavu ili za nju učinio krivično delo,
kazniće se zatvorom do tri godine, a može se
i osloboditi od kazne.*

*(4) Ko poziva ili podstiče na izvršenje
krivičnih dela iz čl. 141. do 144. ovog
zakona, kazniće se zatvorom od jedne do
deset godina.*

Član 154. Rasna i druga diskriminacija

*(1) Ko na osnovu razlike u rasi, boji kože,
nacionalnosti ili etničkom poreklu krši
osnovna ljudska prava i slobode priznate od
strane međunarodne zajednice, kazniće se
zatvorom od šest meseci do pet godina.*

*(2) Kaznom iz stava 1. ovog člana kazniće
se ko vrši proganjanje organizacija ili
pojedinih zbog njihovog zalaganja za
ravnopravnost ljudi.*

1 1 of this article shall be imposed on
2 those who persecute organizations or
individuals for their advocating equality
among people.

3
4 (3) Whoever spreads ideas on the
superiority of one race over another, or
5 advocates racial hatred, or instigates
racial discrimination, shall be punished
6 by imprisonment for a term exceeding
three months but not exceeding three
years.*

7
8 * The duty to incriminate [this offense]
arises under the International
9 Convention on the Elimination of all
forms of Racial Discrimination,
10 published in *Službeni list SFRJ* –
[appendix] *Međunarodni ugovori* No.
11 6/67)

(3) *Ko širi ideje o superiornosti jedne rase
nad drugom, ili propagira rasnu mržnju, ili
podstiče na rasnu diskriminaciju, kazniće se
zatvorom od tri meseca do tri godine.**

* *Obaveza inkriminiranja proilazi iz
Međunarodne konvencije za odklanjanje
svih oblika rasne diskriminacije (“Službeni
list SFRJ” – dodatak: Međunarodni
ugovori, br. 6/67)*

12 **ii. Offenses Enumerated in the Criminal Code of** 13 **Bosnia and Herzegovina**

14 If the facts alleged in the plaintiff’s complaint are proved on trial, and the
15 defendant’s guilt is established, he could also be found criminally responsible for breaches of the
16 following articles of The Criminal Code of the Socialist Republic of Bosnia and Herzegovina
(*Krivični zakon Socijalističke Republike Bosne i Hercegovine*):

18 Art. 42 Heavy bodily injury

19
20 (1) Whoever inflicts a heavy injury to
the body or health of another, shall be
21 punished by imprisonment for a term
exceeding six months but not exceeding
22 five years.

23 ...

24 Art. 49 Violation of equality of citizens

25 (1) Whoever, on the grounds of
26 different nationality, race, religion,
political or other conviction, ethnic
27 affiliation, sex, language, education or
social status, impairs the rights of
28 citizens guaranteed by the constitution,
law or other enactment or general act or
a ratified international treaty, or

Član 42.

(1) *Ko drugog teško tjelesno povrijedi ili
mu zdravlje teško naruši, kazniće se
zatvorom od šest mjeseci do pet godina.*

...

Član 49. Povreda ravnopravnosti građana

(1) *Ko na osnovu razlike u nacionalnosti,
rasi, vjeroispovijesti, etničkoj pripadnosti,
polu, jeziku, obrazovanju ili društvenom
položaju uskrati ili ograniči prava građana
utvrđena ustavom, zakonom ili drugim
propisom ili opštim aktom ili ratificiranim
međunarodnim ugovorom, ili ko na osnovu
ove razlike daje građanima povlastice i
pogodnosti, kazniće se zatvorom od tri*

1 whoever gives citizens privileges or
2 preferences on the grounds of these
3 differences, shall be punished by
4 imprisonment for a term exceeding
5 three months but not exceeding five
6 years.⁹³

7 ...

8 Art. 52 Unlawful imprisonment

9 (1) Whoever unlawfully imprisons,
10 holds in detention, or in any other way
11 restricts the freedom of movement,
12 shall be punished by imprisonment for
13 a term not exceeding one year.

14 ...

15 (3) If unlawful imprisonment lasted
16 more than thirty days or is executed in
17 a mean way, or if the person who was
18 unlawfully imprisoned suffered serious
19 deterioration of health, or of other
20 serious consequences followed, the
21 perpetrator shall be punished by
22 imprisonment for a term exceeding
23 three months but not exceeding five
24 years.

25 (4) If the offense in par. (1) and (3) of
26 this article is committed by an official
27 person in the course of public duty, he
28 shall be punished for the offense in par.
(1) by imprisonment for a term
exceeding three months but not
exceeding five years, and for the
offense in par. (3) by imprisonment for
a term exceeding one year but not
exceeding eight years.

...

mjeseca do pet godina.

...

Član 52. Protivpravno lišenje slobode

*(1) Ko drugog protivpravno zatvori, drži
zatvorenog, ili mu na drugi način oduzme
slobodu kretanja, kazniće se zatvorom do
jedne godine.*

...

*(3) Ako je protivpravno lišenje slobode
trajalo duže od trideset dana ili je vršeno
na svirep način, ili je licu koje je
protivpravno lišeno slobode uslijed toga
teško narušeno zdravlje, ili su nastupile
druge teške posljedice, učinilac će se
kazniti zatvorom od tri mjeseca do pet
godina.*

*(4) Ako djelo iz st. 1 i 3. ovog člana učini
službeno lice u vršenju službe, kazniće se
za djelo iz stava 1. zatvorom od tri mjeseca
do pet godina, a za djelo iz stava 3.
zatvorom od jedne do osam godina.*

...

iii. Violations of Plaintiff's Rights under the Law of Criminal Procedure

As plaintiffs will establish that defendant Vuckovic was acting in an official capacity, i.e. on behalf of the authorities of the Republika Srpska, he may also be found to have breached key provisions of the Law on Criminal Procedure (*Zakon o krivičnom postupku*) and the

⁹³ See also The Constitution of Bosnia and Herzegovina, Art. 180, which explicitly recognizes the freedom to express one's national identity and prohibits any form of inciting ethnic or racial hatred.

1 rights provided by this law to plaintiffs as citizens of Bosnia. In particular, by subjecting plaintiffs
2 and others detained in the *Teritorijalna odbrana* warehouse (TO), *Osnovna škola* elementary
3 school (OS) and *Sekretarijat unutrašnjih poslova* police station to torture and cruel, inhuman and
4 degrading treatment, including sexual assault and beatings; and terrorizing those attempting to visit
5 prisoners at the camps,⁹⁴ defendant Vuckovic's conduct has violated the following provisions of
6 the criminal procedure code:

7 Art. 4

8 (1) The accused must be informed
9 already at the time of first questioning
10 about the offense he is charged with
11 and the grounds of accusation.

11 ...

12 Art. 10

13 It is prohibited and punishable to obtain
14 confessions or other statements by
15 force from the accused or other persons
16 taking part in the proceeding.⁹⁵

15 Art. 201

16 (1) While in detention, the person and
17 dignity of the accused must not be
18 insulted.⁹⁶

18 (2) Only restrictions which are
19 necessary to prevent escape and an
20 agreement that could impair the
21 successful conduct of proceedings, can
22 be placed against the detainee.

21 ...

22 Art. 203

23 (1) With an approval of the body that
24 conducts the investigation and under its
25 supervision or supervision of an
26 authorized person designated by it, and
27 within the limits of house rules, the
28 detainee can be visited by close

Član 4.

(1) Okrivljeni već na prvom ispitivanju mora biti obavješten o delu za koje se tereti i o osnovima optužbe.

...

Član 10.

Zabranjeno je i kažnjivo od okrivljenog ili od drugog lica koje učestvuje u postupku iznuđivati priznanje, odnosno kakvu drugu izjavu.

Član 201.

(1) Pri izdržavanju pritvora ne sme se vređati ličnost i dostojanstvo okrivljenog.

(2) Prema pritvoreniku mogu se primjenjivati samo ograničenja koja su potrebna da se spreči bekstvo i dogovor koji bi mogao biti štetan za uspešno vodenje postupka.

...

Član 203.

(1) Po odobrenju organa koji sprovodi istragu i pod njegovim nadzorom ili nadzorom lica koje on odredi, u granicama kućnog reda pritvorenika mogu posećivati bliski srodnici, a po njegovom zahtevu – lekar i druga lica. Pojedine posete mogu se

⁹⁴ See the Plaintiffs' Amended Complaint, *Mehinovic v. Vukovic*, Civil Action No. 1 98-CV.2470, ¶17.

⁹⁵ See also The Constitution of Bosnia and Herzegovina, Art. 186 (2).

⁹⁶ See also The Constitution of Bosnia and Herzegovina, Art. 186 (1) and Art. 189.

1 relatives, and on his request by a doctor
2 or other persons. Particular visits can be
3 prohibited if they could impair the
4 successful conduct of proceedings.

5 Art. 218

6 ...
7 (2) After that [i.e. being asked to
8 identify himself], the accused shall be
9 informed of charges against him and
10 the grounds of suspicion, and shall be
11 asked what he has to say in his defense.
12 He shall also be informed that he does
13 not have a duty to state his defense or
14 to answer questions.

15 (7) Questioning has to be conducted in
16 a way that fully respects the dignity of
17 the accused.

18 (8) No force, threat or other similar
19 means (Art. 259, par. 3) can be used
20 against the accused to obtain a
21 statement or a confession.

*zabraniti ako bi usled toga mogla da
nastane šteta za vođenje postupka.*

...

Član 218.

...

*(2) Zatim [t.j. kad pruži lične podatke] će
se okrivljenom saopštiti zašto se okrivljuje i
osnovi sumnje koji stoje protiv njega, pa
će se pitati šta ima da navede u svoju
odbranu, a saopštiće mu se da nije dužan
da iznese svoju odbranu niti da odgovara
na postavljena pitanja.*

...

*(7) Ispitivanje treba vršiti tako da se u
punoj meri poštuje ličnost okrivljenog.*

*(8) Prema okrivljenom ne smeju se
upotrebiti sila, pretnja ili druga slična
sredstva (član 259, stav 3) da bi se došlo
do njegove izjave ili priznanja.*

22 The Constitution of Bosnia and Herzegovina of 1974 provides that the state is
23 primarily liable for unlawful or incorrect actions of persons acting in official capacity, i.e. in course
24 of employment. However, it also expressly gives the victim the right to claim compensation from
25 the particular person who caused the damage.⁹⁷

26 Violations of the above provision of the Law on Criminal Procedure therefore
27 provide grounds for causes of action for damages under Bosnian law against defendant.

28 **3. Damages**

a. Duty to Compensate

The duty to compensate the victim of a civil *delict* is set out in Art. 154 of the Law,
which also provides a presumption of fault on the part of the tortfeasor:

Art. 154 Bases of Liability

Član 154.

⁹⁷ See The Constitution of Bosnia and Herzegovina, Art. 210.

1 (1) Whoever causes injury or loss to
2 another shall be liable to redress it,
3 unless he proves that the damage was
4 caused without his fault.

(1) Ko drugome prouzrokuje štetu dužan je
naknaditi je, ukoliko ne dokaže da je šteta
nastala bez njegove krivnje.

...

...

Fault can be found due to either intentional wrongdoing or negligence:

Art. 158 Existence of Fault

Član 158. Postojanje krivnje

Fault exists when a tortfeasor causes
injury or loss intentionally or out of
negligence.

Krivnja postoji kada je štetnik
prouzrokovao štetu namjerno ili
nepažnjom.

Since of all defendant's alleged actions were done intentionally, the issue of
negligence is not raised in the present case.

b. The Types of Injuries Recognized by the Law of Obligations

Article 155 defines damage that can be the basis of a damage claim:

Art. 155 Damage

Član 155. Šteta

Damage is a diminution of value of
someone's property (simple loss) and
preventing its increase (profit lost), as
well as inflicting on another physical
and psychological pain or causing fear
(non-material damage).

Šteta je umanjenje društvenih sredstava,
odnosno nečije imovine (obična šteta) i
sprečavanje njihova povećanja (izmakla
korist), kao i nanošenje drugome fizičkog
ili psihičkog bola ili straha (nematerijalna
šteta).

The law, as Article 155 indicates, divides damage into two kinds: material and non-material. Material damage is, essentially, loss of wealth or economic interest. Non-material damage is damage to the physical and psychological well-being of a person, and is subdivided into physical pain, psychological pain and fear. Art. 200 provides a more detailed description of non-material damage that warrants compensation:

Art. 200 Money Indemnity

Član 200. Novčana naknada

1 (1) For physical pains suffered, for
2 mental anguish suffered due to
3 reduction of life activities, for
4 becoming disfigured, for offended
5 reputation, honor, freedom or rights of
6 personality, for death of a close person
7 as well as for fear, the court shall, after
8 finding that the circumstances of the
9 case and particularly the intensity of
10 pains and fear, and their duration,
11 provide a corresponding ground
12 thereof, award equitable damages,
13 independently of redressing the
14 material damage, even if the latter is
15 not awarded.

16 (2) In deciding on the request for
17 redressing non-material damage, as
18 well as on the amount of such damages,
19 the court shall take into account the
20 significance of the value violated, and
21 the purpose to be achieved by such
22 redress, but also that it does not favor
23 ends otherwise incompatible with its
24 nature and social purpose.

25 According to the commentators, the elaboration of the types of injuries in both Art.
26 155 and Art. 200 is not exhaustive, so a court may expand their list of damages.⁹⁸ In the present
27 case, however, a court would clearly be authorized by the letter of both articles to award damages
28 for injuries caused to the plaintiffs.

Finally, Art. 195 specifies what kind of damages can be sought in cases of bodily
injury:

Art. 195 Redressing damage in case of
bodily injury or damage to health

(1) One who inflicts to another bodily
injury or impairs his health, shall be
liable to reimburse his medical
expenses, as well as other related
necessary expenses, including recovery
of the salary lost due to inability to
work during medical treatment.

(2) Should the injured person due to
total or partial disability lose his salary,

(1) Za pretrpljene fizičke bolove, za
pretrpljene duševne bolove zbog
umanjenja životne aktivnosti, naruženosti,
povreda ugleda časti, slobode ili prava
ličnosti, smrti bliskog lica te za strah sud
će, ako nađe da okolnosti slučaja a
naročito jačina bolova i straha i njihovo
trajanje to opravdava, dosuditi pravičnu
novčanu naknadu, nezavisno od naknade
materijalne štete, kao i u njenom odsustvu.

(2) Prilikom odlučivanja o zahtevu za
naknadu nematerijalne štete, kao i o visini
njene naknade sud će voditi računa o
značaju povređenog dobra i cilju kome
služi ta naknada, ali i o tome da se njome
ne pogoduje težnjama koje nisu spojive sa
njezinom prirodom i društvenom svrhom.

Član 195. Naknade štete u slučaju telesne
povrede ili narušenja zdravlja.

(1) Ko drugome nanese telesnu povredu ili
mu naruši zdravlje, dužan je naknaditi mu
troškove oko lečenja i druge potrebne
troškove s tim u vezi, kao i zaradu
izgubljenu zbog nesposobnosti za rad za
vreme lečenja.

(2) Ako povređeni zbog potpune ili
delimične nesposobnosti za rad gubi
zaradu, ili su mu potrebe trajno povećane,

⁹⁸ Cigoj at 549 – 572.

1 or should his needs become
2 permanently increased, or should
3 possibilities of his further development
4 and advancement be destroyed or
reduced, the person liable shall pay to
the injured specific annuities as
compensation for such damage.

*ili su mogućnosti njegovog daljeg
razvijanja i napredovanja uništene ili
smanjene, odgovorno lice dužno je plaćati
povređenom određenu novčanu rentu, kao
naknadu za tu štetu.*

5
6 The Law of Obligations of the former Yugoslavia thus provides a clear and
7 unequivocal legal basis for claiming a money indemnity for physical pains, mental anguish and
8 fear (Art. 200), as well as for medical expenses and lost income (Art. 195).

9 **G. Attorneys Fees**

10 Attorneys' fees and costs are appropriate where plaintiff is seeking to vindicate
11 federal rights and where it is necessary to ensure access to the judicial process. The Civil Rights
12 Attorneys' Fees Awards Act; 42 U.S.C. § 1988 (1988); *Henschy v. Eckerhart*, 461 U.S. 424, 429
13 (1983). Since the rights at issue in the present case are federal rights protected under the ATCA
14 and TVPA, attorneys' fees are authorized under §1988. District Courts also have the inherent
15 power to award attorneys' fees to provide broad relief for a wide range of conduct. *Chambers v.*
16 *NASCO*, 501 U.S. 32, 43 (1991); *United States v. Hudson and Goodwin*, 11 U.S. (7 Cranch) 32, 34
17 (1812).

18 **H. Damages**

19 Plaintiffs are entitled to damages under international law including "(a)
20 compensatory damages sufficient to compensate for all physical and nonphysical injuries caused by
21 the illegal act and (b) punitive damages sufficient to punish the defendant and deter future
22 violations." *Abebe-Jiri*, 1993 WL 814304 at *4. Plaintiffs will present evidence at trial regarding
23 the amount of compensatory and punitive damages.

24 **V. CONCLUSION**

25 Plaintiffs contend that defendant Vuckovic's conduct is in violation of customary
26 international human rights law, including the prohibition against torture, cruel, inhuman and
27 degrading treatment, arbitrary detention, crimes against humanity, war crimes and genocide and
28 that these violations confer liability on the defendant under the Alien Tort Claims Act and Torture

1 Victim Protection Act. Plaintiffs also make claims under the law of the State of Georgia and the
2 laws of Bosnia and Herzegovina. Plaintiffs are entitled to compensatory and punitive damages,
3 reasonable attorneys fees and costs of suit, injunctive relief necessary to avoid further liquidation
4 or transfer of assets and any other relief that the court deems proper.

5
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